
(2005) 04 UK CK 0017
In the Uttarakhand High Court
Case No : Spl. Appeal No. 10 of 2005

Dinesh Kumar Sharma	Vs	APPELLANT
State of Uttaranchal and Others		RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3(1)

Citation : AIR 2005 Utt 61 : (2005) 3 UC 1642 : (2005) 1 UD 585

Hon'ble Judges : Cyriac Joseph, C.J;P.C.Verma, J

Bench : Division Bench

Advocate : Gopal Narain, for the Appellant; D.S. Patni, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This Special Appeal is filed against the judgment dated 31-8-2004 rendered by a learned single Judge of this Court in civil Writ Petition No. 1190(S/S) of 2003. The appellant was the fifth respondent in the writ petition which was filed by the fifth respondent herein.

2. When this appeal came up for admission on 20-4-2005, Mr. D. S. Patni, learned Counsel for the fifth respondent raised a preliminary objection that the appeal is not maintainable in view of the provisions contained in Rule 5, Chapter VIII of the Allahabad High Court Rules as applicable to the High Court of Uttaranchal and the judgment of the Division Bench of Allahabad High Court in S. B. Nath v. Committee of Management, Anglo Bengali Inter College, Allahabad reported in (1996) 1 U 102 LBEC . The learned Counsel for the appellant was given time to examine the position. Today, we have heard learned Counsel for the appellant and also learned Counsel for the respondent.

3. The writ petition was filed challenging Annexure 1 order passed by the Regional Joint Director of Education, Garhwal Region, Pauri, Uttaranchal. The said order was passed on an appeal filed by the fifth respondent in the writ petition

(appellant herein) under Regulation 3(1)(f) of Chapter II of Regulations framed under the Intermediate Education Act, 1921 against the decision of the Administrator, Sri Guru Nanak Public Boys' Inter College Deharadun. The writ petition was allowed and the impugned order was set aside by the learned single Judge. Against the judgment of the learned single Judge, the appellant filed Petition for Special Leave to Appeal (Civil) No. 15316 of 2004 before the Hon''ble Supreme Court. But on 21-2-2005, the said SLP was dismissed as withdrawn in view of the statement made by the learned Counsel for the petitioner that the petitioner has a remedy by way of filing a Special Appeal before the Division Bench of the High Court and that he desires to withdraw the writ petition. Thereafter, this Special Appeal has been filed.

4. Having considered the submissions made by the learned Counsel for the parties, we find force in the contention of the learned Counsel for the fifth respondent that his Special Appeal is not maintainable in view of Rule 5, Chapter VIII of the Allahabad High Court Rules as applicable to High Court of Uttaranchal. According to Rule 5 of Chapter VIII of the Allahabad High Court Rules, no appeal shall lie to the High Court from a judgment passed by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any order of the Government or any officer or Authority made or purported to be made in exercise or purported exercise of appellate or revisional jurisdiction under any Uttar Pradesh Act or any Central Act. As already noted, the judgment impugned in this Special Appeal was passed by one Judge in exercise of jurisdiction conferred by Article 226 of the Constitution of India in respect of an order passed by the Regional Joint Director of Education in exercise of appellate jurisdiction under the U. P. Intermediate Education Act, 1921. Hence, no Special Appeal is maintainable before a Division Bench of this Court against the impugned judgment. We uphold the preliminary objection raised by the learned Counsel for the fifth respondent regarding the maintainability of the Special Appeal. Therefore, the Special Appeal is dismissed as not maintainable.

5. Learned Counsel for the appellant submits that the appellant filed this appeal after withdrawing the SLP filed before the Hon''ble Supreme Court on the wrong assumption that an appeal will lie to the Division Bench of the High Court against the judgment of the learned single Judge. Even if it is so, we have no jurisdiction to entertain this Special Appeal and the only remedy available to the appellant is to approach the Hon''ble Supreme Court again.