
(2021) 01 UK CK 0099
In the Uttarakhand High Court
Case No : Writ Petition No. 768 Of 2020 (S/S)

Rohitashav Kunwar

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Citation : (2021) 01 UK CK 0099

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Vinay Kumar, Anjali Bhargava, P.C. Bisht, N.P. Sah, Sushil Vasishtha, Bhuwan Bhatt, Vivek Shukla

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of present writ petition, petitioner has sought following reliefs :

(i) Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned communication/order dated 27th May,

2020 issued by the Director, Secondary Education, Uttarakhand, Dehradun, whereby the claim of the petitioner for grant of extension of two years of

service granted to the State Awardee has been rejected.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant the benefit of extension of two years of service to the

petitioner being the State Awardee of Shailesh Matiyani State Education Award-2017 from 1st April 2020.â??

2. Brief facts of the case are that the petitioner was holding the charge of Principal in Inter College, Jwalapur, District Haridwar. He retired from

services on 30.04.2019 after attaining the age of superannuation. Thereafter, in

terms of the provisions of the Government Order dated 8.04.2011, 20.09.2011 and 01.06.2012, the Chief Education Officer, Haridwar granted approval for extension of the services of the petitioner for the period 01.05.2019 to 31.03.2020. Since, the petitioner was attaining the age of superannuation on 30.04.2019 during the academic session 2019-2020, therefore, in terms of the Govt. orders providing for the extension of service to the Teacher/Principals engaged in teaching work, the petitioner was granted the extension of service vide order dated 30.03.2019. Thereafter, on 13.05.2019, the Chief Education Officer, Haridwar has passed an order on 13.05.2019, whereby the concerned authority/Incharge Officer was directed to grant the charge of the post of Principal to the petitioner. It is contended that while the petitioner was working as Lecturer (Hindi)/Officiating Principal, he was conferred with the Sailesh Matiyani State Education Award 2017 for his outstanding work and the said award has given to him in the year 2019 during his extension period and after extension of said period of one year he has been retired on 31.03.2020. It is further contended that as per Rules, the teacher who has been awarded by Sailesh Matiyani State Education Award is entitled for the benefit of two years extension in service. In this regard, petitioner moved an application to the Secretary Education, Government of Uttarakhand for extension of service in view of the fact that he has been conferred with the said award but no decision was taken thereon and on 31.03.2020, petitioner retired from service. On 27.05.2020, Director, Secondary Education Government of Uttarakhand issued a communication to the Chief Education Officer, Haridwar and after referring to the communication issued by the Director General, Education dated 18.05.2020, it was informed that in view of provisions of paragraph-2 of the Government order dated 22.08.2007, it is not possible to grant extension of two years of service on the ground that the petitioner has been awarded the State Award. Feeling aggrieved, present writ petition has been filed by the petitioner.

2. Heard learned counsel for the parties and perused the material available on record.

3. A counter affidavit has been filed by the respondent nos.2, 3 & 4 stating therein that the petitioner's superannuation date was 30.04.2019 and after getting extension of service from Chief Education Officer finally he has been

retired on 31.03.2020. It is also stated that according to G.O. dated 22.08.2007 extension of two years service due to National/State award is permissible only to those teachers who have received the award during their service. It is also stated that the benefit of two years extension is not permissible to those who have received the award after their superannuation/retirement and as the petitioner received the award after his superannuation/retirement, thus the extension of two years service is not permissible to the petitioner.

5. A counter affidavit has also been filed on behalf of respondent no.5 stating therein that the announcement of Shailesh Matiyani State Award-2017 took place in the year 2017 but the same was given to the petitioner on 29.01.2020 and by that time the petitioner had already taken benefit of mid session. It is further stated that the petitioner has already taken benefit of retirement in the mid session and he got this benefit in the manner which ought not to have been given because after his retirement in the mid session on 30.04.2019, he continued as Principal till the end of benefit of retirement during mid sessions i.e. 01.05.2019 to 31.03.2020. However, it is noteworthy that after the retirement of the petitioner on 30.04.2019 he could have taken benefit of mid sessions retirement as a Lecturer of subject Hindi till 31.03.2020. It is further stated that that policy of Uttarakhand Government for extension of service is very consistent in this regard that the teachers or principal of Inter College who have once taken the benefit of mid session, they are not entitled for getting their services further extended on getting any national award or Shailsh Matiyani Uttarakhand State Award. It is further stated that since petitioner received the said award on 29.01.2020 while he was already taking the benefit of mid session, therefore, he is not entitled for further extension of his service pursuant to aforesaid award.

