

(2019) 07 UK CK 0093

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 10695 Of 2018 In And Special Appeal No. 583 Of 2018

State Of Uttarakhand And Others

APPELLANT

Vs

Hayat Singh Mehta And Others

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0093

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : S.S. Chauhan, Shakti Singh

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. The application, seeking condonation of delay of 61 days in preferring this appeal, is not opposed by Mr. Shakti Singh, learned counsel for respondent-writ petitioner, and the delay is, therefore, condoned. Delay condonation application is, accordingly, disposed of.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1761 of 2011 dated 08.03.2018. The respondent-writ petitioner filed the said writ petition seeking a writ of certiorari to quash the order dated 25.11.2011 issued by the second respondent. The order, impugned in the writ petition dated 25.11.2011, is an order of punishment imposed by the disciplinary authority, on the respondent-writ petitioner, removing him from service.

3. In the order under appeal, the learned Single Judge noted that the respondent-writ petitioner had filed a detailed representation against the inquiry report on 16.08.2011; however, the disciplinary authority had not taken into consideration the detailed representation submitted by the respondent-writ petitioner on 16.08.2011; the very purpose of issuing a show-cause notice would be defeated

if the reply filed thereto was not taken into consideration in the right perspective; the respondent-writ petitioner had filed a detailed representation on each and every point; the disciplinary authority had only reiterated the findings, recorded against the respondent-writ petitioner by the Inquiry Officer, without adverting to the reply; and there was violation of principles of natural justice. While quashing the impugned order dated 25.11.2011, the learned Single Judge observed :

".....In normal circumstances, respondents could be given opportunity to proceed with the matter in accordance with law, but since the petitioner has retired after attaining the age of superannuation the matter is ordered to be closed....."

4. Thereafter, on a modification application being filed informing the learned Single Judge that the respondent-writ petitioner was still in service, the afore-extracted last paragraph, of the order passed by the learned Single Judge, was expunged. However, liberty was not granted to the appellants herein to pass an order afresh, after considering the reply submitted by the respondent-writ petitioner to the findings recorded by the Inquiry Officer.

5. Mr. S.S. Chauhan, learned Deputy Advocate General for the State of Uttarakhand, would submit that this contention was raised for the first time during the course of hearing of the writ petition; no such ground was taken by the respondent-writ petitioner in the writ petition filed by him; it is not even stated which finding of the Inquiry Report, was rebutted by way of a reply, which was in turn not considered by the disciplinary authority; an elaborate order was passed by the disciplinary authority, while imposing the punishment of removal from service on the respondent-writ petitioner; and, since the respondent-writ petitioner failed to point out which particular finding of the Inquiry Officer had been questioned in the objections filed thereto, the order passed by the disciplinary authority could not have been faulted or set aside on this ground.

6. It is evident, from the order under appeal, that the learned Single Judge has not recorded which objection, raised by the delinquent employee, against the findings of the Inquiry Officer, has not been considered by the disciplinary authority. It is only if a particular finding, in the report of the Inquiry Officer, had been questioned in the objections filed thereto by the respondent-writ petitioner, can the disciplinary authority then be held not to have dealt with the respondent-writ petitioner's objection. The order under appeal does not make a reference to any such objection raised by the respondent-writ petitioner in the objections filed by him to the Inquiry Report.

7. Mr. Shakti Singh, learned counsel for the respondent-writ petitioner, would submit that the letter dated 08.07.2011, enclosed along with the writ petition, would show that the Inquiry Officer had erroneously recorded findings of guilt, even though the letter dated 08.07.2011 issued by the first respondent states that an audit was required to be undertaken in order to examine these aspects; and even before an audit was conducted, the Inquiry Officer could not have held

the respondent-writ petitioner guilty of the charges leveled against him. Even this contention, urged before us by Mr. Shakti Singh, learned counsel for the respondent-writ petitioner, has not been considered by the learned Single Judge in the order under appeal.

8. Suffice it, in such circumstances, to set aside the order under appeal and restore the writ petition to file. Since the writ petition relates to the year 2011, it is open to Mr. Shakti Singh, learned counsel for the respondent-writ petitioner, to request the learned Single Judge to take up the writ petition for hearing at an early date.

9. The Special Appeal is, accordingly, disposed of. No costs