
(2018) 04 UK CK 0022

In the Uttarakhand High Court

Case No : Special Appeal No. 125 of 2018

DISTRICT CHIEF EDUCATION OFFICER PAURI GARHWAL AND	APPELLANT
Vs	
SMT. UMA GHILDIYAL	RESPONDENT

Date of Decision : 06-04-2018

Acts Referred:

Citation : (2018) 04 UK CK 0022

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Anil Kumar Bisht, Mangal Singh Chauhan

Final Decision : Disposed Off

Judgement

K.M. JOSEPH, C.J.Â Â Â Â Â

1. There is delay of 271 days in filing this appeal. In the circumstances, after hearing learned counsel for the parties, the delay in filing this appeal will stand condoned. Delay condonation application will stand allowed.Â

2. Appellants are the respondents in the writ petition.Â The writ petition was filed seeking to quash the order dated 17.06.2015 passed by the second respondent.Â The further direction sought was to provide promotion and all other consequential benefits to the writ petitioner considering her in C.T.

Grade w.e.f. 01.07.1979.

3. Briefly put, the case of the writ petitioner is as follows:Â Writ petitioner was appointed on the post of Assistant Teacher in Government Girls

Junior High School, Pabou, District Pauri Garhwal on 01.06.1978.Â Later, she was transferred on the post of Assistant Teacher, Government Girls

Junior High School Pabou, District Pauri Garhwal on the same pay scale.Â Still later, pursuant to an advertisement issued by the Education

Department for C.T. Grade pay scale of Rs. 450-750, the writ petitioner forwarded her documents.Â She was appointed vide order dated 04.10.1985

in the C.T. Grade pay scale of Rs. 450-720.Â Thereafter, the Government Teachers Association, Uttar Pradesh filed a writ petition before the

Allahabad High Court and prayed to grant the C.T. Grade pay scale of Rs. 450-720 w.e.f. 01.07.1979 to the Government Girls Junior High School

Teachers, as it is providing to Parishadiya Junior High School/Aided Junior High Schools and Government Model Schools.Â There was an order

passed by the Allahabad High Court and pursuant to the same, order dated 08.07.1992 was passed by the State Government.Â It is stated that the

writ petitioner was granted benefit of amended pay scale, according to the said Government Order, w.e.f. 01.07.1979 and the arrears of the period

from 01.07.1979 to 31.12.1985.Â Thereafter, reference is made to order dated 29.04.2015.Â As per the said Government Order, it appears that the

writ petitioner was given benefit of selection grade w.e.f. the year 1991 and promotional pay scale w.e.f. the year 2003.Â Thereafter, the writ

petitioner made a representation on 21.05.2015 praying that she has been granted the benefit of C.T. Grade w.e.f. 01.07.1979 by the Government

Order, which has been issued pursuant to the order of the Allahabad High Court and, therefore, the seniority of the of the writ petitioner in C.T. Grade

w.e.f. 01.07.1979 and promotion on the higher post may be granted to her (Annexure No. 4).Â It is thereupon that the impugned order was passed

recalling the earlier order dated 29.04.2015 stating therein that the writ petitioner's earlier period of service from C.T. Grade pay scale to L.T.

Grade pay scale could not be counted and the writ petitioner was not entitled to get the selection/promotional pay scale according to her earlier

services and she could not be provided the seniority according to her earlier services.Â It is alleged that the earlier order dated 29.04.2015 was

cancelled arbitrarily and illegally.Â Counter affidavit was filed.Â In the counter affidavit, it is, inter alia, stated as follows:

â??7. That in reply to the contents of para 5 of the writ petition it is submitted that the petitioner was initially appointed as Assistant Teacher in BTC

grade on 12.07.1978. The petitioner applied for Assistant Teacher CT grade and was given appointment as Assistant teacher CT grade in the pay

scale of Rs. 450-720 on 08.10.1987 in Government Girls Junior High School, Paidul. It is submitted that the cadre of Basic School teachers and that of

Upper Primary School are different and selection grade is admissible only after completing 10 years of satisfactory services in a particular cadre.

There is no provision to add the services rendered in a different cadre for the grant of benefit on selection grade.Â

8. That in reply to the contents of para 6 of the writ petition it is submitted that the petitioner was initially appointed as Assistant Teacher BTC Grade

in the pay scale of Rs. 250-320 by the then Regional Girls Inspector of School, Garhwal Mandal, Pauri Garhwal vide its order no.

Sn0/nee0/68/paanch-12(7)/77-78 dated 06.01.1978 in Government Girls Junior High School, Pabou, Pauri Garhwal. The petitioner submitted her joining

on 12.01.1978 thereafter, vide Government Order No. 3542/15-2-92-34(158)/89 dated 08.07.1992 the pay scale of the post of Assistant Teacher

Government Girls Junior High School was upgraded to Rs. 450-720 but the post was not upgraded.Â

In the year 1985 the petitioner applied for the post of Assistant Teacher CT grade (Pay scale of Rs. 450-720) in the Government Girls Junior High

School and after her selection the petitioner was appointed as Assistant Teacher CT grade on 08.10.1985 in Government Girls Junior High School,

Paidul, Pauri Garhwal.Â

Vide Government order no. 655/maa0/2002 dated 12.07.2002 the person is eligible for selection grade after completing 10 years of satisfactory

services. The petitioner from the date of his joining on 12.01.1978 has worked as Assistant Teacher in Government Junior High School for a period of

only 7 years thereafter, the petitioner was appointed on the post of Assistant Teacher CT grade on 08.10.1985 in Government Girls Junior High

