
(2019) 07 UK CK 0066

In the Uttarakhand High Court

Case No : Writ Petition No. 2894 Of 2016 (M/S)

M/s Kanhiya Lal Polytechnic

APPELLANT

Vs

Presiding Officer And Others

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 142, 226, 227
Uttar Pradesh Technical Education Institution (Receiving Grant-In-Aid From The Government) Regulations, 1996 — Regulation 4, 15, 39, 39(2)

Citation : (2019) 07 UK CK 0066

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Siddhartha Sah, P.C. Bisht, Navneet Kaushik

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1) Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India seeking quashing of Labour Court's Award dated 22.06.2016, passed in Adjudication Dispute no. 21 of 2012, Naresh Kumar and others Vs. M/s Kanhaiya Lal Polytechnic, Roorkee.

2) The genesis of the controversy in hand is traceable to a labour dispute raised by respondent nos. 2 to 6 for seeking regularization of their services which was referred for adjudication by the State Government vide reference dated 02.05.2012 through the Labour Commissioner, Uttarakhand, Haldwani. The issue under reference was as follows:

"Whether not making the services of workmen namely Naresh Kumar, Satya Pal, Ram Hridaya, Raj Kumar and Amit Kumar permanent till now by the employer is proper and legal? If not, then what benefit / relief the petitioner employees are entitled to?

3) The reference dated 02.05.2012 was referred to the Labour Court, Haridwar

for adjudication, being Adjudication Case no. 21/2012, Naresh Kumar & others vs K.L. Polytechnic Roorkee. Summons were issued to the petitioner vide order dated 16.05.2012 fixing 16.06.2012. On 16.06.2012, both the parties were present and Presiding Officer granted time to both the parties to file their written statement. From the records it revealed that workmen (respondent nos. 2 to 6 herein) filed their written statement dated 26.07.2012, alleging therein, that K.L. Polytechnic Institute was established in Roorkee in the year 1956 and was upgraded in 1963 and thereafter known as K.L. Polytechnic, Roorkee. The petitioner Institute constructed a hostel for the residence of its students which was named 'Ishwar Dayal Memorial Hostel' and for the purpose of security, respondent nos. 2 to 6 were engaged on temporary / work charge basis on different dates between 1984 and 1999. It is contended in the written statement that one similarly situated person named Hari Singh is receiving minimum of scale since 2006 under orders of this Court, and for same work, different wages are being paid by the petitioner Institute to respondent nos. 2 to 6. It is further contended that the employers have full control and supervision over the hostel and it is part of the Institute. It is also contended that after rendering considerable length of service workmen are not been regularized though the posts are sanctioned. It is contended that Government Letter dated 09.01.1981 provides that those employees, who have completed five years of continuous work be made permanent.

4) It is the case of the respondent nos. 2 to 6 that from the date of their engagement, they are working in the Institution as Class IV employees. Sometimes they were shifted at hostel and sometime to the College and, therefore, they are entitled to all the benefits on the ground of equal pay for equal work.

5) It was further contended in the written statement that in the year 1994, workmen filed Writ Petition no. 18738 of 1994 before the High Court of Allahabad. Said Court vide order dated 12.10.1999, directed the Labour Enforcement Officer, Roorkee to dispose of the representation in three months. The Labour Enforcement Officer, Roorkee, vide order dated 31.01.2000 suggested to raise their dispute before the competent officer. In letter dated 22.10.2002, the petitioner has admitted that seven posts are vacant in the Institute. The employer vide letter dated 15.01.2015 requested the Director, Technical Education, Uttaranchal to approve the permanency of five temporary class IV employees. Thereafter, workmen / respondent nos. 2 to 6 preferred a Writ Petition no. 2309 (S/S) of 2001 before this Court for regularization of their services. This Court vide judgment dated 14.08.2006, dismissed the writ petition. However, it is provided that in case the posts are sanctioned and respondents required their duties at any point of time, liberty is given to the petitioners to apply afresh and the same shall be considered in accordance with law. It was contended that the State of Uttarakhand vide letter dated 21.11.2011 framed rules for regularization of daily wagers, contract employees, fixed wager, temporary and ad hoc appointed employees. It was further contended that as per

provisions of Industrial Disputes Act, 1947, Principal K.L. Polytechnic does not come within the definition of employer.

