

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

**WRIT PETITION (S/B) NO. 375 OF 2023**

**10<sup>TH</sup> AUGUST, 2023**

**BETWEEN:**

Shiv Swaroop Tripathi & others .....Petitioners.

And

State of Uttarakhand & others ....Respondents.

Counsel for the Petitioners : Dr. Aman Rab, learned counsel.

Counsel for the State : Mr. B.S. Parihar, learned Standing Counsel and Ms. Puja Banga, learned Brief Holder.

**The Court made the following:**

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

The petitioners have preferred the present writ petition to seek the following relief:-

*"i. Issue a writ, order or direction in the nature of quo warranto to the respondent no.3 to 7 as they have no authority to continue to hold the respective posts in the State of Uttarakhand after the final disposal of WP No.32389 of 1997 vide order dated 30.10.2007 passed in Special Appeal no.99 of 1999, wherein the decision of the Hon'ble Single Judge of the Hon'ble High Court of Allahabad dated 09.04.1998 has been set aside".*

2. Brief facts, which are relevant to be noticed, are that respondent nos.3 to 7 were appointed by the State of Uttar Pradesh as Upper Division Assistant/ Lower Division Assistant in pursuance of the judgment dated 09.04.1998, passed by the learned Single Judge of the High Court of Allahabad in Civil Misc. Writ Petition No.32389 of 1997,

"*Yogendra Kumar Pal vs. State of U.P. & another*". The said respondents were not parties to the said writ petition. However, they were given benefit thereof by the State of Uttar Pradesh by granting appointment, as aforesaid. The said judgment of the learned Single Judge dated 09.04.1998 was carried in special appeal by the State of Uttar Pradesh *vide* Special Appeal No.99 of 1999. The Division Bench allowed the said special appeal on 30.10.2007, and the judgment of the learned Single Judge was set-aside.

3. Pertinently, there was no direction by the Division Bench to dislodge the appointees, which included the private respondents herein. The application moved by some of the affected persons, to seek recall of the said judgment dated 30.10.2007, being Civil Misc. Recall Application No.265023 of 2007, was also dismissed by the Division Bench on 02.05.2008.

4. Thereafter, Special Leave Petition No.14296-14297 of 2008 was preferred before the Supreme Court by one Yogendra Kumar Pal, against the judgment of the Division Bench of the High Court of Allahabad in Special Appeal No.99 of 1999, dated 30.10.2007, as also against the order passed in the Recall Application, dated 02.05.2008. The said Special Leave Petition was disposed of on 03.02.2014. The said order shows that the appointments granted in pursuance of the judgment dated 09.04.1998, passed by the learned Single

Judge of the High Court of Allahabad, were not disturbed. However, their seniority was downgraded and re-fixed.

5. Dr. Rab submits that the said order of the Supreme Court, dated 03.02.2014, was not applicable to the private respondents in the present writ petition, inasmuch, as they were not parties to the SLP; they had moved an application for impleadment, which was, subsequently, withdrawn, and; by 03.02.2014, the bifurcation of the State of Uttarakhand had already taken place, and no similar consent was granted before the Supreme Court, by the State of Uttarakhand.

6. The further case of the petitioners is that they had made representation against the continuation of the services of the private respondents herein, which was rejected only on 23.06.2023, and consequently, they approach this Court by filing the present writ petition.

7. We are of the view that the present writ petition is misconceived, inasmuch, as a writ of *quo warranto* cannot lie in the facts and circumstances of the case. It is not the case of the petitioners that the private respondents are not having the requisite qualification to man the posts that they are holding. At the highest, the case of the petitioners is with regard to the process by which the said respondents were initially appointed, and continued, even after the judgment of

the Division Bench of the High Court of Allahabad in Special Appeal No.99 of 1999.

8. In our view, the appointment of the private respondents, when granted, by the State of U.P, was valid, inasmuch, as the judgment of the learned Single Judge was prevailing, and they were appointed in terms of the said judgment. When the Division Bench allowed the Special Appeal No.99 of 1999, it did not direct that those appointed under the judgment of the learned Single Judge dated 09.04.1998, be terminated.

9. Therefore, the State had the option of taking a decision- whether, or not, to continue the services of those UDA/ LDA, who have been appointed in pursuance of the judgment of the learned Single Judge of the High Court of Allahabad. Neither the State of Uttar Pradesh, nor the State of Uttarakhand, exercised the option to terminate the services of such appointees- which included the private respondents herein.

10. That being the position, in our view, it is not open to the petitioners to challenge the appointments of the private respondents.

11. For the aforesaid reasons, we do not find any merit in this writ petition and the same is, accordingly, dismissed.

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

**(VIPIN SANGHI, C.J.)**

**(RAKESH THAPLIYAL, J.)**

Dated: 10<sup>th</sup> August, 2023

NISHANT