

(2019) 11 UK CK 0122

In the Uttarakhand High Court

Case No : Writ Petition No. 1135 Of 2019 (S/S)

Ram Singh Chauhan

APPELLANT

Vs

Director, Secondary Education And Others

RESPONDENT

Date of Decision : 16-11-2019

Acts Referred:

Uttarakhand School Education Act, 2006 — Section 2, 2(u)
Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 — Section 2(k), 18(4), 18(4)(1), 18(4)(2)
Financial Hand Book, Vol. II — Rule 56(A)
Constitution Of India, 1950 — Article 226, 309

Citation : (2019) 11 UK CK 0122

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Ravi Babulkar, Indu Sharma, V.K. Kohli, Narendra Bali, Bhuwan Bhatt, Vinay Kumar

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1) By means of present writ petition, the petitioner seeks following reliefs, among others:

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.05.2019, passed by respondent no. 2 i.e. Chief Education Officer, Haridwar (contained as Annexure no. 7 to the writ petition).

ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 4 to handover the charge of Principal, Jwalapur Intermediate College, Jwalapur, District Haridwar to the petitioner.

2) Facts leading to filing of present writ petition, in brief, are that the petitioner was appointed as Asstt. Teacher in the year 1990. Subsequently, he was promoted to the post of Lecturer (Political Science) in the year 1996. Respondent

no. 4 was appointed as Lecturer (Hindi) in the year 1989 in Jwalapur Intermediate College, Jwalapur, Haridwar (hereinafter referred to as 'the Institution'). Being the senior most Lecturer, respondent no. 4 was assigned the charge of officiating Principal of the Institution on the retirement of the then Principal of the Institution on 31.03.2018. While working as officiating Principal of the Institution, respondent no. 4 attained the age of superannuation on 30.04.2019. The State of Uttarakhand has framed a policy to give benefit of extension of session to a teacher if he/she is inclined to continue till the end of academic session. Respondent no. 4 was given said benefit of session extension by respondent no. 2 vide letter dated 30.03.2019 as a Lecturer / In-charge Principal. But, subsequently, the respondent no. 2 passed another order dated 31.03.2019 and wrote a letter to the Manager / Principle of the Institution that in the Uttarakhand Service Benefit Act, 2018 and the G.O. dated 3rd August 2017 it has been directed that on completion of age of superannuation the benefit of increment in the salary and retiral dues shall not be granted and the teacher shall be deemed to be retired on attaining the age of superannuation and during the period of extension of session the payment will be made on the principle of salary last drawn minus the pension. The Deputy Secretary, Govt. of Uttarakhand wrote a letter to the Director, Treasury, Pension and Entitlement on 25.04.2018 stating therein that it has come into the notice of the Government that the period of extension of benefit of session is being considered for granting increment in salary and for retiral benefits. It is also stated that, therefore, in view of the G.O. dated 03.08.2017, those who have attained the age of superannuation and have been given the benefit of extension of session, the extension period may not be considered for calculation of the enhancement of salary and pensionary benefits and they shall be deemed to be superannuated on the date they attained the age of superannuation. Respondent no. 2 issued another order dated 08.05.2019 mentioning therein that the approval to give benefit of extension of session has been granted to respondent no. 4 vide order dated 30.03.2019. The same has been modified / amended on 31.03.2019 to the extent that Mr. Rohitashav Kunwar, Lecturer / officiating Principal has been given the teaching work in the interest of the students on his original post of Lecturer (Hindi). Subsequent thereto, respondent no. 2 passed the impugned order dated 03.05.2019 mentioning therein that respondent no. 4, officiating Principal of the Institution has made an application dated 13.05.2019 seeking benefit of extension of academic session being the senior most Lecturer of the Institution, therefore, he is entitled to continue as an officiating Principal of the Institution. On the representation made by respondent no. 4, respondent no. 2 passed the order to the effect that since the benefit of extension of academic session has been granted to respondent no. 4, therefore, being the senior most Lecturer of the Institution, he shall continue as officiating Principle.

3) The petitioner, who is next to respondent no. 4 in the seniority of the respondent no. 3 Institution felt aggrieved and has preferred the instant writ petition seeking quashing of the order dated 13.05.2019.

