
(2019) 12 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition No. 476 Of 2018 (S/S)

Kamal Kapri And Another

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Citation : (2019) 12 UK CK 0092

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Maneesh Bisht, Sushil Vasistha, N.S. Pundir

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of present writ petition, petitioners, namely, Kamal Kapri and Girja Shankar Pant have sought writ in the nature of the certiorari, seeking

quashing of the order dated 29.01.2018 passed by Uttarakhand Technical Education Board (respondent no. 3 herein) and subsequent order dated

07.03.2018 issued by the Additional Director of Education (Secondary), Kumaun Mandal, Nainital.

2. Facts, in brief, are that an advertisement was issued by Uttarakhand Technical Education Board on 25.02.2014, inviting applications for appointment

on the, including Mathematics, post of Assistant Teacher L.T. Grade in various subjects at both the Region i.e. Garhwal Region and Kumaon Region.

Petitioners applied for the post of Assistant Teacher L.T. Grade (Maths) and had given their option for Kumaon Region and second option for

Garhwal Region. After completing counseling, the petitioners, on being selected against the vacant posts, as per their merits and preference, were

selected for Kumaon Region by the Selecting Body. On the basis of the recommendation of the Selecting Body, the Appointing Authority, namely, the Additional Director (Secondary Education), Kumaon Mandal, Nainital vide order dated 26.07.2017 and 28.06.2017 appointed the petitioners as

Assistant Teacher L.T. Grade at Kumaon Region. Petitioners joined their duties as Assistant Teacher L.T. Grade at Government Higher Secondary

School, Taliyabanj, District-Champawat and Government Inter College, Baste, District Pithoragarh, respectively.

3. Thereafter, one Chandra Shekhar Bhatt (respondent no.5 herein) raised his grievance before respondent no. 3 that as per his merit and option, he

was entitled for Kumaon Region but he has been allotted Garhwal Region and the candidates who were less meritorious to him, belonging to same

category were allotted Kumaon Region. When his case was not considered, he was constrained to file WPSS No. 64 of 2018, Chandra Shekhar Bhatt

vs. State of Uttarakhand & others. The Co-ordinate Bench of this Court vide judgment and order dated 09.01.2018, directed respondent no. 3 to

decide the representation of the petitioners, in accordance with law. Respondent no. 3 in pursuance of Court's order dated 09.01.2018, decided

the representation of Chandra Shekhar Bhatt and passed the order dated 29.01.2018 and has observed that those four candidates, namely, Chandra

Shekhar Kandpal, Sandeep Kumar Mishra and the petitioners, namely, Kamal Kapri and Girja Shankar Pant, who are lower in merit, their region is

being changed with the candidates who are higher in merit

3. Feeling aggrieved by order dated 29.01.2018, as also the consequential order dated 07.03.2018, petitioners have approached to this Court.

4. In the counter affidavit, filed on behalf of respondent no. 4, it is submitted that the order dated 29.01.2018 has been passed, as per the direction of

the Court's order dated 09.01.2018. It is further submitted that the representation of Mr. Chandra Shekhar Bhatt has been decided as per law as

he is higher in merit to the petitioners, therefore, appointment of the petitioners in Garhwal Region has been affected. It is also submitted that the

petitioners, who are low in merit, have rightly been transferred to Garhwal Region.

5. Heard learned counsel for the parties.

6. Learned counsel for the petitioner would submit that the Co-ordinate Bench of

this Court has only directed to decide the representation of Mr.

Chandra Shekhar Bhatt as per law. He would further submit that the said representation had been decided by respondent no. 3, thus it was incumbent

upon respondent no. 3 to give an opportunity of hearing to the petitioners at that point of time. He would further submit that on the recommendation of

respondent no. 3, the petitioners have joined their services at the place where they have appointed and after such recommendation having been

implemented, respondent no. 3 becomes functus officio.

7. On the other hand, Mr. N.S. Pundir, Advocate appearing for respondent no. 3 would submit that since directions were issued to respondent no. 3 to

take decision on the representation, therefore, respondent no.3 has no option except to decide the representation of Mr. Suresh Chandra Bhatt.

8. Mr. K.N. Joshi, learned Dy. Advocate General would submit that since recommendation was received from respondent no. 3, respondent no. 3 has

passed the order dated 07.03.2018.

9. After considering the submissions of the learned counsel for the parties, it is evidently clear that on the basis of the recommendation of respondent

no. 3, petitioners were given joining at Kumaon Region and pursuant to their appointments, they joined their services and rights were accrued in their

favour. But, on the representation of Mr. Suresh Chandra Bhatt the impugned orders have been passed by respondent no. 3 and respondent no. 5

whereby the Region of the petitioners have been changed and they have been transferred to Kumaon Region from Garhwal Region without affording

any opportunity of hearing to them.

10. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of

putting forward his case. In the present case, while passing the impugned order, opportunity of hearing was not given to the petitioners, which is

against the principle of natural justice and the order impugned is not sustainable in the eye of the law. Thus, the impugned order is liable to be set

aside.

11. In view of the above, writ petition is allowed. Impugned order dated 29.01.2018 as well as 07.03.2018 is hereby set aside. Petitioners are permitted

to continue their services in Kumaon Region.