
(2019) 03 UK CK 0122
In the Uttarakhand High Court
Case No : Special Appeal No. 173 Of 2019

Harish Lal & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 5(5), 5(5A), 5(5B)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 UK CK 0122

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : D.S. Patni, A.K. Bisht

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 424 of 2019 dated 28.02.2019. The appellant herein had filed WPSS No. 424 of 2019 seeking a writ of certiorari to quash the impugned order passed by the third respondent in January 2013, and the impugned order dated 18.02.2019 passed by the Superintendent of Police; and for a writ of mandamus commanding and directing the respondents not to disturb the petitioners from discharging their services in their respective promoted posts.

2. Facts, to the limited extent necessary, are that the petitioners joined as Group D/Messenger on 14.11.2007. They were, thereafter, sent for training on 17.11.2007. A tentative seniority list was issued on 30.05.2011 of Group IV employees wherein the seniority of the private respondent was shown lower than the appellant-writ petitioner. A final seniority list is said to have been issued on 01.11.2011 wherein the private respondents are said to have been shown as junior to the appellant-writ petitioners herein. In the tentative seniority list

prepared on 23.10.2013 also, the appellant-writ petitioners appear to have been shown above the private respondents. Some of the petitioners were duly promoted to the post of Workshop Assistant from their posts of Messenger in the Class IV posts, and they were sent for training for six months for Grade-III Operator Course in the Central Workshop.

3. The 5th respondent filed WPSS No. 749 of 2018 seeking a direction from this Court to treat him on par with the appellant-writ petitioners, and to place him at serial No. 4 in the seniority list dated 27.03.2018. A learned Single Judge of this Court, by order dated 20.04.2018, directed the respondents to proceed with the exercise of promotion which was made subject to the outcome of the main writ petition. Thereafter, the said writ petition was disposed of by order dated 30.10.2018 whereby the learned single Judge directed that, before making promotion to the post of Work Hand, the seniority list must be prepared; in case the initial appointment letter of 14.11.2007 is not based on any rational criteria, seniority should be determined in accordance with the Uttaranchal Government Servants Seniority Rules, 2002; and if there are candidates with equal marks, or everything remains equal between the candidates, what would matter, in determining their inter-se seniority, is their date of birth, meaning thereby that a candidate who is senior in age would be given preference in seniority.

4. The said writ petition was disposed of directing the respondents to determine the seniority, after hearing all those including the petitioners therein, and to make promotions thereafter. The learned single Judge made it clear that the date of joining would not be a relevant date for determining seniority. In compliance with the said order, a joint seniority list was prepared by the 3rd respondent in January 2019 amalgamating the two lists of Kumaun and Garhwal Region. It is the appellant-writ petitioners' case that they were not parties to WPSS No. 749 of 2018, nor were they provided an opportunity of hearing by the 3rd respondent. As a consequence thereof, a seniority list was prepared in January 2019, and the petitioners, who were earlier promoted to Group III posts, were reverted to Class IV posts by the impugned order dated 18.02.2019, questioning which they invoked the jurisdiction of this Court.

5. In the order under appeal, the learned Single Judge observed that the order of reversion passed against the petitioners was in compliance with the directions issued by this Court in WPSS No. 749 of 2018 dated 30.10.2018; the controversy was regarding the interse seniority between the appellants-writ petitioners and the private respondents; a perusal of the order of reversion revealed that the parties were heard in person; and, since the issue involved related to determination of interse seniority between the candidates, against promotion based on seniority, the appropriate remedy was to approach the public Service Tribunal against the impugned order. Aggrieved thereby the present appeal.

6. The submission put forth by Shri D.S. Patni, learned counsel for the appellants, on the maintainability of the writ petition, is that, in view of the bar under subsection (5-B) of Section 5 of the U.P. Public Services (Tribunal) Act,

1976, the appellant-writ petitioners cannot invoke the jurisdiction of the Tribunal for grant of interim relief; and they have no other remedy except to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

7. Section 5(5-B) of the 1976 Act stipulates that, notwithstanding subsections (1) to (5-A) of Section 5, the Tribunal would have no power to make an interim order in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement of a public servant. Clause (5-B), which prohibits the Tribunal from granting an interim order, relates to an order of punishment or an order made in the course of disciplinary proceedings whereby an employee is sought to be suspended. In the present case, the petitioners' reversion is not as a measure of punishment, but is as a consequence of a revision in the seniority list which has also been subjected to challenge in the writ petition.

