

(2011) 06 UK CK 0085

In the Uttarakhand High Court

Case No : Writ Petition No. 71 of 2011 (S/B)

Chief Engineer and Head of the Department, Irrigation and
Another

APPELLANT

Vs

Rajendra Prasad Tayal and Another

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (2012) 1 UC 446 : (2011) 2 UD 14

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Respondent No. 1 retired on 30.6.2005. On 2.11.2007, a charge sheet was issued to the Respondent No. 1. In that, three specific charges were made out. Those were pertaining to period 1.6.1999 to 30.6.2005. Respondent No. 1 challenged the said charge sheet before the Tribunal. It was contended before the Tribunal that the said charge sheet is incompetent as the same was not in accordance with Regulation 351(A) of the Civil Service Regulations. The Tribunal has accepted the contention of Respondent No. 1 and has, accordingly, quashed the said charge sheet with a direction to release post-retiral benefits of the Respondent No. 1. Aggrieved thereby, the present writ petition has been filed.

2. The Tribunal found as a fact, to which there is no dispute that after a government employee has retired, recourse to disciplinary proceedings can only be taken against such an employee under Regulation 351(A) of the said Regulations. By the said Regulation, the Governor of the State has alone been authorized to initiate proceedings to establish guilt of grave misconduct on the part of a retired employee, or in respect of pecuniary loss caused to the government by misconduct or negligence on the part of a retired employee, for the purpose of withholding or withdrawing pension. The Tribunal found that the

State has failed to bring on record anything wherefrom it would be evidenced that the said charge sheet was issued on the directions of the Governor of the State or that the Governor of the State granted prior sanction for issuance of the said charge sheet or post facto sanction thereto.

3. In the writ petition, it has not been contended by the State that the Governor had given his assent for initiating action, as was initiated by the said charge sheet. Yesterday, learned Counsel for the State wanted a day's time to verify whether there is any file noting by the Governor. Learned Counsel for the State has reported to us today that he has not been able to obtain any instruction in that regard.

4. In the writ petition, Petitioner/State is contending that the said charge sheet was authorized by the Minister In-charge and appropriate file noting in that regard is available. It was contended that in terms of the Rules of Business, made in exercise of powers conferred by Clauses 1 and 2 of Article 166 of the Constitution of India, the Minister In-charge of Irrigation Department, i.e. the Department from where the Respondent No. 1 has retired, was competent to authorize issuance of the said charge sheet.

5. As aforesaid, under Regulation 351(A) of the said Regulations, the Governor alone is entitled to do what has been provided therein and no one else. Under Article 166 of the Constitution of India, Rules of Business are to be made for more convenient transaction of the business of the Government of a State. Business of the Government of a State does not include those, which have been specifically earmarked for the Governor in the regulations made in exercise of powers of the Government of a State, as conferred by various provisions of the Constitution of India.

6. Furthermore, the Rules of business annexed with the writ petition, do not show that any Minister or the Chief Minister or even the Council of Ministers, i.e. the Cabinet, can deal with the subject provided under Rule 351-A of the Civil Service Regulations. We, accordingly, hold that in absence of either Governor of the State initiating steps for issuing the said charge sheet or authorizing issuance of the same, the said charge sheet was not in accordance with Regulation 351(A) of the said Regulations and, accordingly, the said charge sheet had no legal backing to stand. Since the said charge sheet has been quashed by the Tribunal, we find no scope of interference with the judgment and order of the Tribunal. We dismiss the writ petition accordingly.