
(2019) 07 UK CK 0038

In the Uttarakhand High Court

Case No : Writ Petition No. 793 Of 2018 (S/S)

Manish Kumar

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0038

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Ajayveer Pundir, K.N. Joshi, V.S. Rawat, Sanjeev Singh

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of the present writ petition, petitioner has prayed for the following relief:

"(i) Issue a writ, in the nature of certiorari quashing the impugned order dated 27.02.2017 (contained as Annexure NO. 5 to this writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding/ directing the respondents to release the salary of petitioner including arrears, forthwith."

2. Brief facts of the case are that petitioner was initially appointed as Assistant Teacher (L.T. Grade) in Dr. B.R. Ambedkar Inter College, Garhmeerpur, District Haridwar (hereinafter referred as the 'institution') in the year 2009. In the year 2013, process for grant-in-aid of the institution commenced and steps in this regard were taken by the respondents. The respondent no.5/institution forwarded the name of all working teachers, including the name of the petitioner, before respondent no.1 through respondent no.4 for grant-in-aid of salaries of teachers and other employees including the petitioner. After considering all facts and circumstances of the matter respondent no.1 was pleased to include the

name of the respondent no.5/institution for taken grant for the year 2015-19. Thereafter, salaries for other similarly situated employees were disbursed except the petitioner and another lady teacher. The petitioner made several representations for redressal of his grievance. Respondent no.1 took the cognizance of the matter and constituted a meeting on 27.02.2017. In the said meeting, the respondent no.1 without considering the material available on record passed the impugned order dated 27.02.2017 and terminated the appointment of the petitioner. Hence, present writ petition.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the petitioner would submit that petitioner is fulfilling all the requisite qualifications for the post of Assistant Teacher (L.T. Grade) as he is holding the qualification of B.A. & B.Ed. He would further submit that petitioner applied for appointment on the post of Assistant Teacher in the institution/ respondent no.5. Petitioner was first in the merit list and secured 96.86 Marks. Petitioner was appointed on the post of Assistant Teacher (L.T. Grade) after adopting the due process. He would further submit that at the time of appointment of the petitioner, the college was managed and run by respondent no.5 on self finance basis and the petitioner was getting the salary from respondent no.5-institution.

5. It is contended that in the year 2013 process for grant-in-aid of respondent no.5- institution commenced and steps were taken by the respondents for grant-in-aid of respondent no.5-institution. The respondent no.5-institution forwarded the name of the all working teachers including the petitioner before respondent no.1 through respondent no.4 for grant-in-aid of salaries of teachers and other employees. The respondent no.1 included, the name of respondent no.5 for taking grant-in-aid for the years 2015-2016 vide communication dated 25.02.2016.

6. Learned counsel for the petitioner would further submit that salaries for other similarly situated employees were disbursed except the petitioner and another lady teacher. He would also submit that petitioner has made several representations in this regard, but respondents without considering the facts and circumstances of the matter passed the impugned order dated 27.02.2017, whereby the appointment of the petitioner was cancelled. It is contended that neither charge-sheet or any inquiry committee was constituted nor opportunity of hearing was afforded to the petitioner before passing the impugned order dated 27.02.2017. Lastly, it is contended that the impugned order dated 27.02.2017 is illegal, therefore, the same is unsustainable.

7. Per contra, learned counsel for the respondent no.5 would submit that the Institution, respondent no.5-institution was a self financed recognized institution, who has been taken under grant-in-aid scheme of the State Government vide order dated 25.02.2016. The petitioner claimed himself that he was appointed on

the post of Assistant Teacher, General Subject whereas the Principal of the said institution informed that the petitioner is not working as Teacher on regular basis and in fact he is working as PTA Teacher under Managerial Arrangement. He would further submit that only 01 post of Assistant Teacher, General subject is created/sanctioned under grant-in-aid scheme, whereas the management of the institution under self financed scheme had shown appointment of 02 teachers against the 01 sanctioned post. He would also submit that during the course of inquiry and hearing on the complaint regarding the appointment of the petitioner, the Additional Chief Secretary on 02.03.2017 issued minutes of meeting dated 27.02.2018, wherein it was held that the appointment of the petitioner was not published in widely circulated newspaper and only mere formalities have been completed in the name of procedure. Therefore, the petitioner cannot be treated to have been posted after due selection against the post of Assistant Teacher. Consequently, directions have been issued for cancellation of the appointment of the petitioner and another Assistant Teacher Mrs. Ravita Harkoli.

8. On the other hand, learned counsel for the petitioner would submit that since petitioner's services were absorbed in grant-in-aid institution, therefore, petitioner services are governed by the provisions of Regulations 2009 framed under Uttarakhand School Education Act, 2005. He would further submit that the procedure was prescribed for the termination of services or appointment for teachers of grant-in-aid institutions in Regulations 2009 framed under Uttarakhand School Education but the respondent no.1 while terminating the appointment of the petitioner did not follow the said procedure.

9. From a perusal of the impugned order dated 27.02.2017, it would reveal that the opportunity of hearing has not been provided to the petitioner while passing the said impugned order. The order impugned would further reveal that some complaint was received by the respondent no.1 in regard to the petitioner wherein he was shown appointment on the post of Clerk and not on the post of Teacher. In the said order, it has been stated that the appointment of the petitioner is doubtful as he remained on long leave without being any reason and for appointment of teachers no advertisement was published in any widely circulated newspaper and mere formalities have been completed instated of adopting due procedure, therefore, the appointment of the petitioner cannot be treated as a regular selection. The list of selected candidates has also been annexed as Annexure-2 to the writ petition, in which the name of the petitioner has been found on first place showing him to have secured 96.86 marks. Annexure-3 to the writ petition shows that the petitioner was appointed in the institution on 25.05.2009. However, the petitioner remained on long leave without sufficient reason and again joined the institution and he is still working

10. Undisputedly, the petitioner was working on the post of Assistant Teacher since long and only on the basis of some complaint, the impugned order has been passed. It is an admitted fact that without affording any opportunity of hearing to the petitioner in respect of the allegations made in the complaint, the

impugned order has been passed in an arbitrary manner.

11. In the case *S.C. Girotra v. United Commercial Bank* reported in (1995) 3 SCC 212, the Hon'ble Apex Court set aside the dismissal order which was passed without giving the employee an opportunity of cross-examination. In another case *State of U.P. v. C.S. Sharma* reported in AIR 1968 SC 158, the Apex Court has held that omission to give opportunity to an employee to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry, the witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine those witnesses and to lead evidence in his defence. In the case of *Punjab National Bank v. A.I.P.N.B.E. Federation* reported in AIR 1960 SC 160, the Apex Court has held that in such enquiries evidence must be recorded in presence of the charge-sheeted employee and he must be given opportunity to rebut such evidence.

12. A termination/dismissal order has serious consequence and should be passed only after complying with the rules of natural justice. In view of the above, the writ petition is allowed. Impugned order dated 27.02.2017 is quashed. Respondent/authority concerned is directed to permit the petitioner to continue on the post of Assistant Teacher (L.T. Grade), however, the respondents would be at liberty to pass order afresh, in accordance with law, after affording opportunity of hearing the petitioner.

13. No order as to costs.