
(2018) 12 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 524 Of 2014 (S/S)

Kailash Singh Rawat

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Uttaranchal School Education Act, 2006 — Section 39(9)

Citation : (2018) 12 UK CK 0043

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Devesh Upreti, M. S. Bisht, R. C. Joshi, Anil Kumar Joshi, B. D. Upadhyaya, Naveen Tiwari

Final Decision : Allowed

Judgement

Alok Singh, J.

1) By means of present writ petition, petitioner seeks following relief, among others:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the order dated 29.05.2013 (Annexure-20) directing the respondents to promote the petitioner to the post of Lecturer History w.e.f. 27.01.2010.

(b) Issue a writ, order or direction in the nature of certiorari quashing the order dated 27 June 2013 (Annexure No.22) directing the respondents to regularize the services of the petitioner in accordance with the order dated 25.08.2011.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the order dated 01.02.2011 by which the respondent no.6 was appointed as PTA teacher for the subject History."

2) Brief facts of the case are that the petitioner was appointed as Assistant Teacher (CT) on adhoc basis in July, 1993 in the Public Inter College, Surkhet (respondent no.5 herein). Since there was no provision of giving appointment in

CT grade after declaration of CT cadre as dying cadre, hence, the respondent no.2 vide order dated 22.09.2011 directed the Additional Director (Education) of Garhwal Division (respondent no.3 herein) and the Kumaon Division to regularize the eligible teachers, who had been appointed after 14.05.1989 (i.e. the date of declaring the CT cadre as dying cadre) to LT pay scale and assumed their initial appointment as LT pay grade. Pursuant to this, respondent no.3 vide order dated 17.12.2011 regularised the services of petitioner w.e.f. 27.01.2005. Thereafter, on 19.12.2011, respondent no.5 published an advertisement for recruitment of the post of Lecturer (History) for which the educational qualification was MA History, B.Ed. or LT. On 16.05.2012, the petitioner submitted a representation that since the post of Lecturer (History) is lying vacant after the retirement of one Ram Chandra Singh Rawat on 31.10.2008, he may be promoted to that post on the premise that he taught History subject till 31.01.2011 and in 2010 the petitioner was awarded the Green Card by Deendayal Upadhyaya Shikshik Utkrasthta Puruskar by the Uttarakhand School Education Department for giving more than 95% result.

3) Pursuant to advertisement dated 19.12.2011, the petitioner applied for the post of Lecturer (History), but he was not considered by respondent no.5. Thereafter, vide letter dated 27.06.2012, respondent no.4 directed the respondent no.5 to submit an explanation regarding the appointment of respondent no.6 as PTA and the denial of promotion to the petitioner. On 27.07.2012, the Management Committee passed a resolution for promotion of the petitioner to the post of Lecturer (History). The respondent no.5 forwarded the matter to the District Education Officer, Pauri Garhwal for taking legal opinion of the DGC. The DGC in its opinion has advised the respondent no.5 that it would be justifiable to promote him (petitioner) to the post of Lecturer (History) and it was not justifiable to promote Mahendra Singh Ramola (respondent no.6 herein), who is alleged to be the son of Manager, Public Inter College. The petitioner made several representations and when no heed was paid to his request, he filed a Writ Petition No.1678 of 2012 (S/S) before this Court. The said petition was disposed of by directing the respondent authority to decide the representation of the petitioner. Thereafter, the respondent no.4 rejected the representation of the petitioner by the impugned order dated 29.05.2013 on the ground that on the date when the post of Lecturer (History) fell vacant, the petitioner has not completed 5 years of service. This order has been challenged by the petitioner by way of relief no.(i) made in the prayer clause.

4) Immediately thereafter, on 27.06.2013, respondent no.3 amended the regularization order dated 17.12.2011, by which, the services of the petitioner was regularized w.e.f. 27.01.2005 and accordingly altered the date of regularization of the petitioner w.e.f. 25.08.2011 instead of 27.01.2005. Order dated 27.06.2013 has also been challenged by the petitioner in relief no.(ii). By way of relief no.(iii) made in the prayer clause, the petitioner has challenged the appointment of respondent no.6 as PTA teacher.

5) Learned counsel for the petitioner vehemently contended that this Hon'ble Court vide order dated 06.12.2012 passed in WPSS No.1678 of 2012 directed the respondent authority to decide the representation of the petitioner and the resolution dated 27.07.2012 shall also be taken into account while deciding the case of the petitioner, but inspite of specific direction, the respondent no.4 vide impugned order dated 29.05.2013 (Annexure-20 to the petition) had dismissed the petitioner's representation on the ground that the petitioner had not completed 5 years of service on the date when the post of Lecturer (History) fell vacant. It was also contended on behalf of petitioner that without assigning any reasons and affording any opportunity of hearing to the concerned teachers, respondent no.3 vide order dated 27.06.2013 amended the regularization order dated 17.12.2011 by which the services of the petitioner were regularized w.e.f. 27.01.2005 and the services of the petitioner were now regularized w.e.f. 25.08.2011. The respondent authority has given undue advantage to respondent no.6. The appointment of respondent no.6 as PTA teacher was erroneous, arbitrary and in violation of the Rules as he was appointed without following due process of law.