6) The employer / petitioner denied most of the averments made in the written statement. It was stated that the services of employees working in the hostel and Institution are different. In reply to para 25 of the written statement it was submitted that all the powers of employment are vested with the Director, Technical Education Department. It is also stated that the Institute is financially aided institute from the Uttarakhand Government and is controlled by the Director, Technical Education, Srinagar (Garhwal).

7) Having heard learned counsel for the parties, Labour Court vide Award dated 29.05.2015 concluded that posts relating to the employees are duly sanctioned and are lying vacant in the Institute. It was also held that the workmen fulfill the conditions for regularization. The employer was directed to take decision immediately on the issue of regularization of workmen. Aggrieved against the Award dated 29.05.2015, the petitioner preferred Writ Petition no. 748 (S/S) of 2016, Kanhaiya Lal Polytechnic Vs. Presiding Officer, Labour Court and others, which was disposed of by this Court vide order dated 22.03.2016 and the matter was remitted back to the Labour Court, Haridwar. In compliance of said order, the Presiding Officer, Labour Court after hearing learned counsel for the parties, allowed the reference vide Award dated 22.06.2016 directing the petitioner to take decision for regularization of workmen on class IV posts within two months of publication of Award. Hence, present writ petition.

8) While admitting the present writ petition, co-ordinate Bench of this Court passed following order on 22.10.2016. Relevant paragraph of said order is excerpted hereunder:

"The Management is directed to regularize the workmen as per the award dated 22.06.2016, rendered in Reference no. 21 of 2012, Naresh Kumar and other vs M/s Kanhaiya Lal Polytechnic within a period of one month after completing all the code of formalities. However, it shall be subject to the outcome of the writ petition.

9) By an interim order dated 22.10.2016, the Management was directed to regularize the workmen as per the Award dated 22.06.2016 within a period of one month after completing all the code of formalities. It was further provided that regularization of the workmen shall be subject to the outcome of the writ petition. There is no stay by the Court on the Award. Rather the co-ordinate Bench has directed the Management to regularize the services of the workmen.

10) The State of Uttarakhand was not a party before the Labour Court. After the order dated 22.10.2016 passed by the co-ordinate Bench of this Court, an impleadment application bearing no. 13847 of 2017 was moved to implead State of Uttarakhand through Addl. Secretary, Technical Education Department, Civil Secretariat, Dehradun as party respondent no. 7. The impleadment application was allowed vide order dated 31.10.2017. Since the order passed by the co-

ordinate Bench vide order dated 22.10.2016 was not complied with, workman Naresh (respondent no. 2 herein) filed Contempt Petition no. 119 of 2017, Naresh Vs. Ajay Kumar Agarwal and another. Vide order dated 16.08.2017, the contempt court directed the petitioner to make Secretary, Technical Education, Government of Uttarakhand as respondent no. 3. In compliance of said order, Mr. Om Prakash, Secretary, Technical Education was impleaded as respondent no. 3 in the contempt proceedings. During the pendency of contempt petition, the contempt court passed following order on 20.09.2018.

"Mr. Pankaj Kaushik with Mr. Navneet Kaushik, Advocates for the petitioner.

Mr. Siddhartha Sah, Advocate for respondent nos. 1 and 2.

Learned counsel appearing for the respondent nos. 1 and 2, on the basis of the instructions imparted to him by his client, who are present before the Court, has undertaken to regularize the service of the petitioner, subject to completion of codal formalities.

Necessary orders be passed to this effect within a week.