4) Respondent no. 4 filed his counter affidavit stating therein that being the senior most Lecturer as well as officiating Principle of the Institution he had applied for benefit of extension of session. The application was allowed and respondent no. 4 was permitted to continue as a Lecturer / officiating Principle of the Institution till the end of the session by order dated 30.03.2019. However, without assigning any reason, order dated 31.03.2019 was passed by respondent no. 2. Thus, respondent no. 4 made a representation and having satisfied with said representation, respondent no. 2 passed the order explaining that respondent no. 4, who is senior most Lecturer in the Institution is entitled to continue as a Lecturer / officiating Principal of the Institution till the end of the academic session. It is stated in the counter affidavit that extension of service of respondent no. 4 till the end of academic session is in terms of the G.O. dated 08.04.2011. It is also stated that the said G.O. provides the arrangement for extension of service as the Rule 56(A) of the Financial Hand Book, Vol. II (Parts 2 to 4), has been amended. G.O. dated 08.04.2011 has been annexed as CA-1 to the counter affidavit which stated that in view of the G.O. dated 30.11.2007 which has the overriding effect and having considered the provision of Financial Hand Book, Vol. II (Parts 2 to 4) of original Rule 56(A), in respect of the teachers / Principals / Headmasters working in the Govt. Intermediate Colleges / Grant in Aid non-Govt. colleges / Primary Schools it is directed that those teachers / Principals / Headmasters who are going to retire in midsession are entitled to the benefit of extension of services till the end of the academic session, on the condition that the service period of a teacher / Principal / Head Master must be satisfactory and nothing adverse has been found against him; he/she is mentally and physically fit and he/she was teaching a subject regularly. Therefore, the said benefit shall be given to such teacher / Principal / Headmaster on an application moved by him. It is further stated that by Circular dated 20.09.2011, the earlier Circular / G.O. dated 08.04.2011 was modified to the extent that those teachers / Principals / Headmasters who have been given re-appointment shall be covered by the G.O. dated 30.11.2007.

5) Amended provision of Notification dated 06.06.2012 by which original Rule 56(A) of the Financial Hand Book, Vol. II (Parts 2 to 4) has been amended is extracted hereunder:

"56(A). The extension of services for maximum upto a period of 11 months in the Education Department will be admissible to the employees who are working on such posts and are continuously involved in the teaching work..."

6) Respondent nos. 1 and 2 also filed their counter affidavit stating that the impugned order dated 13.03.2019 has been passed by respondent no. 2 in pursuance of the Notification dated 6th June 2012, wherein Uttarakhand Compendium of Financial (Amendment) Rules, 2011 was promulgated in exercise of powers conferred under proviso to Article 309 of the Constitution of India. By the said Notification, Rule 56(A) of the Financial Hand Book has been amended providing for extension of service of teachers after attaining the age of

superannuation till the end of the academic session. The averments made in the writ petition have been specifically denied by respondent nos. 1 and 2 stating that respondent no. 4 has been given service extension on the post held by him as per amended Notification dated 06.06.2012 and after getting service extension, the respondent no. 4 remains senior most Lecturer in the Institution inasmuch as after the superannuation of Mr. Phool Singh, the then Lecturer / In Charge Principal on 01.04.2018, he has to continue on the same post. It is further stated that the order dated 13.05.2019 has been passed on the representation made by respondent no. 4 having considered the Notification dated 06.06.2012 and also having considered the G.O. dated 25.04.2018. It is further stated that as per the definition of teacher / Head of Institution provided in the Act, handing over the charge of the In-charge Principal to respondent no. 4 being the senior most Lecturer of the Institution after granting him extension of service till the end of session is not contrary to the provisions of the Act. Lastly, it is stated that one Dr. Navneet Parmar is claiming himself to be the Manager of the Institution, whereof the Arya Pratinidhi Sabha has authorized Dr. Deenanath Sharma for looking after the affairs of the society.

7) In a nutshell, respondent nos. 1 and 2 having placed reliance upon the G.Os. issued from time to time have stated that respondent no. 4 has to continue as a Lecturer (Hindi) / officiating Principal in the Institution.

