
(2009) 12 UK CK 0050
In the Uttarakhand High Court
Case No : Writ Petition No. 270 of 2009 (S/S)

Beer Singh Bhandari

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Uttarakhand Seniority Rules, 2002 — Rule 6
Uttaranchal School Education Act, 2006 — Section 58

Citation : (2009) 12 UK CK 0050

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; N.P. Sah for State, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri S.K. Posti, the learned Counsel for the Petitioner and Sri N.P. Sah, the learned Standing Counsel for the State.

2. By means of this petition, the Petitioner has prayed for a writ of certiorari for the quashing of the order dated 08-05-2009 passed by the Respondent, by which the representation of the Petitioner for promotion from Senior Clerk to Chief Assistant has been rejected. The Petitioner has further prayed that a writ of mandamus be issued to the Respondents to give promotion to the Petitioner from the date when the juniors to the Petitioner have been promoted.

3. The brief facts leading to the filing of the writ petition is, that the Petitioner was appointed as a Junior Clerk in Zila Parisad Chamoli on 21-10-1971. Subsequently, the Petitioner's service was merged in the year 1972 in the Basic Education Board. The services of the Petitioner was confirmed by an order dated 04-10-1978 with retrospective effect from 01st August, 1973. The Petitioner was, subsequently, promoted as a Senior Clerk by an order dated 01st August, 2000. It is alleged that a post of Chief Assistant become vacant in the office of District Education Officer on 22-08-2007 and the Petitioner, being the senior most,

applied for promotion and also made a representation. This representation was, subsequently, rejected by an order dated 08th May, 2009 holding that the Petitioner was not entitled for promotion since he was not the senior most and that the Petitioner's seniority could only be considered w.e.f. 22-04-2006 i.e. from the date when his service was transferred to Uttarakhand Government's service under the Uttaranchal School Education Act, 2006 by virtue of the Notification dated 24th June, 2006.

4. It transpires that the Basic Education Board was abolished and the services of the employees of Basic Education Board was transferred to the Government of Uttaranchal u/s 58 of Uttaranchal School Education Act, 2006, which provides as under:

58. The services of teachers and employees of Basic Shiksha Parishad to be under the control of State Government- All the teachers, officers and employees of Basic Shiksha Parishad, including any supervising or inspecting officer or employee working immediately before the date of the commencement of this Act, shall be transferred to the State Government and they shall become teachers, officers and employees of the State Government and their services shall be governed by the service rules prescribed by the State Government.

5. Pursuant to the Uttaranchal School Education Act, 2006 a notification dated 24th June 2006 was issued u/s 58 of the Act transferring the services of the Petitioner as an employee of the State Government of Uttarakhand w.e.f. 22-04-2006.

6. The Respondents in their counter affidavit as well as in the impugned order dated 08-05-2009 has submitted that for the post of promotion in a clerical cadre, the seniority would be counted from the date of appointment / merger / provincialization and since the services of the Petitioner was merged in the Government service on 22-04-2006, his seniority was fixed from the said date. The main thrust of the contention of the Respondents in the impugned order is, that the merger, upon the abolition of Basic Education Board and transfer of the Petitioner in Government services, a substantive appointment was made afresh w.e.f. 22-04-2006 and consequently, his seniority was to be determined from that date, i.e. w.e.f. 22-04-2006.

7. In the opinion of the Court, the stand taken by the Respondents is patently erroneous and bereft of merit. The services rendered by the Petitioner in the Basic Education Board has to be taken into consideration in view of the provision of Section 58 of the Uttaranchal School Education Act, 2006, which clearly indicates that the teachers, officers and employees of Basic Shiksha Parishad working immediately before the date of the commencement of the Act shall be transferred to the State Government and shall become teachers, officers and employees of the State Government and their services shall be governed by the service rules prescribed by the State Government. The word "transfer" does not mean that a fresh substantive appointment is to be given. It clearly connotes

that the previous service has to be taken into consideration, which continued uninterruptedly even after the transfer of the Petitioner. In the case of *State of Orrisa and Anr. v. Bikasendu Das and Ors.* 2004 (13) SCC 783, the SC held that the services rendered by the teachers in those colleges prior to the taking over would be taken into account for considering the seniority for the purpose of promotion to the post of Reader from Lecturer. In the said case, the teachers were earlier working in the private colleges and subsequently, the said private colleges were taken over by the Government of Orissa. The question arose in that case as to whether the services rendered by the teachers in the private colleges would be taken into consideration for the purpose of promotion to the post of Reader from Lecturer. The SC held that the services rendered by the teachers in the private colleges would be taken into consideration for calculating the seniority for the purpose of promotion from the post of Lecturer to the post of Reader.

8. Similar view was taken in the case of *Attar Singh Kaushik Vs. Secretary/ Commr. Transport Department and Another*, wherein the SC has held as under:

15. A bare perusal of the said provisions would furthermore clearly go to show that the position of the employees concerned in the same or equivalent cadre on regular basis in parent department is a relevant factor for determining the inter se seniority. The date from which the employee had been holding the post on deputation is another relevant factor. However, it has also been provided that date from which he has been appointed on regular post to the same or equivalent grade in his parent department, whichever is earlier would be considered for determining the inter se seniority. The Rules have rightly been interpreted by the High Court keeping in view its purport and tenor. The Rules are required to be interpreted harmoniously so as to give effect to all the relevant provisions. Makers of the Rules furthermore must be presumed to have in mind, while laying down the same, to give justice to all concerned. It is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary.

9. In the present case, no rules has been disclosed by the Respondents, which would indicate that the seniority has to be counted from the date of transfer of the Petitioner i.e. from 22-04-2006. The learned Standing Counsel made a feeble attempt to indicate that the seniority of the Petitioner has to be adjusted as per Rule 6 of the Uttarakhand Seniority Rules, 2002, which has been quoted in the counter affidavit and the same is extracted hereunder:

Rule 6 - Seniority where appointment by promotion only from a single feeding cadre- where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

10. A perusal of the aforesaid rule clearly indicates that the aforesaid rule has no

application whatsoever. In the light of the aforesaid, the stand taken by the Respondents to the effect that the seniority would be counted from the date of abolition transfer of the Petitioner from the Basic Education Board to Government Service of Uttarakhand w.e.f. 22-04-2006 is patently erroneous and cannot be sustained. Consequently, the impugned order dated 08-05-2009 passed by the Respondents is quashed.

11. It has also come on record that prior to the rejection of the Petitioner's representation the Respondents issued an order dated 24-02-2009 promoting juniors to the Petitioner on the post of Chief Assistant. In view of the aforesaid, the petition succeeds and is allowed. A writ of mandamus is issued directing the Respondents to consider the promotion of the Petitioner on the post of Chief Assistant after taking into consideration the services rendered by the Petitioner in the Basic Education Board and if found eligible, promote the Petitioner to the post of Chief Assistant w.e.f. one day before the date when the juniors to the Petitioner were promoted. The entire exercise would be carried out by the Respondents within three months from the date of production of the certified copy of this order.

12. In the circumstances of the case, there shall be no order as to cost.