State of Uttarakhand and Others Vs. Daya Ram

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Court : Uttaranchal

Decided On : Dec-04-2012

Judge : The Honourable Chief Justice Mr. Barin Ghosh &Amp; U.C. Dhyani

Appeal No. : Writ Petition (S/B) No. 425 of 2012

Appellant : State of Uttarakhand and Others

Respondent : Daya Ram

Judgement :

Barin Ghosh, C. J.

Oral:

1. We are not inclined to interfere with the judgment of the Tribunal in the instant case. We, accordingly, dismiss the writ petition.

2. In the instant case, facts, to which there is no dispute, are that the respondent was substantively appointed as Lekhpal and was working as such immediately before 22nd September, 2004. On 22nd September, 2004, an order was issued by the District Magistrate, Dehradun, whereby and under, it was stated that a Departmental Promotion Committee was constituted, which Committee made recommendation, having considered the entire service records of the respondent, that he may be permitted to serve in the post of Revenue Inspector. The order, further, provided that, in view of such recommendation, respondent is being

transferred / promoted to the post of Revenue Inspector on temporary basis, which shall continue until training of Revenue Inspectors is made, or appointment of Revenue Inspectors, trained from Chief Revenue Commissioner, in future / arrangement. What was this arrangement, was not indicated in that order. On 6th June, 2008, District Magistrate, Dehradun, issued an order and, thereby, regularised the respondent in the post of Revenue Inspector w.e.f. 22nd September, 2007, in view of the fact that, by then, respondent had already served satisfactorily for a period of three years as Revenue Inspector, which is a requirement under Rules 29 and 32(2) of Kanoongo Seva Niyamavali and that the Collector was exercising that power of regularisation under Coloum II of Sub-Rules (1), (2) and (3) of the Uttar Pradesh Regularisation of Adhoc Promotions (On Posts Outside the Purview of Public Service Commission) (First Amendment) Rules, 2001. District Magistrate, Dehradun, however, by the order dated 7th August, 2008, held out that the said regularisation was improper, inasmuch as, the post, in which the regularisation was made, was not available. This order dated 7th August, 2008 has been successfully challenged by the respondent before the Public Services Tribunal. Hence, the present writ petition.

3. District Magistrate, Dehradun, who passed the order dated 7th August, 2008, was the self-same District Magistrate, who passed the order dated 6th June, 2008. On 6th June, 2008, when he passed that order, he did not bother to find out, whether there was or was not a post, in which the respondent could be regularised. The fact remains that, after 22nd September, 2004 and until 6th June, 2008, respondent was working in his capacity as Revenue Inspector, though on temporary basis. A person could not be asked to discharge duties of a post, even on temporary basis, when the post is not available. Respondent not only worked in the post of Revenue Inspector from 22nd September, 2004, but continued to draw salaries payable to a Revenue Inspector. The District Magistrate, who passed the order dated 6th June, 2008, sanctioned payment of such salaries to the respondent even before 6th June, 2008. In the letter dated 7th August, 2008, the District Magistrate nowhere indicated, from where, he was arranging the funds for payment of the higher salaries to the respondent when there was no sanctioned post, in which he was allegedly asked to discharge the duties. The fact remains that the State has not initiated any proceeding against that District Magistrate, who

passed the order dated 22nd September, 2004, who allegedly permitted the person to discharge the duties of a post, which was not available. Assuming the post was available on 22nd September, 2004 and, thereafter, the availability came to an end, but in the letter dated 7th August, 2008, it was not indicated when the post became unavailable. In the writ petition, many a papers have been annexed. Many a pleadings have been filed. But, surprisingly, nowhere it has been mentioned when the post became unavailable. If it had become unavailable on any date before 6th June, 2008, it became obligatory on the part of the District Magistrate to satisfy the Tribunal as well as this Court as to how remuneration of Revenue Inspector could be given to the respondent without the post of Revenue Inspector being available.

4. In the backdrop of what we have stated, refusal on the part of the Tribunal in accepting that the post was not available, we find is not interferable. The writ petition fails and the same is dismissed.