
(2018) 08 UK CK 0104

In the Uttarakhand High Court

Case No : Special Appeal No. 426 of 2018

Uttarakhand Public Service Commission Gurukul Kangri

APPELLANT

Vs

Avinash Kumar Singh

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Citation : (2018) 08 UK CK 0104

Hon'ble Judges : Manoj Kumar Tiwari, J; Sharad Kumar Sharma, J

Bench : Division Bench

Advocate : N.S. Pundir, Arvind Vashisth, Ashish Sinha

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J.

Manoj K. Tiwari, J. (Oral)

1. Twice time was given to the respondent for filing objection to the delay condonation application but objection has not been filed, as yet. Mr. Arvind

Vasistha, Senior Advocate submits that he is not seriously opposing the delay condonation application. There is 74 days delay in filing the special

appeal. Cause shown in the delay condonation application is sufficient, therefore, delay is condoned. Delay condonation application is allowed.

2. Respondent's case in the writ petition was that a number of examinees, including him, had registered a written complaint regarding broken seal

in the question booklets of Combined State Civil (Pre) Exam, 2012 held on 30.11.2014, however, he alone was picked up and was punished by

debarring him from participating in any examination conducted by Uttarakhand Public Service Commission (hereinafter referred to as

Commission), for five years. It was contended that since his name was at

Sl. No. 1 in the list of examinees, who made the complaint, therefore he was victimised. It was further contended that he had refuted all allegations made against him in the show cause notice, however, his reply was not considered and he was punished with absolute non application of mind.

3. The writ petition filed by the respondent was allowed, impugned order dated 30.01.2015 was quashed and cost of Rs. 5000/- was imposed upon

Uttarakhand Public Service Commission. The operative portion of the said judgment is extracted below:

“The petitioner has right to lodge the protest and he has lodged the protest. Thereafter, the matter was looked into by the SDM concerned as noticed hereinabove. The Uttarakhand Public Service Commission/respondent instead of victimizing the petitioner should have taken action against those officers/officials who were prima facie involved for not putting proper seal on the booklets.

Accordingly, the writ petition is allowed with cost of Rs.5,000/- payable by respondent. Impugned order dated 30.01.2015 is quashed as set aside.”

4. We have gone through the impugned judgment. Learned Single Judge has referred to the inquiry report submitted by Sub Divisional Magistrate, Roorkee, which is enclosed as annexure CA-1 with the counter affidavit filed by the appellant before learned Single Judge. The said report vindicates the stand taken by the examinees that seal of several question booklets was found broken.

5. A plain reading of the punishment order dated 30.01.2015 passed by Secretary, Uttarakhand Public Service Commission, which was challenged in the writ petition, reveals that the only allegation against the respondent was that he had instigated the examinees to boycott the examination.

Respondent had specifically denied this allegation. The competent Authority was therefore, required to record a finding based on cogent material, that it was the respondent, who instigated other examinees. However, the said order is absolutely silent on this vital aspect and there is no finding whatsoever on this issue. Therefore the extreme penalty of debarring the respondent, for 5 years, imposed by the said order, cannot be sustained.

6. We live in a free country and our constitution guarantees certain freedoms to all citizens. Since there was some discrepancy in the question booklets, therefore the examinees had a right to register protest against the

same.

7. We are in agreement with the view taken by learned Single Judge that the Commission should have taken a pragmatic view in the matter and

instead of punishing the respondent for lodging complaint, action should have been taken against the erring officers found remiss in their duties.

8. In such view of the matter, we do not find any infirmity in the view taken by learned Single Judge. However, the cost imposed upon the appellant by the impugned judgment, is waived.

9. Subject to above, the second appeal is dismissed.

10. No order as to cost.