
(2010) 08 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 685 of 2010

Smt. Ruchi Chhetri

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8, Order 9 Rule 9
Constitution of India, 1950 — Article 226, 32
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2010) 08 UK CK 0002

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Aeltemesh Rein, Shamshravish Rein, Maheravish Rein, Aldanish Rein and P.S. Bisht, for the Appellant; S.N. Babulkar, General, A. Sinha, A.A.G., J.P. Joshi, C.S.C., Subhash Upadhyay, Brief Holder, V.K. Kohli H.M. Bhatia and T.C. Pande, for the Respondent

Final Decision : Dismissed

Judgement

B.S, Verma, J.—Learned Counsel for the Petitioner files supplementary affidavit. The same is taken on record.

2. Heard learned Counsel for the parties at length.

3. By means of this writ petition, the Petitioner has sought the following reliefs:

1. Issue of a writ of mandamus directing Respondents to treat the Petitioner as continuing in service and confirm her with all consequential reliefs.

2. Issue a writ of prohibition prohibiting the Respondents from hindering the Petitioner in any manner whatsoever in her service.

3. Issue a writ of certiorari and/or any other writs according as it may please your lordships in favour of the Petitioner.

4. . On 11-8-2010, the instant writ petition was listed before this Court for

admission. When the matter was taken up by the Court for admission, the learned Advocate General Mr. S.N. Babulkar, appearing on behalf of the State raised an objection to the averments made by the Petitioner in the memo of petition that it has been stated in paragraph No. 2 thereof that no other or similar petition has been filed by the Petitioner against the Respondents claiming the same relief in this or in any other Court, but in fact two writ petitions were filed by the Petitioner earlier before this Court, namely W.P.S.S. No. 439 of 2004, Smt. Ruchi Chetri v. Director, Sanskriti Directorate, Uttaranchal and Anr., which subsequently gave rise to filing of Defective Special Appeal No. 35 of 2004 by the Petitioner and W.P.S.S. No. 301 of 2005, wherein almost similar reliefs were sought by the Petitioner.

5. The records of the aforesaid writ petitions and the special appeal were summoned by the Court for perusal. For a ready reference the reliefs sought by the Petitioner in the earlier writ petitions are being reproduced below.

6. In the very first writ petition filed by the Petitioner before this Court, bearing W.P.S.S. No. 439 of 2004, Smt. Ruchi Chetri v. Director, Sanskriti Directorate, Uttaranchal and Anr. the relief sought by the Petitioner are as under:

I. To issue a writ, order or direction in the nature of mandamus commanding the Respondents to pay the salary as a Classical Musical Teacher.

IA. To issue a writ, order and certiorari quashing the order dated 2-04-2004 passed by the Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya.

II To issue a writ, order or direction as this Hon"ble Court may deem fit and proper in the nature and circumstances of the case.

III. To award the cost of the petition.

7. By the order dated 2-4-2004 passed by the Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya, Dehradun, in compliance with the letter dated 1-4-2004 of the Director, Sanskriti Directorate, Uttaranchal, Dehradun, attachment of Smt. Ruchi Kshetri, Instructor Music (on honorarium) with Bhatkhande Hindustani Sangeet Mahavidyalaya, Dehradun was Cancelled in student interest/ public interest and she was relieved for Bhatkhande Hindustani Sangeet Mahavidyalaya, Pauri.

8. It is pertinent to mention here that the Petitioner herself has annexed the copy of appointment letter dated 11 th February 2000 (Annexure-3 to the petition), whereby Smt. Ruchi Kshetri through Sri Vinav Kshetri. Village Ajabpur Khurd. Post Ajabpur Kalan, Dehradun (the Petitioner) was appointed as Instructor Music (on fixed emoluments) of Rs. 5,000/-for newly Created Pauri Branch of Bhatkhande Hindustani Sangeet Mahavidyalaya for the period 16th February 2000 to 29th March 2000. Subsequently, the Petitioner was attached to Bhatkhande Hindustani Sangeet Mahavidyalaya, Dehradun on her own representation.

