
(2011) 06 UK CK 0073

In the Uttarakhand High Court

Case No : Writ Petition No. 391 of 2004

Dr. Munish Kumar Sharma

APPELLANT

Vs

Director of Higher Education and Another

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 1(3), 4

Uttaranchal Regularization of Ad Hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 2002 — Rule 1(3)

Citation : (2011) 06 UK CK 0073

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—On 14.5.1979, the State of Uttar Pradesh made The U.P. Regularization of Ad Hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 1979. The post of a Lecturer, in a college situated in the State of Uttar Pradesh, was within the purview of the Public Service Commission Rules, 1979. In view of Sub-rule (3) of Rule 1 of the said Rules, the said Rules were applicable to the posts of Lecturers in the State of Uttar Pradesh.

2. As is evident from the judgment of the Hon"ble Allahabad High Court, rendered in Civil Misc. Writ Petition No. 4812 of 1988 and Civil Writ Petition No. 27683 of 1993, in the posts of Lecturers available in the State of Uttar Pradesh, ad hoc appointments were made. The Hon"ble Allahabad High Court found that "The U.P. Regularization of Ad Hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 1979" applied to the posts of Lecturers. The Hon"ble Allahabad High Court, while rendering the said judgment, proceeded on the basis that under the said Rules of 1979, various ad hoc Lecturers were regularized. The subject-matter of challenge in those writ petitions, dealt with by the said judgment and order rendered by the Hon"ble Allahabad High Court, was

the Government Order dated 22.7.1986, issued by the State of Uttar Pradesh, whereby Lecturers in colleges were to be appointed on voluntary basis and they would be paid on the basis of lectures given by them. It was contended that such a practice is a sharp practice. In one of the said writ petitions, those volunteers contended that, in law, they are entitled to the minimum pay scale, as is applicable to the pay scale of regular Lecturers, for they have been asked to discharge same or similar duties.

3. By and under the said judgment, the Hon''ble Allahabad High Court deprecated the decision of the Government to engage Lecturers on voluntary basis against payment of remuneration at piece rate i.e. at the rate lectures are given, and directed that those persons, who have thus been appointed on voluntary basis, are also entitled to the pay scale as mentioned in the said judgment with the observation that their cases of regularization be undertaken.

4. Though those writ petitions were filed in 1988 and 1989, the said judgment was rendered on 10.10.1996. Petitioner, in the present writ petition, was a party to the said judgment. It is the case of the Petitioner that on the writ petitions, interim orders were passed, by which the State was prevented from interfering with the engagement of the Petitioner. But in violation of the interim order, his engagement was dispensed with. Since the writ petitions were decided by the said judgment and order dated 10.10.1996, in view of the interim order, which, we proceed was passed, despite disengagement of the Petitioner, in law, it must be deemed that the Petitioner continued to remain engaged till 10.10.1996, when the writ petitions were finally decided by the said judgment and order and to which the interim order stood merged. Since then, however, the Petitioner did not take any step to serve the college, which thus disengaged the Petitioner.

5. On 7.8.2002, the State of Uttaranchal made The Uttaranchal Regularization of Ad Hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 2002. Sub-rule (3) of Rule 1 of the said Rules made it amply clear that the said Rules shall apply to posts under the rule-making power of the Governor which are within the purview of the Public Service Commission. Rule 4 of the said Rules provided that if any person was directly appointed on ad hoc basis before 30.6.1998 and is continuing in service as such on the date of commencement of the said Rules, his case for regularization shall be considered.

6. In view of the said Rules of 2002, Petitioner filed the present writ petition and has also brought on record that subsequent to filing of the writ petition, some of the persons, who were with the Petitioner before the Allahbad High Court, have been regularized under the said Rules of 2002.

7. Hon''ble Allahabad High Court, despite proceeding on the basis that The U.P. Regularization of Ad Hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 1979 applied to posts of Lecturers, did not direct consideration of the case of the Petitioner and other persons, before the Hon''ble Allahabad High Court, under the said Rules. It only directed that the Petitioner

and other persons shall be entitled to the regular pay scale. At the same time, it directed that their cases for regularization shall be considered.

8. A case for regularization can only be considered when there is authority to consider the same. Such an authority is emanated from the law made either by the legislature or by the administration. The administration, in pursuance with the provisions contained in Article 309 of the Constitution has made the Rules of 2002. The said Rules earned the characteristics of a statutory Rule. In order to take advantage of the said Rules, the Petitioner must come within the four corners of the said Rules. There is no dispute that the Petitioner was appointed on ad hoc basis before 30.6.1998. In view of the said judgment rendered by the Hon"ble Allahabad High Court on 10.10.1996, he continued to remain engaged as such till then, however, admittedly, the Petitioner did not continue to serve any day after 10.10.1996 until the said Rules of 2002 were made on 7.8.2002. In the circumstances, consideration of regularization of the case of the Petitioner under the said Rules of 2002 will not arise.

9. The writ petition fails and the same is dismissed.