

(2011) 10 UK CK 0002
In the Uttarakhand High Court
Case No : Writ Petition No. 54 of 2007 (S/B)

State of Uttarakhand and Another	Vs	APPELLANT
Sri H.K. Srivastava and Another		RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 91

Citation : (2012) 2 UC 2095

Hon'ble Judges : Tarun Agarwala, Acting C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Judgement

Tarun Agarwala, Actg. C.J.

1. Heard Mr. B.D. Upadhyaya, the learned Additional Advocate General for the State - petitioners and Ms. Neelima Mishra, the learned counsel for the respondent No. 1. The respondent No. 1 - claimant while working as Medical Officer (Health) at Faizabad conducted a "Sawan Jhoola Mela" and while acting as a drawing and disbursing officer incurred certain expenditure. Pursuant to an audit report, a preliminary enquiry was initiated and thereafter a regular enquiry was initiated against the respondent No. 1. Thereafter, the punishment order dated 13.08.1999 was passed against the respondent. The respondent, being aggrieved, preferred a claim petition No. 1780/1999 before the Public Service Tribunal, Lucknow, but before any final order could be passed, the Government of Uttar Pradesh suo-moto cancelled the punishment order of 13th August, 1999 and the aforesaid claim petition was dismissed as infructuous.

2. The State of Uttarakhand came into existence on 09th November, 2000 and the respondent was allotted the State of Uttarakhand and, consequently, the disciplinary proceedings were transferred to the State of Uttarakhand.

3. It transpires that on the basis of the enquiry report dated 08.09.1992, the fresh punishment order was passed on 09th September, 2002 for a recovery of Rs. 74,829/-. The respondent challenged the said order before the Public Service

Tribunal, Uttarakhand, which was allowed and the recovery order was quashed by the Tribunal by its order of 17th December, 2002.

4. The State of Uttarakhand again passed an order of punishment dated 22.11.2003 which was again challenged by the respondent before the Public Services Tribunal. The Public Services Tribunal, by an order of 02nd May, 2006, allowed the claim of the respondent holding that the enquiry report dated 08.09.1992 was violative of the principles of natural justice. The Tribunal found that no chargesheet were found against the respondent nor any charge was served upon him and no oral enquiry or evidence was taken and after calling for the explanation, the enquiry report was submitted on the basis of which the order of punishment was passed. The Tribunal found that the entire proceedings conducted by the enquiry officer was in gross violation of the principles of natural justice. The Tribunal further found that in view of Section 91 of the Uttar Pradesh Re-organisation Act, 2000 (hereinafter referred to as the Act), the State Government of Uttarakhand had no territorial jurisdiction to deal with any proceedings, which related exclusively outside the territorial-jurisdiction of Uttarakhand and, consequently, the State of Uttarakhand was not competent to pass an order. The Tribunal further found that the matter related to the year 1982, the enquiry report was submitted in 1992 and there has been an inordinate delay in passing the order of punishment, which was passed in the year 2003. On this basis, the claim of the respondent was allowed and the order of recovery passed by the State Government was quashed.

5. The State Government, being aggrieved by the aforesaid order of the Tribunal, has filed the present writ petition.

6. Having heard the learned counsel for the parties, the court finds that no relief can be granted to the petitioner in view of the specific provision contained in Section 91 of the Act. For facility, Section 91 of the Act is extracted hereunder:-

91. Transfer of pending proceedings.-(1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Uttar Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Uttaranchal State, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Allahabad and the decision of that High Court shall be final.

(3) In this section-

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding court, tribunal, authority or officer" in the State of Uttaranchal means-

- (i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or
- (ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government as the case may be, or before the appointed day by the Government of the existing State of Uttar Pradesh to be the corresponding court, tribunal, authority or officer.

From perusal of the aforesaid provision, it is apparently clear that the State of Uttarakhand derives jurisdiction if the proceedings relate exclusively to its territorial jurisdiction. Admittedly, in the present case, the incident of financial irregularity was committed in Faizabad, which still comes in the State of Uttar Pradesh. In the light of the specific provision, the State Government of Uttarakhand had no territorial jurisdiction to pass any order for recovery against the respondent in relation to matters which fell outside its territorial jurisdiction as is clear from Section 91 of the Act. In the light of this, no relief can be granted. The writ petition fails and is dismissed accordingly.