8) A counter affidavit has been filed by Dr. Navneet Parmar claiming himself to be the Manager of the respondent no. 3 Institution. It is stated in the counter affidavit that Writ Petition no. 1725 (M/S) of 2016, Delhi Arya Pratinidhi Sabha and another Vs State of Uttarakhand and others, was filed before this Court, in which an interim order was granted vide order dated 22.03.2017. Operative portion of said order is reproduced hereunder:

"Meanwhile, as an interim measure, it is provided that till the next date of listing, Arya Vidya Sabha, Gurukul Kangri shall continue to function but since there are allegations by the petitioners as to the veracity of this Sabha, it is provided that no financial or administrative decision shall be taken by the Sabha, nor shall they alienate any moveable property of the Sabha, subject to the condition that the regular salary bill etc., which have to be given to employees, etc. in the usual course, shall be given by the concerned authority but only after their verification and countersign of the District Judge, Haridwar.

The Registrar General of this Court is hereby directed to communicate this order to the learned District Judge, Haridwar for onward compliance."

9) It is further stated in the counter affidavit filed by Dr. Parmar that Dr. Deenanath Sharma, who is Chief Administrator of the Society known as Arya Vidya Sabha Gurukul Kangri, Haridwar vide letter dated 03.04.2017 declared himself as the concerned authority of said Society on the strength of the judgment dated 22.03.2017. It is also stated that he (Navneet Parmar) is Asstt. Administrator of the Society and he has also been appointed as Manager and he

is discharging duties in the capacity of Manager of the Institution. It is alleged that Dr. Deenanath Sharma was doing signatures in the financial and administrative transactions of the respondent no. 3 Institution, due to which various difficulties were felt in smooth administration and management of the said Institution. Lastly it is stated that respondent no. 2 is hand in gloves with respondent no. 4. It appears that Dr. Navneet Parmar, who claims himself to be the Manager of the Institution is trying to support the case of the petitioner.

10) Another short counter affidavit has been filed by Dr. Deenanath Sharma, claiming himself to be respondent no. 3, stating therein that respondent no. 4 had attained the age of superannuation on 30.04.2019. However, benefit of extension of academic session was given to respondent no. 4 by order dated 31.03.2019, passed by respondent no.2. It is further stated that respondent no. 4 is imparting education to the students of the Institution in reference to the order dated 8.05.2019, wherein it is specifically mentioned that the benefit has been given to him for imparting education. Dr. Deenanath Sharma is also claiming himself to be the Chief Administrator of the Institution.

11) Jwalapur Inter College, Jwalapur, District Haridwar has been impleaded as respondent no. 3 in the writ petition. Dr. Navneet Parmar has filed his counter affidavit in a capacity of Manager of the Institution. Dr. Navneet Parmar and Dr. Deenanath Sharma are claiming themselves to be the Manager / Concerned Authority of the Institution. This Court is not inclined to decide the dispute between them in the instant lis, therefore, their counter affidavits are irrelevant for deciding the controversy involved in the matter.

12) Petitioner has filed his rejoinder affidavit denying the averments made in the counter affidavit filed by respondent nos. 1 and 2 stating that since respondent no. 4 retired from the post of Lecturer (Hindi) and not from the post of Principal, as he has been extended the benefit of academic session, therefore, he cannot be treated as an officiating Principal of the Institution. In reply to the counter affidavit filed by respondent no. 4, it has been stated in the rejoinder affidavit that the respondent no. 4 was given the extension by respondent no. 2 only on his original post of Lecturer (Hindi) and not on the post of officiating Principal, but subsequently respondent no. 2 directed that during the extension period after his retirement from the post of Lecturer (Hindi), respondent no. 4 will continue to work as officiating Principal of the Institution. It is also stated that as per G.Os. dated 03.08.2017 and 25.04.2018, the State Government has clarified that once the teacher retires, he/she retires for all practical purposes and there cannot be any calculation of service during the extension period towards any financial or pensionary benefit.

13) I have heard learned counsel for the parties and perused the entire material brought on record.

