
(2022) 07 UK CK 0121

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 222 Of 2021

Bhagat Singh Badiyari

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Citation : (2022) 07 UK CK 0121

Hon'ble Judges : Vipin Sanghi, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : Anil Anthwal, Vikas Pande

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The petitioner has preferred the present Writ Petition to seek a direction to the respondents to pay salary to the petitioner for the post of Principal of Shri Shiv Dayal Giri Inter College, Pokharkhal, District Pauri Garhwal, for the period 01.04.2016 to 31.03.2018. The petitioner seeks payment of arrears of the difference of the salary of Lecturer and the Principal for the aforesaid period, along with interest thereon. The petitioner also seeks refund of the amount of Rs. 1,40,800/-, which the petitioner claims, the respondents have illegally recovered from him, and which had been paid to the petitioner towards one increment in his pay-scale of Lecturer. The petitioner also claims interest on the said amount.

2. The petitioner's service, as Lecturer (Hindi), was regularized at the aforesaid College vide order dated 16.10.1991 passed by the District Education Inspector, Pauri Garhwal. On 14.05.2011, the petitioner was given the selection grade, i.e. the promotional pay-scale, with an increment w.e.f. 30.05.2009. The post of Principal - Shri Shiv Dayal Giri Inter College, Pokharkhal, fell vacant due to retirement of the then Principal on 31.03.2016. Being the senior-most Lecturer of the said College, the Authorized Controller passed an order on 21.03.2016

appointing the petitioner to serve as the officiating Principal. On 01.04.2016, the petitioner took charge as the officiating Principal, and continued to serve in that capacity till the date of his retirement i.e. 31.03.2018.

3. The claim of the petitioner, for the difference of salary between the salary payable to the Lecturer and the Principal, is founded upon the judgment dated 20.06.2012 rendered by a Full Bench of this Court in "Writ Petition (S/B) No. 55 of 2011, Kanti Prasad Dadpuri & 3 others v. State of Uttarakhand & others". In particular, the counsel for the petitioner has placed reliance on paragraph nos. 33 and 34 of the aforesaid decision, which read as follows :-

"33. In view of the aforesaid, the court finds that the petitioners were appointed on a vacancy which was more than 30 days. The appointment as Officiating Principal was approved by the District Education Officer. The petitioners are working on the post of Principal, which has exceeded 30 days, and therefore became entitled for the salary on the post on which they were rendering the services. Since appointments by direct recruitment by the Committee of Management was stayed by a Government Order, the petitioners were allowed to continue to officiate as Principal and, consequently, the petitioners are entitled to receive the salary on the post of Principal.

34. In view of the aforesaid, the writ petition is allowed. A writ of mandamus is issued to the State respondents to pay to the petitioner's the salary of the post of Principal from the date when the petitioners took charge as Officiating Principal in the institution concerned. Such arrears of salary shall be paid to the petitioners within three months from the date of production of a certified copy of this order. In the circumstances of the case, parties shall bear their own cost"

4. On the face of it, it appears that the petitioner is entitled to the benefit of the said judgment. However, the respondents have filed their counter-affidavit, and have explained that the petitioner's case is covered by the provisions of the Uttarakhand School Education Act, 2006, and the Regulations framed thereunder in the year 2009. The stand taken by the respondents, in their counter-affidavit, is as follows :-

"4. That the Inter College Pokhrakhal, Pauri Garhwal is Government aided school, receiving grant in aid from the State Government and is being run according to the provisions of Uttarakhand School Education Act, 2006 and Regulation 2009. The post of Principal became vacant on 31.3.2016 after the retirement on superannuation of Birbal Singh Aswal who was working as regular Principal of the institution. After the retirement of Birbal Singh Aswal, Bhagat Singh Badiyari (Lecturer) was given charge of officiating Principal who also retired on 31.3.2018. After the retirement of Birbal Singh Aswal the senior most Lecturer Bhagat Singh Badiyari was given the charge of officiating Principal from 01.04.2016.

That according to the provisions of the Uttarakhand School Education Act 2006, Regulation 2009 and Notification No. 504 dated 18.10.2011 it has been provided

that:- the post of Principal in an Intermediate College an incumbent must be senior most regular Lecturer who fulfill all the eligibility of the post of Principal as provided in Annexure A(Chapter 2) to the Regulation 2009 and after completing 10 years of service after receipt of selection grade would be entitled for the down grade scale of Principal and after completing 5 years as down grade Principal would be posted as Principal and would be eligible for the payscale of the post of Principal.

That the authorized controller of Inter College Pokhrakhal Pauri Garhwal vide his letter dated 05.05.2017 gave the promotion to the petitioner in the down grade pay scale since 01.04.2016. Accordingly the petitioner was to complete 5 years service as down grade Principal on 01.04.2021 and would have been entitled for promotion as Principal according to the provisions of the government notification dated 18.10.2011 but on the contrary the petitioner retired on 31.3.2018 after serving for a period of 1 year and 11 months on the post of down grade principal."

5. Learned counsel for the respondents explains that, in the judgment referred to hereinabove, the Full Bench of this Court was not concerned with the 4 provisions of the Uttarakhand School Education Act, 2006, and the Regulations of 2009 framed thereunder. He submits that the Full Bench was dealing with cases of officiating Principals, who served in that capacity from years 2005 to 2007 or thereabout, and their cases were governed by the Regulations framed under the U.P. Intermediate Education Act, 1921.

6. We find force in the submission of the learned counsel for the respondents. The petitioner, having served in the position of downgraded Principal, since he was entitled to hold only that post in the light of his past experience and pay-scale, can possibly not claim the pay of the Principal since that was not the post on which he could have possibly officiated under the prevalent Regulations. Therefore, there is no basis for the petitioner's claim towards the pay-scale payable to the Principal. He has already been made payment of the pay, as payable to the downgraded Principal. This claim of the petitioner is, accordingly, rejected.

7. The petitioner also claims refund of the amount of Rs. 1,40,800/- from the respondents on the ground of an illegal recovery been made by the respondents. It is pertinent to note that the respondents have disclosed in their counter-affidavit that, in terms of the Government Order No. 74 dated 01.05.2009, the petitioner was entitled for only grade-pay in the promotional pay scale. However, he was wrongly made payment of one additional increment in the higher grade-pay. Since the fixation of the petitioner's salary was wrongly made while the petitioner was serving as the officiating downgraded Principal, in October, 2016 he himself put his signature on the recovery memo of Rs. 1,40,862/- due to wrong pay fixation for the period 01.06.2009 to October, 2016. The petitioner has voluntarily deposited the said amount vide Challan No. 20 dated 12.10.2016, Challan No. 12 dated 17.11.2017 and Challan No. 14 dated 01.03.2018.

8. Only now, the petitioner has sought to raise a challenge to the said recovery by filing the present Writ Petition in June, 2021. The respondents have, therefore, denied the claim of the petitioner on this account as well. There is no disclosure made by the petitioner in the Writ Petition that it was he himself, who signed the recovery memo for Rs. 1,40,862/- pertaining to himself. He never questioned the said recovery within a reasonable time. The challenge raised after more than three years, of the last deposit made by the petitioner on 01.03.2018, is clearly highly belated and barred by delay and laches.

9. We, therefore, find no merit in the present Writ Petition and the same is, accordingly, dismissed.

10. In sequel thereto, pending application, if any, also stands disposed of.