8. In *Public Services Tribunal Bar Association vs. State of U.P. and another* (2003)4SCC 104, reliance upon which is placed on behalf of the appellant-writ petitioners, the Supreme Court observed:-

".....Sub-section (5-B) provides that the Tribunal shall have not the power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant.

Dismissal, removal, termination and compulsory retirement puts an end to the relationship of employer and employee. In case of suspension,, reduction in rank or reversion the relationship of employer and employee continues. Interference at the interim stage with an order of dismissal, removal, termination and compulsory retirement would be giving the final relief to an employee at an interim stage which he would have got in case the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of dismissal, removal, termination and compulsory retirement is found to be justified then holding of the office during the operation of the interim order would amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be taken away as he has worked during that period and the orders passed by him during the period he holds office (because of the interim order) cannot also be put at naught. The Legislature in its wisdom thought it proper not to confer the power to grant interim relief on the Tribunal. State Legislature had the legislative competence to constitute a service tribunal and it was for it to define the parameters of the jurisdiction of the Tribunal. An employee is not left without any remedy. Judicial

review of an order regarding which the jurisdiction of the Tribunal is barred would be available by approaching the High Court by filing petition under Article 226 or 227 of the Constitution of India. In an extreme and rare case where the order is passed mala fide or without following the procedure under the law then the employee can certainly approach the High Court under Article 226 of the Constitution for the interim relief. The High Court in such an extreme and rare case may in its wisdom stay the operation of the said order. In the case of suspension, reduction in rank or reversion the relationship of employer and employee remains. Normally, the suspension is made during a contemplated or a pending enquiry. During the suspension period the employee is entitled for the suspension allowance. If the suspension continues for indefinite period or order of suspension is passed mala fide then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution of India. In case the order of reduction in rank or reversion is set aside then the employee can be compensated by adequately moulding the relief while giving the relief at the final stage. Power of the Tribunal to grant interim relief has been taken away qua certain matters not completely. The power has been taken away in matters where the grant of said relief at the interim stage would result in giving the relief which would normally be given while disposing of the case finally. Simply because in a rare cases of microscopic number a case is made out for stay of orders of suspension, transfer, reduction in rank, reversion or termination, dismissal and compulsory retirement and the employee is liable to approach the High Court for interim stay by itself is no ground to strike down the law enacted by a Legislative which is within its competence to enact....."

(emphasis supplied)

9. While upholding the constitutional validity of Section 5(5-B) of the 1976 Act, the Supreme Court observed that the mere fact that the Tribunal is denuded the power to grant interim relief, in respect of certain matters, would not render the provision unconstitutional, as an employee is not left without any remedy; he can invoke the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India; and in extreme and rare case, where the order as passed is malafide, and without following the procedure under the law, the jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked for grant of interim relief.

10. As noted hereinabove, reversion of the petitioner, from a Class III post to a Class IV post, is not as a measure of punishment, but as a consequence of a revision in the seniority list, which again was made pursuant to an earlier order passed by this Court. The revised seniority list can always be subjected to challenge, and an interim order can be sought to restrain the respondents from giving effect to such a revised seniority list. In such a case subsection (5-B) of Section 5 of the 1976 Act would not apply.

11. We see no reason, therefore, to interfere with the discretion exercised by the learned Single Judge in relegating the petitioners to approach the Public Services

Tribunal. The scope for interference, in an Intra Court appeal, is extremely limited. Interference is permissible only if the order under appeal suffers from a patent illegality. The learned Single Judge was justified in exercising his discretion to relegate the appellants-writ petitioners to approach the Public Service Tribunal. Such exercise of discretion cannot be said to suffer any such infirmity as to necessitate interference in an Intra Court Appeal. We see no reason, therefore, to interfere. The appeal fails, and, is dismissed accordingly. No costs.