

(2011) 08 UK CK 0102
In the Uttarakhand High Court
Case No : Special Appeal No. 80 of 2007

Smt. Gargi Ghunta

APPELLANT

Vs

Regional Joint Director, Education Garhwal Mandal and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 08 UK CK 0102

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—The Appellant was a Lecturer in an intermediate college, but was entitled to teach students upto Class - X. Her designation then was LT Grade teacher. There is No. dispute that Appellant was senior to the private Respondent. The Appellant was engaged to teach Home Science. A post of Lecturer obliged to teach Home Science in the said college fell vacant. The Rules permitted supplying of this vacancy in the post of Lecturer by LT Grade teachers of the selfsame Institution on the basis of seniority, subject to unfit. The Appellant was promoted to the post of Lecturer. Subsequently, private Respondent brought to the notice of the authority concerned that in view of the judgment rendered by a learned Single Judge of this Court, Appellant did not have requisite qualification for being promoted and, accordingly, her promotion was inappropriate. This representation of the private Respondent was accepted whereupon the promotion of the Appellant was cancelled. Cancellation of the promotion was the subject matter of challenge in the writ petition filed by the Appellant. At the same time, private Respondent also filed a writ petition contending that since the post is lying vacant, the same be filled in, by the senior most person, having requisite qualification. In other words, he sought a direction to permit the private Respondent to be promoted. These two writ petitions were heard together and disposed of by one composite judgment. By the judgment, the writ petition of the Appellant has been rejected and the writ petition filed by the private Respondent has been declared to have become infructuous, inasmuch as, during the pendency of the said writ petition, private Respondent was

accommodated in the post of Lecturer. Being aggrieved thereby, present appeal has been preferred.

2. It appears that while dealing with the matter, the learned Single Judge placed reliance upon the judgment of the learned Single Judge, which was submitted by the private Respondent to the authority concerned holding out that the Appellant does not have appropriate qualification for being promoted. The learned Single Judge, who rendered the said judgment took note of the Rules applicable to Government Intermediate Colleges and not to Privately Managed Aided Colleges. The fact remains that two sets of Rules governed these two types of colleges. While in so far as the Government Intermediate Colleges, the Rules stand as it is. The Rules applicable to Privately Managed Aided Colleges have since been amended. The learned Single Judge who rendered the judgment under appeal noticed the unamended Rules. In terms of the unamended Rules trained graduates in Home Science or Home Economics or Domestic Science or Home Art were entitled to be promoted. The fact remains that the Appellant is not a graduate in Home Science or Home Economics or Domestic Science or Home Arts. It, however, appears that as far back as on 23rd January, 1978, the said Rules were amended with effect from 1967, which amendment was not noticed by the learned Single Judge, who rendered the judgment and order under appeal, which became the basis of the representation by the private Respondent. The order incorporating the amendment clearly mentioned that the proposal that a person, who had Home Science or Home Economics or Domestic Science or Home Arts as a subject in the graduation level is eligible for being promoted to the post of Lecturer - Home Science is accepted and, accordingly, the amendment is being made. While, however, making the amendment, it was mentioned that trained graduates in with Home Science or Home Economics or Domestic Science or Home Arts shall be entitled to be promoted to the post of Lecturer - Home Science. The obvious mistake was incorporating the word "in" along with the word "with". The mischief, intended to be removed, was to allow graduates who have Home Science or Home Economics or Domestic Science or Home Arts as one of the subjects in their graduation to acquire eligibility to become Lecturer for intermediate classes in Home Science. The same is absolutely clear from the order effecting the amendment. While, however, incorporating the amendment, it was provided that trained graduates in with Home Science or Home Economics or Domestic Science or Home Arts will be eligible. In the event, it was permissible to train a people in Home Science or Home Economics or Domestic Science or Home Arts in course of undertaking training, while pursuing B.Ed. or B.T. course, then of course, it could be said that the intention was something else. But such training is not available. A graduate in Home Science or graduate in Home Economics or a graduate in Domestic Science or graduate in Home Arts is not taught either Home Science or Home Economics or Domestic Science or Home Arts while undergoing B.Ed. or B.T. Course. At that stage, he or she is imparted training to teach. In the circumstances, having regard to the nature of the amendment effected, and the

purpose thereof, as indicated in the order effecting the amendment, it is clear that since 23rd January, 1978, at least, trained graduates with Home Science or Home Economics or Domestic Science or Home Arts at the level of graduation became eligible for being promoted as teacher for intermediate classes to teach Home Science. There is No. dispute that at the graduation level, the Appellant, on the basis of option exercised by her, had Home Science as one of the subjects.

3. In the circumstances, we allow the appeal and set aside the judgment and order under appeal and at the same time, declare that the Appellant was all throughout eligible for being promoted as a Lecturer for intermediate classes to teach Home Science from the date she was appointed as a Lecturer of the Intermediate College and it was inappropriate on the part of the authority concerned to cancel the said promotion of the Appellant. However, in the meantime, inasmuch as, the private Respondent has already been appointed to teach Home Science in the Intermediate College of the Institution, we would not disturb the engagement of the private Respondent, inasmuch as, fact remains that without noticing the amendment, the authority concerned proceeded to hold that the Appellant did not have necessary qualification for being promoted or appointed, which mistake in law in the similar circumstances, was committed also by a learned Judge of this Court. However, inasmuch as, right to be promoted crystallized in favour of the Appellant, we direct the State Government to treat the Appellant to have been promoted to the post of Lecturer for Intermediate College and to pay to the Appellant remuneration payable to her on the basis of such promotion from the date of original promotion. It shall be open to the Institution to utilize the Appellant and the private Respondent for imparting Lecture in the Intermediate College or in the High School. The designation of the Appellant shall, however, be Lecturer - Home Science and for all practical purpose, she shall be treated to be senior to the private Respondent.