

(2012) 07 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 4168 of 2001 (S/S)

Prakash Chandra Khanduri

APPELLANT

Vs

Garhwal Anushuchit Janjati Vikas Nigam Ltd. and Another

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 12
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2013) 2 UC 1087

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

**Advocate : Rajendra Dobhal, assisted by Sri G.D. Joshi, for the Appellant;
Sandeep Kothari, for the Respondent**

Judgement

Tarun Agarwala, J.—The petitioner was appointed as an Office Assistant in the year 1982 on daily wage basis. In 1984, the petitioner was given a regular appointment on the post of Office Assistant in the pay scale 360-550 per month. On 22nd May, 1985, the General Manager of Garhwal Anushuchit Janjati Vikas Nigam Limited issued an order directing the petitioner to do the additional work of a Senior Clerk in addition to the work of an Office Assistant. Since then, the petitioner was also discharging the duty of a Senior Clerk. The petitioner thereafter made a representation requesting the authority to promote him on the post of Senior Clerk or pay the salary of a Senior Clerk since he was discharging his duties as a Senior Clerk. The matter remained pending and eventually on 10th April, 1990 the Board of Directors, in their 39th Meeting, resolved to promote the petitioner on the post of Senior Clerk and pay the scale to him permissible on that post. Since then the petitioner was working on the post of Senior Clerk, but for reasons best known to the respondents, the salary of the post of Senior Clerk was not being paid to the petitioner. Instead, the salary of Office Assistant was being paid. The petitioner made representation, which fell on deaf ears. On 5th October, 1995, the post of Office Assistant was abolished, pursuant to a decision taken in the 56th Meeting of the Board of Directors.

Consequently, the petitioner could not be given the pay scale of an Office Assistant after this date, i.e., 5th October, 1995. Being continuously harassed and not getting its dues, the petitioner raised an industrial dispute before the Labour Court u/s 33C(2) of the Industrial Disputes Act, praying that the employer should be directed to give the petitioner the pay scale of 490-760, which is the pay scale for the post of Senior Clerk. The Labour Court, by its Award dated 19th May, 1999, dismissed the claim of the petitioner on the ground that the matter is one of promotion which is in the exclusive domain of the employer and the Labour Court cannot direct the employer to pass orders of promotion. The Labour Court also observed that the Resolution of the Board of Directors dated 10th April, 1990 was subsequently kept in abeyance by the Board itself.

2. The petitioner, being aggrieved, thereafter filed the writ petition in the year 2001, which was disposed of by an order of 22nd May, 2008, directing the respondents to pay the pay scale of Senior Clerk to the petitioner. A review application was filed by the respondents, which was rejected by an order of 10th February, 2010. Subsequently, the respondents filed the Special Appeal, which was allowed by a decision dated 27th December, 2010, directing the writ court to consider the question as to whether, in law, the pay scale of the post of Senior Clerk could be denied to the petitioner on the ground of financial crisis. The said appellate court accordingly remitted the matter back for a fresh decision and that is how the matter has come up again before this Court.

3. When the case was taken up for hearing, a supplementary affidavit was filed by the respondents, which has been taken on record.

4. Heard Sri Rajendra Dobhal, the learned Senior Counsel assisted by Sri G.D. Joshi, the learned counsel for the petitioner and Sri G.D. Joshi, the learned counsel for the respondents.

5. The supplementary affidavit and the counter affidavit filed earlier of the respondents indicate that the petitioner was initially asked to do the work of a Senior Clerk in addition to the work of an Office Assistant. By a Resolution in the 39th Meeting of the Board of Directors dated 10th April, 1990, the petitioner's promotion on the post of Senior Clerk was approved. According to the respondents, by the 53rd and 61st Meeting of the Board of Directors, the Resolution dated 10th April, 1990 was kept in abeyance on the ground of financial crisis. Learned counsel for the respondents submitted that on account of financial crisis, the petitioner's promotion could not be given effect to nor could he be paid the salary of the post of Senior Clerk.

6. Apart from the aforesaid admitted facts, the crucial fact admitted by the respondents is, that pursuant to the Resolution dated 10th April, 1990, the petitioner continued to work as a Senior Clerk. The Court finds that the Resolution of 10th April, 1990 was implemented to the effect that the petitioner started working as a Senior Clerk but pay scale was denied to him and the

reasons supplied is financial crisis. Another crucial fact, which has been admitted by the respondents, is the non denial of the fact that the post of Office Assistant was abolished on 5th October, 1995.

7. In the light of the aforesaid admission, it is clear that once the post of Office Assistant was abolished, the petitioner could not do the work of Office Assistant and, in addition to it, do the work of a Senior Clerk.

8. The petitioner has prayed in the present writ petition that he should be given the pay scale of a Senior Clerk w.e.f. 10th April, 1990, i.e., the date when the Board took its decision. Admittedly, the petitioner has been working on the post of Senior Clerk which has not been denied by the respondents. The only ground is lack of resources or financial constraints. No proof of this allegation has been brought on record to indicate as to what was the financial crunch that restrained the respondents from not releasing the pay scale. There is no iota of evidence to indicate the financial crisis that fell upon the respondents' organization. Only a bald allegation has been made, supported by two Resolutions of the Board, keeping the promotion of the petitioner in abeyance.

9. Even assuming without admitting that the respondents were in a financial crisis, there is no order indicating that the respondents directed the petitioner to stop doing the work of a Senior Clerk and do the work of Office Assistant. In any case, such direction could not be issued beyond 5th October, 1995, because on that date the Board of Directors took a decision to abolish the post of Office Assistant, i.e., the post on which the petitioner was working originally.

10. In the light of the aforesaid facts, the Court is perplexed that the respondents, being an instrumentality of the State, as contemplated under Article 12 of The Constitution of India, is adopting unfair labour practice and is not acting as a model employer. If the State can adopt such practice, why can't a private entrepreneur do the same thing? The respondents have continued to take the work of Senior Clerk from the petitioner but did not release the salary of the post on which he was working.

11. It is settled principle of law that the employee is entitled to be paid the salary of the post on which he was working. Admittedly, the petitioner was working as a Senior Clerk, pursuant to the Resolution dated 10th April, 1990 and, to put the matter at rest and to avoid any controversy, was working on that post of Senior Clerk since 5th October, 1995, i.e., the date when the post of Office Assistant was abolished. The petitioner is accordingly entitled to be paid the salary of the post of Senior Clerk. In the light of the aforesaid, the writ petition is allowed. A writ of mandamus is issued directing the respondents to pay to the petitioner the salary of a Senior Clerk w.e.f. 5th October, 1995, i.e., the date when the post of Office Assistant was abolished by the Board of Directors. Arrears be calculated and paid by the respondents within two months from the date of production of a certified copy of the order, failing which, interest @ 8% per annum will be calculated from 5th October, 1995 till the date of payment.