9. The said writ petition (WPSS No. 439 of 2004, Smt. Ruchi Kshetri v. Director, Sanskriti Directorate, Uttaranchal and Anr. was finally dismissed by this Court on merits by order dated 22-6-2004 with the following observations:

This Court vide order dated 19.5.2004 directed an enquiry to be conducted by the Secretary, Culture, State of Uttaranchal.

In pursuance of this order passed by this Court, the Secretary, Department of Culture, Govt. of Uttaranchal has submitted a report, in which it has categorically come that it is a false statement made by the Petitioner. No such misconduct was committed by the Director.

Therefore, in view of the report of the Secretary, Department of Culture, Govt. of Uttaranchal, the stay order dated 29.4.2004 is vacated. Now this Court cannot interfere in this matter as the mala fide alleged against the Director, has not been proved in a transfer matter.

Therefore, the writ petition is devoid of merit and is, hereby dismissed. No order as to costs.

10. Thereafter, being aggrieved by the order dated 22-6-2004, the Petitioner preferred Special Appeal (Defective) No. 35 of 2004, Smt. Ruchi Chhetri v. Director, Sanskriti Directorate and Anr. which was withdrawn by order dated 4-8-2004 with liberty to the Appellant (Petitioner) to make representation to the State Government for her placement somewhere else than Pauri. It was also observed that if the representation is made, the Government shall deal with it in the light of Rules and Regulations.

11. It appears from a perusal of the record that the representation made by the Petitioner was rejected by the Government and the same was communicated to the Petitioner by the Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya, Dehradun by letter dated 3-3-2005 that the Government after considering her representation has decided that the representation made by her was liable to be rejected and that her contractual services are not required to the department/ Bhatkhande Hindustani Sangeet Mahavidyalaya on fixed honorarium for short period.

12. The said order dated 3-3-2005 was assailed by the Petitioner by filing Writ Petition (S/S) No. 301 of 2005, Smt. Ruchi Chhetri v. State and Ors. In this writ petition, the Petitioner has sought the following reliefs:

i. Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned order dt. 3.3.2005 (Annexure No. 10 to the writ petition), passed by Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya, Dehradun-Respondent No. 3.

ii. pass any other and further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iii. award the cost of writ petition to the Petitioner.

13. The said writ petition was dismissed by this Court by order dated 5-8-2010 for want of prosecution. It is clarified that on 5-8-2010 Mr. Subhash Upadhyay, Brief Holder for the State-Respondent Nos. 1 to 3 was present, as is obvious from the order-sheet of the case.

14. Now coming to the present writ petition, as detailed earlier, the first relief has been sought to issue a writ of mandamus directing the Respondents to treat the Petitioner as continuing in service and confirm her with all consequential reliefs. Second prayer is for issue a writ of prohibition prohibiting the Respondents from hindering the Petitioner in any manner whatsoever in her service.

15. It is significant to mention here that after the preliminary objection had been raised by the learned Advocate General on the very first day i.e. on 11-8-2010 when the petition was taken up for hearing on admission that the Petitioner deliberately concealed the facts, which were in her knowledge regarding challenge made by her to the orders passed against her regarding payment of salary as a classical musical instructor as also the alleged transfer and that of rejection of her representation made by her to the Government, which gave rise to Writ Petition (S/S) No. 301 of 2005. Today by filing the supplementary affidavit, the Petitioner has admitted that she had filed the abovementioned writ petitions as well as the special appeal, but on the other hand, the Petitioner has sought to make amendment by adding paragraph No. 2A to 2L to the memo of writ petition. In paragraph 3 of the supplementary affidavit, it is admitted to the Petitioner that the Writ Petition (SS) No. 301 of 2005 came to be dismissed in default.

