
(2014) 10 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 134 (S/S) of 2011

Kundan Singh Saun and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2015) 2 UC 1391

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : K.N. Joshi, Advocates for the Appellant; B.P.S. Mer, Learned Brief Holder, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—Mr. K.N. Joshi, Advocate, present for the petitioner. Mr. B.P.S. Mer, learned Brief Holder, present for the State/respondents.

2. The petitioners are Assistant Teachers in Junior High School. They are aggrieved by order dated 11.02.2011 by which the promotion order of the petitioners dated 01.01.2011 as Assistant Teacher Government Junior High School has been cancelled.

3. In this writ petition, petitioner No. 6 has already withdrawn the writ petition, vide order dated 08.06.2012, as such any interim order granted by this Court shall be considered to have been withdrawn/vacated in his case and no benefit either of the interim order or final order of this Court will be applicable to him. For the remaining of the petitioners, the matter is being heard and is hereby decided as follows:

4. The petitioners before this Court were appointed as Assistant Teacher in Primary School in 1995. The essential conditions for appointment as an Assistant Teacher in Primary School at the relevant time, inter alia, was that one should possess a Diploma/Certificate in Basic Teacher's Training Certificate which in the State of U.P. as well as in the State of Uttarakhand is known as "BTC. Initially the petitioners were not having this mandatory qualification. However, since at the

relevant time there was an acute paucity of trained teachers (BTC qualification holders), the petitioners were appointed on a consolidated salary as untrained teacher. It is again an admitted fact that while in service all the petitioners have undergone the requisite BTC training and by now all of them are trained teachers.

5. The petitioners were, however, promoted as Assistant Teacher Junior High School on 01.01.2011. Since they were not being given the scale of trained teacher, they filed writ petition before this Court being Writ Petition No. 646 (S/S) of 2004 (Kundan Singh Saun & others Vs. State & others). The said writ petition was allowed on 20th December 2005, relying upon an earlier decision of learned Single Judge, rendered in Writ Petition No. 3615 (SS) of 2001 (Deepak Chandra Vs. Basic Shiksha Adhikari, Pithoragarh and Writ Petition No. 1243 (SS) of 2001 (Dinesh Singh Rawat and others Vs. State of U.P. & others). For the reasons best known to the State authorities this order was never challenged in a special leave petition in time. However, special leave to petition was filed belatedly which was dismissed on the ground of delay. In other words, the matter was never considered by the Hon''ble Apex Court as far as the case of the petitioner is concerned. All the same, since there was a direction of the learned Single Judge and in order to save themselves from contempt, an order was passed in favour of the petitioners on 20th September, 2010, by the Secretary, Government of Uttarakhand directing the Director, School Education, Uttarakhand to comply with the order dated 20.12.2005 passed in Writ Petition No. 646 (S/S) of 2004 i.e. to pay the difference of pay between the pay of untrained teacher and trained teacher and along with consequential benefits to the petitioners. Thereafter, the benefits were given to the petitioners.

6. Consequently, on consideration of the seniority which was liable to be given from the date of initial appointment, they were also promoted as Assistant Teacher, Junior High School (Class VI to VIII) i.e. senior elementary school. Later, the Government having realized that the date of the seniority would only be from the date, they have actually completed their BTC training, the earlier order dated 1st January, 2011 was recalled and the impugned order dated 11.02.2011 was passed.

7. Aggrieved, the petitioners have filed the present writ petition. It is also being brought to the notice of the Court that in compliance of the order dated 1st January, 2011, petitioners were promoted as Assistant Teacher, Junior High School and the order dated 11th February, 2011 being stayed by this Court, all the petitioners are teaching in senior elementary schools.

8. The order of the learned Single Judge dated 20.12.2005 was never challenged in special appeal, but belatedly challenged before the Hon''ble Apex Court, where on delay itself it was dismissed. However, from the other decision of this Court as well as from the later decision of Hon''ble Apex Court, it is absolutely clear that the date of seniority of an Assistant Teacher in an elementary school or senior elementary school has to be counted from the date of his substantive appointment. There is infact a specific Rule 22 of U.P. Basic Education (Teachers)

Service Rules, 1981, which was applicable in the State of U.P. and in the State of Uttarakhand till 2006. Rule 22 of U.P. Basic Education (Teachers) Service Rules, 1981 reads as under:--

"22. Seniority.--(1) The seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity: Provided that, if two or more persons are appointed on the same date their seniority shall be determined in which their names appear in the list referred to in Rule 17 or 17-A or 18, as the case may be.

