
(2010) 08 UK CK 0054
In the Uttarakhand High Court

Smt. Ruchi Chhetri

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2010) 3 UC 1504

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—We are not inclined to admit this appeal for the reasons as follows:

2. By the judgment and order under appeal, a writ petition filed by the appellant has been dismissed on the ground that the said writ petition is barred by constructive res judicata. The facts giving rise to the said finding are not in dispute.

3. By an order dated 11.02.2000, a contractual appointment was given to the appellant to work in a school at Pauri Garhwal for the period 16.02.2000 to 29.03.2000. Even after 29.03.2000, the appellant continued to work and she was given the same remuneration, as she was entitled to in terms of the order dated 11.02.2000. After some time, at the request of the appellant, she was transferred to a school at Dehradun. The appellant was thereupon relieved from the school at Dehradun for the purpose of joining back the school at Pauri Garhwal. This order was the subject matter of challenge in the first writ petition filed by the appellant on 22.02.2004. On the said writ petition, an interim order was passed directing an inquiry to be conducted as regards allegations of maltreatment of the appellant by the Director of the school at Dehradun, as was complained of in the said writ petition. The matter was inquired, when it was found that the allegations are baseless. In view of the findings of the said

inquiry, the first writ petition was disposed of without interfering with the order relieving the appellant from the school at Dehradun in order to enable her to join the school at Pauri Garhwal. Being aggrieved by the said order, appellant preferred an appeal. The same was disposed of by permitting the appellant to make a representation for being transferred to or posted at any school other than the school at Pauri Garhwal. Appellant, accordingly, made a representation. That representation resulted in passing of an order, whereby and under, it was held out that the representation of the appellant is meritless, and accordingly, the same is being rejected, and that the services of the appellant are no longer required, and as such, the same are being put to an end. The order, therefore, expressed (i) that the appellant's representation for being transferred to any school other than the school at Pauri Garhwal is not acceptable; and (ii) that the services of the appellant are no longer required. The appellant filed the second writ petition challenging the said composite order of the State and permitted the same to be dismissed for want of prosecution. Appellant did not apply for recalling of the said order of dismissal for want of prosecution. Instead, the appellant filed the third writ petition and thereby contended that she be treated to continue in service and also to make her permanent/regular. This writ petition has been dismissed on the ground that the same is barred by constructive res judicata.

4. The learned Counsel for the appellant has cited the judgments of the Hon''ble Supreme Court rendered in Mool Shankar Singh Vs. Regional Manager, P.N.B. and Another, ; Gulabchand Chhotalal Parikh v. State of Bombay (now Gujarat) reported in (1965) 2 SCC 547; Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd. and Others, ; State of U.P. and Another Vs. Jagdish Saran Agrawal and Others, ; State of U.P. & another v. Jagdish Saran Agrawal and Ors. reported in (2008) 16 SCR 629; Payappar Sree Dharmasastha Temple A. Com. Vs. A.K. Josseph and Others, and Union of India (UOI) and Another Vs. Ranchi Municipal Corporation, Ranchi and Others, for the proposition that dismissal of a proceeding for non-prosecution does not ipso facto make the subsequent proceeding barred by res judicata. We feel the facts, circumstances and law considered in those judgments have no connection or bearing with the facts, circumstances and law applicable to the case at hand.

5. It is now well settled in law that while suit is one of the modes, a proceeding under Article 226 of the Constitution of India is another mode and similarly a proceeding under Article 32 of the Constitution of India is yet another mode of redressing grievances. It is also well settled that while dismissal of a proceeding under Article 226 for non-prosecution, i.e., when the merit has not been decided, a suit may be filed or a proceeding under Article 32 can be initiated for redressing selfsame grievance, but it is not permissible in law, when a proceeding initiated under Article 226 is permitted to be dismissed for non-prosecution, to initiate yet another proceeding under Article 226 for redressal of selfsame grievance, on the analogy that if the same is permitted, a litigant would be permitted to hunt Courts which is against public policy.

6. In the second writ petition, referred to above, the appellant challenged the order of the Government, by which, amongst others, her services were held out to be no longer required. The appellant permitted the said writ petition to be dismissed for nonprosecution. In the third writ petition, the appellant sought her services, which were held out to be no longer required, to be continued. If the appellant is permitted to espouse her such cause in the third writ petition, that would tantamount to permit the appellant to whittle down the basic public policy enshrined above and to permit her to find out a suitable Court by Bench hopping. That being against public policy, we refuse to admit the appeal.

7. The appeal is dismissed in limine.