

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
SPECIAL APPEAL No. 654 of 2015

Smt. Manju Tiwari and another.

.....Petitioners.

Versus

State of Uttarakhand and others

.....Respondents.

Mr. Amar Shukla, Advocate for the petitioners.

Mr. A.K. Joshi, Standing Counsel for the State of Uttarakhand / respondent nos. 1 to 4.

Ms. Beena Pande, Standing Counsel for the State of U.P./respondent nos. 5 & 6.

Dated: 29.02.2016

Coram: Hon'ble K.M. Joseph, C.J.
 Hon'ble V.K. Bist, J.

K.M. Joseph, C.J. (Oral)

Petitioners are the appellants. The husband of appellant no. 1 and the father of appellant no. 2 was an employee of the State of Uttar Pradesh. He was transferred to the State of Uttarakhand. The transfer was made in the month of October 2004, but he did not join; proceedings were taken by the Authorities in Uttarakhand and he was dismissed. The predecessor in interest of the appellants challenged the order before the Tribunal, which was also dismissed. He challenged the order in this Court in Writ Petition No. 175 of 2011 (SB). During the pendency of the said writ petition, the predecessor in interest of the appellants passed away. Thereafter, appellants were substituted. That writ petition was allowed vide order dated 08.10.2013. Relevant portion of the judgment is as follows:

“2. The short question in the writ petition is, whether SSP, Dehradun could be said to be the Disciplinary Authority of the deceased petitioner. In the absence of allocation of the deceased petitioner to the State of Uttarakhand, SSP, Dehradun, who was an authority of the State of Uttarakhand, had no disciplinary jurisdiction over the deceased petitioner. The fact remains that the transfer of the petitioner, effected on 31st October, 2000, was cancelled on 20th November, 2000. Deceased petitioner remained at Kanpur.

3. We, accordingly, interfere, allow the writ petition and, accordingly, set aside the judgment of the Tribunal as

well as the disciplinary order dated 3rd January, 2005, appellate order dated 15th April, 2005 and the revisional order dated 1st August, 2005 only on the ground that these orders were not passed by an appropriate Disciplinary Authority, Appellate Authority and Revisional Authority.”

2. Thereafter, appellants filed a contempt case in the writ petition that was closed, wherein the appellants had sought post retirement benefits. Since it was found that a new cause of action arose, they were relegated to file a fresh writ petition. On the basis of that, a fresh petition was filed seeking the following reliefs:

“i) Issue a writ, order or direction in the nature of mandamus directing the Respondent Authorities to make payment of dues, post retiral dues and pensionary benefits to the petitioners within the stipulated time as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

3. Learned Single Judge took note of the fact that the High Court of Uttarakhand has no jurisdiction. However, it was made clear that the judgment will not prejudice the case of the appellants on merits.

4. We heard the learned counsel for the appellants Sri Amar Shukla, learned Standing Counsel for the State of U.P. Ms. Beena Pande and learned Additional Chief Standing Counsel for the State of Uttarakhand Sri A.K. Joshi.

5. Though the learned counsel for the appellants tried to derive support from the reported judgment of the Hon’ble Apex Court in the case of **Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and others** reported in **(2010) 1 SCC 457** for the proposition that even a part of cause of action arises, we think that it is without any basis. This is for the reason that a perusal of the judgment rendered in Writ Petition No. 175 of 2011 (SB), which was filed originally by the predecessor in interest and continued by the appellants, shows that the writ petition was allowed and the disciplinary proceedings initiated by the State of Uttarakhand officers were quashed. Though the predecessor in

interest has been transferred by the State of Uttar Pradesh, he remained in Kanpur and, therefore, the Authorities in the State of Uttarakhand have no jurisdiction in the matter. No doubt, the learned counsel for the appellants would try to derive support from the finding of the Public Service Tribunal that he has joined, but once the judgment is rendered by this Court, wherein the order of the Tribunal also was quashed, we do not see, how the appellants can be permitted to derive support from the finding of the order of the Tribunal, which stood set aside by this Court. Therefore, we can proceed on the basis that the State of Uttarakhand has nothing to do with the prayer sought for the retirement benefits on the basis that the proceedings were taken by the State of Uttarakhand; the relief can only be sought against the State of Uttar Pradesh. This we say, as the appellants have a case that partly the retirement benefit is to be claimed from the State of Uttar Pradesh and partly the retirement benefit is to be claimed from the State of Uttarakhand. We do not see, how the appellants can be permitted to maintain the writ petition in the State of Uttarakhand; the writ petition can only lie in the State of Uttar Pradesh. Appellants are unable to establish that any part of action has arisen in the State of Uttarakhand. We see no error in the judgment of the learned Single Judge. The Appeal fails and the same is dismissed. No order as to costs.

(V.K. Bist, J.)

(K.M. Joseph, C.J.)

29.02.2016

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