14) Learned counsel for the petitioner would submit that Section 2(u) of the Uttarakhand School Education Act, 2006, defines the word 'teacher', which

includes a Principal, Headmaster or other teacher. He would also submit that the word 'officiating Principal' does not figure in said definition of 'teacher'. He would further submit that neither the respondent no. 4 was re-engaged nor was he re-appointed, rather, he has only been granted benefit of extension of academic session. Therefore, the day respondent no. 4 got retired from service, he cannot continue as an employee and only he has been given benefit of extension of academic session for imparting education as a Lecturer (Hindi). Learned counsel for the petitioner contended that the petitioner being the senior most Lecturer, next to respondent no. 4, in the seniority is entitled to officiate on the post of Principal of the Institution and the respondent no. 4 cannot be permitted to continue as officiating Principal after his superannuation.

15) On the other hand, learned counsel for respondent no. 4 would submit that respondent no. 4 has been extended the benefit of extension of academic session as he was discharging his duties as Lecturer (Hindi) / officiating Principal, therefore, he deserves to continue on the said post. However, the respondent no. 4 is not entitled to get the benefit of grant of increment and other retiral benefits. It is contended that the order dated 30.03.2019 has rightly been passed permitting the respondent no. 4 to continue as Lecturer / officiating Principal, but without assigning any reason order dated 31.03.2019 was passed, whereby the Notification dated 06.06.2012 was wrongly interpreted. It is also contended that since the illegal order dated 31.03.2019 was passed, the respondent no. 4 made a representation. Said representation was considered in the light of communication dated 08.05.2019 and having considered the fact that since the officiating Principal comes within the definition of 'Principal', therefore, the Principal, Headmaster or other teacher and officiating Principal is the same thing. It is further contended that since the respondent no. 4 is senior most Lecturer and is continuing without any break of service as Lecturer / officiating Principal, therefore, he cannot be reduced from the position which he was holding on the date of his attaining the age of superannuation.

16) Learned counsel for respondent no. 4 placed reliance on the judgment of Division Bench of Hon'ble Allahabad High Court in Surendra Prasad Agnihotri Vs State of U.P. and others, passed on 13.01.2010, in Special Appeal no. 1987 of 2009, wherein a reference was made for constitution of a Larger Bench to deal with the following question of law:

"Whether a teacher of Intermediate College who has already been appointed as officiating principal of the Institution by virtue of his seniority on attaining the age of superannuation in the extended period of this service shall continue as officiating principal or simply as a teacher?"

17) The Full Bench of said Court in Surendra Prasad Agnihotri Vs State of U.P. and others (2010) 81 ALR 596, has answered the reference to the question of law in affirmative holding that a teacher of Intermediate College, who has already been appointed as officiating principal of the Institution, by virtue of his seniority on attaining the age of superannuation in the extended period of his

service, shall continue as officiating Principal, not simply as teacher. Relevant paragraphs of said judgment are extracted hereunder:

"7. Against this background, we have to see whether the officiating Principal will also be entitled to the similar benefits for his extension of service by the legal fiction till 30th June of the respective year or not. It is to be remembered that under Section 18(4) of the U.P. Secondary Education (Services Selection Board) Act, 1982 says that every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post, meaning thereby the regularly appointed Principal will only be able to take charge of the Institution from the ad hoc or officiating Principal. Ad Hoc cannot be replaced by Ad hoc. No one having been junior to him can be allowed to claim any relief in such background. The Supreme Court by virtue of a judgment in Hargurpratap Singh Vs State of Punjab (2007) 13 SCC 292, has also held that an ad hoc cannot be replaced by an ad hoc because it will not be beneficial for the institution. There is no doubt and dispute amongst the parties that the Act and provision are inapplicable therein nor the incumbents did not continue as officiating Principals prior to their dates of retirement upon attaining 60 years of age. Against this background, we have to see from such Act what is the meaning of the word 'teacher'. The meaning of 'teacher' is given in section 2(k) of the U.P. Secondary Education (Services Selection Board) Act, 1982, which is as follows:

"2 (k). 'Teacher' means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster."

8. Therefore, whether one is placed as teacher or principal does not make any difference. On the other hand, there is no dispute that senior most teacher can be appointed as officiating Principal till the date of regularly appointed Principal. Factually, both were appointed as officiating Principals prior to their actual age of retirement and continued thereafter, thus, the word 'Principal' or 'teacher' includes the words 'Officiating Principal'."

18) The core issues before this Court are -

(i) Whether the Principal, Headmaster or teacher, includes the officiating principal?

