
(2011) 03 UK CK 0052

In the Uttarakhand High Court

Case No : Writ Petition No. 230 of 2011 (S/S)

V.S. Rajput

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Citation : (2011) 03 UK CK 0052

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. D.S. Patni, Advocate for the Petitioner and Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand/Respondents.

2. The Petitioner is a Junior Engineer in Regulated Area, Bageshwar. Vide order dated 11.3.2011, he has been transferred to Haldwani on administrative grounds and has been attached to Regional Planning Division, Haldwani. The Petitioner has challenged this order on two grounds. First ground is that the order has been passed due to malafide reasons inasmuch as the said order has been passed on directions of the Hon'ble Minister, Medical Education, State of Uttarakhand, who has written to the Principal Secretary (Avas) that the Petitioner who has been posted to the Regulated Area Bageshwar is harassing the local citizens and that there are complaints against the Petitioner for indulging in corrupt practices and therefore he writes that in public interest the Petitioner should be transferred. Consequent to that the Petitioner has been transferred and attached to Regional Planning Division, Haldwani.

3. Secondly, the counsel for the Petitioner also submits that in view of the Government Order dated 28.6.2007 of the Chief Secretary, Uttarakhand it has been provided that attachment should not be resorted to easily and should be done in rare cases after taking approval from the Higher Authorities. For this reason as well the Petitioner asserts that the impugned order is bad, as it is in

violation of the directions of the Chief Secretary in his order dated 28.6.2007.

4. In the counter affidavit called for by this Court, as far as that portion of the Government Order dated 28.6.2007 is concerned, the Respondents have remained silent and have not made any specific reply to that effect. Regarding the other issue raised by the Petitioner, it has been stated that there have been complaints against the Petitioner and he has been transferred to Regional Planning Division, Haldwani based on those complaints.

5. Although it is by now trite, it must be stated here that transfer is an exigency of service and Courts are slow in interfering in a transfer order except on two occasions, when the transfer order itself is in violation of law or the transfer order has been passed due to mala fide reasons. In the present case, the transfer order is bad on both the counts. Firstly, in terms of the standing instructions of the Chief Secretary of the State contained in order dated 28.6.2007 attachment should not be resorted to as it has been done in the present case and secondly, since it is admitted in the counter affidavit that the order has been passed on the instructions of the Hon"ble Minister for reasons stated in the letter of the Hon"ble Minister, the order becomes mala fide in nature. As such, the impugned order dated 11.3.2011 by which the Petitioner has been transferred and attached to the office of Regional Planning Division, Haldwani cannot stand and is hereby quashed.

6. All the same, one clarification must be made. It has been highlighted in the counter affidavit filed by the State that an enquiry has been set up against the Petitioner for his misconduct. Therefore, it is made clear that although the impugned order has been set aside, but in case a disciplinary inquiry is made against the Petitioner, the Respondents will be free to pass any order in accordance with law during the period such inquiry is in process, as that would be a separate issue altogether.

7. The writ petition is allowed as above. No order as to costs.