

Dharmendra Kumar Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/488967

Court : Allahabad

Decided On : Aug-01-2008

Reported in : 2008(4)AWC4173

Judge : A.P. Sahi, J.

Appellant : Dharmendra Kumar

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Manish Nigam

Disposition : Petition allowed

Judgement :

ORDER

A.P. Sahi, J.

1. Heard Sri Manish Nigam learned Counsel for the petitioner, Sri H.P. Misra for the respondent No. 7 and the learned standing counsellor the respondent Nos. 1 to 6.

2. This Court had earlier Issued notices to the other respondents for which steps have been taken by the learned Counsel for the petitioner but no Counsel has put in appearance. It is further submitted that the main contesting respondent Kusum Devi is contesting the matter and Sri H.P. Misra has advanced his submissions.

It was pointed out that the order impugned would be unsustainable in view of the law laid down by this Court in the Full Bench decision in the case of Ram Adhar v. State of U.P. and Ors. 1985 ALJ 615, on this issue. Learned Counsel for the respondents did not dispute the aforesaid proposition of law. The order impugned dated 23.4.2008 does not proceed to support the conclusion drawn on the basis of the evidence which was allegedly led by the parties.

This fact has also been noticed by this Court when the interim order dated 30.4.2008 was granted. The aforesaid position could not be dislodged by the learned Counsel for the respondents but it has been pointed out that the difference of votes is only four, as such it was a fit case for recounting relying on the decision of this Court in the case of Shobh Nath v. State of U.P. and Ors. : 1999(1)AWC451 .

3. Having heard learned Counsel for the represented parties as well as the learned standing Counsel, it is evident that the impugned order cannot be supported on the basis of the conclusions drawn. The order rather renders an opinion of a simple doubt without there being any conclusion drawn by the officer on the basis of evidence led. The order of recounting in the opinion of the Court cannot be passed on the basis of mere doubts and therefore, the order dated 23.4.2008 in view of the law laid down in Ram Adhara's case (supra) is unsustainable.

4. Accordingly, the impugned order dated 23.4.2008 is set aside with a direction to the competent authority to proceed to pass an order in accordance with law after giving opportunity of hearing to the concerned parties. It goes without saying that the other respondent Nos. 9 to 15 who were impleaded under orders of this Court on 9.7.2008 shall also be at liberty to advance their submissions before the concerned authority.

5. Accordingly, the writ petition is allowed. The order dated 23.4.2008, is quashed. The matter is remanded back with the aforesaid direction to the concerned authority. The concerned authority shall proceed to dispose of the matter as expeditiously as possible preferably within six months from the date of presentation of this order before him.