Note.-A candidate selected by direct recruitment may lose his seniority, if he fails to join without valid reasons when a vacancy is offered to him whether the reasons in any particular case are valid or not shall be decided by the appointing authority.

(2) The seniority of a teacher who has been transferred from one local area to another in accordance with the provisions of Rule 21 shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the local area to which he has been transferred, as on the date of orders for transfer are passed, such a person shall not be entitled to any compensation."

9. Moreover, one of the essential conditions for appointment as primary school teacher is given under clause to Rule 8 of U.P. Basic Education (Teachers) Service Rules, 1981 which is "Basic Teacher's Certificate". This Certificate the petitioners never had, therefore, initial appointment of the petitioners which was made in 1995 cannot be said to be a substantive appointment. Their substantive appointment will be made when they have completed the training which is the in the year 2000. Consequently, seniority as an Assistant Teacher in primary school can only be calculated from the date they completed the training of BTC.

10. This Court while expressing this view has relied upon a decision of Hon'ble Apex Court which was rendered in Civil Appeal No. 2717 of 2006 (State of Uttaranchal and another Vs. Chandra Kishore Mahra and others) which was a case where the Hon'ble Apex Court held, relying upon Rule 22 of the aforesaid Rules, that a trained teacher can only claim regular pay scale from the date he acquires BTC training. The relevant part of the judgment is reproduced as under:--

"The eligibility and qualification for appointment to the post of Assistant Teacher, Primary School, as indicated above, is prescribed in Rule 8 of the 1981 Rules. It is true that the respondents fulfilled the eligibility and qualification, except that they did not have BTC training. Obviously, for want of BTC training, they were not qualified to be appointed as Assistant Teacher, Primary School in terms of Rule 8 of the 1981 Rules. The Government, in view of large number of vacant posts of Assistant Teachers, therefore, thought of appointing those candidates as Untrained Teachers on fixed pay, subject to their acquiring BTC training. It is not in dispute that the respondents have, after their appointment, acquired BTC training and they have also been regularized in the service. The question is,

having acquired the BTC training and, thus, having become Trained Teachers, can the respondents claim regular pay-scale of Assistant Teacher, Primary School from the date of their initial appointment. In our view, the answer has to be in the negative.

Pay-scale for a particular post can only be claimed from the date of regular appointment on having acquired the eligibility for that post and not from the anterior date. Merely because some of the similarly situated candidates went to the High Court earlier and the High Court passed order in their favour and such order was complied by the State Government, we are afraid, the respondents cannot be given benefits of such orders. As a matter of fact, one of such orders was complied with by the State Government under the threat of contempt. Be that as it may, we are of the opinion that the respondents could not claim regular pay-scale prescribed for the post of Assistant Teacher, Primary School from the date of their initial appointment as they did not have BTC training and could not have been appointed as Assistant Teacher in the regular pay-scale on the date of their initial appointment. Of course, the respondents would be entitled to regular pay-scale from the date they acquired BTC training."

11. In view thereof, the only question for determination whether the petitioners were appointed substantively in the year 1995 or later. It is clear that the petitioner was not substantively appointed in 1995 and their substantive appointment can only be treated after they have acquired the requisite training in the year 2000. Their seniority as an Assistant Teacher Primary School can only be calculated from the date they completed their training, irrespective of the period of service they have rendered as an untrained teacher. This is also irrespective of the fact that by order of this Court which was never properly challenged before the appellate authority, the petitioners were directed to be given the scale of trained teacher which" according to the respondents they have also given. No fault, therefore, can be found in the order dated 11.02.2011, passed by the respondent No. 3.

12. In view thereof, the writ petition fails and is hereby dismissed. It is, however, made clear that in case any person junior to the petitioners, after calculation of the seniority of the petitioners from the year 2000, has been promoted as an Assistant Teacher in senior elementary school, the petitioners shall not be disturbed from their present post. However their seniority shall be refixed in accordance with law, keeping in view the determination made above. No order as to costs.