

(2010) 04 UK CK 0101
In the Uttarakhand High Court

State of Uttarakhand

APPELLANT

Vs

Sri Rishi Ram Bhatt and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 UK CK 0101

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—Respondent No. 1, Rishi Ram Bhatt, responded to an advertisement for an appointment against the post of Assistant Engineer in the Garhwal Jal Sansthan. He participated in the process of selection, whereafter he was appointed as an Assistant Engineer on 06.10.1978. His work and conduct having been found to be satisfactory, he was confirmed against the post of Assistant Engineer by an order dated 30.09.1980, w.e.f. 07.10.1979.

2. While respondent No. 1 was in the employment of the Garhwal Jal Sansthan, an advertisement was issued by the Irrigation Department, inviting applications for the post of Assistant Engineers. Respondent No. 1 responded to the aforesaid advertisement. Yet again, having participated in the process of selection, he was found suitable for appointment for the post of Assistant Engineer. On the declaration of the select list, respondent No. 1 issued a notice dated 14.01.1982, informing the Garhwal Jal Sansthan, that he had been selected as an Assistant Engineer in the Irrigation Department, and therefore, he be relieved from the employment of the Garhwal Jal Sansthan within three months of the receipt of the aforesaid notice. Having considered the request of respondent No. 1, the Garhwal Jal Sansthan relieved respondent No. 1 by an order dated 23.04.1982. Having been relieved from his aforesaid employment, respondent No. 1 joined his employment as Assistant Engineer with the Irrigation Department on 24.04.1982.

3. On 19.03.1985 respondent No. 1 addressed a representation to the Garhwal Jal Sansthan praying, that he be re-inducted into its service. Since the Garhwal

Jal Sansthan did not respond to the aforesaid representation made by respondent No. 1, he filed a Claim Petition bearing No. 335/F/II/87 before the Public Services Tribunal, Uttar Pradesh, Lucknow. The Public Services Tribunal, by its order dated 12.09.1994, accepted the claim of respondent No. 1 by arriving at the conclusion, that respondent No. 1 had a subsisting lien with the Garhwal Jal Sansthan under Fundamental Rule 14, contained in the Financial Handbook, Vol. II. The order passed by the Public Services Tribunal dated 12.09.1994 has been assailed by the State Government through the present writ petition.

4. The solitary contention advanced by the learned Counsel for the petitioner before this Court is, that Fundamental Rule 14, relied upon by the Public Services Tribunal, Uttar Pradesh, has wrongly been applied to the controversy in hand, so as to determine the issue of lien of respondent No. 1 with the Garhwal Jal Sansthan. In this behalf, it is the vehement contention of the learned Counsel for the petitioner, that the Fundamental Rules, including Fundamental Rule 14 taken into consideration by the Public Services Tribunal, are applicable only to Government servants. In this behalf, learned Counsel for the petitioner, has invited this Court's attention to Rule 2 contained in Chapter I of the Uttar Pradesh Fundamental Rules, Vol. II. The Garhwal Jal Sansthan not being a Department of the Government, it is the submission of the learned Counsel for the petitioner, that Rule 14 of the Fundamental Rules is clearly inapplicable to the facts and circumstance of this case.

5. The submission advanced by the learned Counsel for the petitioner has fully been supported by the learned Counsel representing the Garhwal Jal Sansthan, i.e. respondent No. 2. It is the pointed contention of Mr. Rakesh Thapliyal, Advocate representing the Garhwal Jal Sansthan, that Fundamental Rule 14 is inapplicable to the Garhwal Jal Sansthan, and as such, could not have been taken into consideration to determine the issue of lien of respondent No. 1 with the Garhwal Jal Sansthan.

6. The submission advanced by the learned Counsel for the petitioner, as supported by the learned Counsel for respondent No. 2, flows from Rule 2 of the Uttar Pradesh Fundamental Rules, Vol. II. Thus viewed, unless respondent No. 1 is able to establish that the aforesaid Rule came to be extended to the Garhwal Jal Sansthan by a subsequent amendment or Government Order or by a matter of adoption at the hands of the Garhwal Jal Sansthan itself, the same cannot be deemed to be applicable to the employees of the Garhwal Jal Sansthan.

7. Since learned Counsel for respondent No. 1 has not been able to invite our attention to any such rules, regulations or orders, on the basis whereof it can be inferred, that the Fundamental Rules applicable to the Government employees of the State of Uttar Pradesh were extended to the Garhwal Jal Sansthan, we are satisfied, that the Rule 14 of the Fundamental Rules, taken into consideration by the Public Services Tribunal, Uttar Pradesh, did not constitute a condition of service of respondent No. 1. To be fair to the learned Counsel representing respondent No. 1, it is necessary to notice that learned Counsel representing

respondent No. 1 invited our attention to a communication dated 13.03.1987 addressed by the General Manager, Garhwal Jal Sansthan to the Under Secretary, Urban Development, Government of Uttar Pradesh, expressing the view, that respondent No. 1 had sought to be relieved by issuing a notice of three months, and that, he had never resigned from the employment of the Garhwal Jal Sansthan, and as such, his lien is liable to be continued with the Garhwal Jal Sansthan. It is not possible for us to accept the submission advanced by the learned Counsel for respondent No. 1 on the basis of the aforesaid communication dated 13.03.1987, in as much as the aforesaid communication only constitutes the opinion expressed by the General Manager, Garhwal Jal Sansthan, whereas the retention of a lien is a condition of service, which must be specified by rules, regulations or orders passed by the competent authority. In the absence thereof, no employee can be treated to have been retained his lien with an earlier employer, after having relinquished charge, so as to assume fresh employment in a different organization.

8. For the reasons recorded hereinabove, we are satisfied, that the Tribunal in its order dated 12.09.1994, in arriving at the conclusion, that respondent No. 1 had retained his lien with the Garhwal Jal Sansthan, seriously erred in law by applying Rule 14 of the Fundamental Rules to arrive at the aforesaid conclusion. The impugned order rendered by the Public Services Tribunal dated 12.09.1994 is, therefore, liable to be set aside. The same is accordingly hereby set aside.