
(2018) 12 UK CK 0030
In the Uttarakhand High Court
Case No : Special Appeal No. 976 Of 2018

Dhyan Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Uttaranchal School Education Act, 2006 — Section 40, 41

Citation : (2018) 12 UK CK 0030

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Bhupesh Kandpal, S.S. Chaudhari

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, C.J.

While the objection of the Registry is that a set of papers were not served on the respondents, Shri S.S. Chaudhari, learned Brief Holder for the State of Uttarakhand, would submit that a set of papers have been handed over to him. The writ petition was dismissed at the admission stage without notice being issued to the fourth respondent, and the fourth respondent could not have entered appearance through counsel. The question of serving a set of papers on the fourth respondent does not, therefore, arise at this stage. The objection of the Registry is overruled.

This appeal is preferred against the order passed by the learned Single Judge in WPSS No.3853 of 2018 dated 03.12.2018. The appellant herein filed WPSS No.3853 of 2018 seeking a writ of mandamus directing the respondent authorities to consider the candidature of the petitioner as per government order dated 21.12.2016 as well as 03.01.2017; a writ of mandamus directing the respondents not to change the service conditions of the petitioner till his representation is disposed of; a writ of mandamus commanding the respondents to grant the benefit of the government order dated 21.12.2016, as well as the

government order dated 03.01.2017, to the petitioner w.e.f. 03.01.2017; and to further to grant him arrears in accordance with law within a specified time period. The petitioner placed reliance on the government orders dated 21.12.2016 and 03.01.2017 whereby the remuneration to ad hoc Parent Teacher Association's teachers was enhanced to Rs.10,000/-.

In the order under appeal, the learned Single Judge observed that the petitioner's appointment as a PTA teacher was made, considering a particular contingency in mind which is that the aforesaid teacher's post was vacant, and a qualified person be appointed as a PTA teacher so that students may not suffer; these appointments were made by the Committee of Management in exceptional circumstances; and the dispute, in the writ petition, related to the remuneration of the petitioner, and his claim to be paid Rs.10,000/- per month. The Single Judge disposed of the writ petition directing that the selection process for the post of Assistant Teachers and Lecturers shall continue in accordance with law; and the Chief Education Officer, Pauri Garhwal should ensure that the selection process of teachers is monitored and is completed in accordance with law. In so far as the petitioner's remuneration is concerned, the Director of Education was requested to consider the same in accordance with law as expeditiously as possible, but preferably within a period of six weeks from the date of production of a certified copy of the order. The learned Single Judge also made it clear that, in case the petitioner is eligible, he may apply as a candidate in the open competition.

In this context it is relevant to note that an advertisement was issued on 15.09.2018 inviting applications from eligible candidates for three posts, one of which related to that of Lecturer in Mathematics. In terms of the advertisement, the applications were required to be submitted within 11 days from the date of the advertisement i.e. on or before 26.09.2018.

Before us Shri Bhupesh Kandpal, learned counsel for the appellant, would submit that, pursuant to the advertisement issued on 15.09.2018, the appellant had also submitted his application for the said post; the only relief which the petitioner sought was that his representation be considered in accordance with the government orders dated 21.12.2016 and 03.01.2017; the petitioner did not seek the relief of a regular selection process being undertaken for appointment on a regular basis; the learned Single had gone beyond the scope of the writ petition, and had granted a relief not sought for therein, by directing the selection process to continue; if, before the writ petitioner's representation is considered by the authorities, the regular selection process is completed, the petitioner will not be extended the revised remuneration of Rs.10,000/- per month, as any such order would come into force only from the date on which the order is issued by the government; and even prior thereto, the petitioner's services would be terminated consequent upon a regular lecturer being appointed in terms of the selections undertaken pursuant to the aforesaid advertisement.

Section 41 of the Uttaranchal School Education Act, 2006 relates to ad hoc appointment of Part Time Teachers/acting PTA Teachers by the Committee of Management which is entitled to appoint, on an adhoc basis, such part time/ PTA teachers as were employed up to 05.09.2003, from its own resources, for which such substantive posts were created at the time, and who possessed the qualification prescribed for the corresponding posts, and who were paid honorarium from the government funds. As Section 41 indicates, the Committee of Management is authorized to make ad-hoc appointments of part time teachers/ acting Parent Teacher Association's teachers, for which the government has been revising the monthly remuneration which is currently said to be Rs.10,000/- per month.

The appellant-writ petitioner's apprehension is that, if regular selections are finalized, and a Lecturer (Mathematics) is appointed before his representation is considered, he would not be extended the benefit of enhanced remuneration of Rs.10,000/- per month, since his services would have been dispensed with by the time a government order is issued in this regard.

While the submission of the learned counsel for the appellant is no doubt attractive at first blush, we must express our inability to agree for the reason that the very appointment of a PTA teacher, in terms of Section 40 of the Act, is merely an ad hoc appointment; and by the very nature of such appointment, their tenure as a PTA teacher is to last only till a regular lecturer is appointed pursuant to a process of selection. The learned Single Judge has merely directed the authorities to proceed with the selection process in accordance with law. As the authorities are obligated to do so, the observations of the learned Single Judge, in the order under appeal, is merely a reminder to the authorities to ensure that the regular selection process continues unhindered. In any event, such a direction cannot be said to have caused any prejudice to the appellant-writ petitioner, as the very nature of his appointment as a PTA teacher is only on an ad hoc basis, and is to last only till a regular selection process is completed.

While we see no reason to interfere with the directions issued by the learned Single Judge to the respondents to proceed with the selection process, we find some force in the submission of Shri Bhupesh Kandpal that any delay, in considering the appellant-writ petitioner's representation, may result in his being denied the enhanced remuneration of Rs.10,000/-, for, even if the Government were to consider his representation favourably later, it would not be in a position to issue orders, if regular candidates are appointed in the meanwhile.

We consider it appropriate, in such circumstances, to modify the order under appeal to the limited extent that the respondent authorities should consider the petitioner's representation, and pass orders thereupon in accordance with law, at the earliest, and, in any event, not later than 20.12.2018.

Let a copy of the order be furnished to the both sides by tomorrow i.e. 05.12.2018.

Subject to the aforesaid modifications, the appeal fails and is, accordingly, dismissed.