6. A rejoinder affidavit has been filed stating therein that the office memorandum dated 20.10.2009 prescribed the norms for selection for the award and as per the norms prescribed the Teacher who has completed 15 years of service on 31st December of the last calendar year will be eligible to be considered for the award. It is further stated that the retired/re-appointed teacher/principal will not be eligible for Shailesh Matiyani State Education Award. It is further stated that the Government issued a Govt. Order on

22.08.2007 which clarify that the benefit of additional two years of service available to the State Teacher Awardee will be admissible only to such Teachers who have been conferred the award during the service. It is further stated that the benefit of additional two years of services will not be admissible to the Teacher who has retired or has been conferred the award after the end of sessions benefit. It is further stated that the petitioner retired on attaining the age of superannuation on 10.05.2019 and was granted the session benefit upto 31.03.2020. It is further stated that the Shailesh Matiyani State Teacher Award 2017 was conferred on the petitioner on 20.01.2020 i.e. during the period when the petitioner was working on extended session benefit. It is further stated that as per Govt. order dated 22.08.2007 the benefit of extended service will not be granted to those teachers who have been granted the award after retirement/session benefit but the award has been conferred to the petitioner in the month of January, 2020, whereas the academic session of the petitioner was to complete on 31.03.2020. It is further stated that the petitioner has been conferred the said award prior to completion of the end of benefit of academic session, therefore, he is entitled for grant of additional two years extension in service as per the norms of the said award.

7. Perusal of the record would reveal that the Honâ??ble Governor has granted the approval for conferment of State Teacher Award to such teachers who have done outstanding work for upgradation and qualitative improvement of education in the State. The teachers who have received the award after their retirement/session benefit would not be entitled for such benefit of extension of service. In the instant case, the petitioner after attaining the age of superannuation, retired from service on 30.04.2019. However, as he was being retired during mid academic sessions 2019-20 by order dated 30.03.2019, he was granted session benefit and his and his service were extended for the period 10.05.2019 to 31.03.2020 in view of Government Order dated 08.04.2011, which provides the guidelines for granting approval for extension of services till the end of the academic session. During the extension period, he was nominated for Shailesh Matiyani State Award-2017 on 23.10.2019 and on 20.01.2020, he received the said award. Thereafter, on 28.03.2020, the petitioner moved application for extension of service in view of Government Order dated 22.08.2007, however, no heed

was paid by the respondents at that relevant point of time and on 31.03.2020, the petitioner retired. Subsequently, on 27.05.2020, the petitioner's representation was rejected by the respondent on the ground that the petitioner has received the said Award after his retirement, therefore, he is not entitled for two years extension of service. A perusal of Government Order dated 22.08.2007 would reveal that teachers who have received the award after retirement/sessions benefit are not entitled for two years' extension of service. In the said G.O., it is nowhere stated that the teachers, who have already been granted sessions benefit, is not entitled for two years' extension of service. It is well settled that a provision is required to be read in whole and not in part and in isolation to other parts of the provisions. The entire provision is required to be read out harmoniously.

8. It is a cardinal rule of construction that when there are in a statute two provisions in conflict with each other such that both of them cannot stand together, they should possibly be so interpreted that effect can be given to both and that a construction either of them inoperative and useless should not be adopted except in the last is what is known as a rule of harmonious construction. The authority should avoid 'a head on clash', in the words of the Apex Court, between the different parts of an enactment and conflict between the various provisions should be sought to be harmonized. The normal presumption should be consistency and it should not be assumed that what is given with one hand by the legislature is sought to be taken away by the other. The rule of harmonious construction has been tersely explained by the Supreme Court thus, 'When there are, in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, effect should be given to both'. A construction which makes one portion of the enactment a dead letter should be avoided since harmonization is not equivalent to destruction. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a 'useless lumber' or 'dead letter' is not a harmonised construction. To harmonise is not to destroy. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a

harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved.

9. The Supreme Court in *Surjit Singh Kalra vs. Union of India* reported in (1991) 2 SCC 87 in paragraph no.19 has held as under:

19. True it is not permissible to read words in a statute which are not there, but ""where the alternative lies between either supplying by implication

words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meanings, it is

permissible to supply the words"" (Craies Statute Law, 7th Edition, p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan*

Lal Sowcar, [1988] 2 SCC 513 at 524-25 where it was observed that the court construing a provision should not easily read into it words which have

not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is

enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant

provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan & Ors. v. The Sunni Central Board of Waqf*, [1959] SCR 1287

at 1299)

10. In *Sultana Begum Vs. Prem Chand Jain* ,Honâ??ble Supreme Court held that the Rule of interpretation requires that while interpreting two

inconsistent or obviously repugnant provisions of an Act, the Courts should make an effort to so interpret the provisions as to harmonise them so that

the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.

11. Thus, as per the Government Order dated 22.08.2007, as the petitioner has been conferred with the award during the period of session benefit, he

is very much eligible for extension of service, which has wrongly been denied to him by the impugned order dated 27.05.2020. The same is liable to be

quashed.

12. By relying upon the aforementioned judgment and by applying the rule of harmonious construction, this Court is of the considered opinion that the

petitioner is entitled for the benefit of two years of service.

13. Accordingly, the writ petition is allowed. Impugned order dated 27.05.2020 is hereby quashed. Mandamus is issued to the respondent authority to

grant the benefit of extension of two years of service to the petitioner being the State Awardee of Shailesh Matiyani State Education Award-2017

within a period of one month from the date of production of certified copy of this order.

14. No order as to costs.