
(2011) 07 UK CK 0178

In the Uttarakhand High Court

Case No : Writ Petition No. 201 (S/S) of 2009

Nandan Singh Nayal and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Citation : (2011) 07 UK CK 0178

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—By means of this petition the Petitioners have sought the following relief:

(I) To issue a writ, order or direction in the nature of mandamus commanding and directing the Respondent authorities to pay the consolidated salary to the Petitioners of Rs. 8,020/- and Rs. 6,980/- working the class-III and class IVth posts respectively in the department.

(II) To issue a writ, order or direction in the nature of mandamus commanding and directing the Respondent authorities to pay the consolidated salary of Rs. 8,020/- and Rs. 6,980/- on the basis of recommendation made by the State Election Commission from time to time to the Chief Secretary, Uttarakhand Sashan Dehradun.

(III) To issue any other order or direction, which be deemed fit and proper under the facts and circumstances of the case in favour of the Petitioners.

(IV) Award the cost of the writ petition to the Petitioners.

2. Brief facts giving rise to the present writ petition are that according to Petitioners, they were appointed in the years 2001 and 2002 on different dates, on the basis of agreement on contract in the office of State Election Commission and Panch Sthaniya Chunawalaya in various districts of Uttarakhand on the posts of Kanisth Sahayak/Data Entry Operators and Peon/Chowkidars. Class III

employees were paid Rs. 3600/- per month and Class IV employees were paid Rs. 3000/- per month consolidated salary.

3. The allegation of the Petitioners is that the employees appointed on contract basis in the department on class III and class IV posts were paid the consolidated salary of Rs. 8020/- and Rs. 6980/- respectively, while they are doing the same job which the Petitioners are doing from last many years. The Petitioners also alleged that the employees working from the three years in the Department have been adjusted on the basis of approval or recruitment of Department of Uttarakhand Sashan and in this context the documents supplied by Secretary/ Chief Election Officer dated 6.11.2007 shows that nine persons have been adjusted/regularized in the department who have completed three years service on the basis of contract vide G.O. No. 1415/17-A-1-158/74 Election Department dated 18.3.1986 on the approval of Karmik Vibhag Uttarakhand Sashan Dehradun.

4. It is further alleged by the Petitioners that the State Election Commission Uttarakhand has written letter to the Secretary Panchayat Raj on 19-12-2007, 18-6-2008, 7-8-2008, 8-10-2008 and 18-11-2008 for increasing the honorarium to the Petitioners, but the Petitioners are not being paid increased honorarium.

5. The Respondent State Election Commission has filed counter affidavit and alleged that the State Election Commission was constituted in the State of Uttarakhand on 30-7-2001 and prior to it the entire work of elections was being conducted by the erstwhile State Election Commission U.P. Vide G.O. dated 5-2-1996 seven temporary posts were created for the district level Panch Asthani Chunawalaya for the period 29-2-1996 which were to be filled up from the retrenched/surplus employees of local bodies. The aforesaid period of temporary arrangement was extended till 28-2-2001 vide G.O. dated 25.4.2000. Consequent to creation of State Election Commission, Uttarakhand aforesaid period of temporary arrangement was extended till 28.2.2002 vide G.O. dated 26.2.2002. Lastly the said temporary arrangement was further extended upto 28-2-2009 vide G.O. dated 17.2.2009. Similarly for the head quarter of Election Commission some posts of typists, junior assistant cum data entry operators, peon, sweeper etc were created vide G.O. dated 30-7-2001. These posts were to be filled up from the employees of Rural Development Department, Panchayatraj Department and Panch Asthani Chunawalaya on deputation. Since Rules for appointment against the vacant posts at Headquarter of State Election Commission and District Level Offices have not been framed so far No. appointment could be made and in contingency to conduct elections of local bodies as well as the Panchayats some persons including the present Petitioners were engaged on contract basis by the erstwhile State Election Commission U.P. as well as Uttarakhand. The honorarium for class III was Rs. 3600/- and for Class IV was Rs. 3000/- per month. The aforesaid period came to an end on 22-6-2003. Aggrieved by the order dated 22.6.2003 some of the employees filed several writ petitions before this Court and got interim orders in their favour. On

the basis of said interim orders these employees were permitted to work in the State Election Commission and District Level Offices on contract basis. It is further alleged in the counter affidavit that on 2-5-2007 bunch of writ petitions leading case being W.P. No. 373 (S/S) of 2003 Atul Bhatt and Anr. v. State Election Commission and Ors. were finally disposed of by this Court and direction was issued that the competent authority to take into consideration the fact that in case in near future the posts are filled in accordance with law the Petitioners may be provided weightage as stated by Respondents in the order rejecting representation of Petitioners.

