

(2022) 04 UK CK 0013

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 280 Of 2020

Anita Sharma

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 35, 49, 49(o), 50, 60F, 241(2)(b)
Constitution Of India, 1950 — Article 30(1), 348

Citation : (2022) 04 UK CK 0013

Hon'ble Judges : S.K. Mishra, J; R.C. Khulbe, J

Bench : Division Bench

Advocate : Piyush Garg, S.S. Chaudhary, Dr. Kartikey Hari Gupta, Rafat Munir Ali, Ajay Veer Pundir

Final Decision : Allowed

Judgement

S.K. Mishra, J

1. In this case, the petitioner has prayed for issuance of a writ of certiorari quashing and setting-aside the impugned order dated 24.08.2020, Annexure No.1, by which the respondent No.7 has given compulsory retirement to the petitioner. She assails the order passed by the Committee of Management of the BSM (PG) College, Roorkee, which is affiliated to the Hemwati Nandan Bahuguna Garhwal University (hereinafter referred to as "the University" for brevity).

2. The facts of the case are not in dispute at this stage. The petitioner was appointed as a Lecturer in English in the BSM PG College, Roorkee in District Saharanpur (now Haridwar). After the creation of the State of Uttarakhand on 09.11.2000, the BSM (PG) College, Roorkee was functioning within the State of Uttarakhand. On 19.01.2015, an inquiry committee was setup by the Committee of Management of the BSM (PG) College, Roorkee, District Haridwar regarding certain alleged misconduct against the petitioner. The allegation was that the petitioner while remaining absent in the college, attended a seminar on 30-31st March, 2012 in Lansdowne, and despite being out of station simultaneously put

her signature in the relevant attendance register. However, such inquiry never came to its logical conclusion. On 11.02.2019, the respondent No.10 sent a letter bearing No.236/2018-19 dated 11.02.2019 stating therein that he gave a report to the Secretary of the Committee of Management of the said college. It is alleged that the petitioner was not properly heard and not given an opportunity of representing her case before the respondent No.10. On 16.02.2019, being aggrieved, the petitioner, sought information under the Right to Information Act, 2005 from the respondent No.10. On 20.08.2020, for the first time, a notice was issued to the petitioner with a direction to appear before the Principal of the college on 21.08.2020 at 12.00 noon. On 21.08.2021, the petitioner appeared before the Principal, and prayed for 15 days' time to place her defence. On 24.08.2020, the Inquiry Committee issued the order of compulsory retirement against the petitioner. Hence, this writ petition.

3. The primary arguments advanced by Mr. Piyush Garg, the learned counsel for the petitioner, are as follows:-

Firstly, the principle of natural justice has completely been violated in this case. Hence, the order passed by the respondent No.7 is liable to be quashed and set-aside.

Secondly, the order of compulsory retirement, passed by the respondent No.7, is de hors jurisdiction. As the Rules guiding the service conditions of the petitioner do not provide for any punishment of compulsory retirement.

4. Admittedly, in this case, the punishment of compulsory retirement is inflicted on the petitioner purportedly in exercise of jurisdiction conferred under the Uttar Pradesh Fundamental Rules, 1942, as applicable to the State of Uttarakhand (hereinafter referred to as "the Rules" for brevity). However, the State of Uttarakhand, in its counter-affidavit, has stated in Paragraph No.6 that the Fundamental Rules are not application to privately managed, but government aided schools/colleges. It is appropriate to take note of the pleadings raised. The same reads as under:-

"6. That in reply to the contents of Para Nos.14 to 22 of the writ petition, it is admitted that Rule 56(c) of the U.P. Fundamental Rules, Chapter-II, Part-2 to 4 of Financial Hand Book are applicable only in respect of Government employee. The teaching and non-teaching employees of the Private Aided College governed by the Statute framed by the affiliating University. As the BSM (P.G.) College, Railway Road, Roorkee, District Haridwar is a non-government aided college affiliated to the Hemwati Nandan Bahuguna (Central) University, Srinagar, Garhwal, the college is governed by the Statute of Hemwati Nandan Bahuguna University, Srinagar, Garhwal.

