

(2011) 07 UK CK 0017

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1732 of 2007

Dharmendra Rawat and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2012) 2 UC 1196

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Ramji Srivastava, for the Appellant; N.P. Sah for the State of Uttarakhand, for the Respondent

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Ramji Srivastava, Advocate present for the petitioners and Mr. N.P. Sah, Standing Counsel present for the State of Uttarakhand. The petitioners are primary schools teacher in District Dehradun who in response to an advertisement for appointment as Cluster Resource Centre Coordinator (from hereinafter referred to as CRCC) applied in the year 2004, as they came under the eligibility shown. Consequently they were selected and appointed as CRCC at remote places in district Dehradun. A CRCC is appointed under a project which is primarily for spreading education, inter alia, in the remote part of State of Uttarakhand. These posts were created vide Government Order dated 19.3.2003 which clearly stipulated that the post of CRCC will carry a pay-scale of Rs. 5500-9000. Subsequently when the petitioners were appointed as CRCC, their appointment letter also clearly shows that they are appointed in the pay-scale of Rs. 5500-9000. It is also an admitted case that the petitioners are now getting a lower grade i.e. Rs. 4500-7000. All the same, it is the main contention of the petitioners that they applied as CRCC in order to get better remuneration and also considering the fact that whereas they were earlier teaching in Dehradun now they are to teach in remote areas of Uttarakhand and the main reason for doing so was that it carried a higher pay-scale. All the same, even after the petitioners had joined the post of CRCC, the said pay-scale was

not given to them. Consequently the petitioners moved a joint representation before the concerned authority which was District Project Officer. Since the representation of the petitioners was not decided, the petitioners filed the present writ petition. Meanwhile the State Government during the pendency of the said writ petition passed a Government Order dated 31.3.2008 whereby they made an amendment in the earlier Government Order dated 28.7.2003 saying that the appointment of the petitioners on the post of CRCC is not by way of deputation but they have carried their post as CRCC. It is important to note that this amendment which has been made during the pendency of the writ petition was not existing on 19.3.2003 (i.e. the date when the posts of CRCC were created) and it was only made during the pendency of the writ petition of the petitioners when the petitioners have challenged the action of the respondents of giving them the lower pay-scale than what they have promised and what was stated in their appointment letter.

2. This subsequent amendment dated 31.3.2008 has also been challenged by the petitioners by way of an amendment by making a prayer which reads as follows:-

(iv) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 08.07.2008 (Annexure No. 9 to the writ petition) passed by the respondent authorities, rejecting the representation of the petitioners.

3. The principal stand of the Government before this Court is that the petitioners are not liable to get the pay-scale of Rs. 5500-9000 inasmuch as they were not appointed on the pay-scale of Rs. 5500-9000, as the order dated 24.2.2004 clearly stated that those teachers may also apply who carry a lower pay scale of Rs. 4500-7000. In other words, the stand of the State Government before this Court is that even in the said order they have clearly stated that the teachers who had a lower pay-scale are liable to apply and therefore by implication it would mean that they would be getting the same pay-scale as they are getting as primary school teacher.

4. First of all, this argument of the State cannot be accepted for the simple reason that it is not clearly stated in the Government order dated 24.2.2004. What has been stated in the said Government order is that post of CRCC will carry a pay-scale of Rs. 5500-9000. It does not say that the primary school teachers carrying the lower grade will be getting the original scale of Rs. 4500-7000 and not higher scale of Rs. 5500-9000, otherwise there would have been no reason for the State to make an amendment that too during the pendency of the writ petition saying that appointment was not by way of deputation but the primary school teacher will carry the same pay-scale.

5. There is another aspect in the writ petition which is of promissory estoppel. The petitioners were admittedly primary school teachers. They applied for the post of CRCC in view of Government order dated 24.2.2004 that they would be getting the pay-scale of Rs. 5500-9000. This pay-scale of Rs. 5500-9000 is also reflected in their appointment orders. The State Government was therefore liable

to give higher pay-scale and is estopped from giving lower pay-scale.

6. The law of promissory estoppel need not be elaborated at this juncture. Suffice it would be to state that the petitioner acted upon a promise made by the Government. Their choice for leaving a relatively comfortable life and adopting the rigours of work as CRCC where one has to work, inter alia, in remote areas was done obviously for the reasons that it carried a higher pay scale. Since the job itself is not of a permanent nature it cannot be said that the petitioners are permanently absorbed in that particular pay-scale as the job itself is temporary or in the nature of a deputation, but as long as they work as CRCC they must be given that pay-scale, as it was promised in the advertisement and subsequently in the appointment letter itself. The fact that such promise was earlier made is also reflected in the subsequent amendment made by the authorities whereby they are trying to make amendments in the earlier order. When a promissory estoppel has been made, the Government cannot back out, as such a promise has already been acted upon by the petitioners. In *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, the Government of Punjab had issued a brochure in the year 1996 declaring its new policy whereby as an incentive or concession refund of sales-tax would be available to those persons who set up selective large-scale industries at focal points. Acting upon this declaration by the Government *Amrit Banaspati Co. Ltd.* had set up a Banaspati manufacturing unit in Punjab and when subsequently such concession was not given it was challenged before the Court. The Hon'ble Apex Court in *Amrit Banaspati Case (supra)* held that since the petitioner had responded to an announcement or declaration made by the Government and had made huge investment, Government cannot back out from the promise of the incentives as earlier declared by the Government, and they are liable to be given to the petitioner.

7. Similarly in *State of Punjab Vs. Nestle India Ltd. and Another*, again the issue of promissory estoppel was there before the Hon'ble Apex Court. In the said case before the Hon'ble Apex Court, a number of milk producers in the State of Punjab had refused to pay purchase tax between 1.4.1996 to 4.6.1997 for the reasons that the Government had decided to abolish the purchase tax on milk for the period in question and therefore it was estopped from claiming it. These milk producers had filed a writ petition before the Punjab and Haryana High Court challenging the demand of purchase tax between 1.4.1996 to 4.6.1997. The writ petition of the petitioners was allowed and the demand of purchase tax was quashed. Aggrieved by the said decision, the State of Punjab preferred an appeal before the Hon'ble Apex Court. The Hon'ble Apex Court while dismissing the appeal had held that there was a promissory estoppel made by the Government which they cannot back out as the promise was in the nature of an "announcement" made by the Chief Minister of Punjab on 26.2.1996 and addressing the dairy farmers where he declared to abolish such purchase tax and consequently while presenting the budget speech in 1996-97 again it was reiterated. There were other circumstances as well. We must also keep in mind the fact that the Hon'ble Apex Court had considered this to be a matter of

promissory estoppel though the issues under challenge were largely fiscal in nature. The doctrine of estoppel applies even more strongly under the facts and circumstances of the present case. There is a clear promise made by the State Government to pay the scale of Rs. 5500-9000 to the petitioners and therefore there is no plausible reason for the State not to give the said pay-scale to the petitioners.

8. Writ petition is therefore succeeds. For the reasons, as recorded above, impugned order dated 8.7.2008 (Annexure No. 9 to the writ petition) is also quashed. Mandamus is issued to the respondents to give the pay-scale of Rs. 5500-9000 to the petitioners along with arrears of salary and other remunerations, allowances, etc. which are liable to be given on such pay-scale of CRCC, within a period of six weeks from the date a certified copy of this order is produced before the respondent. No order as to costs.