

(2019) 04 UK CK 0158

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 590 Of 2016, 3076, 3127, 3128 Of 2017, 209, 281, 447, 491, 572, 634, 641, 645, 653, 657, 666, 679, 680, 687, 710, 776, 813, 922, 1204, 1482, 2173, 2345, 2368, 2369, 2371, 4133 Of 2018, 190, 191, 224, 855 Of 2019, Contempt Petition

Rajmohan Singh Rawat

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 27-04-2019

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 3, 6, 8, 9, 38
Right Of Children To Free And Compulsory Education Rules, 2010 — Rule 22

Citation : (2019) 04 UK CK 0158

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : V.K. Kohli, M.C. Pant, Shobhit Saharia, Yogesh Pacholia, Amar Shukla, Sanjay Bhatt, Sanjay Kumar, Bhagwat Mehra, Jitendra Chaudhary, B.M. Pingal, Paresh Tripathi, N.P. Sah

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. Petitioners in these writ petitions are serving as Block Resource Persons (in short "BRP") or Cluster Resource Persons (in short "CRP") under a project known as 'Sarva Shiksha Abhiyan'. Petitioners belong to the cadre of Assistant Teacher in Government Primary Schools or Government High Schools, who were appointed on deputation as Co-ordinator Block Resource Centre (BRC) and Cluster Resource Centre (CRC). The post of Co-ordinator in BRC is now redesignated as Block Resource Person (BRP) and that of Co-ordinator, CRC is redesignated as Cluster Resource Person (CRP). Now the State Government has decided to repatriate BRP and CRP to their original cadre of Assistant Teacher. Thus, feeling aggrieved, petitioners have approached this Court.

2. Sarva Shiksha Abhiyan (Education for all) is a flagship programme of the

Government of India for universalisation of elementary education (Class 1 to 8). Sarva Shiksha Abhiyan is being implemented in partnership with the State Governments since the year 2000-2001. Under the said scheme, Central Government provides 90% of the funds and the remaining funds are provided by the State Government. For implementation of the aforesaid Scheme, State Government appointed Coordinators in Block Resource Centre (BRC) and Cluster Resource Centre (CRC) from amongst Assistant Teachers serving in Government schools. Initially appointments on the posts of Coordinator in BRC and CRC were made without holding any selection, consequently, majority of persons, serving as Coordinators in BRC/CRC, were appointed without facing any selection process. However, some Assistant Teachers were appointed as Coordinators in BRC/CRC after selection.

3. Since common questions of fact and law are involved in these petitions, therefore, all these petitions are clubbed together and are being heard & decided by a common judgment. However, for the sake of convenience, facts of WPSS No. 209 of 2018 are being considered.

4. According to the petitioners, they were serving as Assistant Teacher L.T. Grade in Government Schools. They responded to advertisement dated 27.06.2014 inviting applications for appointment as BRP/CRP and after due selection, they were appointed by deputation, as BRP/CRP. Consequent to their appointment, they were relieved from their respective schools and they joined duties as BRP/CRP. They are aggrieved by the decision taken by the State Government to abolish the system of appointing BRP/CRP and to repatriate the BRP/CRP to their original post of Assistant Teacher. This decision was conveyed vide Government Order dated 25.01.2018, which is challenged in most of the writ petitions while in some writ petitions, petitioners have challenged the notifications, whereby fresh applications were invited for appointment as BRP/CRP.

5. The reason given in the Government Order dated 25.01.2018 is that the Government Schools are facing acute shortage of teachers, due to which academic activity in such schools is impaired. Another reason, which has been given, is that the existing system of appointing BRP/CRP is giving rise to unnecessary litigation, therefore, it has been provided that BRP will handover charge of their office to Deputy Education Officer of the concerned Block and CRP will handover charge of their office to Principal of nearby school.

6. It is the contention of the petitioners that Sarva Shiksha Abhiyan, under which they were appointed, has been extended upto 2020, therefore, petitioners have a right to continue till 2020. It is further submitted that the reason assigned for abolishing the system of BRP/CRP is merely an eyewash, as there are many teachers of Government Schools, who have been assigned non-teaching duties. It is further submitted that pendency of court cases, in respect of BRP/CRP, cannot be a valid reason for doing away with the system of appointing BRP/CRP. It is further submitted that the Deputy Education Officer and Principal of Government Schools, who are to look after the work of BRP/CRP, as per the

impugned decision, are not eligible to hold the charge of BRP/CRP. It is further submitted that petitioners were required to be heard before taking any decision to repatriate them to their parent post.

