
(2020) 03 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 291 Of 2013

Kailash Chandra

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Uttaranchal Regularization Of Ad-Hoc Appointments (On Posts Outside The Purview Of The Public Service Commission) Rules, 2002 — Rule 4, 4(1)(i), 4(1)(ii), 4(1)(iii)
Constitution Of India, 1950 — Article 226, 309

Citation : (2020) 03 UK CK 0031

Hon'ble Judges : Ramesh Ranganathan, CJ; Ravi Malimath, J

Bench : Division Bench

Advocate : S.S. Yadav, S.S. Chaudhary

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. S.S. Yadav, learned Counsel for the petitioner and Mr. S.S. Chaudhary, learned Brief Holder appearing for the State-respondents and,

with their consent, the Writ Petition is disposed of.

2. The petitioner has invoked the jurisdiction of this Court seeking a writ of certiorari to quash the regularization order dated 03.10.2011 passed by the

first respondent in so far it related to the petitioner; a writ of mandamus commanding the first respondent to rectify the terms, conditions and the date

in the regularization order dated 03.10.2011 of the petitioner, and to issue a fresh regularization order in tune with the earlier regularization order dated

03.07.2003; a writ of mandamus commanding the first respondent to withdraw the regularization order dated 03.10.2011, and to provide him all

consequential benefits from the due date ie 03.07.2003; and for a writ of

mandamus directing the first respondent to provide all service benefits of senior scale, selection grade under the Career Advancement Scheme, 2001 and pensionary benefits as were extended to his batch mates from the due date of 2003.

3. Facts, to the limited extent necessary, are that the petitioner, a post-graduate in Political Science from the Allahabad University, qualified in the NET examination held in the year 1995. An advertisement was issued on 28.08.1996 by the office of the Director, Higher Education, inviting applications for appointment to the post of Lecturer on an ad hoc basis. The petitioner submitted his application, was interviewed by the selection committee, and was selected and appointed as a Lecturer in Political Science, on an ad hoc basis, by order dated 11.04.1997.

4. The petitioner filed Writ Petition No.14730 of 1998 before the Allahabad High Court, and an interim order was passed directing that the petitioner

be permitted to discharge his duties as an ad hoc Lecturer, and not be substituted by another ad hoc Lecturer. While matters stood thus, the State of

Uttarakhand framed the Uttaranchal Regularization of Ad-hoc Appointments (on posts outside the purview of the Public Service Commission) Rules,

2002 (for short the "2002 Rules"). The petitioner's claim for regularization was negated on the sole ground that the entries in his service

record rendered him unsuitable to be regularized in service under the 2002 Rules. The petitioner continued in service, and was regularized on

03.10.2011 under the 2002 Rules. The petitioner's compliant in this Writ Petition is that the entries, on which reliance was placed by the

respondents to declare him unsuitable, are frivolous and false; these adverse entries were not communicated to him, and were passed behind his back;

the Principal, who is alleged to have sent such a letter stating that there were adverse entries against the petitioner, had himself stated before the

Information Commissioner, on the petitioner making an application under the Right to Information Act that he had not made any such entries; and

though other persons, who were appointed on an ad hoc basis around the same time as the petitioner, were regularized in service, the said benefit was

not extended to the petitioner.

5. The petitioner's claim for regularization is under the 2002 Rules which were made in the exercise of powers conferred under the proviso to

Article 309 of the Constitution of India. Rule 4 of the 2002 Rules relates to regularization of ad hoc appointments and, under Rule 4(1)(i), any person, who was directly appointed on ad hoc basis before 30th June, 1998 and is continuing in service as such on the date of commencement of the Rules;

(ii) possessed the requisite qualifications, prescribed for regular appointment, at the time of ad hoc appointment; and (iii) has completed three years

service as such, shall be considered for regular appointment in a permanent or temporary vacancy, as may be available, on the basis of his record and

suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

6. The petitioner fulfilled the requirement, of both clauses (i) and (ii) of Rule 4(1) of the 2002 Rules, as he was directly appointed on an ad hoc basis

before 30.06.1998, and was continuing in service under the 2002 Rules; and he possessed the requisite qualifications, prescribed for regular

appointment, at the time of his ad hoc appointment. He was held disentitled for regularization, in the year 2003, on the sole ground that, in terms of

clause (iii) of Rule 4(1) of the 2002 Rules, he was found unsuitable for regular appointment. The basis, for the respondent to hold the petitioner

unsuitable, is a letter allegedly addressed by the Principal to the Director, Higher Education on 25.03.2003 referring to certain incidents of the years

1997-98, 1998-99 and 1999-2000.

7. While we find considerable force in the submission of Mr. S.S. Yadav, learned counsel for the petitioner, that these entries do appear frivolous, and

do not justify the conclusion that the petitioner had acted contrary to the Rules in discharging his duties as a Lecturer, it is unnecessary for us to dwell

on this aspect since the petitioner was, admittedly, not communicated any of these entries which were recorded behind his back, but were

straightaway communicated to the Director, Higher Education who placed reliance thereupon to hold the petitioner unsuitable for regularization.

8. While the petitioner was, no doubt, regularized in service in 2011, his claim is to be considered for regularization from 2003, when persons junior to

him in service were regularized. The petitioner also relies on the information secured by him under the RTI Act which discloses that the very same

Principal had, subsequently, resiled from his earlier statement, and had stated that he had never furnished any such information. We are satisfied that

reliance could not have been placed on entries made behind the petitioner's back, and which were not communicated to him, to declare him unsuitable for regularization of his services in 2003.

9. While we are satisfied that the action of the respondents in rejecting the claim of the petitioner, for regularization from 2003, does not accord with the 2002 Rules, it would be inappropriate for this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, to direct the respondents to regularize the petitioner in service, for the Rules stipulate that his candidature is required to be considered by a properly constituted committee.

10. Suffice it, instead, to direct the respondents to forthwith consider the petitioner's claim for regularization under the 2002 Rules at the earliest, without placing reliance upon any entries made in his service record behind his back, and, in any event, within two months from the date of production of a certified copy of this order.

11. Needless to state that, in case the petitioner is found suitable for regularization from 2003 onwards, he shall then be entitled for all such benefits which he would have been entitled to if he had been regularized in service in 2003 in terms of the 2002 Rules.

12. The Writ Petition is disposed of accordingly. No costs.