
(2018) 12 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1789 Of 2011

Promod Kumar Joshi

APPELLANT

Vs

Uttarakhand Rajya Sahkari Sangh Ltd. & Another

RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:

Citation : (2018) 12 UK CK 0033

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : B.S. Kathai, Siddhartha Sah, Subhash Upadhyaya

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. There had been an earlier Writ Petition (S/S) No. 202 of 2006 'Bhuwan Chandra Sharma & others vs. U.P. Cooperative Federation Ltd. & Another', wherein, the following reliefs were sought:

"(i) Issue a writ, order or direction in the nature of mandamus, commanding the respondent authorities to give the promotion pay scale and an increment in the salaries of petitioners w.e.f. the date, when they have completed their 14 and 19 years of continuous services on their respective posts in the federation respectively, as per the Government Order dated 2.12.2000 (Annexure No. 1 to this writ petition)

(ii) Issue a writ, order or direction in the nature of mandamus, commanding the respondent authorities to pay the salary to the petitioner no. 1 in pay scale of Rs. 5500-9000 w.e.f the date, from when the petitioner no. 1 is discharging the duties of the Office Superintendent in the federation.

(iii) Pass any other and further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of writ petition to the petitioners."

2. Precisely on scrutinizing the relief, it was rather the promotional pay scale, which was being sought by the petitioner along with the increments to be paid to him on satisfactory completion of 14 and 19 years of satisfactory services rendered, the claim was on the basis of the covenants contained in the Government Order dated 02.12.2000. In this Writ Petition the petitioner was impleaded as petitioner no. 9. This Writ Petition was instituted in the year 2006 and decided by the Court on 27.04.2012.

3. Later on, the petitioner had filed the present Writ Petition on 11.12.2011, during the pendency of earlier Writ Petition, being Writ Petition (S/S) No. 1789/2011 praying for the following reliefs:

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondent no. 1 to grant the petitioner next promotional payscale of 8,000-250-13,500 w.e.f. 1/12/1999 when he had completed 14 years of continuous satisfactory service on the post of Kray-Sahayak.

(ii) Issue any other writ, order or direction which this Hon'ble Court deems fit and proper under the facts and circumstances of the case."

4. The subsequent Writ Petition as filed on 11.12.2011 was apart from the fact that it was almost raising an identical relief, rather the foundation of the writ was based on the Government Order dated 2.12.2000. Surprisingly, in the second Writ Petition No. 1789 of 2011 the petitioner has not disclosed the fact of pendency of earlier Writ Petition No. 202 of 2006 in which petitioner was also a party.

5. In the second Writ Petition, i.e. Writ Petition No. (S/S) 1789/2011, the petitioner contends that the second Writ Petition, the cause has accrued on the basis of the order, which was rendered by the Managing Director of Uttarakhand State Cooperative Federation Ltd. on 15.12.2007 that would be giving a fresh cause of action. Apparently, this order was passed on 15.12.2007 when the earlier Writ Petition of the petitioner was pending. There is no reason disclosed as to why this order, which the petitioner contends to be giving him a fresh cause of action was not brought on record in the earlier Writ Petition and as to why it was not challenged in the earlier Writ Petition by amendment, or even in the second Writ Petition filed by the petitioner. Rather, it also reflects from the record that this order has not been put to challenge even in the present Writ petition. This Court is of the view that if the petitioner alleges that order of respondent no. 2 dated 15.12.2007 was giving a fresh cause of action, that at least it ought to have challenged, which was not done by the petitioner, that too when the order dated 15.12.2007 was also based on the consideration of Government Order dated 02.12.2000, which was under consideration for relief in the earlier Writ Petition.

6. As would be apparent from the judgment dated 27.04.2012, the

Coordinate Bench had considered the Government Order dated 02.12.2000, and the various decisions already rendered by the Hon'ble Court as to how the claim for the period prior to the creation of the State, how it was to be apportioned between the two Cooperatives of State of Uttar Pradesh and that of State of Uttarakhand, and who would be liable to pay the salary or benefit claimed because of the implications of the Government Order dated 2.12.2000. It was held that for period prior to 01.01.2005 responsibility would be of U.P. Cooperative Federation Ltd. and for subsequent period it would be the responsibility of Uttarakhand State Cooperative Federation Ltd. Thus, Court concluded as under:

"This argument of the U.P. Cooperative Federation Ltd. is wholly misconceived. This Court has categorically held that all the employees of the U.P. Cooperative Federation Ltd. who stood transferred to Uttarakhand State Cooperative Federation are liable to be given the benefit of Government Order dated 2.12.2000. The case cannot be distinguished from other cases."

7. Having held so by various judgments it was necessary that petitioner should have impleaded U.P. Cooperative Federation Ltd. Having not impleaded U.P. Cooperative Federation Ltd. as party respondent in the present second Writ Petition, on this ground also the Writ Petition deserves to be dismissed.

8. So far as the claim of revision of promotional pay scale based on the Government Order dated 02.12.2000 is concerned, the same has been adjudicated by the learned Single Judge by the judgment dated 27.04.2012 rendered in Writ Petition No. 202 of 2006. It was expected from the petitioner that when he was a party to the earlier Writ Petition he ought to have disclosed the fact of pendency of the earlier Writ Petition in the subsequent Writ Petition. More particularly, when the petitioner was claiming the same relief based on the Government Order dated 02.12.2000. No disclosure of the pendency of the Writ Petition earlier in which the petitioner has claimed for the same relief and coupled with the fact that the fact that the present cause of action, which the petitioner has contended being that of 2007, which was not brought on record in the earlier Writ Petition No. 202/2006, subsequent Writ Petition would not be maintainable.

9. Accordingly, the same is dismissed.

10. There will be no order as to cost.