

Surendra Kumar Arora Vs. State of Uttarakhand and ors.

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Court : Uttaranchal

Decided On : Apr-13-2010

Judge : J.S. Khehar, C.J. and; Sudhanshu Dhulia, J.

Appellant : Surendra Kumar Arora

Respondent : State of Uttarakhand and ors.

Disposition : Appeal allowed

Judgement :

J.S. Khehar, C.J.

1. The appellant was promoted as a Branch Manager in an officiating capacity vide an order dated 08.08.1989. Soon thereafter he was reverted from the post of Branch Manager to the post of Assistant Accountant vide an order dated 01.09.1992. To assail the order of his reversion dated 01.09.1992, the appellant filed Writ Petition No. 34721 of 1992 before the High Court of Judicature at Allahabad. An interim order dated 18.09.1992 was passed by the High Court in Writ Petition No. 34721 of 1992, whereby the order of reversion dated 01.09.1992 was stayed.

2. On the creation of successor State of Uttarakhand with effect from 09.11.2000, Writ Petition No. 34721 of 1992 was transferred to the High Court of Uttarakhand at Nainital. Before the High Court of Uttarakhand, the aforesaid writ petition was re-numbered as Writ Petition (M/B) No. 1169 of 2001. During the pendency of the

aforesaid writ petition, the same was dismissed on account of non-prosecution by an order dated 24.02.2004. The case of the appellant before this Court is, that he never came to know about the dismissal of Writ Petition (M/B) No. 1169 of 2001 and as soon as he came to know of the same, he moved an application for restoration of the aforesaid writ petition. This Court, having considered the restoration application, allowed the same by an order dated 02.07.2009. By the aforesaid order dated 02.07.2009, Writ Petition (M/B) No. 1169 of 2001 was restored to its original number. In addition thereto the interim order passed on 18.09.1992 was directed to be continued.

3. Despite the fact, that an interim order was passed in favour of the petitioner as far back as on 18.09.1992, whereafter the same was ordered to be continued by an order dated 02.07.2009, respondent Nos. 2 & 3 moved an application for vacation of the aforesaid interim order. The instant request made on behalf of respondent Nos. 2 & 3 was acceded to on 07.08.2009, inasmuch as, the interim order passed in favour of the appellant on 18.09.1992 was vacated '...forthwith and with immediate effect'.

4. A perusal of the factual position depicted in the foregoing paragraphs reveals, that inspite of the fact that Writ Petition (M/B) No. 1169 of 2001 was dismissed in default on 24.02.2004, the appellant continued to enjoy the effect of the interim order dated 18.09.1992. In this behalf it is necessary to record, that the appellant not only continued to discharge duties against the post of Branch Manager, he also continued to draw salary against the post of Branch Manager after 24.02.2004.

5. Since the dismissal of the Writ Petition (M/B) 1169 of 2001 should have resulted in the reversion of the appellant to the post of Assistant Accountant, respondent Nos. 2 & 3 tentatively arrived at the conclusion, that the appellant was not entitled to salary against the post of Branch Manager after the dismissal of the aforesaid writ petition, and accordingly issued a show cause notice to the appellant requiring him to refund the salary drawn by him against the post of Branch Manager. As against the aforesaid show cause notice, the appellant approached this Court by filing Writ Petition (S/S) No. 860 of 2009. The aforesaid writ petition, however,

came to be dismissed by an order dated 11.11.2009. Liberty was, however, granted to the appellant to respond to the aforesaid show cause notice.

6. In furtherance of the directions issued by this Court, while disposing of Writ Petition No. 860 of 2009, the appellant responded to the show cause notice. On the receipt of his reply, respondent Nos. 2 & 3 passed an order dated 02.02.2010 ordering recovery of a sum of Rs. 65,163.00 from the appellant.

7. The order dated 02.02.2010 was assailed by the appellant before this Court by filing Writ Petition (S/S) No. 116 of 2010. The aforesaid writ petition was dismissed by a learned Single Judge of this Court, vide an order dated 26.02.2010. Through the present special appeal, the appellant has impugned the order dated 26.02.2010.