In compulsory retirement order, Ref. No.57/2020-21, dated 24.08.2020, also the respondent No.7, i.e. Secretary, Managing Committee Unregistered, BSM (P.G.) College, Railway Road, District Haridwar, in Page No.6, Paragraph 3 mentioned that "On confirmation of crime deliberately committed by Smt. Anita Sharma,

Associate Professor, BSM (P.G.) College, Railway Road, Roorkee, in her educational and financial irregularities (enhancement in her annual increment), she has made false and misleading complaints against the college management committee and the College Principal with a view to exert undue pressure, which shows that the relevant section of the Hemwati Nandan Bahuguna (Central) University, Srinagar, service regulations have been violated, Smt. Anita Sharma is also habitual of doing such type of acts. By her such acts, the college discipline and management is adversely affected. On this basis, there is sufficient ground to terminate her services and to remove her from the service”.

Thus, it is clear from the above that the charges were framed against the petitioner under the Hemwati Nandan Bahuguna University, Srinagar Pariniyamawali, 2000, and retired compulsorily under Rule 56(c) of the U.P. Fundamental Rules, Chapter-II, Part-2 to 4 of the Financial Hand Book.

Section 56 (c) of the U.P. Fundamental Rules, Chapter-II, Part-2-4 of the Financial Hand Book provides as under:-

(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of [forty-five years] or after he has completed qualifying service of twenty years.

It is evident from perusal of Section 56(c) that it applies only to the Government servant (whether permanent or temporary). Further, the Government servant is defined in Rule 9(7-B) of the U.P. Fundamental Rules, Chapter-II, Part-2-4 of the Financial Hand Book.

Rule 9(7-B) provides that:

Government servant for purposes of these rules, means a person appointed to a civil post or a civil service under the State Government in India, and serving in connexion with affairs of the Uttar Pradesh, whose conditions of service have been or may be prescribed by the Governor under section 241 (2) (b) of the Act.

So Government Servant for the purpose of these Rules:

A person appointed to-

- (i) a civil post or a civil service;
- (ii) under the State Government in India; and
- (iii) serving in connection with affairs of the Uttar Pradesh;
- (iv) whose conditions of service have been or may be prescribed by the Governor.

A person is Government employee for the purpose of the U.P. Fundamental

Rules, Chapter-II, Part-2 to 4 of the Financial Hand Book only when he fulfills all the four conditions mentioned in Rule 7(b) of the said Rules. However, in the instant case, though the petitioner is holding a civil post, but she is not a Government servant, as such, Rule 56(c) is not applicable in the case of the petitioner. A true copy of Rule 7(b) of the U.P. Fundamental Rules and Rule 56 (Amendment and Validation) Act, 1975 are being filed herewith and marked as Annexure CA-3 (Colly) to this affidavit”.

5. Mr. Piyush Garg, the learned counsel developing the case of the petitioner, would argue that Section 49(o) of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as “the Act” for brevity), provides for statutes, ordinances and regulations. It reads as under:-

“Section 49(o)-the number, minimum qualifications and experience, the emoluments and other conditions of service, including the age of retirement and provisions relating to compulsory retirement of salaried employees (not being teachers) of the University or an affiliated or associated college, and the preparation and maintenance of record of their service]”.

6. In exercise of powers under Section 49 read with Section 50 of the Act, the Governor of the State of Uttarakhand, in pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, by notification dated June 25, 1978, published the First Statute of the University of the Hemwati Nandan Bahuguna, Garhwal, 1978 (hereinafter referred to as “the First Statute” for brevity).

7. It is not disputed by the learned counsel for the parties that both, the colleges and the employees, including the petitioner, are guided by the Act and by the First Statute.

8. It is apparent from the record that Chapter XVII, Part-I of the First Statute provides for conditions of services of teachers of associated colleges. We have carefully examined Regulations 17.01 to 17.11, and we do not find that the management of any aided college affiliated with the University has a jurisdiction to inflict the punishment of compulsory retirement.