In view of this fair stand, list this case for further orders on 04.10.2018."

11) On 04.10.2018, the contempt court passed following order:

"Mr. Navneet Kaushik, Advocate for the petitioner.

Mr. Siddhartha Sah, Advocate for respondent nos. 1 and 2.

In sequel to order dated 20.09.2018, the petitioner has been regularized but codal formalities are required to be completed by the State Government.

The State Government is directed to do the needful within a period of two weeks.

List thereafter."

12) Feeling aggrieved by order dated 04.10.2018, Mr. Om Prakash, Addl. Chief Secretary, Technical Education Department (respondent no. 3 in the contempt petition) preferred a Special Leave to Appeal no. 12189 of 2018 before Hon'ble Apex Court. During the course of hearing, their Lordships made a query to learned counsel for the respondent-State whether the codal formalities would include discharging the financial liability as well. Learned counsel for the State could not reply the query made by their Lordships. Hon'ble Apex Court being dissatisfied with the reply, vide judgment and order dated 10.12.2018, allowed the appeal and set aside the impugned order dated 04.10.2018 passed in contempt proceedings and requested this Court to consider and decide the issue as to whether the compliance of codal formalities would include financial liability as well as service conditions. The relevant paragraphs of said judgment are excerpted hereunder:

"We have asked learned counsel for the respondent-State whether the codal formalities would include discharging the financial liability as well.

It appears that no clear answer is available on record. Since the Government was not a party to the proceedings, before passing the directions, the Government authorities or the officials ought to have been heard in the matter on the said basic issue.

In the circumstances, we set-side the impugned order dated 04.10.2018 and request the High Court to consider whether the compliance of codal formalities would include compliance of the regulations in respect of financial liability as well as service conditions.

Considering the facts of the case, we request the High Court to take up the matters as expeditiously as possible and dispose-of the pending writ petition within three months from today.

The appeal is allowed in aforesaid terms."

13) Before parting with the matter in issue, this Court has to answer the query made by Hon'ble Apex Court and to decide the actual meaning of 'codal formalities' whether it includes the financial liability. This Court has tried to found out the legal meaning of words 'codal formalities' and consulted the Oxford dictionary, Black's Law Dictionary, Webster , Law Lexicon and Halsbury laws of England, but the word 'codal' or 'codal formalities' is not defined in English dictionaries. Then, this Court took the help of Googal and finds that word 'codal' is a Spanish word which means -'formalities is something that follows traditional rules'. eg. even though you knew your request for time out at work would be approved, you still went through the formalities of filling only all the required paper work. Formalities also mean to align with customs of etiquette.

14) Since by an interim order dated 20.06.2018, the co-ordinate Bench of this Court has directed to complete code of formalities but till it reaches to the contempt court it changed the word 'code of formalities' to 'codal formalities' and is the same question arises before the Hon'ble Apex Court as to whether the codal formalities would include discharging the financial liability as well, and, as no clear answer was available on record to the query posed by the Hon'ble Apex Court, the Apex Court has set aside the impugned order dated 04.10.2018 passed by contempt court with a request to this Court to dispose of the pending writ petition expeditiously.

15) The meaning of word 'codal formalities' has been considered by Hon'ble Supreme Court in the judgments rendered by it in the case of C.Chenga Reddy and others Vs. State of A.P.(1996) 10 SCC 193. Relevant paragraph of said judgment is extracted hereunder:

