
(2004) 09 UK CK 0019

In the Uttarakhand High Court

Case No : Writ Petition No. 296 of 2004 (S/B)

Dr. Gopal Singh Rawat

APPELLANT

Vs

State of Uttaranchal and others

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73, 76

Citation : (2005) 1 UC 317

Hon'ble Judges : V.S.Sirpurkar, C.J;Irshad Hussain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Chief Justice

1. Rule. Learned Counsel for the parties appeared and waived notices. Heard finally with the consent of the parties.

2. This is a very peculiar kind of writ petition, where an innocuous prayer has been made for quashing the order dated 1-07-2004. By that order, the representation of the Petitioner Dr. G.S. Rawat has been rejected. In that representation, the relief sought for by the Petitioner was in the following terms.

3. Its English translation would be that the order passed by the U.P. Government, Agricultural Department No. 1488/ 12-1-2001-2558-2000 dated 4th April, 2001 regarding the allocation of Sri Madan Lal and Sri C.S. Mehra, Respondents No. 7 and 8 respectively to Uttaranchal State should be cancelled as the said right to make the final allocation rests with the Government of India u/s 73 of the U.P. Reorganisation Act and since, these officers have not opted for the State of Uttaranchal.

This representation is also seemingly very innocuous. The real difficulty lies in the fact that the Petitioner and the Respondents No. 7 and 8 were in the same cadre to begin with and admittedly, the Respondents No. 7 and 8 were promoted

to the Class I post w.e.f. 24-06-1993 and 17-08-1995 respectively. The Petitioner, who was a member of the Hill Sub-Cadre and was serving in a Class II post, continued to be serving on those dates in his capacity as a Class II officer and therefore, it is obvious that the Respondents No. 7 and 8 were seniors to the Petitioner in the matter of service as they had walked into Class I service with the dates mentioned above.

4. What is sought to be obtained by the representation is the removal of Respondents No. 7 and 8 from the Uttaranchal cadre altogether so that they do not, any more, remain in Uttaranchal cadre and thereby, the Petitioner becomes senior officer, at least, as compared to Respondents No. 7 and 8. The gravamen of the contention of the Petitioner is that earlier the Hill-Sub Cadre Rules were applicable only to the officers of the category of Class II, Class III and Class IV posts and since, the Respondents No. 7 and 8 were promoted from Class II post to Class I post, they walked out of the Hill Sub-Cadre and thereby, their umbilical cord with the Hill Sub-Cadre was snapped. The Petitioner, further, submits that though, thereafter, w.e.f. 1-12-1995 the Class I services, also were brought under the umbrella of Hill Sub-Cadre, these two officers did not opt for the Hill Sub-Cadre afresh and therefore, they could not be deemed to be the members of the Hill Sub-Cadre merely because the Class I services were also brought under the umbrella of Hill Sub-Cadre. The Petitioner, further, relies on the provisions of Section 73 of the U.P. Reorganisation Act and says that though the Central Government sent all the employees of the Hill Sub-Cadre to the State of Uttaranchal and allocated them by a general order dated 11-09-2001, that order could not include these two officers as these two officers had already snapped their cord with the Hill Sub-Cadre and they were only the members of the general cadre. Under the circumstances, the order passed by the U.P. Government allocating them to the Hill Sub-Cadre would be beyond the powers of the U.P. Government as that power exclusively rests with the Central Government. In short, the contention of the Learned Counsel is that the order dated 11-09-2001 did not have the effect of sending the Petitioner or allocating him to the State of Uttaranchal in the absence of his initial option for the Hill Sub-Cadre, The Learned Counsel also very heavily relies on the earlier judgment of this Court disposing of the writ petition No. 1396 of 2002, in which the same question was raised by him regarding the final allocation of the Respondents No. 7 and 8 to the State of Uttaranchal.

