

(2018) 06 UK CK 0061

In the Uttarakhand High Court

Case No : Writ Petition No. 1631 (S/S) of 2018

Smt. Madhu Negi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Citation : (2018) 06 UK CK 0061

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Sushil Kumar, Shailendra Nauriyal, N.P. Sah, Neeraj Garg

Judgement

Sharad Kumar Sharma, J.

The petitioner has sought the following reliefs :-

â??(i) Issue a writ, rule or direction in the nature of certiorari/mandamus directing the respondents to grant the benefit of pay at par to the similarly

situated employees in view of the orders dated 30.12.2008 and 30.05.2013 along with arrears and in view of the law laid down by the Apex Court in

the case of State of Punjab Vs. Jagjit Singh and as per AICTE norms keeping in view the facts highlighted in the body of the petition along with all

consequential benefits to quash the order dated 16.08.2017 along with its effect and operation also after calling the entire records from the

respondents.

(ii) Issue writ, rule or direction in the nature of the mandamus declaring the petitioner as a contractual employee of the Institute and UPNL only a

placement agency and also to direct the respondents to consider the case of the petitioner for classified them as a permanent and regular, keeping in

view the facts highlighted in the body of the petition and further to declare the

action of the respondents is unfair labour practice and also against the public policy and quash the same for creating such ostensible employer, employee relationship keeping in view the facts highlighted in the body of the petition and also direct the respondents to prepare a scheme for absorption of the petitioner in regular employment before making any steps for filling up the posts and position occupied by the petitioner from open market.

(iii) Issue any other order or direction which this Honâ??ble Court may deem fit and proper in the circumstances of the case.

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(iv) Award the cost of the petition in favour of the petitioner.â??

2. Learned counsel for the petitioner submitted that the petitioner was appointed through UPNL. The grievance of the petitioner is that neither the

respondents are giving the minimum pay scale nor granting the status of a regular employee to her. The apprehension of the petitioner is that since the

petitioner has preferred this writ petition before this Court for redressal of her grievances, she will face the music and may be removed from the

contractual appointment at any point of time.

3. Per contra Mr. N.P. Sah, Standing Counsel submits that there is no relationship between the petitioner and the State Government, as the petitioner

has been sourced through UPNL and the State Government is paying the salary of the employees who have been sourced through UPNL after

deducting the GST and UPNL is paying salary to the respective employees. He further submits that since the petitioner is not directly appointed and

there is no relationship of employer and employee between petitioner and the State Government, therefore, the respondents are not bound to pay the

minimum of pay scale as being paid to the regular ITI instructor in the respective ITIs.

4. Mr. Sushil Kumar, learned counsel for the petitioner submits that the Government of India issued a letter dated 30.12.2008 to all the State

Governments and the Union Territories with the directions that all the State Governments and the Union Territories shall pay the minimum pay scale to

the Instructors on contractual basis and the respondents are not giving effect to the letter of the Government of India dated 30.12.2008. He further

submits that similar controversy arose in the case of Nihal Singh and Ors. Vs. State of Punjab and Ors, (2013) 14 SSC 65 that since, the petitioner is

working on a sanctioned post as per the requirement of the respondents and that the petitioner is continuing since 2008. Therefore, neither the

respondents can deny the minimum pay scale to the petitioner as is being given to the newly appointed instructors on regular basis nor can they

immediately dispense with services of petitioner without any rhymes and reasons.

5. The Coordinate Bench of this Court in an identical matter adjudicated by way of Writ Petition No. 563 of 2018 (S/S), while admitting the writ

petition has passed an interim order dated 31.05.2018. This fact that the controversy, in question, happens to be identical to that as involved in Writ

Petition No. 563 of 2018 (S/S) this fact stands admitted by the respondentsâ?? counsel.

6. In that view of the matter, this writ petition would too carry the same interim order as passed in Writ Petition No. 563 of 2018 (S/S) on 31.05.2018.

The respondents are directed to file their counter affidavit within a period of three weeks showing under which provision of law the UPNL is legally

entitled to provide service to the State Government as UPNL is not registered under Contractual Labour Act and the rules framed thereunder and

neither the State Government is having any registration.

7. After considering the rival submissions of the learned counsel for the parties and after going through the judgment it is directed that the respondents

shall pay the minimum pay scale to the petitioner and petitioner shall continue on the present post and position till the decision of the present writ

petition.

8. List thereafter along with WPSS Nos.1541/2018 & 1550/2018, 1564/2018 & 1565/2018.