
(2019) 01 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 677 Of 2018

M.P.S. Rawat

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 01 UK CK 0006

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Rakesh Thapliyal, Anil Kumar Bisht, Seema Sah

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Rakesh Thapliyal, learned counsel for the petitioner, Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand-respondent nos. 1 and 2 and Mrs. Seema Sah, learned counsel for the third respondent-Corporation.

2. The petitioner questions the order dated 29.11.2018 whereby several employees including the fourth respondent were transferred to other departments. The fourth respondent was transferred, by the said order, to the third respondent-Corporation, a company incorporated under the Companies Act, 1956 and a legal entity distinct from that of the Government.

3. Mr. Rakesh Thapliyal, learned counsel for the petitioner, would submit that the Rules of the Corporation provide for appointment to the post of Regional Manager either by promotion or by deputation; an employee can be deputed to the Corporation only with the consent of the Corporation and not otherwise; in any event, the fourth respondent has not been sent on deputation to the Corporation, but has been transferred; such an order of transfer is, EX FACIE, illegal since an employee can be transferred by the Government only from one department to another, and not to a Corporation which is a legal entity distinct from that of the

Government; there is only one post of Regional Manager, Kumaon Region, which is occupied by the petitioner; he is due to retire by the end of May, 2019; and since there is only one post of Regional Manager, appointment of the fourth respondent to the said post would automatically result in the petitioner being shifted elsewhere as two persons cannot hold the single post of Regional Manager.

4. A Government servant cannot be transferred, and can only be deputed to a Corporation, since a Corporation, incorporated either by a Statute or under the Companies Act, is not a department of the Government and has a separate legal entity of its own. It is only the Corporation or the fourth respondent which/who can claim to be aggrieved thereby, and complain that such deputation is impermissible, and not the petitioner. The effect of deputation is akin to that of a transfer to the extent it results in an employee being shifted from the existing place of work to another. The distinction between the two, however, is that, while transfer is permissible from one department to another under the control of the very same employer, deputation can be resorted to where a person from outside the Corporation/department is sought to be posted with the Corporation or the department concerned. The nomenclature of the impugned order notwithstanding, if, in effect, the order is one of deputation, the mere fact that the word "transfer" is used instead matters little. However deputation to the post of Regional Manager in the Corporation can only be with the consent of the Corporation and the employee who is sought to be deputed to the Corporation. Any grievance in this regard can only be put forth either by the Corporation or by the fourth respondent. The petitioner cannot be said to be a person aggrieved thereby, justifying his invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. While Mr. Rakesh Thapliyal, learned counsel for the petitioner, would submit that the natural consequence of the impugned order is the displacement of the petitioner from the post of Regional Manager, both Mr. Anil Kumar Bisht, learned Standing Counsel for the State of Uttarakhand and Mrs. Seema Sah, learned counsel for the third respondent-Corporation, would submit, not without justification, that the impugned order has not resulted in the petitioner being transferred elsewhere; and any change in his posting can only be effected on the orders passed by the Corporation by way of separate proceedings; and the petitioner's grievance, as at present, is misconceived.

6. While the submission, urged on behalf of the respondents, cannot be said to be without merit, suffice it to leave it open to the petitioner, in case he is shifted elsewhere from his current place of posting, to avail his legal remedies in accordance with law.

7. Mr. Rakesh Thapliyal, learned counsel for the petitioner, would submit that, since the petitioner is on the verge of retirement, it would be wholly inequitable to now transfer him to another place as he has less than 5 months of service left to complete. Learned counsel would submit that, while the petitioner has made a representation to the authorities regarding appointment of the fourth respondent

in the third respondent-Corporation, he be permitted to make a representation to the Managing Director of the Corporation to retain him in the post of Regional Manager; and the Managing Director be directed to consider his representation sympathetically.

8. In the light of this submission of Mr. Rakesh Thapliyal, learned counsel for the petitioner, and as it does appear that the petitioner is due to retire within five months, we consider it appropriate to permit the petitioner to make a representation to the Managing Director requesting that he be retained in the post which he is occupying as at present; and he not be transferred elsewhere. If any such representation is filed, the Managing Director shall consider the same in accordance with law; pass an order thereupon, and communicate the same to the petitioner within one month from the date of receipt of his representation.

9. The writ petition is, accordingly, disposed of.