
(2009) 11 UK CK 0042

In the Uttarakhand High Court

Case No : Writ Petition No's. 608 and 1288 of 2005

Amar Singh Kanwal

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 1 UC 38

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : D.C. Joshi, in Writ Petition No. 608 of 2005 and Manoj Tiwari, in Writ Petition No. 1288 of 2005, for the Appellant; N.P. Sah for State of Uttarakhand in Writ Petition No. 608 of 2005 and N.P. Sah for State of Uttarakhand in Writ Petition No. 1288 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Both these writ petitions have a similar cause of action and seek similar relief from this Court by means of the present writ petitions. Hence, both these writ petitions are being decided together by this common order.

2. Although the departments in both these writ petitions are different, in Writ Petition No. 608 of 2005 (S/S) the department is Public Works Department and in Writ Petition No. 1288 of 2005 (S/S) it is Education Department, yet the prayer in both these writ petitions is the same. The Petitioner in Writ Petition No. 608 of 2005 (S/S) is aggrieved by an order dated 15-2-2005 whereby his request for promotion from class IV to class III under departmental promotion quota has been denied on the ground that before such promotion can be made, the candidate must have High School Qualification but he has obtained a certificate of "Prathama" from "Hindi Sahitya Sammelan" which is not equivalent to High School and, hence, he is not eligible to be promoted under the said quota. The Petitioner has challenged this order and has prayed for an order of

mandamus and certiorari directing the Respondents to consider his promotion under the Rules.

3. In the order impugned in the writ petition No. 608 of 2005 (S/S), the authorities have stated that the Petitioner has a qualification, namely, "Pratharna" from an institute known as "Hindi Sahitya Sarnmelan" which is not recognized as High School qualification of Uttarakhand and, therefore, his candidature for promotion is being denied.

4. The matter therefore in both the writ petitions is the same which is whether the authorities were right in dismissing the claim for promotion of the Petitioner by not granting equivalence of High School to "Pradhama", a certificate granted by "Hindi Sahitya Sarnmelan, Allahabad."

5. It is a settled position of law that the Courts cannot grant equivalence to a degree. This power vests with the authorities which are giving appointment to the candidates or to any authority established by law which can grant such an equivalence. Since these authorities in their considered view have held that the certificate granted by "Hindi Sahitya Sarnmelan" is not equivalent to a High School certificate in Uttarakhand, there is no ground for interference by this Court as they are perfectly justified in doing so. The Division Bench of this Court also in *Shailendra Singh and Ors. v. State of Uttaranchal and Ors.* reported in 2007 (1) U.D., 155 has held that a certificate granted by "Hindi Sahitya Sarnmelan" is not equivalent to that of B. Ed., as was contested by the Petitioners. Reasoning given by the Division Bench of this Court while upholding the decision of the State authorities in not granting such an equivalence to the holders of "Siksha Visharad" was that after the establishment of National Council for Teacher Education, which is a statutory body established under National Council for Teacher Education Act, 1993, it is this body which can grant equivalence and this body has not granted any equivalence to "Shiksha Visharad" as equivalent to B. Ed, and, therefore, such an equivalence cannot be granted by orders of this Court.

6. The Petitioner in Writ Petition No. 608 of 2005 (S/S) has also alleged that in some cases where a candidate had "Pratharna" from "Hindi Sahitya Sarnmelan", it has been treated as equivalent to a High School and appointment/promotion has been given to him. This contention of the Learned Counsel for the Petitioner is also entirely misconceived in as much as two wrongs do not make a right. If a wrong has been committed by the authorities concerned that cannot be a ground to grant such an appointment to the Petitioner.

7. The Petitioners have not been able to establish any right for themselves and, therefore, they are not entitled for any relief. Now merely because a similarly situated person has been illegally granted any relief or benefit will not be a ground to direct similar relief to the present Petitioner. This would amount to enforcing a negative equality by perpetuating an illegality which is impermissible in law. This principal has been stated by the Hon'ble Apex Court in a number of

cases but more particularly in Chandigarh Administration and another Vs. Jagjit Singh and another, where the Hon''ble Apex Court has stated as follows:

8. ?Generally speaking, the mere fact that the Respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that Illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the Petitioner if it is found that the Petitioners'' case is similar to the other persons'' case. But then why examine another person's case in his absence rather than examining the case of the Petitioner who is present before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case, in our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles?.

8. Further in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, the Hon''ble Apex Court observed as follows:

9. ...There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This

guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State So far such Petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such Petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the Petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination?.

9. Further in Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, the Hon"ble Apex Court reiterated the above proposition of law. Similarly, in the present case, the Petitioners cannot claim same relief or exemption from the authorities by placing reliance on something which is on the face of it illegal.

10. In view of the aforesaid, writ petitions have no merit. Both these writ petitions are dismissed. No order as to costs.