

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 385 of 2012

Cooperative Cane Development Union Ltd. Appellant

Versus

Suresh Narayan Pandey & others. Respondents

Mr. Manoj Tiwari, Senior Advocate, assisted by Mr. Alok Mahra, Advocate for the appellant.

Mr. B.D. Upadhyaya, Senior Advocate, assisted by Mr. Sunil Upadhyaya, Advocate for respondent No. 1.

Mr. Rajeev Singh Bisht, Brief Holder for the State of Uttarakhand / respondent Nos. 2 & 5.

JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.

Hon'ble V.K. Bist, J.

BARIN GHOSH, C. J. (Oral)

Respondent No. 1 approached the writ court challenging a disciplinary order. That disciplinary order has been quashed. Noticing that respondent No. 1 has retired, while disposing of the writ petition, directions were given for releasing the retiral dues of respondent No. 1. Aggrieved thereby, the present appeal has been preferred.

2. In the appeal, surprisingly, the merit of the order under appeal is not being challenged, but the jurisdiction of the writ court is being challenged. It is being contended that the appellant is neither funded nor controlled by the Government. It is being contended that the appellate court had directed the appellant to produce certain documents, which have been produced, wherefrom, it would be evidenced that the contention of the appellant to the effect that the appellant is not funded by the Government and the State has no control over the appellant stands established.

3. Unfortunately, the writ petition was contested by filing a counter affidavit. Nowhere in the counter affidavit, it was contended that the

appellant is not funded by the Government and that the Government has no say in the matter of the affairs of the appellant and, accordingly, appellant is not a State within the meaning of Article 12 of the Constitution of India and, as such, no writ lies against the appellant. That being a mixed question of law and facts, unless the factual aspects of the matter are highlighted giving an opportunity to the other side to deal with the same, it cannot be decided whether, in fact, appellant is or is not an authority within the meaning of Article 12 of the Constitution of India. The foundational facts having not been stated in the counter affidavit, the same cannot be permitted to be raised for the first time in the appeal.

4. Accordingly, the appeal fails and the same is dismissed.

(V.K. Bist, J.)
31.03.2014

(Barin Ghosh, C. J.)
31.03.2014

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