

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Writ Petition No.233 of 2009 (S/S)

Shamim Ahmad Khan

.....Petitioner

Versus

State of Uttarakhand & two others

....Respondents

Mr. Rajendra Dobhal, Advocate for the petitioner.

Mr. Paresh Tripathi, Brief Holder for respondent nos.1 & 2.

Ms. Neelima Mishra, Advocate holding brief of Mr. D. Barthwal, Advocate for respondent no.3.

Dated: 22.05.2009

Hon'ble V.K. Bist, J.

Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was appointed as L.T. Grade Teacher in Ashram Type School in the year 1973. Since then he is working as Assistant Teacher. In the year 2004 the name of the petitioner was considered for the post of Chief Executive Officer, Waqf Board Uttarakhand, Dehradun. The name of the petitioner was kept in three members' panel and consent of the petitioner was taken for being considered as Chief Executive Officer, Waqf Board for which the petitioner gave his consent. But none of the person included in the panel was appointed as Chief Executive Officer, Waqf

Board. On 05.02.2009 order was passed by the Secretary Social Welfare Department, State of Uttarakhand by which the petitioner was given charge of the post of Chief Executive Officer, Waqf Board, Dehradun. In this order it was mentioned that no additional salary/allowance will be given to the petitioner and petitioner will be paid salary from his place of posting. By this order the respondent no.3, who was officiating as Chief Executive Officer, Waqf Board, was sent back to his original place of posting at Pauri as Samaj Kalyan Officer. In pursuance of order dated 05.02.2009 the petitioner joined as Chief Executive Officer, Waqf Board, Dehradun on 06.02.2009. Thereafter, vide order dated 24.02.2009 earlier order dated 05.02.2009 was superseded and petitioner was sent back to his original place of posting. By this order, the respondent no.3 was given work on the post of Chief Executive Officer, Waqf Board.

Aggrieved by the order dated 24.02.2009 the petitioner filed present writ petition on the ground that before passing the order dated 24.02.2009 the petitioner was not given any opportunity of hearing and as such the impugned order is violative of principles of natural justice. This order has further been challenged on the ground that the petitioner is fully qualified to be appointed as Chief Executive Officer, Waqf Board under Section 23 of Waqf Act, 1995 and no reason was given for the cancellation of the order dated 05.02.2009. The respondent no.2 filed

counter affidavit denying the contention of the petitioner. In counter affidavit respondent no.2 came up with the case that as per Section 23 (1) of the Waqf Board Act the Chief Executive Officer of the Board shall be a Muslim and shall be appointed by the State Government in consultation with the Board by notification in the Official Gazette. In counter affidavit the respondent no.2 further submitted that the petitioner moved an application on 05.11.2008 before the Deputy Director Social Welfare by which it was apprised that in the year 1998 the petitioner was converted as Hindu and he changed his name as Shailendra Singh. Since petitioner changed his religion and is no more Muslim, the petitioner cannot be appointed as Chief Executive Officer, Waqf Board. Respondent no.3 also filed his counter affidavit and also took the same grounds including the ground that since the petitioner was converted as Hindu he cannot legally be appointed as Chief Executive Officer for Uttarakhand Waqf Board.

Learned counsel for the petitioner argued that in the official record the name of the petitioner is still Shamim Ahmad Khan and being a Muslim he has every right to be appointed as Chief Executive Officer of the Waqf Board. He further argued that since no opportunity was given to the petitioner before passing the order dated 24.02.2009 and the order dated 24.02.2009 is not a reasoned order, the same deserves to be set aside. Learned counsel for the respondents, on the other hand, argued that since the

petitioner is not a Muslim, he cannot be appointed as Chairman of the Waqf Board under Section 23 of the Waqf Act, 1995. They further argued that since the appointment of the petitioner was temporary appointment, the petitioner cannot claim his posting on the said post as a matter of right.

After hearing learned counsel for the parties and after perusal of record, this Court is not inclined to grant any relief in favour of the petitioner because vide order dated 05.02.2009 the petitioner was given an officiating posting and it was not a fulfilled appointment made under Section 23 of the Waqf Act. Therefore, order dated 24.02.2009 cannot be challenged on the ground of violation of natural justice. The petitioner cannot claim his posting on the post of Chief Executive Officer, Waqf Board, Dehradun. Consequently, the writ petition fails and dismissed.

In the present case this Court fails to appreciate why a person who is posted at Pauri is being posted as Chief Executive Officer, Waqf Board, Dehradun which is about 100 k.m. away from Dehradun. The action of the respondents by giving posting to a person who is not posted at Dehradun and is posted away is not fair because it is certainly not convenient for a person to perform the duties of Chief Executive Officer of Waqf Board, Dehradun from Pauri. For performing the duties of Chief Executive Officer, he is required to come to Dehradun and by doing so his valuable time is wasted during journey. This will also

certainly adversely affect the functioning of respondent no.3 as Assistant Social Welfare Officer, Pauri. The respondent no.1 is directed to look into this aspect of the matter.

(V.K.Bist, J.)
22.05.2009

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