6. On the question of increase in consolidated salary, it is alleged in the counter affidavit that the matter pertaining to the increasement of the honorarium of employees engaged on contract basis in the headquarter of the Commission is pending before the Panchayat Raj Department inasmuch as the power to create the posts and fix the honorarium vests with the said department. Similarly matter pertaining to increasement of honorarium of employees engaged on contract basis at the district level offices of the Commission viz. Panchasthani Chunawalaya is pending before the department of Urban Development Government of Uttarakhand inasmuch as the power to create the posts and fix the honorarium vests with it. Therefore, nothing could be done by the State Election Commission until and unless any positive response comes from the Government level.

7. The Respondent/State also filed counter affidavit and alleged that all the Petitioners were engaged on contractual basis for a fixed period on the posts of class III and class IV and they are continuing on the fixed remuneration of Rs. 3600/- for class III and Rs. 3000/- for class IV employees. It is also alleged that after the said fixed period of engagement and after the completion of election work, when Petitioners were removed from the engagement, aggrieved by the said orders the Petitioners have filed various writ petitions, in which one is W.P. No. 373 (S/S) of 2003 Atul Bhatt v. State and Ors. along with 19 other writ petitions, which are pending before the High Court and under the cover of stay order in their favour, the Petitioners are still working in the Election Commission and in the 11 districts of the State. It is further alleged that in the G.O. dated 5.1.2001 and 3.8.2001 it was provided that the officers/employees of Panchayat Raj, Rural Development or Local Bodies will be given engagement in the commission on contract basis or in deputation, but the Commission has not done so and without the consent/approval of State Government has engaged the Petitioners on contractual basis without following the due process of selection. The Petitioners are claiming equal salaries and allowances of Rs. 6890/- and Rs. 8020/- which is only admissible to those appointed/working employees through Ex-service Welfare Cooperative Limited of Uttarakhand in view of provisions of G.O. No. 391 dated 3.7.2008. The above salary is only payable to those employees who are appointed through said Ex-service man, their wife/dependent son/daughter till maximum 10 years, as a rehabilitant package to the Ex-service man. Not a single Petitioner is in the said category and they are appointed only

on contractual basis.

8. The Petitioners filed rejoinder affidavit and reiterated the facts mentioned in the writ petition.

9. The State filed supplementary counter affidavit and alleged that the revised basic pay of class III and class IV employees is Rs. 7100/- and 4740/- respectively and the Petitioners are comparing them with the persons working in some departments of State Government on the basis of outsourcing and they too are not getting the consolidated salary of Rs. 8020/- and Rs. 6980/- respectively and actually they are getting Rs. 6550/- and 5700/- as is clear from G.O. dated 3.7.2008, annexed as SCA-1.

10. I have heard learned Counsel for parties and perused the record.

11. At the outset it is to be mentioned here that by means of this writ petition the Petitioners have sought a writ of mandamus commanding and directing the Respondents authorities to pay the consolidated salary to the Petitioners of Rs. 8020/- and Rs. 6980/- working in class III and class IV posts respectively.

12. The assertion of the Petitioners is that the State Election Commission from time to time recommended to the Chief Secretary, Uttarakhand Sashan Dehradun for payment of above salary to the Petitioners. It is true that the State Election Commission has written various letters to Chief Secretary, Uttarakhand Sashan, Dehradun for increase of consolidated salary of the class III and class IV employees on contractual basis, but the State Government has not taken any decision as yet in this matter.

13. The learned Standing Counsel appearing on behalf of the State has alleged that the Petitioners are working on contract basis, and the period was extended from time to time and ultimately it ended on 22.6.2003. The Petitioners filed writ petitions and they are working in the protection of stay orders. The similar bunch writ petition No. 373 (S/S) of 2003 Atul Bhatt and another v. State Election Commission and Ors. were finally disposed of by this Court and direction was issued to the competent authority to take into consideration that in accordance with law the Petitioners may be provided weightage as stated by Respondents in the order of rejecting representation of Petitioners in that case.