5. On the other hand, it is pointed out by Mr. Manoj Tiwari, Learned Counsel for Respondent No. 7 that there was no question of giving any fresh option. The Learned Counsel is at pains to explain that the Respondent No. 7 as also the Respondent No. 8 were actually the members of the Hill Sub-Cadre when they were in the Class II posts. He points out from the language of Rule 6 of the Hill Sub-Cadre Rules and, more particularly, the proviso thereto that there was no necessity on the part of the Respondent No. 7 or as the case may be, Respondent No. 8, who were already the part of the Hill Sub-Cadre when they were serving as Class II officers, to give any fresh option once they were

promoted to Class I post. His contention is that the subsequent amendment, by which the Class I posts were also brought under the umbrella of the Hill Sub-Cadre, would apply even to the persons, who were promoted eventually from Class II posts to Class I posts and by that amendment, all those persons, who were so promoted, would be automatically brought under the umbrella of Hill Sub-Cadre Rules. He points out that there was no occasion for him to give any option and rightly, no option was called from him because Respondent No. 7 or as the case may be, Respondent No. 8 had already given an option in favour of being included in the Hill Sub-Cadre and it was only in pursuance of that option that they continued to serve in the Class II capacity. He, therefore, points out that there was no question of giving any final option again. He, then, points out that all the members of the Hill Sub-Cadre were actually made over to and allocated to the State of Uttaranchal by the order dated 11-09-2001 by the Central Government and therefore, the U.P. Government had rightly included these officers in the list of officers, who were allocated to the State of Uttaranchal.

6. Learned Counsel appearing on behalf of U.P. Government has also taken the same line of argument and has contended that there was no question of taking any fresh options from the persons like Respondent No. 7 and 8 merely because they had for a time being, gone out of the so-called umbrella of the Hill Sub-Cadre Rules. She has also taken the position that the moment the amendment was effected to the Hill Sub-Cadre including the Class I officers also, the inclusion of the Respondents No. 7 and 8 into the Hill Sub-Cadre was automatic. The Learned Counsel appearing for the Central Government also takes up a position that the Respondents No. 7 and 8 have actually been finally allocated to the State of Uttaranchal and there would be no question of their being sent out of the cadre of Uttaranchal back to the cadre of Uttar Pradesh. The Learned Counsel appearing for the State of Uttaranchal also takes up this position and says, relying on the orders passed earlier, that the State of Uttaranchal had taken a correct stand that Respondents No. 7 and 8 were finally allocated to the State of Uttaranchal and therefore, there would be no question of sending back the said officers.

7. We are convinced that this writ petition has to be rejected for more reasons than one. The first reason for rejecting this writ petition would be the tenability of the petition, itself. Now, there can be no doubt that the Petitioner is a Government servant as contemplated in the definitions. That is not a position disputed by Mr. Arvind Vashishth, Learned Counsel for the Petitioner, also. There is a Tribunal working, created u/s 3 of the U.P. Public Service (Tribunal) Act, 1976 (from hereinafter referred to as the "Act") and u/s 4 of the Act, the Tribunal has all the jurisdiction to decide any question regarding the service. Sub-section (1) of Section 4 of the Act suggests "subject to the other provisions of this Act, a person, who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of the claim to the Tribunal for the redressal of his grievance."

The service matter has been defined u/s 2(2)(bb) of the Act as under:

"Service matter means a matter relating to the conditions of service of a public servant."

Section 2(b) of the Act defines a public servant to mean every person in the service or pay of:

- i. the State Government; or
- ii. a local authority not being a Cantonment Board.

8. Now, there is no dispute that the Petitioner is a public servant and the matter pertains to his service and therefore, can be safely stated to be a service matter and therefore, the Tribunal u/s 4(1) of the Act would always have a jurisdiction to entertain the same. It is pointed out that the Petitioner is aggrieved by the order passed by the State Government rejecting his representation. The representation, undoubtedly, pertained to the service matter, in as much as, the Petitioner has sought his betterment though in an indirect manner by seeking the removal of Respondents No. 7 and 8 from the Uttaranchal cadre. Therefore, this would be a fit case, which was well within the jurisdiction of the Tribunal and if that was so, there was no point in coming directly against the order passed by the State Government rejecting his representation. In our opinion, merely because the order is passed by the State Advisory Committee, which is appointed u/s 76 of the U.P. Reorganisation Act, 2000 by the Central Government, there would be no dearth of jurisdiction on the part of the Tribunal because the matter, which is required to be decided by the State Advisory Committee, essentially pertains to the state service for deciding the rights of the State Government servants regarding their allocation to either the State of U.P. or the State of Uttaranchal. Under these circumstances, this would be the first reason to reject the petition on the ground of alternative remedy.