16. Be that as it may, the question still remain for consideration by this Court whether the admissions made by the Petitioner by filing the supplementary affidavit would cure the charge of filing false affidavit and concealment of facts before the Court particularly when the Petitioner had taken recourse to litigation since the year 2004 and the Petitioner had upto date knowledge of the dismissal of her second writ petition in default by this Court vide order dated 5-8-2010 as pointed out in the supplementary affidavit filed today in the Court.

17. Learned Counsel appearing for the Petitioner has vehemently urged that the relief sought in the present writ petition and the reliefs sought in the earlier writ petitions are altogether different. According to the learned Counsel the principle of res-judicata does not apply to the instant writ petition. Learned Counsel in support of his contention has placed reliance upon the Apex Court judgment in the case of State of U.P. and Another Vs. Jagdish Saran Agrawal and Others, , wherein the Apex Court has observed in paragraph No. 14 as under:

14. In the present case, the suit filed by Nagar Palika was dismissed on technical ground and in any case the State was not a party. So far the suit where the State was a party and amendments were made, the same was dismissed for non-prosecution. But the same was not dismissed under Order 9 Rule 8. Order 9 Rule

8 and Order 9 Rule 9 CPC read as follows:

8. Procedure where Defendant only appears.- Where the Defendant appears and the Plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the Defendant admits the claim, or part thereof, in which case the court shall pass a decree against the Defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against Plaintiff by default bars fresh suit.-(1) Where a suit is wholly or partly dismissed under Rule 8, the Plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Therefore, Order 9 Rule 9 cannot be said to be applicable. The dismissal of the suit for non-prosecution was not a decision on merit. Consequently, the said order cannot operate as res judicata.

18. The ratio of the Apex Court judgment cannot be disputed, but the case-law is not applicable to the facts of the instant writ petition. In the appeal before the Apex Court [Jagdish Sharan Agrawal case (supra)], the State of Uttar Pradesh was one of the Appellants. The stand taken by the Appellants before the Apex Court was that the judgment in question does not operate as res judicata between the parties inasmuch as in the suit No. 25 of 1960 filed by Nagar Palika, the State of Uttar Pradesh was not a party. The State being the owner of the land and the land being only under the management of Nagar Palika, in view of Para 47 of the Nazul IV Annual, any proceeding initiated by Nagar Palika to which the State of Uttar Pradesh is not a party cannot be said to be binding on the State. In these premises, the Apex Court has held that Order 9, Rule 9 CPC was not applicable. The facts of the instant writ petition are quite distinct.

19. Learned Counsel for the Petitioner has also placed reliance upon the case of Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd. and Others, wherein the Apex Court has observed in paragraphs 11, 12, 13 and 18 as under:

11. On an examination of the pleadings in WP No. 1267 of 1999 and WP No. 1673 of 2005, we find that the issues for consideration, the parties to the cause, the cause of action and the reliefs claimed were all different in the two cases.

12. In the first petition, relief was sought under the Contract Labour (Regulation and Abolition) Act, 1970 for abolition of contract labour system in the operation of canteen in the marketing establishment of IOC and for absorbing the canteen works as employees of IOC.

13. In the second petition, relief was sought under the Industrial Disputes Act, 1947 for making a reference u/s 10(1)(c) to the Industrial Tribunal to decide whether the Contract between IOC and the canteen contractor was sham, nominal and a mere camouflage to avoid extension of labour law benefits to the workers in question, and whether the canteen Workers the direct employees of IOC.

18. When it became clear after the Constitution Bench decision in SAIL I that if the Case of the workmen is that the contract between the principal employer and the contractor was sham and merely a camouflage to deny benefits to the workers, then they could raise a dispute and approach the industrial adjudicator, the Appellant sought a reference of the dispute to the industrial adjudicator, and when such a reference was refused, rightly approached the High Court by way of second writ petition. This means that the Appellant had prayed for a particular relief in the first writ petition, and when such relief was found to be inappropriate and the law was clarified in SAIL I on the same fact raised a dispute which was the proper remedy, and as the dispute was not referred to the Industrial Tribunal, approached the High Court seeking a direction to the Central Government for making a reference. There is thus neither inconsistency nor any estoppel.

