
(2017) 04 UK CK 0037
In the Uttarakhand High Court
Case No : 398 of 2016

Sanjay Kumar

APPELLANT

Vs

State of Uttarakhand & Ors.

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

[Constitution of India](#), [Article 41](#) - Right to work, to education and to public assistance in certain cases

Citation : (2017) 04 UK CK 0037

Hon'ble Judges : V.K. Bist, Alok Singh

Bench : Division Bench

Advocate : Vinay Kumar, Charanjeet Kaur, B.D. Kandpal

Judgement

1. Petitioner has approached this Court seeking the following reliefs: "(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith undertake the regular selection process for supplying the vacancies on the post of Assistant Professor, Govt. Degree/Post Graduate Colleges of the State in the present Academic Session as per the statement made in the Govt. Order dated 19th September, 2015 and Govt. Order dated 29th June, 2016 as well as in terms of the provisions of Service Rules governing appointment of Assistant Professor in Govt. Degree Colleges.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondents from re-engaging /continuing with the Guest Faculty against the vacant posts of Assistant Professor, Govt. Degree Colleges in the next Academic Session 2017- 18 without first making regular appointment on the post of Assistant Professor, Govt. Degree Colleges."

2. Brief facts, necessary for adjudication of the case are that in the month of September, 2015, 681 posts of teachers were lying vacant in Govt. Degree Colleges of the State. On 19.09.2015, the Principal Secretary, Higher Education, Govt. of Uttarakhand, issued a Govt. Order providing for the arrangement of Guest Faculty on contractual basis by way of temporary arrangement against the

sanctioned/vacant posts of Assistant Professor in Govt. Degree Colleges under Higher Education Department. The said Govt. Order further provides that the State Government after due deliberation has taken a decision to provide Guest Faculty by way of temporary arrangement for one academic session, taking into consideration the interest of the students. The appointment of the Guest Faculty was to be made on the vacant posts of Assistant Professor in Govt. Degree Colleges. The said G.O. further provided that the arrangement of Guest Faculty will be made on certain terms and conditions. The appointment of Guest Faculty will be till the regular selected candidates are appointed by the Public Service Commission or till the end of academic session, whichever is earlier and further the claim of the Guest Faculty for regularization will not be entertained. The said G.O. further provided that for appointment of Guest Faculty on the vacant posts, the advertisement will be issued in the newspapers published at National Level and State Level. The selection will be made by the Selection Committee on the basis of merit and interview. The scheme of the Guest Faculty further provided that before appointment of the Guest Faculty, the candidate is required to execute a Bond in prescribed form, which will contain a specific clause, that the Scheme of Guest Faculty is a temporary arrangement for a limited period, which can be terminated at any point of time without any prior information. For selection of the Guest Faculty the criterion was allotment of marks on the basis of the marks obtained in High School, Intermediate, Graduation and Post Graduation and Interview comprised of 30 marks. The candidate appointed as Guest Faculty was to be paid an honorarium of Rs.25000/- per month. This proforma of the Contract Bond was to be executed by the candidate for appointment as Guest Faculty. In pursuance of the said G.O. dated 19.09.2015, an advertisement was issued in the daily newspaper namely Amar Ujala, Dainik Jagran and Times of India dated 22.09.2015, for appointment of Guest Faculty on contract basis on the 681 vacant posts of Assistant Professor in Govt. Degree Colleges of the State. It was clearly mentioned in the advertisement that on the appointment of regularly selected candidates, the contract will be terminated without any prior information. It is the case of the petitioner that in pursuance of the said advertisement the petitioner applied and also got selected as Guest Faculty against the vacant post of Assistant Professor Geography in Govt. Degree College, Tuni, but he did not join as such, inasmuch as, he was interested in regular appointment.

3. At the fag end of the Academic Session 2015- 16, the State Government again issued a Govt. Order on 29.06.2016, whereby the extension of contract was granted in favour of the Guest Faculty who were appointed on contractual basis by way of temporary arrangement against the vacant posts of Assistant Professor in Govt. Degree Colleges of the State for the academic session 2016-17. In pursuance of Govt. Order dated 29.06.2016, the Director Higher Education, Uttarakhand issued a communication on 04.07.2016 to Principal, Govt. Degree/ Post Graduation Colleges regarding extension of contract of the Guest Faculty appointed on contract basis against the vacant posts of Assistant Professor. The

communication further provided that on reopening of the Colleges, the Guest Faculty will be appointed on or before 15.07.2016 by getting the contract bond signed. Pursuant to the G.O. dated 29.06.2016 and the communication dated 04.07.2016, the Guest Faculty who were appointed in the Academic Session 2015-16, were re-engaged as Guest Faculty in the Academic Session 2016-17.

4. The regular appointment on the posts of Assistant Professor in Government Degree Colleges of the State is made by direct recruitment through Uttarakhand Public Service Commission. The last selection process for making regular appointment on the post of Assistant Professor in Government Degree Colleges was undertaken by the Uttarakhand Public Service Commission on 04.12.2011. At that time, total 272 vacancies of Assistant Professor in different subjects were advertised. We have been told by Mr. B.D. Kandpal, Advocate appearing for Uttarakhand Public Service Commission (respondent no.3) that the selection process in pursuance of advertisement dated 04.12.2011 was concluded on 24.03.2015 for different subjects of different departments of the Govt. Degree Colleges of the State. Out of 272 vacant posts, selection was made only for 142 posts and 120 posts were carried forward, due to non-availability of eligible candidates in reserved category.

