
(2011) 06 UK CK 0009
In the Uttarakhand High Court
Case No : Special Appeal No. 57 of 2011

Vishal Saini

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 16-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 2 NCC 315 : (2011) 3 UC 2335 : (2011) 1 UD 514

Hon'ble Judges : Servesh Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Prafulla C. Pant, J.—This special appeal, is filed under Chapter VIII Rule 5 of Rules of the Court, 1952, applicable to this high court, challenging the order dated 14.02.2011, passed by learned Single Judge of this Court, in Writ Petition No. 71 (S/S) of 2011.

2. Heard Learned Counsel for the parties and perused the affidavits, counter affidavits, and the record of the writ petition.

3. Brief facts of the case are that the appellant/writ petitioner Vishal Saini filed writ petition seeking direction in the nature of mandamus commanding the respondents to consider his representation dated 25.06.2010. He further sought a direction in the nature of certiorari quashing the order dated 06.10.2010, passed by respondent No. 4, rejecting the application of the writ petitioner (seeking employment under Government Order No. 23/25/1973 Karmik/2 dated 21.09.1981, issued by the State of Uttar Pradesh). It is stated in the writ petition that land of grandfather of the petitioner, situated in Village Bajuhedi, Tehsil Roorkee, District Haridwar (now within the territory of State of Uttarakhand) was acquired by the State of Uttar Pradesh in the year 1982-83, for Upper Ganga Modernization Project. The petitioner/appellant claimed that he is entitled to the employment under the Government Order dated 21.09.1981. Parity was claimed

by him as one Minaxi was given employment vide order dated 12th of June 2007, in compliance of order dated 01.03.2006, passed in the Writ Petition No. 944 (S/S) 2005; Minaxi Vs. State of UP. and others. It is also pleaded that one Mohit Saini was also given job. However, learned Single Judge of this Court vide impugned order dated 14.02.2011, observed that because the land belonged to the grandfather of the petitioner, the Government Order relied does not help him (writ petitioner).

4. Affidavit filed with the writ petition shows that age of Vishal Saini (writ petitioner/appellant) is only 19 years. This discloses that writ petitioner was born after ten years of acquisition of land. In other words, he was not member of family of the person concerned at the time when the land was acquired.

5. On behalf of the State of Uttar Pradesh our attention is drawn to the Full Bench judgment of the Allahabad High Court in Ravindra Kumar Vs. District Magistrate and Others, , in which in paragraph 25, following directions are issued by the Full Bench of the Allahabad High Court-

(1) The Government orders/circulars providing employment to one member of a family of a person whose land has been acquired (over and above the compensation awarded under the law) are invalid.

(2) The acquiring body for whose benefit the land was acquired are not bound by such Government order/circular.

(3) No writ can be issued directing the acquiring body to consider the claim in accordance with the aforesaid order/Government circular.

6. However, Learned Counsel for the writ petitioner/appellant relied and referred the case of State of Haryana Vs. Gurcharan Singh; (2004) 12 SCC 540, and pleaded that the writ petitioner/appellant cannot be subjected to hostile discrimination. Having gone through said case law, and the latest principle of law laid down in Vishal Properties Pvt. Ltd. Vs. State of U.P. and Others, , we are of the view that negative equality cannot be claimed under Article 14 of the Constitution of India. Article 14 of the Constitution of India is not meant to perpetuate the illegality. If someone has been given some benefit due to some mistake, others cannot claim equal treatment.

7. For the reasons as discussed above, we find no force in this appeal, which is liable to be dismissed. Accordingly, the appeal is dismissed. No order as to costs.