9. Mr. Arvind Vashishth, Learned Counsel for the Petitioner, however, suggests that earlier petitions were entertained by the Court and were decided also and there were number of such petitions, which were entertained by the Court. That might have been so, but, that does not, in any manner, decide the question as to whether those petitions were liable to be entertained by the Court. The question of tenability of those petitions was not discussed nor decided by any of the earlier judgments passed by this Court. The fact of the matter was that the petitions were entertained and decided, but that would not, necessarily, obtain a position that such petitions were always and would always be tenable before this Court, even before approaching the Tribunal. We, therefore, hold that the writ petition filed by the Petitioner before us is not maintainable. In fact, we had given a clear option to Mr. Vashishth to approach the Tribunal, however, the Learned Counsel says that he has no instructions to withdraw the writ petition for approaching the Tribunal. Under the circumstances, we are constrained to decide the writ petition on merits also.

10. It will be seen that Rule 6 of the U.P. Hill Sub-Cadre Rules, 1992 (from hereinafter referred to as the "Rules") provides as under:

6. Allocation of members of Service to Hill Sub-Cadre: (1) The existing members of Service shall be required by the appointing authority to exercise their option for allocation to Hill Sub-Cadre within three months from the date of order made under Sub-rule (2) of Rule 5.

(2) On the commencement of the Uttar Pradesh Hill Sub-Cadre (Second Amendment) Rules, 1997 the appointing authority, in case where the procedure for asking for options to Hill Sub-Cadre has not been completed or partially completed, may require the members of the General Cadre to exercise their options for allocation to Hill Sub-Cadre within three months from the date of order made under Sub-rule (2) of Rule 5:

Provided that fresh options shall not be invited in respect of the Departments and posts for which options have already been asked for.

11. A bare reading of the Rule would obtain a position that fresh options would not be required in respect of the persons, where the options were already asked for. In our considered opinion, this proviso would include the case of the persons like Respondents No. 7 and 8 also. They had already given an option to be in the Hill Sub-Cadre and while they were serving in the Hill Sub-Cadre, they were promoted to Class I post. Subsequently, the Class I post also came to be included in the Hill Sub-Cadre w.e.f. 1-12-1995. In our considered opinion, therefore, the proviso would apply even to the persons like the Respondents No. 7 and 8 for whom, there would be no further necessity to give fresh options. When we read Sub-rule (1) of Rule 6 of the Rules along with proviso, the position obtained is that even if the persons like Respondents No. 7 and 8 had walked out of the cadre because of their promotions, the subsequent inclusion of Class I posts also in the said Hill Sub-Cadre would engulf them and there would be no necessity for them to give fresh options. Therefore, the basic objection raised by Mr. Vashishth has to fall that in the absence of any fresh options given by Respondents No. 7 and 8, they would automatically go out of the cadre and remain in the general cadre. That is not the position in law. This would be, again, the reason to reject the writ petition because the basis of the writ petition is not giving of the option by Respondents No. 7 and 8.

12. We are certain that the Petitioner did not have any locus standi to file this writ petition. What the Petitioner could really pray for is the fixation of his own seniority vis-a-vis Respondents No. 7 and 8. Those contentions are conspicuously absent in the writ petition. All that the Petitioner is praying is for the ouster of Respondents No. 7 and 8 from the State of Uttaranchal. Now, it is an admitted fact that all the members of the Hill Sub-Cadre were made over and allocated to the State of Uttaranchal finally by the Central Government. The Learned Counsel for the Central Government also takes up the stand and contends before us that the Respondents No. 7 and 8, being members of Hill Sub-Cadre, were allocated

