
(2019) 06 UK CK 0082

In the Uttarakhand High Court

Case No : Writ Petition No. 4306 Of 2018 (S/S)

Surendra Singh Aswal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 20-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0082

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Krishan Kumar Verma, K.N. Joshi, Seema Sah, K.P. Upadhyay

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. Present writ petition has been filed seeking the following relief:-

(i) Issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 10.12.2018 (Annexure No. 7) passed by respondent no. 2.

2. Facts, in brief, are that petitioner was initially appointed/engaged in Garhwal Mandal Vikas Nigam Ltd. as cleaner on 09.05.1994 through due selection process on consolidated salary @ Rs. 1000/- per month. In the month of February 1997, his services were converted to as a daily wager and after completion of 22 years of service, his services were regularized vide order dated 07.12.2016 on the post of peon at pay scale of 5200-20200 grade pay 1800. As per the appointment letter, the petitioner was on probation for a period of one year which can be extended for further one year. When he was on probation, he was transferred twice vide order dated 27.06.2017 and 4.08.2018. By impugned order dated 10.12.2018 services of the petitioner were terminated by stating therein that as per Rule 20(2) of the Rules of the Garhwal Mandal Vikas Nigam Ltd., probation of the petitioner was extended for one year by order dated 30.12.2017. Thereafter, a notice of 30 days' was issued to the petitioner stating therein that in view of

condition no. 02, 03 and 04 of the order dated 07.12.2016 his services came to an end. Hence, this petition.

3. In the counter affidavit, filed on behalf of respondent nos. 2 and 3 it has been stated that by an order dated 09.05.2017 petitioner was transferred from Gas Service Lansdowne to Gas Service Pokhra Marme. However, due to unavoidable reasons the said order was modified by an order dated 27.06.2017 and the petitioner was permitted to remain posted in Lansdowne Gas Service Unit. Subsequently, by Order No. 1313/m-e-4/2018 dated 27.04.2018, the petitioner was transferred from Lansdowne Gas Service to Petrol Pump Gopeshwar but he did not join at the place of his new posting. Further, by Order No. 86/6-m-e-4/2018 dated 04.08.2018, the petitioner was transferred to Tourist Rest House Lansdowne in place of Petrol Pump Gopeshwar. It is contended that the transfer order dated 04.08.2018 had been passed after considering the letter dated 02.06.2018 of his mother Smt. Dikka Devi. It is further contended that petitioner was transferred by order dated 27.04.2018 from Lansdowne Gas Service to Petrol Pump Gopeshwar but he did not join at the place of his posting and resorted pressure tactics and the conduct of the petitioner was in violation of Rule 5(6) and Rule 19 of the Model Conduct, Discipline and Appeal Rules of Garhwal Mandal Vikas Nigam Ltd. It is further contended that since the period of probation of the petitioner was extended for one year therefore his services were not confirmed and by impugned order dated 10.12.2018 his services were terminated.

4. Learned counsel for the petitioner would contend that petitioner was regular employee of the department. It is further contended that the probation period of one year was expired on 06.12.2017 which was not extended and the order dated 29.08.2018 has been passed after expiry of nine months of probation period therefore services of the petitioner cannot be dispensed with on 30 days notice and without affording opportunity of hearing to the petitioner.

5. Heard learned counsel for the parties and perused the material available on record.

6. Undisputedly, petitioner was engaged by order dated 09.05.1994 and he was continuously performing his duties till his regularization and there was no complaint whatsoever against him. His service was regularized on 07.12.2016 and probation of one year expired on 06.12.2017. On or before the last of expiry of the probation period i.e. 06.12.2017 probation period of the petitioner was not extended and the order of extending the period of probation was not communicated to the petitioner.

7. There is no whisper on record to show that the order dated 30.12.2017 has been served upon the petitioner. The only allegation against the petitioner is that he adopted pressure tactics in getting his transfer at favourable place in the name of his mother and made an application before Hon'ble the Chief Minister of the State. Further, there is no reference in the termination order that the

petitioner ever made pressure tactics in getting his transfer; it has come only in the counter affidavit.

8. The impugned order dated 10.12.2018 does not speak that the petitioner has ever made any application to Hon'ble the Chief Minister of the State. Before passing the order dated 10.12.2018, opportunity of hearing was not afforded to the petitioner and same has been passed in violation of principle of natural justice. Further, respondent no. 2 without conducting any departmental inquiry and without calling any explanation from the petitioner terminated the services of the petitioner by giving notice of one month, which is unsustainable in law.

9. Thus, in view of the above, the order dated 10.12.2018 is hereby set aside. Writ petition is allowed. Respondents are directed to reinstate the petitioner in service and shall pay his salary from the date of his termination in accordance with law.

10. No order as to costs.