8. The sole contention advanced by the learned Counsel for the appellant in the present special appeal is, that neither the appellant, nor respondent Nos. 2 & 3, who are party respondents even in Writ Petition (M/B) No. 1169 of 2001, were aware of the dismissal of the aforesaid writ petition in default on 24.02.2004, and as such, non-communication of information at the hands of the appellant to the respondents about the dismissal of the aforesaid writ petition and thereby the implied vacation of interim order dated 18.09.1992 cannot be considered to be deliberate or intentional. It is submitted that respondent Nos. 2 & 3 were also party respondents to the aforesaid writ petition, and as such, they were equally blameworthy of not taking consequential action against the petitioner after the dismissal of Writ Petition (M/B) No. 1169 of 2001 on 24.02.2004. It is, however, submitted that when the appellant moved a civil miscellaneous application before this Court for restoration of Writ Petition (M/B) No. 1169 of 2001 to its original number, as also for the restoration of the interim order passed in his favour on 18.09.1992, and when this Court allowed the aforesaid application on 02.07.2009 all that transpired between 24.02.2004 to 07.08.2009 became inconsequential. In this behalf, learned Counsel for the appellant also invited our attention to the order dated 07.08.2009 passed by a Division Bench of this Court in Writ Petition (M/B) No. 1169 of 2001, wherein the order dated 18.09.1992 was vacated. According to the learned Counsel for the appellant, the instant order fully demonstrates, that

with the restoration order dated 02.07.2009 not only Writ Petition (M/B) No. 1169 of 2001 came to be restored to its original number, the interim order dated 18.09.1992 also came to be restored without there being any break during the interregnum.

9. We find substance in the contention advanced by the learned Counsel for the appellant. There can be no doubt, whatsoever, that after the dismissal of Writ Petition (M/B) No. 1169 of 2001 on 24.02.2004, it was open to respondent Nos. 2 & 3 to revert the appellant from the post of Branch Manager to the post of Assistant Accountant. The aforesaid respondents did not choose to take the aforesaid action obviously because they were not aware of the order dated 24.02.2004. Had the appellant been aware of the same, he would have moved a restoration application but then he became aware of the order dated 24.02.2004 only when a communication was addressed by respondent Nos. 2 & 3 to him which led to the filing of the restoration application at the hands of the appellant. The aforesaid restoration application, as noted hereinabove, was allowed on 02.07.2009. We are also satisfied with the veracity of the contention advanced by the learned Counsel for the appellant, that by the order dated 02.07.2009 not only was Writ Petition (M/B) No. 1169 of 2001 restored to its original number, even the interim order passed on 18.09.1992 came to be restored. In the aforesaid view of the matter, there can definitely be no period during which the interim order can be deemed to have been vacated. This inference drawn by us is fully supported by the order dated 07.08.2009 passed in Writ Petition (M/B) 1169 of 2001, where rather than vacating the order dated 02.07.2009, the Division Bench of this Court vacated the order dated 18.09.1992 fully demonstrating that the order dated 18.09.1992 was the one which was continuing without any break.

10. Not only that we find, that there was no fault, whatsoever, at the hands of the appellant in discharging duties of the post of Branch Manager after 24.02.2004, we are also satisfied, that having discharged the duties of the said post without any objection at the hands of the respondent Nos. 2 & 3, it is now not open to respondent Nos. 2 & 3 to recover excess wages paid to him for the period during 24.02.2004 till the vacation of the interim order on 07.08.2009. In the aforesaid view of the matter, we are satisfied that the impugned order dated 02.02.2010 was

passed without any justification and in ignorance of the factual position noticed hereinabove. The aforesaid order dated 02.02.2010 is liable to be set aside. The same is hereby set aside. Accordingly, the order passed by the learned Single Judge dated 26.02.2010, dismissing Writ Petition (S/S) No. 116 of 2010, is also set aside.

11. The instant special appeal stands allowed in the aforesaid terms.

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