"...In view of the findings with regard to the violation of the codal provisions and administrative lapses b the departmental officials, a departmental enquiry may be justified but in this fact-situation, it would be an unnecessary exercise. The counsel for the delinquent officers (appellants) have been heard by the Supreme Court at length and they were unable to assail the findings of the courts below

regarding codal violations and administrative lapses which may have caused some loss to the exchequer also. In the established facts and circumstances of these cases, it would be appropriate with a view to do complete justice between the parties, in exercise of jurisdiction under Article 142 of the Constitution of India, to direct that no departmental enquiry shall now be initiated against the departmental officials for their established administrative breaches and violation of the codal provisions in 1979-80. Consequent upon their acquittal, the officials shall be reinstated in service with continuity of service for all purposes but for their established administrative lapses and breach of codal provisions etc., they shall not be entitled to any back wages or any other type of monetary benefit for the period they remained out of service. The suspens on allowance, if any, received by all or any one of them shall however not be recovered from them. This punishment appears to be commensurate with the gravity of their lapses and shall serve the ends of justice. Those of the officials who may have reached the age of superannuation in the meanwhile, will get their pensionary benefits calculated on the basis of their continuous service but they shall be entitled to draw pension with effect from the date of this order only.

16) Their Lordships of Hon'ble Supreme Court in the case of Dinesh Kumar Gupta Vs. General Manager 1, State Bank of India and others (2018) 15 SCC 57, in para 3 of said judgment, has held thus:

"3. The learned counsel appearing for the appellant submits that there are some arrears of salary, allowances, etc. We direct the Bank to clear the arrears of salary and allowances, if any, within a period of one month from today. Needless to say, the appellant shall complete the codal formalities in that regard."

17) In view of the above, the actual meaning of word 'codal formalities', as appears to this Court, is that codal formalities includes following of traditional rules. There is a difference between the words 'codal formalities' and 'code of formalities'. The legal meaning of the word code is 'compilation of law'. Thus, the meaning of word 'code of formalities' is that the person has to fulfill all the legal formalities. Codal formalities would not include discharge of financial liabilities as well as service conditions. The question posed by Hon'ble Apex Court in its order dated 10.12.2018 is answered accordingly.

18) Now, this Court proceeds to decide the controversy involved in the matter.

19) In the supplementary affidavit filed by the petitioner it has been stated that after filing of the instant writ petition certain material developments have taken place and it is necessary to bring on record those material developments. It is stated that petitioner Institution is the only government aided Polytechnic institute in the State of Uttarakhand and is governed by the Regulations namely 'The Uttar Pradesh Technical Education Institution (receiving Grant-in-Aid from the Government) Regulations, 1996. As per Regulation nos. 4 and 15 of the aforesaid Regulations, after receiving permission to fill up the vacant sanctioned posts by the Director, Technical Education, the process of recruitment of class IV

employees is undertaken and the Principal of the Institution has nothing to do with the recruitment of Class IV employees. Regulation 39 provides that Principal is only the signing authority on appointment letters of the staff other than Principal and teachers recruited by due process mentioned in Regulation 4 and Regulation 15 of the aforesaid Regulations. It is also stated that workmen Naresh Kumar, Satyapal and Rajkumar are working in the hostel of the Institution as chowkidar / safai karamchari. No grant is received from the government for the hostel. Their salary is paid by the fees deposited by the students as hostel fee. There are no posts sanctioned by the Government for the hostel. Workmen Ram Hariday and Amit Kumar are working as class IV / safai karamcharies in the premises of the Institution. They are also not recruited against any sanctioned post by the Government. Their salary is also paid by other resources of the Institute. The nature of job of all the workmen is of temporary type and is based on availability of work in the Institution and hostel. The Institution has never paid them less than the minimum wages. It is categorically stated in the supplementary affidavit that when workmen Naresh Kumar, Ram Hriday and Satya Pal had earlier filed WPSS no. 2309 of 2001 regarding their regularization, the same was dismissed by this Court vide judgment and order dated 14.08.2006.

20) Since the writ petition filed by the workmen (respondent nos. 2, 3 and 4 herein) in the previous round of litigation was dismissed by this Court vide judgment and order dated 14.08.2006 and relief of regularization of their services was declined, the same relief could not be considered again.