finally to the State of Uttaranchal. That is the contention of the Respondents No. 7 and 8 also as also of the learned Standing Counsel appearing on behalf of State of Uttaranchal. What is pointed out before us by Mr. Vashishth is a letter dated 29th May, 2004. In this letter, the Secretary, Uttaranchal Government has written to the State Advisory Committee that since the Respondent No. 7 had not been finally allocated to the State of Uttaranchal, it was not possible to take any decision regarding his promotion to the post of Addl. Director, Agriculture. From this, the Learned Counsel takes a stand that, at least, on 29th May, 2004 the State of Uttaranchal was of the firm opinion and belief that, at least, at that time, the allocation of the Respondent No. 7 and also equally Respondent No. 8 was not final.

13. As against this, the Learned Counsel appearing on behalf of State of Uttaranchal points out that an order was already passed on 9th March, 2004 by the same Secretary vide No. 1128/Agriculture/ 2003-writ-2(48)02 to the State Advisory Committee, in which he had taken a clear cut stand that Shri Madan Lal Respondent No. 7 as also Shri C.S. Mehra Respondent No. 8 were always members of the Hill Sub-Cadre. Our attention is also invited to the 4th paragraph of this order, wherein it is pointed out that the U.P. Government by its order dated 8.5.2003 had issued a seniority list, in which the names of Respondents No. 7 and 8 were not included, though they were so included in the earlier list dated 29-10-2001, which list was objected to by Respondent No. 7 on the ground that he could not be said to be the employee of U.P. Government and therefore, his name could not have been included in the said seniority list of the U.P. Government officers. The Learned Counsel points out that there is an unequivocal stand taken by the U.P. Government by order dated 8-05-2003 that the Respondents No. 7 and 8 would not be the members of the U.P. Cadre. The Learned Counsel also points out that in paragraph 5 of this order, it is very clearly indicated by the Secretary that no options were asked for from the officers, who were promoted to the post of Deputy Director and Addl. Directors because they were promoted only from the Class II officers, who were the members of the Hill Sub-Cadre.

14. Now, once this position of the fact is obtained, the basis of Mr. Vashishth's argument that these officers, after their promotion, did not give the option has to fail. It is obvious that after this letter was given by Mr. Om Prakash, Secretary, Uttaranchal Government, he did not have the final verdict from the State Advisory Committee and hence, in pursuance of this letter, he wrote the letter dated 29th May, 2004. Probably, the Secretary was waiting for the verdict by the State Advisory Committee and hence, he mentioned by way of abundant caution that there was no final allocation. This being the position, we are not prepared to read the letter dated 29th May, 2004 as a commitment on the part of the Uttaranchal Government that the Respondents No. 7 and 8 were not finally allocated to the State of Uttaranchal. In the impugned order, the State Advisory Committee had mentioned while rejecting the representation that Dr. G.S. Rawat, the Petitioner, himself, had admitted that his appointment as well as the

appointments of Sri Madan Lal and Sri C.S. Mehra were made in the Hill Sub-Cadre and since, all of them were the optee of Hill Sub-Cadre, they were finally allocated to the State of Uttaranchal vide Government of India Order dated 11-09-2001.

15. Mr. Arvind Vashishth, Learned Counsel for the Petitioner takes a very serious objection on this observation and submits that he had not made any such admission. That may be so. What we have pointed out by the earlier reference is that it was an admitted position for all that Sri Madan Lal and Sri C.S. Mehra, Respondents No. 7 and 8 respectively were actually appointed in the Hill Sub-Cadre as they continued to serve there as the Hill Sub-Cadre officers in Class II posts and ultimately, after they were promoted to Class I posts, by reason of proviso to Rule 6(1) of the Rules, there was no necessity on their part to make any option and ultimately, by the amendment, even they were included in the Hill Sub-Cadre, for whom, no fresh options were sought.

16. We are, therefore, convinced that the order passed is absolutely correct. We, therefore, do not find any merit in the writ petition. The writ petition is, accordingly, dismissed. No order as to costs.