

(2014) 11 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 693 of 2014

Sohan Singh Rawat

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Waqf Act, 1995 — Section 24, 75, 77, 96, 97

Citation : (2015) LabIC 768

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Neeraj Garg, Advocates for the Appellant; R.P. Sharma, learned Brief Holder and Dharmendra Barthwal, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioner before this Court is an employee of Uttarakhand Waqf Board, which is constituted under the Waqf Act, 1995. He is aggrieved by the order dated 27.02.2014 whereby the earlier decision taken in his case dated 03.05.2012 for granting the benefit of Sixth Pay Commission have been withdrawn though instead his salary has been doubled. According to the petitioner, this effectively means lowering down of the salary of the petitioner. Hence, the present writ petition. This is an admitted case that the Board in its meeting dated 03.05.2012 had approved the benefit of Sixth Pay Commission be given to the petitioner and consequently, they were given benefits in terms of salary which reflected in the salary given to him. Thereafter, in an another meeting of Board dated 27.02.2014 it was resolved without assigning any particular reasons to review the decision and now instead of giving benefit of the Sixth Pay Commission it was resolved that the salary will be doubled with an additional Rs. 1000.00 added to their salary.

2. In the counter-affidavit it has been stated that the Board while granting the benefit of Sixth Pay Commission have not taken the approval of the State Government. This is the only defence taken by the respondents.

3. The counsel for the petitioner submits that there was no requirement to take

approval from the State Government, as the staff and officers of the Board are being paid salary from the funds of the Waqf Board, as it is clear from the Section 77 of the Waqf Act, which reads as under :--

"77. Waqf Fund--(1) All moneys received or realized by the Board under this Act and all other money received as donations, benefactions or grants by the Board shall form a fund to be called the Waqf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) subject to any rules that may be made by the State Government in this behalf, the Waqf Fund shall be under the control of the Board, so, however, that the Waqf Fund under the control of common Waqf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Waqf Fund shall be applied to-

(a) repayment of any loan incurred under Section 75 and payment of interest thereon;

(b) payment of the cost of audit of the Waqf Fund and the accounts of Waqf;

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson, members, of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986)

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of Waqf properties or for such other purposes as it may deem fit."

4. The officers and the staff of the Board which are required for the functioning of the Board are made under Section 24 of the Waqf Act. Section 24 of the Waqf Act reads as under:--

"24. Officers and other employees of the Board--(1) the Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in Consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations."

5. Under Section 97 of the Act where the guidance of the State Government is taken for a limited purpose which is provided under Section 97 of the Waqf Act which reads as under:--

"97. Directions by State Government.- Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:

Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf."

6. Therefore, for granting the benefit of Sixth Pay Commission, there is no need for taking approval of the State Government, as the entire salary of such officers and staffs are made from the funds of the Board itself.

7. The learned counsel for the Board Mr. Dharmendra Barthwal, has further drawn the attention of this Court towards Section 24 of the Waqf Act. He particularly emphasizes that the Board is free to have assistance of officers and employees but before that, it must have a consultation of the State Government. Moreover, under clause (2), appointment of officers and other employees, their term of office and conditions of services shall be such as may be provided by regulations.

8. If this be so, the State Government is always at liberty to take a suitable action against the petitioner in accordance with law but presently the denial of benefit of Sixth Pay Commission to the petitioner does not seem to be justified.

9. The writ petition is allowed. The decision taken by respondent No. 2 in its meeting dated 27.02.2014 regarding withdrawal of the benefit of Sixth Pay Revision from the petitioner is hereby quashed. A mandamus is issued to the respondents to grant the benefit of Sixth Pay Revision to the petitioner, as decided by it earlier. No order as to costs.