21) The case of the workmen, in nutshell, is that they were engaged as casual labour in a hostel run by K.L. Polytechnic, Roorkee. The State of Uttar Pradesh framed the Regulations known as Uttar Pradesh Technical Education Institution (receiving Grant-in-Aid from the Government) Regulations 1996 (hereinafter referred to as 'Regulations of 1996'). It is mentioned in Regulation 39(2) of Regulations of 1996 that the Principal of an institution will be fully responsible towards the institute and he will exercise necessary powers for internal management and discipline, which includes the following powers:

"2(एक) छात्रों का प्रवेश और विद्यालय छोड़ना और उनको दण्ड जिसमें निकाला जाना और निष्कासन भी सम्मिलित है, निदेशक द्वारा यथा अनुमोदित सूची से पुस्तकालय और वाचनालय के लिए पाठ्य-पुस्तकों और पत्रिकाओं का चयन, समय-सारिणी की व्यवस्था और कर्मचारियों के कर्तव्यों का आवंटन, परीक्षा और परीक्षण का आयोजन, छात्रों की प्रोन्नति और रोका जाना, समस्त प्रपत्रों और संस्था की पत्रिकाओं और छात्रों की प्रगति रिपोर्ट का अनुरक्षण, परिषद् द्वारा दिये गये मानकों के अनुसार फर्नीचर, उपस्कर और उपकरणों की माँग तैयार करने, उनका प्रतिस्थापन और मरम्मत, छात्रों के स्वास्थ्य और चिकित्सीय उपचार की, खेल और पाठ्य सहगामी क्रिया-कलापों का आयोजन की व्यवस्था करना। संस्था के परिसर के अन्दर और बाहर शैक्षिक प्रयोजनों और क्रिया-कलापों के लिए कर्मचारियों की सेवाओं का उपयोग करना, प्रधानाचार्य और अध्यापकों से भिन्न कर्मचारियों की नियुक्ति, पदोन्नति, स्थायीकरण नियंत्रण और दण्ड, जिसमें सेवा से हटाया जाना और पदच्युति भी सम्मिलित है, छात्रावास अधीक्षक के माध्यम से छात्रावास का नियंत्रण।

(दो) अध्यापक और अन्य कर्मचारियों की सेवा पुस्तिका और चरित्र-पंजी का अनुरक्षण, उनकी चरित्र पंजियों में प्रविष्टि करना और संबंधित व्यक्ति को प्रतिकूल प्रविष्टियों की संसूचना देना, अध्यापकों और अन्य कर्मचारियों का नियंत्रण और

पर्यवेक्षण, संस्था के सभी श्रेणियों के कर्मचारियों को आकस्मिक अवकाश स्वीकृत करना, अध्यापकों के विरूद्ध अनुशासनात्मक कार्यवाही के लिए प्रबन्धक समिति की सिफारिश करना, शैक्षिक परीक्षाओं से सम्मिलित होने की अनुमति के लिए कर्मचारियों के अनुरोध पर प्रबन्ध समिति की सिफारिश करना।

(तीन) छात्र निधि का नियंत्रण और प्रशासन, प्रधानाचार्य का यह कर्तव्य होगा कि वह यह सुनिश्चित करे कि ऐसी निधि को उसी मद पर खर्च किया जाता है जिसके लिए वह आवंटित है, प्रबन्धक समिति की सिफारिश पर निदेशक द्वारा स्वीकृत सीमा तक निःशुल्कता और अद्धशुक्लता स्वीकृत करना, वृत्ति का और छात्रवृत्ति धनराशि का आहरण और वितरण करना।

(चार) वित्तीय और अन्य मामलों में जिसके लिए प्रधानाचार्य अकेले उत्तरदायी नहीं हैं, वह प्रबन्ध समिति के निदेशों का अनुपालन करेगा जो उसे प्रबन्ध समिति के अध्यक्ष के माध्यम से जारी किये जायेंगे।

