
(2019) 05 UK CK 0032

In the Uttarakhand High Court

Case No : Special Appeal No. 184 Of 2014

Uttarakhand Forest Development Corporation & Others

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N
Constitution Of India, 1950 — Article 141

Citation : (2019) 05 UK CK 0032

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : V.K. Kapurwan, Ranjan Ghildiyal, Naresh Pant

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in WPSS No. 545 of 2011 dated 22.02.2018.

2. Respondent no. 2 in this appeal filed WPSS No. 545 of 2011 seeking a writ of mandamus directing the respondents therein (appellants herein) to

treat his services as continuous by giving him all back wages and consequential benefits of service from 03.11.1979, by considering his case in terms

of Para 47 of the Judgment of the Supreme Court in Uttaranchal Forest Development Corporation vs. Jabar Singh & others: 2006 (13) SCALE Page

556; a writ of mandamus directing the respondents to pay back wages to him, as directed by the Supreme Court, along with interest at the market rate

on the delayed payment; and for a writ of mandamus directing the respondents to pay him his regular pay scale as is being given to the beneficiaries of

the judgment of the Supreme Court, in Jabar Singh, along with all consequential

benefits.

3. Facts, to the limited extent necessary, are that the respondent-writ petitioner was appointed as a Scaler on daily wages in the marketing division of the then U.P. Forest Corporation, Haldwani on 03.11.1979. His services were retrenched on 15.04.1982, aggrieved by which he sought a reference; and the dispute was referred by the Government to the Labour Court. The Labour Court decided the reference, in favour of the respondent-writ petitioner, by its award dated 29.06.1984; and, while declaring the respondent-writ petitioner's retrenchment as bad in law, it directed that he be reinstated in service, and be given the benefits treating his services as continuous.

4. Against the said award, passed by the Labour Court, the then U.P. Forest Corporation filed Writ Petition No. 16785 of 1984 before the Allahabad High Court which, on its transfer to the Uttarakhand High Court, was renumbered as WPMS No. 5027 of 2001. The said writ petition was disposed of by this Court by its order dated 27.02.2004, and the writ petition was allowed in terms of the judgment in WPMS No. 1376 of 2001, WPSS No. 511 of 2003 and WPMS No. 6747 of 2001. The order of retrenchment of the petitioner was quashed, and he was directed to be reinstated with continuity of service, however, without back wages.

5. Thereafter, on a modification application being filed by the respondent-writ petitioner, the Division Bench, in its order dated 23.03.2004, directed that the order of retrenchment of the second respondent-writ petitioner be quashed; and the respondents (appellants herein) should reinstate him with continuity of service, but he shall not be paid back wages except for the period already paid. Against the said order, the appellants herein filed SLP Civil No. 13975 of 2004 and, in its order dated 30.04.2007, the Supreme Court observed that, in view of para 47 of its judgment in *Uttaranchal Forest Development Corporation vs. Jabar Singh & others*: 2006 (13) SCALE 556, the Special Leave Petition was dismissed.

6. The judgment of the Supreme Court in *Jabar Singh* was passed in a batch of 38 appeals filed by the *Uttaranchal Forest Development Corporation* against the order passed by the *Uttaranchal High Court* in WPMS No. 1376 of 2001 dated 21.08.2003. The said writ petition was filed by the respondent-workmen against the award passed by the Labour Court on

24.12.1997. In para 47 of its judgment, in this batch of appeals, the Supreme Court held:

On the other hand, the respondents in civil appeals arising out of special leave petitions as detailed infra who approached the Tribunal and the High Court are entitled for the relief of reinstatement, back-wages and continuity of service in view of our finding that the appellant-Corporation is an Industrial Establishment and that provisions of Section 25N of the Industrial Disputes Act are attracted. ...

7. Consequently, in terms of para 47 of the judgment of the Supreme Court in Jabar Singh, the appellants herein were obligated to grant continuity of service, and back wages, to the respondent-writ petitioner.

8. In the order under appeal, the learned Single Judge held that the present lis was squarely covered by the judgment of the Supreme Court in

Uttaranchal Forest Development Corporation & another vs. Jabar Singh & others: 2006 (13) SCALE 556. The writ petition was disposed of, and the

respondents (appellants herein) were directed to consider the respondent-writ petitioner's case within a period of ten weeks as per the ratio of the

judgment in Jabar Singh. Aggrieved thereby, the present appeal.

9. Sri V.K. Kapurwan, learned counsel for the appellant-corporation, would submit that the observations made by the Supreme Court, in SLP Civil No.

13975 of 2004 dated 30.04.2007, cannot be read out of context; this Court in its order in WPMS No. 5027 of 2001 dated 27.02.2004, while quashing

the order of retrenchment, had directed that the respondent-workman be reinstated with continuity of service; it had, however, observed that he would

not be paid back wages except for the period already paid; the respondent-workmen did not question the order passed in WPMS No. 5027 of 2001

dated 27.02.2004; it is the appellants-corporation which had carried the matter in appeal to the Supreme Court; no relief could have been, or was,

granted by the Supreme Court in SLP Civil No. 13975 of 2004; dismissal of the Special Leave Petition would only mean that the order of this Court in

WPMS No. 5027 of 2001 dated 27.02.2004 continued to remain in force; and, in terms thereof, the respondent-workman was not entitled for back

wages, except for the period already paid.

10. On the other hand, Sri Naresh Pant, learned counsel for respondent no. 2, would submit that the law declared by the Supreme Court is binding on

this Court under Article 141 of the Constitution of India; and since the Supreme Court had dismissed the Special Leave Petition, in view of para 47 of

the judgment in Jabar Singh, the appellants were obligated to pay the respondent-workman back wages in its entirety, and reinstate him with continuity of service; and not limit payment of back wages only for the period for which it had already been paid, in view of the aforesaid judgment of the

Supreme Court which required back wages to be paid in its entirety to the respondent-writ petitioner.

11. In this context, it must be borne in mind that the civil appeals before the Supreme Court, in Jabar Singh, were preferred by the Uttaranchal Forest

Development Corporation, and not by the respondent-workmen therein; and it is in the appeals, preferred by the Uttaranchal Forest Development

Corporation, that the Supreme Court had, in para 47 of its judgment in Jabar Singh, directed payment of back wages to the respondent-workmen in its

entirety. While dismissing SLP (Civil) No. 13975 of 2004 preferred by the appellants herein, by its order dated 30.04.2007, a similar direction was

issued by the Supreme Court. As the SLP preferred by the appellant was dismissed, in view of para 47 of the Judgment of the Supreme Court in

Jabar Singh, the learned Single Judge was justified in applying the law laid down therein, in passing the order under appeal.

12. The contention that no direction could have been issued against the appellants herein, in the Special Leave Petition preferred by them before the

Supreme Court, cannot be agitated before this High Court since the order of the Supreme Court makes it clear that, in view of para 47 of the judgment

in Jabar Singh, the SLP was dismissed. The appellants were obligated, therefore, to pay the respondent-workman his back wages in its entirety, in

terms of para 47 of the judgment in Jabar Singh.

13. Interference in an intra-Court appeal is justified only if the order under appeal suffers from a patent illegality. While the order passed by the

learned Single Judge is no doubt cryptic, it cannot be said to suffer from any such infirmity as to warrant interference by a Division Bench. The

Special Appeal must be, and is accordingly, dismissed. No costs.