5. Heard Mr. Vinay Kumar, learned counsel for the petitioner, Ms. Charanjeet Kaur, learned Brief Holder for the State as well as Mr. B.D. Kandpal, learned counsel for Uttarakhand Public Service Commission.

6. On instructions, Ms. Charanjeet Kaur, learned Brief Holder for the State submits that at present there are 879 posts of Assistant Professor of different subjects, which are lying vacant in the Government Degree Colleges of the State. She further submits that at present 374 teachers are working on contractual basis.

7. We find that in the year 2015 there were 681 posts of Assistant Professor vacant in the Government Degree Colleges whereafter the Government took a decision to fill up those posts on temporary basis from Guest Faculty. It seems that the said decision was taken in the interest of students. Therefore, we find no fault in taking such decision and the Government had rightly appointed the Guest Faculty so that the students of the institutions may not suffer. We find that the Rules which govern the field are Uttarakhand Higher Education (Group "A") Service Rules, 2008, as amended in the year 2001. The Service Rules contemplates that the appointment on the post of Assistant Professor will be made by direct recruitment through regular selection to be conducted by the Public Service Commission. It is admitted to all that the last advertisement was issued by the Uttarakhand Public Service Commission in the year 2011 and the process was completed in 2015 and since then no fresh advertisement has been issued. Mr. B.D. Kandpal, Advocate for Uttarakhand Public Service Commission, submits that, in fact, the Commission has not received any requisition from the Government, thus there is no question of proceeding further in the matter, though this fact is denied by Ms. Charanjeet Kaur, Brief Holder. She has referred

to paragraph-17 of the counter affidavit, which reads as under: "17.it is submitted that since the creation of the State three requisitions have been sent to the Public Service Commission for making selection of teachers in the Govt. Degree Colleges of the State but the pace of selection by the Commission has been very slow. In the meeting held on 20 June, 2016, the State Cabinet decided to establish a separate selection board for higher education, but till date necessary formalities could not be completed. Now vide order dt. 07 December, 2016, it has been directed to the Director, Higher Education to take necessary steps to send requisition to the Public Service Commission to make selection on the vacant posts in the Higher Education Department." The submission of learned Brief Holder is not correct as in the counter affidavit it is nowhere stated that any requisition was sent after 2015. In fact, it is the State Government which is to be blamed for not making timely recruitment and not the Public Service Commission.

8. Be that as it may be. The fact remains that after 2011 no further requisition has been sent by the State Government to the Uttarakhand Public Service Commission. As per the respondents' own case, there are 879 posts vacant in the Govt. Degree Colleges of the State, for which no selection exercise is under process at present. We find that in the interest of students the State Government took a decision in 2015 to fill the vacant posts of Assistant Professor on temporary basis from Guest Faculty. That arrangement is still going on. Appointment of guest teachers was a stopgap arrangement for a short period. It should not be permitted to continue for a long period. The future of the students cannot be given in temporary hands for a long period. Right to education is a fundamental right under Article 21A, which provides that the State shall provide free and compulsory education to all children of the age of six to fourteen year. Article 41 of the Constitution provides that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to education. Of course, the State Government has established many degree/post graduate degree colleges. This alone is not sufficient. Proper infrastructural facilities are to be necessarily provided. That is also not sufficient. Providing facilities to the students will not serve the purpose, if teachers are not appointed. Even, promotional posts should also be filled timely. Some time, by keeping the promotional exercise pending for years, right of eligible/competent person is curtailed. Sometime such persons retire from service without getting benefit of due promotion. Such thing should not be permitted to happen. In Welfare Country like India, right to education cannot be ignored. There can be no meaningful exercise of this right if teachers are not available. We can think about GREAT INDIA only when we will provide proper education to our children. State of Uttarakhand is a very small State and keeping a number of posts of teachers vacant in Govt. Degree Colleges for a long period is not in the interest of students as well as in the interest of State. It is against the public interest. Timely filling up of the vacancies is extremely necessary. If posts of teachers are not filled up in time, purpose of right to education is frustrated. One should keep in mind that the youth, who come from economically weaker section, have no

option except to go to Government Colleges. In the present case, it is admitted to all that several posts of teachers are vacant for last many years. It is the duty of the respondents to undertake selection exercise every year and ensure that posts of teachers do not remain vacant for long.

9. In view of the above discussion, we dispose of the writ petition in the following manner: i) The State Government shall determine the total number of vacant posts, including those posts which are being occupied by contractual teachers, guest teachers and ad hoc teachers; whereafter requisition will be sent to the respondent no.3-Uttarakhand Public Service Commission within a period of six weeks.

ii) Thereafter, the Uttarakhand Public Service Commission shall advertise the posts and shall complete the selection process within a period of eight months from the date of receiving the requisition in accordance with Uttarakhand Higher Education (Group "A") Service Rules, 2008.

iii) After declaration of result by the Uttarakhand Public Service Commission, the State Government shall make appointment of eligible candidates within a period of three months from the date it receives the recommendation.

10. It is also expected that the Government shall also take steps for filling up the vacant posts of Professor and Associate Professor, in the Govt. Degree Colleges and Post Graduate Degree Colleges of the State, simultaneously.