(पाँच) यह धन के आहरण और वितरण के लिए उत्तरदायी होगा और यह भी सुनिश्चित करेगा कि किसी विशेष शीर्षक में स्वीकृत धन को केवल उसी शीर्षक में व्यय किया जा रहा है।

(छः) उसे इस निमित्त सरकार के नियमों और आदेशों के अधीन अंशदायी/सामान्य भविष्य निधियों से संस्था के किसी कर्मचारी (स्वयं के अलावा) को अस्थायी अग्रिम स्वीकृत करने की शक्ति होगी।

(सात) वह संस्था के कर्मचारियों, प्रबन्ध समिति के सदस्यों या प्रबन्ध समिति की उपसमितियों के सदस्यों के यात्रा-भत्ता स्वीकृत किये जाने के मामलों में नियंत्रक, अधिकारी होगा।

(आठ) वह वेतन और अन्य आकस्मिक बजट के समुचित उपयोग के लिए उस सीमा तक उत्तरदायी होगा जिस सीमा तक प्रबन्ध समिति और सरकारी द्वारा अनुमोदित किया गया हो।

(नौ) वह संस्था के किसी कर्मचारी द्वारा दक्षतारोक पार करने से सम्बन्धित मामलों के निपटाने के लिये उत्तरदायी होगा।

(दस) वह नियमों या सरकारी या निदेशक द्वारा निर्धारित प्रक्रियाओं के अनुसार समस्त कार्यों के लिए उत्तरदायी होगा।

(ग्यारह) वह आय और व्यय के वार्षिक अनुमानों को तैयार करने के लिए उत्तरदायी होगा और समस्त लेखाओं की लेखा परीक्षा करायेगा और लेखा परीक्षा रिपोर्ट और अनुमानों को प्रबन्धक समिति के समक्ष प्रस्तुत करेगा।

(बारह) वह संस्था द्वारा प्राप्त अनुदानों के सम्बन्ध में उपयोगिता प्रमाण-पत्र समय से प्रस्तुत करने के लिये उत्तरदायी होगा।

(तेरह) वह लेखा परीक्षा आपत्तियों के सम्बन्ध में प्रभावी, समुचित और तत्काल उपचारी कार्यवाही करने के लिये उत्तरदायी होगा।

(चौदह) वह सरकार/निदेशक/परिषद्/प्रबन्ध समिति द्वारा प्राधिकृत सदस्यों/अधिकारियों द्वारा संस्था के निरीक्षण किये जाने पर उन्हें समस्त आवश्यक सुविधायें उपलब्ध कराने के लिये उत्तरदायी होगा।

(पन्द्रह) वह मत देने के अधिकारी के साथ प्रबन्ध समिति का पदेन सदस्य होगा और प्रबन्ध समिति के सचिव के रूप में कार्य करेगा।

(सोलह) जब भी प्रधानाचार्य के व्यक्तिगत आचरण से सम्बन्धित कोई आरोप विचाराधीन हो तो वह न तो प्रबन्ध समिति की बैठक में उपस्थित होगा न ही मत देने के अपने अधिकार का प्रयोग करेगा।

(सत्रह) वह प्रबन्ध समिति की बैठक के दिनांक, समय और स्थान की सूचना देगा और प्रबन्ध समिति के अध्यक्ष द्वारा सम्यक् रूप में अनुमोदित बैठक की कार्यसूची का परिचालन पंजीकृत डाक द्वारा ऐसी बैठक के कम से कम 15 दिन पूर्व सदस्यों में करायेगा।

(अठारह) प्रशासन योजना में यथा उपबन्धित के अनुसार वह छात्र कल्याण लेखा समिति के परामर्श और सहायता से छात्र

कल्याण निधि का संचालन और अनुरक्षण करेगा।

(उन्नीस) प्रधानाचार्य संस्था के कर्मचारियों और प्रबन्ध समिति के मध्य संसूचना का माध्यम होगा।"