20. In the case of Sarva shramik Sangh (supra), the Apex Court on examination of the pleadings found that the issues for consideration, the parties to the cause, the cause of action and the reliefs claimed were all different in the two writ petitions. In the instant writ petition, the parties to the cause are not at all different, rather the relief has been sought against the Respondent Nos. 1 and 2, who were arrayed as Respondents in earlier Writ Petition (S/S) No. 301 of 2005. No relief has been sought by the Petitioner against the Respondent No. 3 to the instant writ petition. Moreover, the cause of action is the same because the Petitioner was aggrieved by the order dated 3-3-2005 of the Respondent No. 2 (Respondent No. 3 in WPSS No. 301 of 2005), who had communicated the decision of the State Government to the Petitioner that her representation was rejected and her alleged contractual services were not required by the department.

21. Learned Counsel for the Petitioner also contended that the Petitioner is working in the Bhatkhande Hindustani Sangeet Mahavidyalaya Dehradun. The Petitioner was appointed on 11-2-2000 on contractual basis and since then she is in service. Learned Counsel for the Petitioner has submitted that in view of the law laid down in paragraph No. 55 of the Apex Court judgment rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Petitioner has a right for regularization.

22. In reply, the learned Advocate General, assisted with Additional Advocate General, Mr. A. Sinha, Chief Standing Counsel Mr. J.P. Joshi and Brief Holder Mr. Subhash Upadhyay has raised a preliminary objection that the prayer sought in the earlier Writ Petition (S/S) No. 301 of 2005 was for quashing the order 3-3-2005 whereby the Principal concerned of the Bhatkhande Hindustani Sangeet

Mahavidyalaya Dehradun, who has been arrayed as Respondent No. 2 to the instant writ petition, communicated the decision of the Government that the representation made by the Petitioner was rejected after due consideration. It was also informed that the Government had taken a decision that her services of contractual engagement are no more required in the department/music college.

23. Learned Advocate General has pointed out that the admission made by the Petitioner in the supplementary affidavit that she had already filed the said writ petitions referred to above amounts to filing of false affidavit as well as concealment of facts by the Petitioner in the present writ petition. Learned Advocate General further contended that in paragraph No. 13, 14 and 15 of the Writ Petition No. 301 of 2005 (S/S), the Petitioner herself had stated that the services of the Petitioner were terminated by the order dated 3-3-2005 of the Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya Dehradun, but the impugned order of termination does not disclose the reason on which the services of Petitioner have been terminated by the Respondent authorities. It is further stated in para 14 thereof that in the impugned order, it has been simply stated that the services of Petitioner, on the basis of contract, are not required to the institution and as such the impugned order of termination is a non speaking order and is not legally sustainable in the eye of law.

24. Learned Advocate General in support of his contention placed reliance upon Rule 7 of Chapter XXII of the Rules of the Court, 1952 and submitted that second writ petition on same facts is not maintainable, where the earlier application had been rejected by this Court. Learned Counsel has placed reliance upon the judgment of Allahabad High Court in the case of S. Tripathi v. Banaras Hindu University 1993 (1) UPLBEC 448, wherein it has been held that filing of successive writ petitions on the same facts, a part from being abuse of process of Court is against public policy.

25. Rule 7 of Chapter XXII of the Rules of the Court, 1952 reads as under:

7. No second application on same facts.- Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts.

26. Learned State counsel has contended that in the earlier writ petitions filed by the Petitioner as well as in the instant writ petition, the core issues are similar. The Petitioner instead of seeking recall of the dismissal order dated 5-8-2010 passed in WPSS No. 301 of 2005 has taken recourse of filing fresh writ petition with a very slightly twisted prayer of mandamus. Learned State counsel further submitted that unless and until, the order impugned in that writ petition No. 301 of 2005 (S/S) is quashed, the Petitioner could not have been granted the relief sought in the present writ petition. Therefore, filing of present writ petition by the Petitioner on similar core issues amounts to abuse of the process of law. The learned Advocate General has placed reliance upon the Apex Court judgment rendered in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha and

Another Vs. State of U.P. and Others, wherein it has been held that a writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. Repeated filing of writ petitions amounts to criminal contempt.