(ii) Whether respondent no. 4, who was officiating as a Principal, is entitled to the benefit of extension of academic session as such or is he entitled to continue as Lecturer only?

19) Before further discussion it would be apt to reproduce Section 2 of the Uttarakhand School Education Act, 2006 (hereinafter referred to as 'the Act') which deals with definitions and amended Rule 56(A) of the Financial Hand Book, Vol. II (Parts 2 to 4) (quoted above). Section 2(u) of the Act defines the word 'teacher'. The same is extracted here-in-below:

"Teacher" of an institution receiving Maintenance grant from the State funds

means a Principal, Head-master or other teacher in respect of whose employment maintenance grant is paid by the State Government to the institution and includes any other teacher employed according to rules in fulfillment of the conditions of recognition of the institution or as a result of the opening with the approval of the District Education Officer of a new section in an existing class".

20) A plain reading of Section 2(u) of the Act would suggest that the Principal, Headmaster or other teacher comes within the same definition, in absence of the word 'officiating principal' which does not figure in Section 2 of the Act. Therefore, it can safely be construed from the definition of 'teacher' that it includes Principal, Headmaster or other teacher, as also the officiating Principal or officiating Headmaster. Since respondent no. 4 was neither re-engaged nor was he re-appointed in service, rather his services were continuing after the age of his superannuation on the said post, therefore, the services of respondent no. 4 shall be deemed to continue as Lecturer / officiating Principal, as the officiating Principal also is a teacher / Lecturer in view of the definition given in Section 2(u) of the Act as well as amended Rule 56(A) of the Financial Hand Book, Vol. II (Parts 2 to 4).

21) So far as Section 2(k) of the Act 1982 is concerned it only defines the 'teacher', whereof in Section 2(u) of the Act, the definition of 'teacher' is much elaborative and includes any other teacher employed according to rules in fulfillment of the conditions of recognition of the Institution or as a result of the opening with the approval of the District Education Officer of a new section in an existing class. The definition of 'teacher' as per Section 2(u) of the Act is much wider in comparison to the definition given in Section 2(k) of the Act 1982.

22) Having considered the rival contentions of learned counsel for the parties and also considered the ratio of the judgment of Full Bench of the Hon'ble Allahabad High Court in Surendra Prasad Agnihotri (supra), as also the definition of 'teacher' as has been defined in Section 2(u) of the Act, it is amply clear that whether one is placed as teacher or principal does not makes any difference, as the word 'principal' or 'teacher' includes the words 'officiating principal'. The core issue no. (i) is answered in affirmative.

23) In view of the answer to core issue no. (i) it is held that respondent no. 4, who got superannuated on 30.04.2019 from the post of Lecturer (Hindi) / officiating Principal, is entitled to continue as an officiating Principal on extension of his service till the end of the academic session. The core issue no. (ii) is answered accordingly.

24) A Division Bench of this Court having considered the judgment of Hon'ble Apex Court in Syed Yakoob Vs. K.S. Radhakrishnan and others AIR 1964 SC 1344 while disposing of WPSB no. 438 of 2016, vide judgment and order dated 17.05.2019, has laid down the principle of law that unless the writ petitioner makes out a case of grave injustice, illegality and arbitrariness at the hands of

the other side only in such contingency the High Court can exercise its jurisdiction in writ proceedings under Article 226 of the Constitution of India and not otherwise.

25) Thus, in view of the findings recorded above, respondent no. 4, who got superannuated on 30.04.2019 has been rightly granted the benefit of extension of service till the end of academic session being eligible for such extension in view of the directions contained in G.Os. issued in the year 2011 as well as the Notification dated 06.06.2012, as he fulfils all the requirement of the G.O. Therefore, the petitioner has utterly failed to make out a case which requires interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India as held by Hon'ble Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and others AIR 1964 SC 1344. Relevant paragraph of said judgment is excerpted hereunder for reference:

"The scope of interference in certiorari proceedings is extremely limited. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where the order is passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings as it is in the province of a court of appeal."

26) Petitioner has completely failed to show any illegality or impropriety in the order impugned which can be interfered into in certiorari proceedings by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

27) The writ petition is devoid of merit and is liable to be dismissed. The writ petition is, accordingly, dismissed. Interim order dated 21.05.2019 is hereby vacated. No order as to costs.