22) It is contended that since the control on the hostel is through the hostel Superintendent, therefore, the Principal is the Appointing Authority. Regulation 15 provides the procedure of direct recruitment on the posts other than the posts of Principal and teachers though a Selection Committee constituting of following members:

(i) President of the management committee of institute
- President

(ii) Secretary of the institute
- Member

(iii) Officer appointed by the Director, who is below the rank of Asstt. Director, Technical Education, U.P. - Member

(iv) Officer appointed by the Director, who is below the rank of Dy. Secretary
- Member

23) Clause (6) of Regulation 15 stipulates that the posts of Assistant, Peon, Gardner, Chowkidar, Orderly, Peon and Library Assistant should be filled by direct recruitment through the Selection Committee constituted under sub-regulation (1) on the basis of procedure prescribed in Group 'D' Employees Service Rules, 1985 (as amended from time to time).

24) The services of workmen working in a hostel of K.L. Polytechnic, Roorkee are not governed by the Regulations 2013. The Joint Secretary of State of Uttarakhand wrote a letter dated 15.12.2015 in this regard to the Director, Technical Education, Uttarakhand. A perusal of the material available on record would show that though the Principal of the Institution will look after the affairs of the hostel through the hostel Superintendent, but no financial assistance will be provided by the State Government to run the hostel. The student hostel is being run from the funds collected from the students. Learned Labour Court vide Award dated 22.06.2016 has directed the petitioner to regularize the services of the workmen (respondent nos. 2 to 6 herein) in view of the Regularization Rules 2011, whereof the Regularization Rules 2012-13 are not applicable in the Institution.

25) Admittedly, the State of Uttarakhand was not a party to the proceedings before the Labour Court. Neither the workmen have impleaded it as necessary and proper party, nor the Labour Court thought it proper to implead the State as necessary party before passing the impugned Award. Principal, K.L. Polytechnic, Roorkee is an employee of the Institution appointed by the Director, Technical Education. Being an employee of the Institution, he has got no authority to appoint or regularize the services of the workmen (respondent nos. 2 to 6 herein). Thus, the State of Uttarakhand, who is bearing the expenses viz.

salaries etc. of the petitioner Institute, was the necessary and property party. The petitioner Institute is not in a position to comply with the directions issued by the Labour Court vide impugned Award.

26) Though the powers of the Principal have been defined, but vacancy has to be declared by the Director, Technical Education. Unless the vacancy is declared in an Institution covered under grant-in-aid, the Principal himself has no authority to appoint anyone. It is only the Selection Committee which is empowered to appoint Class IV employees as per Regulation 15. In fact, there are no regularization rules to regularize the services of the workmen working in aided technical education institutions. The Labour Court has wrongly interpreted the provisions of Rule 29(2) of the Rules. Since K.L. Polytechnic, Roorkee is an aided Institution and respondent nos. 2 to 6 were claiming their regularization, the principal employer is the Director, Technical Education, Govt. of Uttarakhand and without impleading him as party respondent, the Labour Court should not have proceeded to decide the lis against the petitioner which indirectly is an Award passed against the State Government.

27) In view of the fact that the respondent no. 7 State Government (impleaded herein) was not impleaded as party respondent before the Labour Court, as such, this Court cannot exercise the jurisdiction of original authority in exercise of its jurisdiction under Article 226/227 of the Constitution of India. Therefore, respondent no. 7 be impleaded as party respondent in the adjudication case and the same shall be decided after affording opportunity of hearing to it.

28) In view of the above, the writ petition stands allowed. Impugned Award is hereby set aside. The matter is remanded back to the Labour Court, Haridwar to decide the lis expeditiously, in accordance with law, after impleading respondent no. 7 State of Uttarakhand through Addl. Chief Secretary, Technical Education Department, Civil Secretariat, Dehradun, as party respondent and after giving opportunity of hearing to all the parties, preferably within a period of six months from the date of production of certified copy of this judgment.

29) No order as to costs.