

(2018) 11 UK CK 0219
Uttarakhand High Court
Case No: Special Appeal No. 942 Of 2018

State Of Uttarakhand
& Ors

APPELLANT

Vs

Amit Kumar Sharma &
Ors

RESPONDENT

Date of Decision: Nov. 26, 2018

Hon'ble Judges: Ramesh Ranganathan, CJ; Lok Pal Singh, J

Bench: Division Bench

Advocate: Anil Bisht, Bhagwat Mehra

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. Shri Bhagwat Mehra learned counsel appearing for the respondent no.1 expresses no objection to the delay in preferring the special appeal being condoned. The delay is condoned, and the application is ordered.

2. While certain defects are pointed out by the Registry, which have not been complied with by the appellants, we see no reason to defer hearing of the appeal on this ground, as we are satisfied that the order under appeal does not suffer from such an infirmity as to warrant interference in an intra-court appeal.

3. Facts, to the extent necessary, are that the respondent no.1-writ petitioner was appointed as a Junior Assistant on 20.4.2000 in the State of Uttar Pradesh, and joined duty soon thereafter. The State of U.P. was bifurcated, and the State of Uttarakhand came into being on 09.11.2000, when he

was working at Uttarkashi (presently in the State of Uttarakhand). The petitioner exercised his option to be allotted to the State of Uttar Pradesh, and

was relieved from duty at Uttarkashi on 1.8.2001 with a direction to submit his joining report to the concerned officials in the State of Uttar Pradesh.

Though the petitioner was issued relieving orders on 1.8.2001 by the State of Uttarakhand, no posting orders were given to him by the Rural

Engineering Services Department of the State of Uttar Pradesh. The first respondent-writ petitioner then approached the Allahabad High Court

seeking a direction to the respondent-officials of the State of Uttar Pradesh to issue posting orders. The Allahabad High Court, however, permitted the

petitioner to make a representation in this regard. In the meanwhile, the Central Government passed order dated 31.03.2003 directing that all Class III

employees would be treated as employees of the State in the region where they were initially appointed. As the petitioner's initial appointment, as

a Junior Assistant, was at Uttarkashi in the State of Uttarakhand, he was required, in terms of the Central Government directives, to be treated as an

employee of the State of Uttarakhand.

4. While the writ petitioner invoked the jurisdiction of the Allahabad High Court in the year 2003 by filing Writ Petition No.31713 of 2003, an interim

order was passed on 19.05.2009 directing the State of Uttarakhand to permit the writ petitioner to join duty. The first respondent-writ petitioner

submitted his joining report on 23.5.2009, and an order was issued on 26.09.2009 treating his appointment as a fresh appointment without back wages

for the period 01.08.2001 to 28.9.2009. Aggrieved thereby, the first respondent-writ petitioner filed Writ Petition (S/S) No.513 of 2015.

5. In the order under appeal, the learned Single Judge observed that the petitioner was duly selected, and had joined duty in Uttarakhand; he was sent

to the State of Uttar Pradesh to join duty thereat; he was not issued posting orders as a result of which he was constrained to approach the Allahabad

High Court twice; it was only on the basis of the interim order dated 19.5.2009, that he was ultimately permitted to join duty in the State of

Uttarakhand on 28. 9.2009; the conditions imposed in the letter dated 26.09.2009, denying him salary for the period 1. 8.2001 to 28.09.2009, treating

the said period as a break in service, was illegal; it was not as if the writ petitioner was not ready and willing to join in the post and to work thereat from the very inception; he was prevented from discharging his duties; the principle of "No Work No Pay" was not attracted in the present case; and the petitioner's appointment must be reckoned as continuous from the date of his initial appointment, and not from 28.09.2009. The writ petition was allowed, the proceedings dated 26.9.2009 were set aside, and the respondents were directed to pay arrears of salary from 01.8.2001 to 28.9.2009.

6. Shri Anil Bisht, learned Standing Counsel appearing for the State of Uttarakhand, would submit that the petitioner had exercised his option to be appointed in the State of U.P. and had, in fact, joined thereat; failure on the part of the officials, in the State of U.P., to permit him to join duties thereat, cannot result in the State of Uttarakhand being mulcted with the liability of payment of salary from 02.08.2001 to 28.09.2009 even though the first respondent-writ petitioner, actually, joined duty in the State of Uttarakhand only on 28.09.2009; arrears of salary prior to 28.09.2009, even if payable to the petitioner, would only be required to be paid by the State of U.P. and not by the State of Uttarakhand; and the State of Uttarakhand is, for no fault of theirs, being forced to pay arrears of salary to the first respondent-writ petitioner from 02.08.2001 till 28.9.2009.

7. While the facts of the case, undoubtedly, disclose a lapse on the part of the officials of the Rural Engineering Services Department of the Government of U.P. in not taking the petitioner to duty, on his having exercised his option to work in the State of U.P. and having reported for duty thereat on 02.08.2001, the fact remains that the petitioner has been denied his salary for the period 02.8.2001 till 28.09.2009 for no fault of his, as he was ready and willing to work wherever he was posted, be it in the State of U.P. or in the State of Uttarakhand. It is only after the interim order was passed by the Allahabad High Court, directing that he be permitted to join in the State of Uttarakhand, was he issued posting orders, and he joined duty on 28.09.2009 in the State of Uttarakhand. The petitioner has only been compensated by the learned Single Judge for his not having been permitted to discharge his duties from 02.08.2001 till 28. 09.2009.

8. While arrears of salary for this period are required to be paid to him, either by the State of U.P. as is now contended before us by Shri Anil Bisht,

learned Standing Counsel for the State of Uttarakhand, or by the State of Uttarakhand as directed by the learned Single Judge, we are satisfied that

the first respondent-writ petitioner is entitled for arrears of salary from 02.8.2001 to 28.09.2009. The order of the learned Single Judge, directing the

State of Uttarakhand to pay the first respondent-writ petitioner, arrears of salary from 02.08.2001 to 28.09.2009, which is under challenge in the

present appeal, does not suffer from such a patent illegality as to warrant interference in an intra-court appeal.

9. Suffice it to safeguard the interest of the appellant-State of Uttarakhand, as it does appear that they are now being required to pay arrears of salary

to the first respondent-writ petitioner for what appears to be the fault of the Rural Engineering Services Department of the State of U.P., to leave it

open to them to take necessary action, if so advised, to recover the amounts, paid to the first respondent-writ petitioner, from the State of U.P.

10. Subject to aforesaid observations, the special appeal is dismissed.