7. Learned Chief Standing Counsel appearing on behalf of the respondents submits that due to appointment of teachers of Government Schools as BRP/CRP, they are not available for teaching duties, consequently, educational activity in Government Schools has been adversely affected, as such it was decided by the State Government to abolish the system of appointing Government Teachers as BRP/CRP. It is further submitted that BRP/CRP were appointed under a temporary project and they have no lien to hold the post. It is further submitted that, at best status of the petitioners is that of a deputationist and the State Government has decided in public interest to send them back to the Government Schools, where they may perform their duty as a Teacher. It is further submitted that since BRP/CRP have lien on the post of Assistant Teacher, therefore, the vacancies arising in their cadre due to their appointment on deputation as BRP/CRP, cannot be filled by making fresh appointment. It is further submitted that the order challenged by the petitioners in the writ petition is neither punitive nor stigmatic in nature and no prejudice is going to be caused to petitioners due to their repatriation, as they will get the same salary as they were getting earlier. It is further submitted that State Government is under a statutory obligation under Right of Children to Free and Compulsory Education Act, 2009 to make available adequate number of teachers in Government schools and as such, the challenge thrown by the petitioners to the Government Order dated 25.01.2018 and the consequential orders, passed by authorities of Education Department, is without any substance.

8. Admittedly, petitioners were regularly appointed as teacher in Government schools and they hold lien on the said post. After the introduction of Sarva Shiksha Abhiyan, State Government decided to temporarily utilize their services as Coordinators BRC/CRC (now known as BRP/CRP). Accordingly, petitioners were deployed/appointed as Coordinator (BRP/CRP) with the condition that their lien will be on the post of Teacher and they can be repatriated to their original post any time. Majority of teachers, were so appointed as Coordinators (BRP/CRP), without facing any selection and few of them were appointed after selection. However, petitioners cannot have any lien on the post of BRP/CRP, as these are the posts under a project which is temporary in nature.

9. At best, status of the petitioners is that of a deputationist. It is settled position in law that a deputationist has no right of absorption in the borrowing organization and he can be repatriated any time to his parent department. Since repatriation of a deputationist does not have civil consequences to the concerned employee, therefore, principles of natural justice are not attracted, while repatriating a deputationist.

10. Uttarakhand is basically a hill State. The State Government is under a Constitutional obligation to provide elementary education also to the children

living in far flung hill areas. Shortage of teachers is a matter of concern. Government Schools situate in remote parts of Hill districts are worst affected by shortage of teachers.

11. In the year 2009, Union Parliament enacted "The Right of Children to Free and Compulsory Education Act". Section 3 of the said Act confers a right upon every child between the age of six to fourteen years to have free and compulsory education in a neighbourhood school. Section 8 of the said Act enumerates the duties of appropriate Government, which includes ensuring availability of a neighbourhood school, as specified in Section 6; providing infrastructure, including school building, teaching staff and learning equipment and ensuring good quality elementary education conforming to the standards and norms specified in the Schedule. Likewise, Section 9 of the said Act enumerates the duties cast upon the local authority, which also includes providing infrastructure including school building, teaching staff and learning material.

12. In exercise of powers under Section 38 of the said Act, Central Government has framed Rules known as "The Right of Children to Free and Compulsory Education Rules, 2010." Rule 22 of the said Rules ordains that the Central Government, appropriate Government or the local authority, as the case may be, shall ensure that optimum pupil-teacher ratio is maintained in all schools.

13. The question whether Coordinators in BRC/CRC (now re-designated as BRP/CRP) can claim absorption on the post came up for consideration before this Court in WPSS No. 1204 of 2014 & other connected matters and a coordinate Bench of this Court vide judgment dated 27.10.2014 held that the Coordinators in BRC/CRC have no such right of absorption.

14. The Coordinators in BRC/CRC challenged the judgment rendered by learned Single Judge by filing special appeals. A Division Bench of this Court vide judgment dated 9.08.2017 rendered in SPA No. 106 of 2016 & other connected appeals held that because of the very nature of their appointment BRP/CRP can be repatriated to their parent department. It was further held that principles of natural justice are not attracted in case of repatriation of Coordinators in BRP/CRP to their parent department. Division Bench also repelled the argument based on the judgment rendered by the Apex Court in the case of State of Haryana & others Vs Piara Singh & others reported in (1992) 4 SCC 118 by holding that the principle that one ad-hoc appointee cannot be replaced by another ad-hoc appointee is not attracted in the case of Coordinators (BRP/CRP), as they were appointed on deputation and a deputationist can always be repatriated. Para 21 of the judgment passed by Division Bench of this Court in SPA No. 106 of 2016 is extracted below:-