9. Admittedly, such a provision is only provided in the Fundamental Rules, and not in the Rules guiding the University. Moreover, Section 35 of the Act provides for conditions of service of teachers of affiliated or associated colleges other than those maintained by Government or local authority. Sub-Section (2) provides that every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor: Provided that in the case of colleges established and administered by a minority referred to in clause (1) of Article 30 of the Constitution of India, the decision of the Management dismissing, removing or reducing in rank or punishing in any other manner any teacher shall not require the approval of the Vice-Chancellor, but,

shall be reported to him and unless is satisfied that the procedure prescribed in this behalf has been followed, the decision shall not be given effect to.

10. So, it is admitted in this case by Mr. Ajay Veer Pundir, the learned counsel for the respondent No.10, that the punishment of compulsory retirement taken by the Management of the College has never been referred to the Vice-Chancellor of the University. Far less, taking his consent for such removal by way of compulsory retirement.

11. In that view of the matter, we are of the considered view that the order passed by the respondent No.7 de hors the jurisdiction, and therefore, has to be quashed.

12. The alternative argument of Mr. Ajay Veer Pundir, is that in view of Section 60-F of the Act, the salary of the petitioner was paid by the State Government, and as the State Exchequer is being taxed for payment of salary to the petitioner, the Fundamental Rules shall be applicable to the petitioner.

13. We are unable to agree with the arguments of Mr. Pundir that the service of an employee is guided by the Rules and Regulations that have been legislated, or adopted. Only because salaries of certain persons are being paid from the State Exchequer, the Rule that is guiding the regular employees of the State Government will not be applicable to such persons.

14. Moreover, the Rule has been made to apply to the government servant, and government servant has been defined by the Rule itself. Clause (7-B) of Rule 9 defines the government servant for purposes of these Rules. It means a person appointed to a civil post or a civil service under the State Government in India, and serving in connection with affairs of the Uttar Pradesh (now Uttarakhand), whose conditions of service have been or may be prescribed by the Governor under Section 241(2)(b) of the Act.

15. We are of the opinion that the petitioner is not a civil servant. She was never appointed to a civil post, or civil service under the State Government. Rather, she was employed by the Committee of Management of privately maintained college, but receiving aid from the State Government.

16. In that view of the matter, though the argument advanced by Mr. Ajay Veer Pundir, the learned counsel appears to be attractive, but does not hold water in the ultimate analysis.

17. The other aspect of the case is that the petitioner was never given an opportunity of defending herself. As we have pointed out earlier that on 20.08.2020, the petitioner was given a notice, for the first time, to appear on 21.08.2020 at 12.00 noon, before the Principal, i.e. the respondent No.10. On that day, she prayed for 15 days' time to put her defence. However, on 24.08.2020, without giving her an opportunity, the Management of the College issued an order of compulsory retirement against the petitioner. This, in our opinion, is in violation of principle of natural justice. It also shows the

authoritarian attitude on the part of the Management of the College.

18. In that view of the matter, we find enough merit in this writ petition. Hence, the writ petition is allowed. A writ of certiorari is issued by quashing the order dated 24.08.2020.

19. It is brought to our notice that when this matter came up before this Court in the initial stage, this Court, by virtue of an interim order dated 29.09.2020 held that the Fundamental Rule is not applicable to the present case, and therefore, stayed the order impugned. The Committee of Management preferred Special Leave to Appeal (C) No(s).11960/2020 before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not interfere with the matter, but directed this Court to dispose the writ petition as early as possible. However, the Hon'ble Supreme Court observed that the respondent (petitioner herein) shall not press for implementation of the interim order dated 29.09.2020.

20. In compliance of the order passed by the Hon'ble Supreme Court dated 14.10.2020, the petitioner is not discharging her duties, and she has not been paid any salary.

21. In that view of the matter, we direct that the petitioner shall be given engagement order forthwith with all consequential service benefits. However, this order shall not be constituted any impediment to her superannuation on attaining the appropriate age.

22. Urgent certified copy of this order be issued to the learned counsel for the parties, as per Rules.