
(2022) 07 UK CK 0104

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 472 Of 2014

Dr. Kalu Ram Jain & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-07-2022

Acts Referred:

Citation : (2022) 07 UK CK 0104

Hon'ble Judges : Alok Kumar Verma, J;Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : Shashank Pandey, P.C. Bisht, Nikhil Singhal

Final Decision : Allowed

Judgement

Manoj Kumar Tiwari, J

1. Petitioners are serving as teacher in a Government Aided Post Graduate College in District Dehradun. According to them, their pay was fixed at a lower level compared to their junior, w.e.f. 01.01.2006 when revised U.G.C. scales were granted to teachers of Government Aided Colleges.

2. Petitioner represented the matter before the Competent Authority. Pursuant to representations made by petitioners, their pay was equalized with that of their junior, by an order passed by Director, Higher Education, Uttarakhand, in terms of Policy contained in Government Order dated 11.11.2009. Subsequently, the benefit granted to petitioners was withdrawn by the Director vide order dated 19.06.2013 and their pay was again down-graded and an order of recovery was also passed against them.

3. Petitioners challenged the said order dated 19. 06.2013 passed by Director, Higher Education and the consequential order passed by Principal of the College, by filing Writ Petition (S/B) No. 329 of 2013, which was allowed, however, the Competent Authority was given liberty to pass order afresh, after issuing show cause notice and after giving opportunity of hearing to petitioners.

4. In terms of the liberty granted by this Court, Director, Higher Education again passed two orders dated 01.11.2014 and 25.11.2014, whereby he maintained his earlier order and provided for reducing the basic pay of petitioners and also directed for recovery of excess amount paid to petitioners. These orders dated 01.11.2014 and 25.11.2014 have been challenged by petitioners, in this writ petition.

5. Learned counsel for the petitioners contends that Dr. Kaushal Kumar, who is serving as Associate Professor (Commerce) in D.A.V. P.G. College, Dehradun, was appointed as Lecturer on 12.09.1989; while all the petitioners were appointed as Lecturer in the said college between 1986-87, therefore, the basic pay of Dr. Kaushal Kumar could not have been fixed at a level higher than the petitioners.

6. Mr. P.C. Bisht, learned State Counsel contended that date of increment of Dr. Kaushal Kumar is 1st January, while for petitioners, it is 1st July, consequently, at the time of pay fixation after 6th pay revision, basic pay of Dr. Kaushal Kumar became slightly more than that of the petitioners, due to one additional increment, which was given to Dr. Kaushal Kishore on 01.01.2006. Since increment was given to petitioners on 1st July, consequently, there is momentary difference in the basic pay of petitioners vis-à-vis Dr. Kaushal Kumar, which is equalized in the month of January each year, when petitioners are given annual increments.

7. On 27.06.2022, this Court passed the following order:

"At the request of learned Additional C.S.C. the case is adjourned for a period of two weeks to enable him to get necessary instructions regarding the Government Policy/Statutory Rules, if any, dealing with a situation as is arisen in the present case, where due to six months delay in increment of senior persons, their salary has been allegedly reduced compared to their juniors."

8. Today, Mr. P.C. Bisht, learned State Counsel has produced in Court a letter dated 15.07.2022 issued by Additional Secretary, Higher Education, Government of Uttarakhand, which is taken on record.

9. In the said letter, Government Orders dated 11.11.2009 and 17.10.2008 have been referred and it is stated that these Government Orders deal with a situation like the present one, where pay of senior teacher is fixed at a lower level than his junior. In paragraph 2-iv of the said letter, provision contained in Rule 22-B(2) of the Fundamental Rules, Financial Hand Book (Volume II, Part II to IV) has been reproduced, which reads as under:-

"(2) (i) If as a result of initial pay under sub-rule (1) there arises an anomaly, namely, that the rate of pay admissible to a government servant on the higher post would exceed that of another government servant senior to him in the lower grade or scale and promoted earlier to another identical post the pay of the latter shall with effect from date of promotion or appointment of the former be stepped up by the Government to an amount admissible to the former as pay fixed under

sub rule (1) subject, however, to the following conditions:-

(a) The junior and the senior government servants belong to the same cadre and the posts to which they have promoted or appointed are identical and in the same cadre;

(b) The time-scale of pay for the lower and higher posts in which the junior and the senior government servants are entitled to draw their pay is identical;

(c)

(d) the senior government servant shall draw his next increment on completion of requisite qualifying service with effect from the date of such stepping up of his pay."

10. Learned counsel for the petitioners contends that in the impugned order dated 01.11.2014, Director, Higher Education has completely overlooked the provision contained in Rule 22-B of the Fundamental Rules, which goes to the root of the matter.

11. Learned State Counsel fairly concedes that this aspect has not been dealt with in the impugned order dated 01.11.2014, by which petitioners pay was down-graded with direction to recover the excess amount paid to the petitioners.

12. Since the relevant statutory provision has been overlooked by Director, Higher Education while passing the impugned order, therefore, on this short point alone, the impugned order dated 01.11.2014 and the consequential order dated 25.11.2014 are liable to be quashed and are hereby quashed.

13. The writ petition is allowed. Director, Higher Education, Uttarakhand is directed to re-consider the matter in the light of Rule 22-B of the Fundamental Rules and the Government Orders dated 11.11.2009 and 17.10.2008.

14. Let necessary exercise shall be completed within four months from the date of production of certified copy of this order.