6) Considering the above submissions, the following questions are before this Court for adjudication of the matter:

(i) Whether the petitioner has completed 5 years of service or not?

(ii) Which date will be relevant for the purpose of determination of criteria of eligibility for promotion to the post of Lecturer, i.e., the date on which vacancy occurs or the date of the recruitment when the vacancy is notified for recruitment.

(iii) Whether the impugned order dated 27.06.2013, by which the services of the petitioner have been regularized w.e.f. 25.08.2011 instead of 27.01.2010, is against the principle of Audi Alteram Partem or not?

7) It is admitted that the services of the petitioner were regularized w.e.f. 27.01.2005, vide order dated 17.12.2011. In this way, the petitioner had already completed 5 years of service on 26.01.2010 in LT grade having been regularized w.e.f. 27.1.2005. So, the question no.(i) posed above is answered in affirmative. Though, the respondent authority has amended the regularization order, which shall be dealt with later in the subsequent paragraphs.

8) In so far as the above question no.(ii) is concerned, learned counsel for the petitioner placed reliance upon a decision of Full Bench of Allahabad High Court in Raeesul Hasan vs. State of U.P. (Service Single No.1593 of 2001) decided on 14.05.2015. A learned Single Judge of Allahabad High Court made a reference to the Full Bench to decide the issue as follows:-

"Which date will be relevant for the purpose of determination of criteria of availability and eligibility for promotion to the post of Lecturer grade, i.e., the date on which vacancy occurs to forward to the Selection Committee /

Commission or the first day of year of the recruitment when the vacancy is notified for recruitment."

9) After considering the reference/issue, the Full Bench of Allahabad High Court had held that it is not the date on which the vacancy has occurred, but the year of recruitment which is relevant for the determination of eligibility for promotion to the Lecturer grade. Looking into to the Full Bench's decision of Allahabad High Court, this Court is of the considered opinion that the date when the vacancy is notified for recruitment will be relevant for the purpose of determination of criteria of eligibility for promotion to the post of Lecturer. The advertisement for recruitment of the post of Lecturer (History) was published on 19.12.2011 and the petitioner had already completed 5 years of service way back in 2010. In this way, the petitioner is eligible for promotion. The question no.(ii) posed above is answered accordingly.

10) Now, the impugned order dated 27.06.2013, by which the services of the petitioner have been regularized w.e.f. 25.08.2011 instead of 27.01.2010, is taken into consideration. The principle of Audi Alteram Partem is the basic concept of the principle of natural justice. This doctrine specifically states that no one shall be condemned unheard and no decision can be declared without hearing the affected person. The impugned order dated 27.06.2013 was passed by the respondent authority without affording any opportunity of hearing to the petitioner. The respondent no.5/Manager appears to be hand in glove with respondent no.6, in as much as this order was passed only in order to support the order dated 29.05.2013, by which the representation of the petitioner was rejected on the ground that the petitioner has not completed 5 years of service. Therefore, the said order dated 27.06.2013 (Annexure-22 to writ petition) cannot sustain in the eye of law and is liable to be quashed.

11) In terms of order dated 17.12.2011, services of the petitioner were regularized w.e.f. 27.01.2005 and he had already completed his five years of service by 26.01.2010, however, another regularization order was passed by which the services of the petitioner were regularized w.e.f. 17.12.2011. The second regularization order dated 27.06.2013 has already been dealt with in the preceding paragraph.

12) Learned counsel for the petitioner pointed out that in order to give an undue advantage to respondent no.6, who was appointed as PTA teacher on 01.02.2011, and in order to veil the matter, the respondent authority vide order dated 27.06.2013 altered the regularization order of the petitioner w.e.f. 25.08.2011. It was alleged by the petitioner that respondent no.6/Mahendra Singh Ramola is the son of Manager, Public Inter College, Surkhet and the said appointment is against the provision of Section 39(9) of the Uttaranchal School Education Act, 2006, which reads as under:-

"39. Conditions of service of Head of Institution, teachers and other employees.

(1)

(2)

(9). A person will not be eligible for appointment in an institution, if such teacher was related to any member of the Committee of Management or the Principal or Headmaster of the institution concerned."

13) Annexure-2 of the counter affidavit filed by respondent no.4 (especially at page 149 of the writ petition) is the minutes of meeting of PTA held on 19.01.2011, perusal of which clearly reveals that Dilvar Singh Ramola, who is the Member of the Management Committee, is the father of respondent no.6- Mahendra Singh Ramola. Thus, the appointment of respondent no.6 is against the provisions of sub-section (9) of Section 39 of the Uttaranchal School Education Act, 2006. So far as the appointment of respondent no.6 is concerned, it is directed that the respondent authority shall re-consider the appointment of respondent no.6 as PTA teacher keeping in view the provision of Section 39 (9) of the Uttarakhand Education Act, 2006.

14) In view of above, the impugned orders dated 29.05.2013 and 27.06.2013 are hereby quashed. The writ petition is allowed accordingly. The respondent authority is directed to promote the petitioner forthwith on the post of Lecturer (History) pursuant to the advertisement dated 19.12.2011. As a consequence, petitioner shall be entitled to the arrears of pay and allowances. The arrears shall be calculated and paid to the petitioner within a period of one month from today. No order as to costs.