

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 401 OF 2017

27TH JUNE, 2023

BETWEEN:

Union of India & others Appellants.

And

Uma Shankar Pant Respondent.

Counsel for the Appellants : Mr. Shivanand Bhatt, learned
Standing Counsel.

Counsel for the Respondent : None.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

None appears for the respondent, despite service.
No response has been filed by the respondent to the application seeking condonation of delay in filing the present special appeal.

2. In these circumstances, we allow the application seeking condonation of delay and condone the delay of 32 days in preferring the present special appeal.

3. The appellants-Union of India and others have preferred the present special appeal to assail the order dated 17.04.2017, passed in Writ Petition (S/S) No.148 of 2015, preferred by the respondent- writ petitioner.

4. The learned Single Judge disposed of the writ petition with a direction to the appellants to consider the case

of the respondent-writ petitioner for absorption within a period of ten weeks from the date of the order.

5. The case of the respondent-writ petitioner was that he was appointed on probation for a period of three months, and on expiry of the said period, he was entitled to be confirmed. However, he had not been confirmed, even though, he had been working since the year 1995.

6. The learned Single Judge found the action of the appellants to be violative of Articles 14 and 16 of the Constitution of India, and consequently, issued the direction, as aforesaid.

7. Learned counsel for the appellants state that the appellants had filed their counter-affidavit in the writ petition, which has not been adverted to by the learned Single Judge while allowing the writ petition. He submits that the respondent was merely a contractual employee, and he was not appointed on substantive basis, against the substantive vacancy.

8. In Paragraph No.3 of the counter-affidavit filed in the writ petition, the stand taken by the appellant was as follows:-

"3. That the contents of para 2 of the writ petition are not admitted as stated hence denied. It is submitted that the services of employees of Computer Training Center, Ranikhet governs from Standing Operation Procedure: Kuman Regiment Center Terms

and Condition for Regt. CIV Employees of the Center (for short SOP). As per para 6&7 of SOP and terms and condition for Regt Civil Employee of the Center, all civil employee of this center are on contractual basis and their contract are being renewed every year. Hence, their employment cannot be considered as permanent. In addition, the appointing authority is also authorized to terminate their service by giving one month's notice in advance,

It is further submitted that the Computer Training Center, The Kumaun Regimental Centre, Ranikhet is not a government organization. The expenditure of this institute including wages of the employees is being met from local resources of the Centre. The employment in the Computer Training Centre is neither covered not paid by any Defence estimated. The employees in the Computer Training Centre are not covered under Central Civil Services (Temporary Service) Rules. Also salary to the civil employees is also not paid from any government contingencies.

It is further submitted that the Computer Training Center can be disbanded at any time due to non-performance/ Progress on unforeseen reasons. The appointment to the civil employees in this institute is given on contractual basis. The period of the employees is being extended every year by the management committee and to allowed be continue in the job.

No temporary/ permanent vacancy has been allotted to this institute by the government as the institute is established on local resources of the centers. The application for offering a permanent job in Computer Training Center cannot be considered since there is no job of permanent nature in the institute.

In view of aforesaid facts and circumstances since the Computer Training Center is not a government organization, and as per the terms of condition of the services of petitioner and other similarly situated employee their employment is purely of contractual in nature, as such the grievance of petitioner for regularization cannot be considered.

*Copy of SOP is annexed as **Annexure CA-1** to this affidavit".*

9. In our view, the impugned order cannot be sustained for the reason that the learned Single Judge has not considered and dealt with the defence of the appellants, as aforesaid.

10. We, accordingly, set-aside the impugned order and remand the matter back to the learned Single Judge. The writ petition stands revived, and the same be decided afresh after hearing counsels, and after considering the pleadings of the parties.

11. We make it clear that we have not examined the case of the respondent on merits. The learned Single Judge shall proceed to decide the case on its own merits, uninfluenced by the impugned order, or our present order.

12. The appeal stands disposed of in the aforesaid terms.

13. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 27th June, 2023

NISHANT