
(2009) 12 UK CK 0040
In the Uttarakhand High Court

Dr. Smt. Pushp Lata Bisht

APPELLANT

Vs

Additional Director of Education, Kumaon Region, District
Education Officer and Committee of Management, Bhartiya
Shaheed Sainik Vidhyalaya

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Citation : (2009) 12 UK CK 0040

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 16.06.2007, passed by respondent No. 1 and consequential order dated 20.06.2007, passed by respondent No. 2, whereby it is intimated that the petitioner's case does not fall within the eligibility criteria fixed for regularization. A mandamus has also been sought commanding the respondent No. 1 giving benefit to the petitioner u/s 5 of Uttarakhand Act No. 4 of 2005 (Uttaranchal Non Governmental Education (Amendment and Repeal) Act, 2005).

2. Heard learned Counsel for the parties and perused the affidavit, counter affidavit, supplementary counter affidavit and rejoinder affidavit filed on their behalf.

3. Brief facts of the case are that the petitioner holds Post Graduate Degree in Hindi as well as in Sanskrit. She also holds B.Ed, degree. Not only this, the petitioner possesses Ph.d. in Hindi. It is stated that she stood first in the High School and Intermediate examinations. Bhartiya Shaheed Sainik Vidhyalaya (for short the Institution) run by respondent No. 3 is a recognized Institution, which is aided by the State Government. In the year 1987, the petitioner was initially appointed against a short-term vacancy as a C.T. Grade Teacher due to suspension of one Kali Charan, a regular incumbent, on said post. Petitioner served on said capacity till 30th of September 1992 whereafter Kali Charan

resumed his duties after his acquittal from the Court. In view of the petitioner's dedication in her work, the Management decided to utilize her services in L.T. Grade and passed a resolution in its meeting held on 20th September 1992 to appoint her as L.T. Grade Teacher against the vacancy which fell vacant due to promotion of one Govind Singh, in the Lecturer's Grade. Said appointment of the petitioner was also short-term appointment. She joined her duties in L.T. Grade on 01.10.1992 and since then teaching in the Institution as a L.T. Grade Teacher. Vide order dated 01.01.1993 Sri Govind Singh who was promoted as Lecturer was directed to be reverted to the post in L.T. Grade and consequently the petitioner's term as a L.T. Grade Teacher was to come to an end, but Govind Singh challenged the order of his reversion before Allahabad High Court by filing a writ petition and obtained an interim stay order on 12.01.1993. Consequently, petitioner continued to work as an Assistant Teacher in L.T. Grade. Later services of Govind Singh on the post of Lecturer were regularized with effect from 07.08.1993. This made the petitioner to continue to work as Assistant Teacher in L.T. Grade. She too had filed Writ Petition No. 1606 of 1993 before Allahabad High Court against the order dated 01.01.1993 by which Sri Govind Singh was reverted and she was to get terminated. Said writ petition filed by the petitioner was transferred to this Court after creation of this High Court which was renumbered as Writ Petition No. 6974 of 2001 (S/S). This Court vide its judgment and order dated 16.06.2006 disposed of the writ petition directing the Committee of Management to send the name of the petitioner for her regularization under the provisions of Uttarakhand Act No. 4 of 2005 and Regularization Committee was directed to consider the regularization of the petitioner in L.T. Grade. While passing said order this Court in its order dated 16.06.2006 (copy Annexure-8 to the writ petition) observed that in view of Sri Govind Singh's regularization as Lecturer, consequential termination of service of petitioner from the post of L.T. Grade did not take affect, as such it was observed that there is no need to quash said order. In compliance of said order of this Court the Committee of Management recommended the name of the petitioner for her regularization as Assistant Teacher in L.T. Grade vide resolution dated 08.07.2006. It appears that the matter was sent to the Divisional Level Regularization Committee. However, vide impugned order dated 16.06.2007 (copy Annexure-21 to the writ petition) Additional Director of Education, Kumaon Mandal (respondent No. 1) informed the District Education Officer, Nainital that since the appointment of the petitioner was not with the approval of the competent authority as such the petitioner's case does not fall within the eligibility criteria for regularization. Consequently, District Education Officer, Nainital (respondent No. 2) sent impugned letter dated 20th June 2007 (copy Annexure-22 to the writ petition) intimating accordingly to the respondent No. 3. Hence this writ petition.

4. In the counter affidavit and supplementary counter affidavit filed on behalf of the respondents No. 1 & 2 it has been stated that petitioner's case was duly considered by the Regularization Committee in compliance of order dated

16.06.2006, passed by this Court in Writ Petition No. 6974 of 2001 (S/S), but since the petitioner's appointment in the Institution was without approval of the competent authority as such she was not entitled to regularization. It is stated in the supplementary counter affidavit that petitioner's appointment in the Institution cannot be said to be made in accordance with law as such she is not entitled to the regularization of her services in the L.T. Grade as prayed by her.