14. I have gone through the above judgment dated 2.5.2007 passed by learned Single Judge of this Court in Bunch matters of W.P. No. 373(S/S) of 2003. In that petition the Petitioners have raised the issue of their regularization. The representation of the Petitioners in those cases were rejected by the department and the learned Single Judge has observed that the representations for regularization of their services, have rightly been rejected in view of decision of Hon'ble Apex Court in the case of Secretary State of Karnataka v. Uma Devi reported in (2006) 4 SCC 01. The issue of increasement of salary was not raised in the aforesaid writ petitions.

15. Learned Counsel appearing on behalf of the Petitioners has vehemently

argued that the Petitioners are working on class III and class IV posts and minimum wages payable to class III and class IV employees should be paid to them. He also submitted that this Court in Writ Petition No. 414 of 2010(S/S) decided on 10-8-2010 has issued direction to pay minimum wages equal to the salary at the lowest grade of the employee of their cadre of class IV in view of the Apex Court judgment of Uma Devi (supra) and the Petitioners are also entitled to get the minimum wages equal payable to class III and class IV employees.

16. It is true that the daily wagers are entitled to get salary equal to the salary that is being paid to regular employees in view of Uma Devi case, but in the instant case the Petitioners have not been able to establish that the class III and Class IV employees in the department are getting the salary which the Petitioners are claiming in this writ petition. The Petitioners have relied their claim on the letter No. 3060 dated 18-11-2008 Annexure No. 22 to the writ petition in which the State Election Commission has written to the Chief Secretary Uttarakhand Sashan to increase the salary of class III and IV employees on contract basis vide G.O. No. 392/XVII (2)/2008-09(17)/2004 dated 3-7-2008. But allegation of the State is that salaries and allowances of Rs. 6890/- and Rs. 8020/- is only admissible to those appointed/working employees through Ex-service man Welfare Cooperative Limited of Uttarakhand in view of provisions of G.O. No. 391 dated 3.7.2008. The above salary is only payable to those employees who are appointed through Ex-service man, their wife/dependent son/daughter, till maximum 10 years, as a rehabilitant package to the Ex-service man. Not a single Petitioner is in the said category and they are appointed only on contractual basis.

17. The State filed supplementary counter affidavit and alleged that the revised basic pay of class III and class IV employees is Rs. 7100/- and 4740/- respectively and the Petitioners are comparing them with the persons working in some departments of State Government on the basis of outsourcing and they too are not getting the consolidated salary of Rs. 8020/- and Rs. 6980/- respectively and actually they are getting Rs. 6550/- and 5700/- as is clear from G.O. dated 3.7.2008, annexed as SCA-1. The Petitioners have not refuted the above contention raised on behalf of the State. This G.O. has been issued specifically in respect of employees engaged on contractual basis through Uttarakhand Exservicemen Welfare Corporation Limited.

18. However, the State Election Commission Uttarakhand in para 12 of the counter affidavit has specifically stated that the increasement of the honorarium of employees engaged on contract basis in the headquarter of the Commission is pending before the Panchayati Raj Department inasmuch as the power to create the posts and fix the honorium to the employees of headquarter vests with the Panchayati Raj Department. Similarly matter pertaining to incresement of honorarium of employees engaged on contract basis at the district level offices of the commission viz. Panchasthani Chunawalaya is pending before the

Department of Urban Development Government of Uttarakhand.

19. In the aforesaid facts and circumstances of the case that the Petitioners have not been able to brought on record the cogent and reliable documentary evidence regarding the salary being paid to class III and class IV employees in the department, which they are claiming and since the matter of increasement of consolidated salary of class III and class IV employees engaged on contract basis is pending before the competent authority and yet No. decision has been taken, No. direction can be issued in respect of enhancement of honorarium to the Petitioners.

However, the authorities concerned are directed to expedite the decision in the matter of increasement of salary of class III and class IV employees engaged on contract basis.

20. It is also expected from the competent authority to take into consideration the fact that in case in near future the posts are filled in accordance with law, the Petitioners may be provided weightage, and the Respondents may also consider sympathetically the issue of relaxation in age of those who have worked with the department, as has been directed by the learned Single Judge of this Court in the order dated 2.5.2007 passed in Bunch matters of W.P. No. 373 (S/S) of 2003, Atul Bhatt and Anr. v. State Election Commission and others.

21. With the above directions the writ petition is disposed of finally.