
(2020) 07 UK CK 0017

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 661 Of 2020

Vipin Prakash Sharma

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Uttarakhand Government Servant (Discipline And Appeal) Rules, 2003 — Rule 7

Citation : (2020) 07 UK CK 0017

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Division Bench

Advocate : Alok Mahra, P.S. Bisht, Sachin Mohan Mehta

Final Decision : Disposed Of

Judgement

Sharad Kumar Sharma, J

1. The matter is heard through video conferencing.
2. The brief facts as involved consideration in Writ Petition No. 661 of 2020 â?? Vipin Prakash Sharma vs. State of Uttarakhand and Othersâ??; it is to the effect that the petitionerâ??s contention is that in accordance with the testimonials, which he possessed of his qualification, he was qualified and he had undertaken the process of selection for being appointed, as an Assistant Teacher, Primary School, and after undergoing the process, he was given an appointment, as such on the post of Assistant Teacher, on 24.12.2008, in the payscale of Rs. 4,500-7,000/-, which he joined and was serving.
3. The contention of the petitioner is that on account of a certain complaint, which has been submitted against him with regards to the BTC certificate, which he possessed, which constituted as to be the basis for providing the

appointment to the petitioner, as an Assistant Teacher. A SIT enquiry was conducted and after submission of the SIT enquiry report, it was alleged that the BTC certificate, based on which the petitioner was appointed, was a fraudulent certificate. Hence, a SIT enquiry report was submitted for taking an action.

4. Later on, the petitioner was placed under suspension on the basis of the SIT report by an order dated 01.10.2016. The petitioner challenging the

order of suspension he had preferred a writ petition being Writ Petition No. 693 of 2017, which came up for consideration before the Coordinate

Bench of this Court, and it was disposed of on 20.04.2017 directing the respondents to take a final decision on the representation of the petitioner

within a period of four weeks from the date of the order.

5. In the meantime, the respondent proceeded to terminate the services of the petitioner by an order dated 27.10.2017. It was on the ground that the

petitioner has obtained a forged document, i.e. BTC certificate, based on which the appointment was made.

6. The petitioner challenged the order of termination dated 27.10.2017, before the Coordinate Bench of this Court in Writ Petition No. 3600 of 2017

and when the matter came up for consideration before the Coordinate Bench, the same was decided by the judgment dated 13.05.2019, which is

quoted hereunder:

“Learned counsel for the petitioner as well as learned counsel appearing for respondents submit that a similar controversy has been decided by the

Division Bench of this Court in Special Appeal No. 543 of 2017.

In view of the consensus between learned counsel for the parties, the present writ petition is disposed of in terms of judgment dated 13.02.2019

rendered by Division Bench of this Court in Special Appeal No. 543 of 2017 (State of Uttarakhand & Others vs. Krishan Pal Singh).”

7. It was based on the judgment rendered by the Division Bench of this Court in Special Appeal No. 543 of 2017. The Court has held that the order of

termination as passed against the petitioner on 27.10.2017 since it was contrary to the Uttarakhand Government Servant (Discipline and Appeal)

Rules, 2003. The Division Bench, when it was seized with the matter in Special Appeal No. 543 of 2017 “State of Uttarakhand vs. Krishan Pal

Singh”, which was arising out of yet another matter of an identical nature

being that of Writ Petition No. 650 of 2016 decided by judgment dated 28.03.2017, had affirmed the judgment of learned Single Judge with the slight modification to the effect that as a consequence of the remittance of the matter for re-conducting the enquiry in the light of the Division Bench's judgment, it may not amount to reinstatement of the petitioner whose services stood terminated.

8. The Division Bench has modified the judgment only to the extent that as a consequence of the Single Bench Judgment though the departmental enquiry was directed to be continued as per the rules of 2003, however, the status of suspension of the petitioner was directed to be maintained till the enquiry as directed by the Coordinate Bench was to conclude. Relevant paragraphs of the judgment are quoted hereinbelow:

“6. The appellant-respondent should have conducted a departmental enquiry, in as much as the respondent-writ petitioner had denied the charges levelled against him. They should have also afforded the petitioner a reasonable opportunity of defending himself in such an enquiry and, thereafter, should have furnished him a copy of the enquiry report calling for his objections. It is only thereafter, could a punishment have been imposed on the petitioner. Instead, the appellant has straightway, after receipt of the petitioner's reply to the charge-sheet denying the charges, dismissed him from service.

7. While, we find no error in the order under appeal necessitating interference in so far as the order of punishment was set aside by the learned Single Judge, the fact however remains that the learned Single Judge has also directed that the respondent-writ petitioner be reinstated into service with all consequential benefits.

8. As noted hereinabove, the petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension when he was dismissed from service by proceedings dated 6.1.2016. Setting aside the order of punishment would only require that the order of 3 suspension be continued, and for the disciplinary enquiry to be completed early.

9. In such circumstances, we consider it appropriate to modify the order of learned Single Judge and direct the appellants-respondents to continue to pay the petitioner subsistence allowance, which he is entitled to during the period of suspension, till the completion of departmental enquiry initiated

against him.â??

9. The petitionerâ??s case is that even after the judgment rendered in his case on 13.05.2019, the respondent had yet again proceeded to pass an

order of dismissal of services dehors to the provisions contained under Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal Rules),

2003, because the procedure as contemplated therein for imposition of major punishment has not been complied with. Hence, the present writ petition.

10. Apparently, this Court after hearing the learned counsel for the parties and after having scrutinized the impugned order of termination, which is

under challenge in the present writ petition, i.e. dated 06.05.2020, this writ petition is partially allowed only to the extent that the termination order since

being in contravention to Rule 7 of the Rules of 2003, would stand set-aside and the petitioner would be restored back to the stage of his suspension as

it was existing on 01.10.2016.

11. This aspect that the impugned order under challenge dated 16.05.2020, happens to be apparently in contravention to Rule 7 of Rules of 2003, as

well as, the judgment dated 13.05.2019, are facts which is admitted by the Standing Counsel. Hence, based on the consensus arrived at, to the effect

that the impugned order runs contrary to the Division Bench judgment, as Rule 7 was not complied.

12. The respondents are directed to strictly adhere to the provisions contained under the Uttarakhand Government Servant (Discipline and Appeal)

Rules, 2003, and conduct the enquiry strictly in terms of Rule 7 of the Rules of 2003, and then take a decision with regards to the services of the

petitioner.

13. Subject to the above observation, the order of termination is modified to the extent that it will be treated as to be an order of suspension pending

enquiry, which is being now directed to be concluded by the respondent as expeditiously as possible, but under no condition beyond four month of the

receipt of the certified copy of the order.

14. During this period of suspension, pending enquiry as per Rule 7 of the Rules of 2003, the petitioner would be paid subsistence allowance as

admissible under law.

15. Writ petition stands disposed of accordingly.