"21. Having set out the effect of the orders dated 28.07.2003 on the one hand and the orders dated 05.02.2013 and 01.08.2013, the following conclusion can safely be reached:

Persons who were selected earlier under the Government order dated

28.07.2003 continue to have the lien in the parent department, namely, the Education Department wherein they were selected and appointed as Teachers. It is true that in the order dated 28.07.2003, it is provided that if the service is found to be unsatisfactory, they could be repatriated, but it may not be correct to say that otherwise, the Government has no right to repatriate them. Having regard to the nature of their appointment as Coordinators, call it deployment or deputation, the tenure cannot detract from the power available to the Government to repatriate them to the parent department. The case of Mr. Yogesh Pacholia, learned counsel for the appellants in other two appeals is that it is not deployment also, what is contemplated under order dated 31.03.2008, which we have extracted, but it is posting. Even if it is posting, the lien of the appellants would continue to be in the parent department. A person cannot have lien on two posts. The basis for the appellants, approaching this Court against the advertisement, as evident from the first prayer, is that they have been permanently absorbed. In fact, Mr. C.D. Bahuguna, learned senior counsel fairly submitted that he cannot substantiate that the appellants have been permanently absorbed or that there were permanent posts. The appellants are persons, who were selected as Coordinators under the earlier Sarva Shiksha Abhiyan. Their tenure was precarious in law, as they could always be repatriated back, if it is found that their service is unsatisfactory. Undoubtedly, it is a condition in the order but that does not take away the power of the Government, if it is found necessary to repatriate them to the parent department on other reasonable grounds."

15. Hon'ble Supreme Court in the case of Union of India Vs V. Ramakrishnan & others reported in (2005) 8 SCC 394 has held that ordinarily a deputationist has no legal right to continue in the post nor he has any right to be absorbed in the post to which he is deputed.

16. Learned counsel for the petitioners have emphasized that the petitioners were appointed as BRP/CRP after due selection, therefore, they could not have been repatriated. There is no force in this argument, inasmuch as, the posts of BRP/CRP are not permanent posts in Education Department of the State Government. On the other hand, these posts are created under the Project, which is likely to come to an end in the year 2020. Moreover, petitioners were appointed as BRP/CRP on deputation with the condition that they will hold lien in their parent cadre of Assistant Teacher. A Government employee cannot hold lien simultaneously on two posts.

17. The argument that teachers of Government Schools have been assigned non teaching duties, therefore, the impugned decision taken by the State Government to repatriate petitioners to the post of Teacher is also not sustainable. State Government as an employer has inherent right to decide where to post an employee. There is a presumption that a decision taken by the State Government regarding transfer/posting of Government employees, is in public interest or in administrative exigency. Moreover, no Government Teacher

has been named who has been assigned non teaching duties. In the absence of any pleading or any relief sought against such Government Teachers, this Court cannot go into the question of posting of other Government Teachers to non teaching posts.

18. Similarly, the argument that pendency of Court cases in respect of BRP/CRP cannot be a valid reason for doing away with the system of appointing BRP/CRP is devoid of merit. Pendency of large number of cases indicates dissatisfaction amongst Government Teachers in respect of the present system of appointing BRP/CRP, therefore, the State Government as an employer was well within its rights to devise a human resource policy which may help in reducing the burden of Court cases.

19. Similarly, the challenge thrown to the Policy decision taken by the State Government on the ground that Deputy Education Officer and Principal of Government Schools are not eligible to hold the charge of BRP/CRP is devoid of any merit. There is no statutory provision which lays down the qualification for appointment as BRP/CRP. Executive instructions, if any, issued on the subject do not have the force of law and they can be superseded by subsequent executive instructions.

20. Learned counsel for the petitioners were unable to show any law which provides permanency to the tenure of the petitioners as BRP/CRP. The decision to deploy/appoint them as BRP/CRP was taken by the State Government in public interest and the impugned decision has also been taken by the State Government in public interest. The State Government can very well devise another method of deploying/appointing BRP/CRP and, in the absence of any statutory provision to the contrary, freedom available to the State Government in these matters cannot be curtailed.

21. For the aforesaid reasons, there is no scope of interference in the matter. Accordingly, writ petitions fail and are hereby dismissed.

22. No order as to costs.

23. All pending applications stand disposed of.

24. In view of the judgment passed in above writ petitions, nothing survives in contempt petitions (CLCON No.231 of 2019 and CLCON No. 153 of 2019). Accordingly, the contempt petitions are dismissed. Notices issued to the respondents are hereby discharged.