
(2019) 09 UK CK 0122

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 99 Of 2018

Bhagwan Singh Samant & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Uttarakhand School Education Board Regulations, 2009 — Regulation 2(1)

Citation : (2019) 09 UK CK 0122

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : M.C. Kandpal, Chitrarth Kandpal, Prabha Naithani, Vikas Pande

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. In this Writ Petition, the petitioners (five in number) have questioned the vires of Regulation 2(1) of the Uttarakhand School Education Board Regulations, 2009 which provides for the benefits of pay-scales of the post of Principal to be extended only after completion of five years; for a writ of certiorari to quash the same; for a writ of mandamus directing the respondents-authorities to pay arrears of salary with interest to the petitioners for the post of Principal in the pay-scale of Rs.15,600-39,100/-along with Grade Pay of Rs.7600/- from the date they were working as Principal of the institute; and to review the pay-scale of the petitioner in the pay-scale of Rs.15,600-39,100/- along with the Grade Pay of Rs.7600/-

2. Regulation 2(1) of the 2009 Regulations, as amended by notification dated 18.10.2011, stipulates that the senior most regular lecturer who holds the requisite qualification according to Chapter II Appendix-A, and who has also been granted selection grade after 10 years of service in the pay-scale, would be considered for downgraded promotion to the post of Principal in the downgraded pay-scale; and, after working in the downgrade pay-scale for a period of five

years, he would be entitled for regular pay-scale in the post of Principal.

3. Petitioner Nos.1, 2 and 3 were working as Principals even before they were appointed as downgrade principals. While the first petitioner was an In-charge Principal from 01.02.2016, the second petitioner was an officiating Principal from 01.04.2015, and the third petitioner was an officiating Principal from the year 2012. The first petitioner was appointed as downgraded Principal on 18.03.2016, the second petitioner on 01.07.2015, the third petitioner on 22.04.2015, the fourth petitioner on 01.04.2017, and the fifth petitioner on 01.04.2015. The fifth petitioner has since retired from service.

4. Mr. M.C. Kandpal, learned Senior Counsel appearing on behalf of the petitioners, would submit that Regulation 2(1) of the 2009 Regulations is ultra vires the Uttarakhand School Education Act, 2006 since the Act makes no provision for a downgrade principal; and since the post of downgrade principal cannot be created by way of Regulations made under the Act, without such post being prescribed under the Act, Regulation 2(1), as amended by notification dated 18.10.2011, is liable to be struck down as ultra vires the 2006 Act.

5. While this submission of the learned Senior Counsel cannot be said to be without merit, the fact remains that a Division Bench of this Court had, in its order dated 23.03.2018, recorded the submission of the learned Senior Counsel that the petitioners were not pressing relief No.1. Relief No.1, as noted hereinabove, is to quash Regulation 2(1) of the 2009 Regulations as ultra vires the provisions of the 2006 Act. Since this prayer was dismissed as not pressed, this Court would not be justified, thereafter, in examining the vires of the said provision.

6. Proceeding on the basis that the said Regulation is valid, all the petitioners have not yet completed five years service as a downgrade Principle to be entitled to be paid the pay-scale of a Principal. It is the third petitioner alone who is due to complete five years service shortly on 22.04.2020. While the fifth petitioner has since retired, the other three petitioners complete their five years service as a downgrade principal only thereafter. Consequently, the petitioners cannot seek the relief of payment of the pay-scale of Principal from a date anterior thereto.

7. Consequently the Writ Petition fails and is, accordingly, dismissed. No costs.