5. In the rejoinder affidavit the petitioner has reiterated the averments made in the writ petition.

6. Before further discussions, this Court thinks it just and proper to mention the relevant provision of law applicable to the said case. Section 5 of Uttaranchal Non Governmental Education (Amendment and Repeal) Act, 2005 [Uttarakhand Act No. 4 of 2005], reads as under:

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?5? bl /kkjk dh fdlh ckr ls ;g ugh le>k tk;sxk fd dksbZ v/;kid ekSfyd fu;qfDr ds fy, gdnkj gks tk;sxk] ;fn mi/kkjk ?1? ds [k.M ?x? es fufnZ"V vf/kfu;e ds izkjEHk

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Uttaranchal School Education Act, 2006, whereby U.P. Intermediate Education Act, 1921, was repealed also contains analogous provision in its Section 40 and the same need not to be reproduced.

7. Now this Court has to see the validity of the impugned orders passed by respondents No. 1 & 2 wherein it is mentioned that the petitioner's case does not fall in the eligibility criteria for regularization, as there was no approval of her appointment by the competent authority. Learned Counsel for the petitioner drew attention of this Court to Annexure-3 to the writ petition which is copy of letter dated 6th January 1993 issued by District Education Officer Nainital (respondent No. 2) whereby the petitioner's services in L.T. Grade in the pay scale of 1400-2300 were approved w.e.f. 01.10.1992 till Govind Singh is reverted to his original position. (It is pertinent to mention here that Sri Govind Singh never reverted back after his obtaining stay order from Allahabad High Court on 12.01.1993 and subsequently regularized in Lecturers Grade). Annexure-10 to the writ petition, which is copy of letter dated 30th December 1995 passed by District Education Officer, Nainital (respondent No. 2) shows that on the request of respondent No. 3 Committee of Management of the Institution, a financial approval for payment of salary of the petitioner from Government Exchequer was given. Note of said approval is also taken by respondent No. 1 in his letter dated 29th November 2003 (copy Annexure-11 to the writ petition).

8. At this stage, it is relevant to mention that the question of regularization appears to have been discussed by this Court while disposing of the Writ Petition No. 6974 of 2001 (S/S) vide its order dated 16.06.2006 (copy Annexure 8 to the writ petition). Paras 9, 10, 11, 12 and 13 of said judgment and order read as under:

9. Undisputedly, the approval to the appointment of the petitioner was granted by the District Inspector of Schools vide order dated 06.01.1993 and again on the representation of the petitioner, the D.I.O.S. passed order on 30.12.1995 to make payment of salary to the petitioner. In any case, the petitioner is getting salary not from the State Exchequer but from own sources of Committee of Management. Now the petitioner has confined her prayer to provide her benefit u/s 5a of Act No. 4 of 2005 passed by the State of Uttaranchal which says that the persons who were appointed in the Lecturer's Grade or Trained Graduates Grade, against a short term vacancy on or after 14th May 1991 and before 6th August

1993 shall be considered for their regularization by the Regularization Committee, as per the Provisions of the Act.

10. It is also not disputed that the petitioner was appointed on 1st October 1992 against the short term vacancy in L.T. Grade which has not converted into a permanent vacancy. The approval was also granted by the District Inspector of Schools to the said appointment therefore, the termination order dated 01.01.1993 could not be given effect to because Sri Govind Singh has challenged the same before the Allahabad High Court and the Allahabad High Court has stayed the order passed by the Principal, thus the petitioner is entitled to get the benefit of the Act. No. 4 of 2005.

11. Learned Counsel for the petitioner has submitted that he is confining his prayer to the extent that the petitioner may be considered under the Act No. 4 of 2005 and the petitioner shall not claim salary under the Payment of Salary Act, as she is getting the salary for all this period from the Committee of Management.

12. In view of the fact that the termination of the services of the petitioner was made by a composite order on the ground that Sri Govind Singh was reverted to the post of L. T Grade Teacher, hut the reversion order was challenged by Sri Govind Singh before the High Court and the High Court had stayed the impugned order. Thus, there is no necessity for quashing of the impugned order as the same could not be given effect to and further that in view of the fact that Sri Govind Singh has already been regularized on the post of Lecturer, the order dated 1.1.1993 is irrelevant.

13. The Committee of Management is directed to send the name of the petitioner for her regularization and the Regularization Committee shall consider the case of the petitioner for her regularization under Provisions of Act No. 4 of 2005.

9. The aforesaid observations made by this Court clearly show that this Court in its order dated 16.06.2006 already held that the petitioner is entitled to the benefit of Uttarakhand Act No. 4 of 2005. As such it is not open to the respondents No. 1 & 2 to reject the case of the petitioner on the ground that her case does not fall within the eligibility criteria for regularization. The respondents No. 1 & 2 or the State of Uttarakhand had not challenged the order dated 16.06.2006 passed by this Court in the aforesaid Writ petition No. 6974 of 2001 (S/S), as such the same has attained its finality.

10. Therefore, for the reasons as discussed above the impugned orders dated 16.06.2007, passed by respondent No. 1 and consequential order dated 20.06.2007, passed by respondent No. 2 intimating that the petitioner's case does not fall within the eligibility criteria for regularization, are liable to be quashed. Accordingly the writ petition is allowed. Both the impugned orders are hereby quashed. The respondents are directed to regularize the services of the petitioner within a period of three months from the date certified copy of this order is produced before such authority.