

(2021) 12 UK CK 0133
In the Uttarakhand High Court
Case No : Special Appeal No. 390 Of 2021

Kapil Kumar And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Citation : (2021) 12 UK CK 0133

Hon'ble Judges : Raghvendra Singh Chauhan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Ajay Veer Pundir, Anil Kumar Bisht, Prateek Tripathi

Final Decision : Dismissed

Judgement

Raghvendra Singh Chauhan, CJ

1) The appellants are aggrieved by the common order dated 05.10.2021, passed by learned Single Judge, in Writ Petition No. 925 (S/S) of 2021, and batch matter, whereby the learned Single Judge had dismissed the writ petitions.

2) Briefly, the facts of the case are that by advertisement dated 25.08.2020, applications were invited by the respondent No. 5, Multi-purpose Kisan Seva Sahkari Samiti Limited, for appointment on the post of Assistant Accountant, on contractual basis. The petitioners applied for the same. By Resolution dated 21.09.2020, the petitioners were duly appointed to the said post. Subsequently, the Resolution dated 21.09.2020, was forwarded by the Assistant District Co-operative Officer to the District Assistant Registrar Co-operative Societies. It was further forwarded to the Registrar Co-operative Societies. The Registrar Co-operative Societies also approved all the appointments. Consequently, the petitioners were issued appointment orders on 25.09.2020 by the respondent No. 5. The petitioners claimed that they joined the respondent No. 5 on 15.01.2021. According to the petitioners, they were discharging their duties to the best of their abilities. Vide Resolution dated 28.12.2020, it was resolved that the petitioners' services, in fact, should be regularized against substantive and

vacant post. The said resolution was equally approved by the Registrar Co-operative Societies. Therefore, by the appointment order dated 15.01.2021, the petitioners were, in fact, granted regular appointments. However, certain complaints were made by the ex-Chairman of the Society with regard to the recruitment process. Therefore, vide order dated 29.06.2021, the Registrar Co-operative Societies directed that not only the petitioners should be removed from their services, but even their appointment should be set aside. Consequently, the order dated 29.06.2021, was forwarded by the District Assistant Registrar Co-operative Societies to the Management Committee. Since the petitioners were aggrieved by this twin orders dated 29.06.2021 and 03.07.2021, they filed a batch of writ petitions before the learned Single Judge. As mentioned hereinabove, by the common order, the learned Single Judge dismissed the writ petitions. Hence, this appeal before this Court.

3) Mr. Ajay Veer Pundir, the learned counsel for the petitioners-appellants has raised the following contentions before this Court :-

Firstly, that once the appointment was approved by the Registrar Co-operative Societies, the Registrar Co-operative Societies could not have set aside the same set of appointment.

Secondly, the impugned orders have been passed behind the back of the petitioners, and without giving an opportunity of hearing to the petitioners. Therefore, their rights under the principles of natural justice have been violated.

Thirdly, neither of these facts had been noticed by the learned Single Judge while passing the impugned order. Therefore, the impugned order deserves to be set aside by this Court.

4) Heard the learned counsel for the appellants and perused the impugned order.

5) A bare perusal of the impugned order clearly reveals that the learned Single Judge has elaborately discussed the facts of the case. The learned Single Judge has noticed that by Notification dated 16.10.2018, the entire process for recruitment was prescribed. In cases of substantive vacancies, the Management Committee was required to forward the proposal for filling up the vacancies to the District Assistant Registrar Co-operative Societies. Being satisfied with the proposal, the District Assistant Registrar Co-operative Societies was to forward the proposal to the Registrar Co-operative Societies along with his / her recommendations. It is only after receiving an approval from the Registrar Co-operative Societies that the vacancies were supposed to be published in the local newspaper.

6) Moreover, under the said Notification, it is imperative that the advertisement should specify not only the number of vacancies, but also the pay-scale, the education qualification, the age limit, the preferential qualifications, the reservation position, and the procedure for appointment.

7) Admittedly, the procedure prescribed by the Notification dated 16.10.2018,

was not followed by the respondent No. 5. For, the respondent No. 5, never sent a proposal to the District Assistant Registrar Co-operative Societies informing him about the vacancies which have arisen in the Society. Since, no such proposal was sent to the District Assistant Registrar Co-operative Societies, obviously, no proposal was forwarded along with the recommendations of the District Assistant Registrar Co-operative Societies to the Registrar Co-operative Societies. Moreover, the Registrar Co-operative Societies never had a chance to approve the proposal on the basis of which the advertisement could be issued. But, notwithstanding the fact that the initial steps were never taken by the respondent No. 5, still the advertisement had been issued by respondent No. 5. Further, the learned Single Judge has clearly noticed that even the advertisement does not confirm to the requirement as prescribed by the Notification dated 16.10.2018. For, the advertisement nowhere mentions the pay-scale, and the reservation position. Therefore, even the advertisement was de hors the Notification dated 16.10.2018.

8) Relying on the case of Satya Prakash and others Vs State of Bihar and others, (2010) 4 SCC 179, the learned Single Judge has opined that if the appointment itself is in infraction of the rules, such an illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority.

9) Moreover, in the case of Bhupendra Nath Hazarika and another Vs State of Assam and others, (2013) 2 SCC 516, the Hon'ble Supreme Court has clearly stated that when there is violation of the recruitment rules, the recruitment is unsustainable. Therefore, the learned Single Judge was justified in concluding that since the procedure established by the Notification dated 16.10.2018 had been violated, the recruitment was patently illegal; hence, unsustainable.

10) The learned Single Judge has also dealt with the issue, whether an opportunity of hearing should have been provided to the petitioners, or not? Relying on the case of State of U.P. Vs Sudhir Kumar Singh and others, 2020 SCC Online SC 847, wherein the Hon'ble Supreme Court has summarized the principles dealing with the applicability and non-applicability of the principles of natural justice, the learned Single Judge has concluded that where the facts are admitted or are indisputable, in such a situation, the principles of natural justice need not be applied.

11) In the present case, it is an admitted fact that the procedure established by the Notification dated 16.10.2018, was violated. Therefore, no fruitful purpose would have been served by giving an opportunity of hearing to the petitioners. In catena of case, the Hon'ble Supreme Court has clearly opined that where an opportunity of hearing is merely a ceremony to be performed, and no fruitful purpose would be served, in such a situation, the principles of natural justice need not be followed.

12) Furthermore, in catena of cases the Hon'ble Supreme Court has opined that

the power of issuance of a writ should not be exercised where the exercise of such a power would entail the implementation of an illegal order. For, a writ court cannot be a privy to the implementation to an illegal act. In the present case, if the impugned orders dated 29.06.2021 and 03.07.2021 were to be set aside by the learned Single Judge, an appointment which is per se and patently illegal, would be resurrected.

13) All these aspects have been elaborately discussed by the learned Single Judge. Therefore, this Court does not find any illegality or perversity in the impugned order passed by the learned Single Judge.

14) This appeal, being devoid of any merit, is hereby dismissed.

15) No order as to costs.