

Rajmati Devi Vs State Of Uttarakhand And Others

Court: Uttarakhand High Court

Date of Decision: May 21, 2019

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

Bench: Division Bench

Advocate: M.S. Bhandari, Vikas Pande

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1042 of 2019 dated 07.05.2019.

2. The appellant herein filed the writ petition seeking a writ of certiorari to quash the order dated 11.02.2019 passed by the third respondent; and a writ

of mandamus commanding the respondents not to disturb / interfere with the peaceful functioning of the petitioner as an Assistant Teacher in

Government Primary School, Ladoli, Block-Augustmuni, District Rudraprayag, and to pay her salary on a monthly basis, including arrears of salary for

the month of March, 2019.

3. Facts, as noted in the order under appeal, are that the appellant-writ petitioner was initially posted as an Assistant Teacher in the Government

Primary School, Jasoli, Rudraprayag district. She was, thereafter, adjusted in the Government Primary School, Chidpi, Block-Augustmuni by order

dated 11.09.2018. Subsequently, by order dated 15.01.2019, her attachment order was modified; and she was asked to join the Government Primary

School, Ladoli. However, by order dated 11.02.2019, the earlier order dated 15.01.2019 was cancelled, and the appellant-writ petitioner was asked to

join at her original school i.e. the Government Primary School, Chidpi. Aggrieved thereby, the appellant-writ petitioner invoked the jurisdiction of this

Court.

4. In the order under appeal, the learned Single Judge noted the contentions, urged on behalf of the appellant-writ petitioner, that the reasons assigned,

in the impugned order dated 11.02.2019, for the appellant-writ petitioner not joining duty at the Government Primary School, Ladoli, in terms of the

order dated 15.01.2019, was incorrect; the impugned order dated 11.02.2019 was not even served on the appellant-writ petitioner; and she came to

know of the said order only in the first week of May, 2019. The learned Single Judge opined that, without going into the merits of the case, interests of

justice would be served if the appellant-writ petitioner was permitted to make a representation to the competent Authority, who would take an

appropriate decision thereupon within the stipulated time-frame. The writ petition was disposed of with liberty to the appellant-writ petitioner to make a

representation to the competent Authority "respondent no. 3 within two weeks from the date of the order. The learned Single Judge made it clear

that, if such a representation was made, the competent authority should consider the same, and take an appropriate decision in accordance with law

within four weeks from the date of receipt of such a representation.

5. Sri M.S. Bhandari, learned counsel for the appellant-writ petitioner, would submit that since the order of attachment dated 11.02.2019, whereby the

earlier attachment order dated 15.01.2019 was cancelled and the petitioner was posted back to the Government Primary School, Chidpi, Block

Augustmuni, was not even served on her, the appellant-writ petitioner cannot be faulted for not joining duty as an Assistant Teacher in the

Government Primary School, Chidpi; the findings recorded, in the impugned order, that the appellant-writ petitioner did not join duty at the Government

Primary School, Ladoli is false; the appellant-writ petitioner had, in fact, joined duty in the said post; and, since the learned Single Judge had directed

the respondents to consider the appellant-writ petitioner's representation within six weeks, she be permitted to continue to work in the Government

Primary School, Ladoli till orders are passed on the representation, of the appellant-writ petitioner, by the respondent-Government.

6. Transfer is an incidence of service, and is effected in the exigencies of administration. No employee can claim, as of right, that he / she be

permitted to continue at a particular place, and should not be transferred elsewhere. While the appellant-writ petitioner was initially appointed as an

Assistant Teacher in the Government Primary School, Chidpi on 11.09.2018, she was adjusted and asked to join duty at the Government Primary

School, Ladoli vide proceedings dated 15.01.2019. While the impugned order records that the appellant-writ petitioner never joined duty at the

Government Primary School, Ladoli, the appellant-writ petitioner claims that she had joined duty.

7. Be that as it may, the order dated 15.01.2019 was set at naught by the District Education Officer by his order dated 11.02.2019, as a result of

which the appellant-writ petitioner was required to join duty at the Government Primary School, Chidpi, Block Augustmuni.

8. Sri M.S. Bhandari, learned counsel for the appellant, would submit that the appellant came to know of the order dated 11.02.2019 only when she

was not paid her salary from 1st May, 2019.

9. If that be so, the appellant-writ petitioner can always raise this plea, of a notice not having been served on her, in her representation to be submitted

to the competent Authority in terms of the order passed by the learned Single Judge. In case, the appellant-writ petitioner has been working in Ladoli

ever since 15.01.2019, as is now claimed before us, the respondents shall consider whether or not the appellant-writ petitioner should be extended the

benefit of payment of her salary for the period from 15.01.2019 till 1.05.2019.

10. We are, however, unimpressed by the submission of Sri M.S. Bhandari that the appellant-writ petitioner should be permitted to continue in the

Government Primary School, Ladoli till fresh orders are passed by the competent Authority.

11. An order of transfer or posting must be complied with forthwith. It is always open to an employee to make a representation to the competent

Authority expressing his / her grievance regarding the place of posting. Till a fresh order is passed by the competent Authority, based on the

representation of the employee concerned, she is bound to comply with the earlier transfer order / order of posting. The appellant-writ petitioner was,

therefore, required to join duty at the Government Primary School, Chidpi, Block Augustmuni in compliance with the order dated 11.02.2019. Even if

her claim that she came to know of the order dated 11.02.2019, only on 01.05.2019, is true, she should at least have joined duty at the Government

Primary School, Chidpi, Block Augustmuni on 01.05.2019, or soon thereafter.

12. The scope of interference in an intra-court appeal is extremely limited. It is only if the order under appeal suffers from a patent illegality would

interference be justified. We find no such infirmity in the order under appeal.

13. Suffice it, therefore, to modify the order of the learned Single Judge to the limited extent that it would be open to the appellant-writ petitioner, in the

representation to be submitted by her to the competent Authority, to also highlight the fact that she was unaware of the order of posting dated

11.02.2019, till she came to know of such transfer order when her salary, for the month of April, was denied to her on 1st May, 2019. The competent

Authority shall examine the appellant-writ petitioner's claim and, in case it is found to be true, to then consider whether she should be paid her

salary and emoluments for the period from 15.01.2019 till 01.05.2019, during which period she claims to be working as an Assistant Teacher in the

Government Primary School, Ladoli.

14. In case the appellant-writ petitioner submits an additional representation within one week from today, the respondents shall consider the said

representation in accordance with law, and pass appropriate orders thereupon, within three weeks thereafter. That would not, however, justify the

appellant-writ petitioner continuing to work in the Government Primary School, Ladoli. She shall forthwith report for duty at the Government Primary

School, Chidpi, Block Augustmuni; and, if she submits a joining report, she shall be permitted to join duty, at the said school, forthwith.

15. Subject to the aforesaid modifications, we see no reason to interfere with the order under appeal. The special appeal fails and is, accordingly,

dismissed. No costs.