School, Paidul, Pauri Garhwal. It is submitted that since the petitioner has joined fresh as Assistant Teacher CT grade therefore, the petitioner was

eligible for selection grade after 10 years of services on 08.10.1985. It is further submitted that the petitioner is demanding the selection grade from

01.07.1979. It is submitted that according to the Government order a person is entitled for a selection grade after 10 years on one post. Here it is also

stated that the cadre of Assistant Teacher of Basic School and that of Upper Primary School is different and the petitioner cannot be granted the

benefits of selection grade treating her services continuous in the BTC grade because the petitioner's appointment was a fresh appointment as

Assistant Teacher CT Grade in Government Girls Junior High School.Â

10. That in reply to the contents of para 8 of the writ petition it is submitted that the petitioner was initially appointed as Assistant Teacher in BTC

grade on 12.01.1978. The petitioner applied for Assistant Teacher CT grade and was given appointment as Assistant Teacher CT grade in the pay

scale of Rs. 450-720 on 08.10.1985 in Government Girls Junior High School, Paidul. It is submitted that with the cadre of Basic School Teachers and

that of Upper Primary School are different and selection grade is admissible only after completing 10 years of satisfactory services in a particular

cadre. There is no provision to add the services rendered in a different cadre for the grant of benefit on selection grade. It is submitted that the

petitioner was initially appointed as Assistant Teacher BTC Grade in the pay scale of Rs. 250-320 by the then Regional Girls Inspector of School,

Garhwal Mandal, Pauri Garhwal vide its order no.Sn0/nee0/68/paanch-12(7)/77-78 dated 06.01.1978 in Government Girls Junior High School, Pabou,

Pauri Garhwal. The petitioner submitted her joining on 12.01.1978 thereafter, vide Government Order No. 3542/15-2-92-34(158)/89 dated 08.07.1992

the pay scale of the post of Assistant Teacher Government Girls Junior High School was upgraded to Rs. 450-720 but the post was not upgraded.Â

In the year 1985 the petitioner applied for the post of Assistant CT grade (Pay scale of RS. 450-720) in the Government Girls Junior High School and

after her selection the petitioner was appointed as Assistant Teacher CT grade on 08.10.2015 in Government Girls Junior High School, Paidul, Pauri

Garhwal.

12. That the contents of para 11 of the writ petition are wrong and denied. It is submitted that the petitioner has been granted benefit of selection

grade after completing 10 years of service from 08.10.1985 and the petitioner has already been granted promotion to the post ofÂ Lecturer on

08.10.2007 after completing 12 years of service and in view thereof the averments made in the writ petition are devoid of merit and liable to be

dismissed.â??Â

4. No rejoinder affidavit was filed by the petitioner.Â Â Â

5. The learned Single Judge took the view that the benefit was given to the writ petitioner by order dated 29.04.2015 and the said order has been

recalled. Seven yearsâ?? benefit was granted under the order dated 29.04.2015 and the said order was recalled by the impugned order and all this

was done without affording any opportunity to the writ petitioner.Â The impugned order, therefore, was interfered with and the writ petition was

allowed and the order dated

17.06.2015 was quashed and set aside with all consequential benefits.Â

6. In appeal, we heard Mr. Anil Kumar Bisht, learned Standing Counsel on behalf of the State of Uttarakhand/appellants and Mr. Mangal Singh

Chauhan, learned counsel on behalf of the respondent/writ petitioner.Â

7. Learned Standing Counsel for the appellants/respondents would submit that in the order dated 29.04.2015 itself, it was mentioned that if the benefit,

which was being given, is found to be contrary to the Government Order, it will be liable to be cancelled.Â According to him, the case set up is that

the benefit of the services rendered prior to being appointed as C.T. Grade teacher in the year 1985 could not be counted for grant of

selection/promotional pay scale.

8. Per contra, Mr. Mangal Singh Chauhan, learned counsel for the respondent/writ petitioner would submit that the benefit given 22 years ago cannot

be taken away at this distance of time.Â This benefit of C.T. Grade was given pursuant to the order of the Allahabad High Court and on the basis of

the same the Government Order was issued on 08.07.1992 and on the basis of the same, the order was passed.Â Â

9. The case set up, as we have seen, by the appellants appears to be that the writ petitioner has been given the benefit of selection grade, which is

given after completion of 10 years service in the year 1995 and promotional pay scale in the year 2007, apparently, after 12 years of giving the

selection grade.Â It is the further case that the benefit of pay scale of C.T. Grade alone was given to the writ petitioner and the services rendered in

the earlier post cannot be clubbed together for the purpose of giving selection grade.Â

10. We notice that the only ground, on which the learned Single Judge has interfered with the impugned order, is violation of principle of natural

justice.Â The learned Single Judge has not gone into the merits of the matter.Â Therefore, in this case, when the impugned order was interfered with

on the ground that principle of natural justice was violated, we do not think that

portion of the order, as such, is to be interfered with. We only modify it by making it clear that it will not stand in the way of the appellants issuing notice, giving an opportunity to the writ petitioner and taking steps for rescinding the order dated 29.04.2015.

11. We record the submission of Mr. Anil Kumar Bisht, learned Standing Counsel that fresh steps, if any, will be taken within a period of six weeks from today.Â Â Â Â

12. Accordingly, the appeal stands disposed of.

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