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**(2023) 07 UK CK 0163**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/S/) No. 267 Of 2023**

Bhagmal Singh Negi

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

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**Date of Decision : 24-07-2023**

**Acts Referred:**

**Citation : (2023) 07 UK CK 0163**

**Hon'ble Judges : Ravindra Maithani, J**

**Bench : Single Bench**

**Advocate : M.S. Bhandari, Atul Bahuguna**

**Final Decision : Allowed**

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## **Judgement**

Ravindra Maithani, J

1. By means of the instant petition, the petitioner seeks the following reliefs:-

"i) Issue a writ, in the nature of Mandamus directing the respondents to grant/release pension to the petitioner from the date of his retirement i.e. 31.03.2021.

ii) Issue any suitable writ order or direction in the nature of Mandamus directing the respondents to grant arrears of pension from the date of his retirement i.e. 31.03.2021 till the date of actual payment is made, alongwith interest @ 9 % per annum.

iii) Issue any writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

iv) Award the cost of writ petition to the petitioner."

2. Heard learned counsel for the parties and perused the record.

3. It is the case of the petitioner that he was working in Shri Tungeshwar Government Higher Primary School, Chopta, District Rudraprayag ("the School"), which was brought in grant-in-aid in the year 1996 and thereafter with effect

from 26.05.2014, it was provincialized. The petitioner was working as Principal/ Head of the School. The petitioner was to superannuate on 30.09.2020, but he was given Session Benefit. Therefore, he retired on 31.03.2021. He had an unblemished career as a teacher/principal, but he has not been released pension for more than two years.

4. State has filed its counter affidavit. According to the State, in the year 2014, when the school was provincialized, all the movable and immovable properties of the school were to be transferred to the State Government. It was found that, in fact, the petitioner had transferred some rooms to another private institutions (Saraswati Vidya Mandir, Chopta). An enquiry committee was constituted and the petitioner had then assured that within two months, he would get the property vacated and will be transferred to the Government. For this reason, according to the counter affidavit, the principal had not given no dues certificate, therefore, the pension could not be released.

5. In his rejoinder affidavit, the petitioner has elaborated these facts, according to which, in fact, the two villagers had donated their property for educational purpose. Out of it, one portion of the property had already been given to a primary school in the year 2011-12, much before the school was provincialized. Therefore, it is a case of the petitioner that there is no question of dereliction of duty on the part of the petitioner.

6. Learned counsel for the petitioner would submit that the petitioner has superannuated in the year 2020, though he was given Session Benefit. His pension has been stopped, without any reasonable cause. The date when the school was provincialized, whatever movable and immovable property were with the school, that had already been transferred to the department. The petitioner cannot be held responsible for any act that had been done prior to provincialization of the school.

7. Learned State Counsel would submit that in a meeting, the petitioner was granted time to get the primary school vacated and transfer the property to the department.

8. Admittedly, the property, which is in possession of some other private school, was gifted by some other person for educational purpose. There is no document on the record, which could reveal that, in fact, some property that was transferred to the school had been wrongly transferred by the petitioner to some other person after provincialization. The petitioner has stated in his rejoinder affidavit that in the year 2011-12, a portion of the property, which was gifted by one villager, was given to a primary school. It is the case of the petitioner that whatever property the school had on the date when it was provincialized that had been transferred to the education department.

9. The petitioner has never been owner of any property. The property, if any, was in the name of school, which was gifted to the school prior to the provincialization, by some villagers. If the school property is in the possession of

some other institution, it is the school, which could get the possession back, if lawfully it is permissible. But, merely because the petitioner happened to be the principal of a provincialized school at the relevant time and some of the property, which the department considers belongs to the school, has not been transferred in the name of the department, the pension of the petitioner cannot be stopped.

10. In view of the foregoing discussion, this Court is of the view that the pension of the petitioner has been wrongfully stopped by the department. Accordingly, the petition deserves to be allowed.

11. The petition is allowed

12. The respondent no.2, the Chief Education Officer-Rudraprayag, is directed to release the pension of the petitioner within a period of six weeks from today. The arrears of the pension shall also be paid within the period of six weeks from today along with the interest @ 6% per annum.