

(2019) 10 UK CK 0016
In the Uttarakhand High Court
Case No : Writ Petition (S/B) NO. 420 Of 2019

Dhiraj Singh

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 11-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 UK CK 0016

Hon'ble Judges : Ramesh Ranganathan, CJ; Ravindra Maithani, J

Bench : Division Bench

Advocate : B.D. Pandey, B.S. Parihar, N.S. Pundir

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. The petitioner has invoked the jurisdiction of this Court against a show cause notice. It is his case that, since he retired from service on attaining the age of superannuation on 31.10.2017 nearly two years ago, no disciplinary proceedings can be initiated thereafter in the absence of any specific provision in the applicable Rules in this regard.

2. Reliance is placed by the petitioner on a Division Bench judgment of this Court in Anil Kumar Seth vs. State of Uttarakhand and others (order in Writ Petition (S/B) No. 09 of 2013 dated 11.07.2013), wherein the Division Bench held that in the absence of any specific rule, no disciplinary proceedings can be initiated against the petitioner post his retirement.

3. The submission of Sri B.D. Pandey, learned counsel for the petitioner that on cessation of master and servant relationship consequent on an employee attaining the age of superannuation, disciplinary proceedings can only be initiated if the Rules so provide, cannot be said to be without merit. We must, however, bear in mind that the jurisdiction which this Court exercises under Article 226 of the Constitution of India is discretionary.

4. While we are in agreement with the law declared in *Anil Kumar Seth*, we cannot also ignore the fact that the show cause notice alleges that a sum of Rs. 12,29,004/- is due from the petitioner. We see no reason in such circumstances, to exercise our discretionary jurisdiction under Article 226 of the Constitution of India, to permit a person, who allegedly owes a sum in excess of Rs.12 lacs to the respondent, to walk away without having to re-pay such dues merely on the ground that he has retired from service.

5. Exercise of jurisdiction, under Article 226 of the Constitution of India, is discretionary. (*C.R. Reddy Law College Employees' Association, Eluru W.G. District vs. Bar Council of India, New Delhi*, reported in 2004 (5) ALD 180). The jurisdiction of this Court is exercised only in furtherance of the interest of justice and in larger public interest, and not merely on a legal point being made out. The interest of justice and the public interest coalesce. They are very often one and the same. The Court has to weigh public interest vis-à-vis private interest while exercising its discretionary powers. (*Ramniklal N. Bhutta v. State of Maharashtra* reported in AIR 1997 SC 1236; *Manohar Lal v. Ugrasen & others* reported in (2010) 11 SCC 557; *Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkison Pvt. Ltd* reported in (2005) 6 SCC 138; *Air India Ltd. v. Cochin International Airport Ltd.* reported in (2000) 2 SCC 617). A writ of mandamus and a writ of certiorari are discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice. (*State of Maharashtra v. Prabhu* reported in (1994) 2 SCC 481). Even if a legal flaw might be electronically detected, (*Rashpal Malhotra v. Mrs. Saya Rajput* reported in AIR 1987 SC 2235 and *Council of Scientific and Industrial Research v. K.G.S. Bhatt* reported in AIR 1989 SC 1972), or some defect is found in the decision-making process, this Court would exercise its discretion with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Only when it comes to the conclusion that overwhelming public interest requires interference, should it intervene. (*Air India Ltd. v. Cochin International Airport Ltd.* reported in (2000) 2 SCC 617).

6. The notice dated 31.07.2014, calling upon the petitioner to show cause, refers to the fact that a sum of Rs. 12,29,004/- is due from him, and the petitioner has been called upon to show cause why the said amount should not be recovered from him.

7. While *Sri B.D. Pandey*, learned counsel for the petitioner, would assert that no sum is due and payable by the petitioner, this contention, now urged across the bar, can always be taken by the petitioner in his reply to the show cause notice.

8. Suffice it, in such circumstances, to permit the petitioner to submit his reply to the show cause notice within ten days from today, and on such a reply being filed, the second respondent shall pass a detailed and considered order, in accordance with law, within two weeks thereafter.

9. It is made clear that the observations aforementioned shall not be construed as our having expressed any opinion on the truth, or otherwise, of the allegations leveled in the show cause notice.

10. The writ petition is disposed of accordingly. No costs.