

(2024) 03 UK CK 0064

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 503 Of 2016

Kusum Panwar

APPELLANT

Vs

Addl. Director Of Education (Secondary) & Others

RESPONDENT

Date of Decision : 15-03-2024

Acts Referred:

Citation : (2024) 03 UK CK 0064

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Bhagwat Mehra, Narain Dutt

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Heard.

2. Petitioner has challenged the order dated 18.02.2016 (Annexure No.12) passed by respondent no.1 whereby the representation moved by her has been turned down.

3. It is submitted by learned counsel for the petitioner that earlier, a writ petition being WPSS No.1447 of 2015 was moved by petitioner which was partly allowed by a Co-ordinate Bench of this Court vide order dated 04.11.2015, and respondent no.1-Addl. Director of Education (Secondary) Garhwal Division, Pauri was directed to decide petitioner's representation by a speaking order within three weeks from the date of production of order dated 04.11.2015; it was also directed that in case petitioner is actually promoted, her promotion shall be considered from the date when the persons junior to her were promoted. However, by the impugned order, the representation of petitioner was rejected.

4. From a bare perusal of impugned order, it appears that the impugned order has been passed by respondent no.1 in a callous and negligent manner as the basis for passing the order is different order dated 06.08.2015 passed by the Co-

ordinate Bench in some other case, which is not related, at all, to the present case.

5. When this fact was brought to the notice of this Court by learned Counsel for petitioner, the Court had called upon an explanation from respondent no.1, but subsequently, realizing the blunder, respondent no.1 promoted petitioner vide order dated 07.05.2016 but with immediate effect. The said order dated 07.05.2016 passed by respondent no.1 is passed over to this Court which is kept with the records.

6. Now, the only grievance left to be decided in the present petition is that petitioner has claimed promotion on the post of Assistant Teacher, L.T. Grade (English) from the date the persons junior to her were promoted whereas respondent no.1 has granted promotion to the petitioner with immediate effect from the date of order dated 07.05.2016, during pendency of present writ petition.

7. Despite giving opportunity and pendency of present petition since 2015, no counter affidavit, till date, has been filed by State. It is, however pointed out by learned State Counsel that the petition remained dismissed for default for about 05 years, but having gone through the record, it is reflected that the petition was dismissed for default on 01.05.2018 and it was restored on 18.07.2018, however, there was a technical defect while restoring the petition that delay was not condoned, and therefore, vide order dated 20.12.2023, delay condonation application was allowed and delay in filing the restoration application was condoned.

8. The fact of the matter is that no counter affidavit has been filed by the State.

9. From a perusal of record, this Court is of the opinion that no counter affidavit is required as such in the matter and the petition can be disposed of in absence of any counter affidavit.

10. The promotion has now been given to the petitioner and it is also not disputed that persons junior to petitioner have been promoted with effect from 08.04.2015. Therefore, petitioner is also entitled for the same relief.

11. Accordingly, the writ petition is allowed. Impugned order dated 18.02.2016 (Annexure No.12) passed by respondent no.1 is set aside. A writ of mandamus is issued to respondent no.1 directing him to grant notional promotion to petitioner w.e.f. 08.04.2015. The petitioner shall be entitled to get notional benefit from the said date till she was actually given promotion. Needless to mention that this period shall be reckoned for the purpose of seniority and other consequential benefits on the post of L.T. Grade (English).

12. There would be no order as to costs.

13. Pending application, if any, stands disposed of as such.