

(2010) 12 UK CK 0100
In the Uttarakhand High Court
Case No : Writ Petition (S/S) No. 1705 of 2005

Nasar Ahmad Khan

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 3, 37(1)

Citation : (2010) 12 UK CK 0100

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Petitioner was a Junior Engineer working under Uttar Pradesh Jal Nigam, a body corporate having perpetual succession constituted by and under U.P. Water Supply and Sewerage Act, 1975. Uttar Pradesh Jal Nigam had establishments at different parts of the State of Uttar Pradesh. One of them was located at Dehradun. Petitioner was working at the establishment of Uttar Pradesh Jal Nigam situated at Dehradun. As on 9th November 2000, when carving out a part of Uttar Pradesh, the State of Uttarakhand was established, Dehradun, the place where the establishment of Uttar Pradesh Jal Nigam was situated and in which the Petitioner was working, fell within the territory of the new State of Uttarakhand.

2. In terms of Section 67 of the Uttar Pradesh Re-organisation Act, 2000, Uttar Pradesh Jal Nigam continued to function and operate. On the records of this writ petition nothing has been brought, which would suggest that the Central Government, as was entitled to, gave any directions in regard to such functioning or operation.

3. Upon the State of Uttarakhand being established, the law enforced in the State of Uttar Pradesh applied to the State of Uttarakhand. Accordingly, the U.P. Water Supply and Sewerage Act, 1975 also applied to the State of Uttarakhand.

Section 87 of the Uttar Pradesh Re-organisation Act, 2000 authorised the State of Uttarakhand to adopt any existing law with modifications within two years from the date of establishment of the State of Uttarakhand. The State of Uttarakhand by the Uttaranchal (the Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002 adopted the Uttar Pradesh Water Supply and Sewerage Act, 1975 with certain modifications. By modifying Section 3 of the U.P. Water Supply and Sewerage Act, 1975, it established the Uttaranchal Pay Jal Sansadhan Vikas Avam Nirman Nigam. It also modified Section 37(1) of the Uttar Pradesh Water Supply and Sewerage Act, 1975. In terms thereof, the modified Section 37(1) of the Uttar Pradesh Water Supply and Sewerage Act, 1975 stood for our purpose as follows:

Transfer of employees to Nigam-(1) Save as otherwise provided in this section every person, who was employed in the Local Self Government Engineering Department of the State Government, Uttar Pradesh Jal Nigam, who are allotted to Uttaranchal State on account of being a member of Hill Sub-Cadre, or an option for Uttaranchal State or on account of any decision of a competent Court of law, shall on and from the appointed day become employee of the Uttaranchal Pay Jal Sansadhan Vikas Avam Nirman Nigam.

4. By an order dated 30th September, 2005 Petitioner was relieved, so as to enable him to join Uttar Pradesh Jal Nigam. Petitioner filed a representation against the said relieving order. That was decided by an order dated 14th November, 2005. In that, it was contended that since Petitioner did not belong to Hill Sub-Cadre and since he did not opt for Uttaranchal Pay Jal Sansadhan Vikas Avam Nirman Nigam, he being not an employee of Uttaranchal Pay Jal Sansadhan Vikas Avam Nirman Nigam, he cannot be permitted to continue to work at Uttaranchal Pay Jal Sansadhan Vikas Avam Nirman Nigam.

5. Petitioner, accordingly, approached this Court by filing the writ petition. On 19th November 2005, the writ petition was admitted, when three weeks' time was granted to file counter affidavit. The Court directed listing of the writ petition thereafter. At the same, operation of the orders dated 30th September 2005 and 14th November 2005 were directed to remain stayed till the next date of listing. Since thereafter, this writ petition has been listed for the first time before us today. In the meantime, no counter affidavit has been filed. We have, therefore, either to conform the interim order and thereby dispose of the writ petition, or to dismiss the writ petition. While the interim order was passed, no reason in support thereof had been furnished. It is, therefore, incumbent upon us to furnish some reason in support of the interim order.

6. In the body of the writ petition, Petitioner has contended that Uttar Pradesh Jal Nigam, at no point of time, had any Hill Sub-Cadre. The said assertion, having not been denied and there being no provision for creation of a Hill Sub-Cadre under the U.P. Water Supply and Sewerage Act, 1975 and, inasmuch as the Hill Sub-Cadre Rules made in 1992 applied only to Government employees and not to statutory employees, we have no other option, but to accept the

contention of the Petitioner that in Uttar Pradesh Jal Nigam, there was no Hill Sub-Cadre. Therefore, we have to consider, whether the Central Government passed any order pertaining to any establishment of Uttar Pradesh Jal Nigam situated in the territory, which has now become Uttarakhand ? There is no pleading in regard thereto in the writ petition. We are, therefore, unable to proceed further in that regard. According to the Adaptation and Modification Rules, a person, who has opted for Uttaranchal State, would also become an employee of Uttaranchal Pay Jal Sanshadhan Vikash Avam Nirman Nigam. In the body of the writ petition, there is no assertion that the Petitioner did submit an option on being invited to submit the same. That being the situation, there is nothing on record on the basis of which we can hold, even prima facie, that the Petitioner- an employee of Uttar Pradesh Jal Nigam, could become an employee of Uttaranchal Pay Jal Sanshadhan Vikash Avam Nirman Nigam.

7. In such view of the matter, since it is difficult for us to continue the interim order already passed, we have no other option, but to dismiss the writ petition, despite no counter affidavit to that having been filed.

8. The writ petition is, accordingly, dismissed.