27. Learned State counsel has further placed reliance in paragraphs 32, 33, 34, 36, 37, 38 and 39 of the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, . The Apex Court while referring to the case of Kensington Income Tax Commrs. (1917) 1 KB 486 in paragraph No. 37 has observed as under:

37. In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (K Bpp.495-96) ... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."(emphasis supplied) 28. In paragraph 38, the Apex Court has observed:

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or riot to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The Petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts.

29. Mr. V.K. Kohli, Senior Advocate, assisted by Mr. H.M. Bhatia and Mr. T.C. Pandey, advocates, appearing on behalf of the Respondent No. 3 has contended that filing of successive writ petition by not disclosing fact of earlier writ petitions on same fact amounts to abuse of process of law and that an exemplary cost be

imposed against the writ Petitioner in the instant case: Learned Counsel has placed reliance in paragraph 10 of a Division Bench judgment of Allahabad High Court in the case of J.C. Saxena v. Union of India and Ors. 2007(5) ALJ 811 (All) which reads as undergo. Learned Counsel for the Petitioner sought to argue that there is an additional prayer in the present writ petition that he should be given benefit of past service rendered in Ministry of Defence but this by itself would not make this writ petition based on different cause of action. Admittedly when the earlier writ petition was filed even this relief could have been claimed by the Petitioner. In Rakesh Kumar Agarwal v. State Bank of India, Mumbai and Ors. 2003 (3) ESC 1333 a Division Bench of this Court held:

Even if a party does not pray for the relief in the earlier writ petition, which he ought to have claimed in the earlier petition, he cannot file successive writ petition claiming that relief, as it would be barred by the principle of constructive res judicata.

30. In that case, the Allahabad High Court while dismissing the writ petition has levied cost Rs. 10,000/- against the Petitioner.

31. Having heard the rival contentions of the parties and having perused the material placed before this Court, I am of the view that in above premise, it has to be examined by this Court whether the core issue involved in the earlier writ petitions filed by the Petitioner as well as in the present writ petition is similar or not.

32. The admitted facts are the Petitioner had filed a writ Petition being W.P.S.S. No. 439 of 2004 and therein the first prayer made by the Petitioner was for mandamus commanding the Respondents (Director Sanskriti Directorate, Uttaranchal, district Dehradun and Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya Dehradun) to pay the salary as a classical musical teacher to the Petitioner. The second prayer was made for issue a writ of certiorari quashing the order dated 2-4-2004, whereby the Petitioner was relieved from Dehradun to Pauri. It is also not disputed that the Petitioner never complied with the order dated 2-4-2004 and she did not join her duties at Pauri. Admittedly, the said writ petition No. 439 of 2004 was dismissed by this Court vide order dated 22-6-2004. The Petitioner has assailed the order dated 22-6-2004 in Special Appeal (Defective) No. 35 of 2004 before this Court and the special appeal was disposed of as withdrawn with liberty to the Petitioner/Appellant to make representation to the State Government for her placement somewhere else than Pauri. Ultimately, the representation of the Petitioner was rejected by the Government and her contractual engagement was dispensed with and the same was communicated to the Petitioner by the Principal, Bhatkhande Hindustani Sangeet Mahavidyalaya Dehradun by letter dated 3-3-2005. The Petitioner challenged the said order/letter in subsequent writ petition bearing W.P.S.S. No. 301 of 2005 before this Court, which was ultimately dismissed for want of prosecution by order dated 5-8-2010. It is also not disputed that the Petitioner has not chosen to file recall application and to restore the said writ petition till

now, rather the Petitioner has preferred the instant writ petition with the relief including a prayer for a writ of mandamus directing the Petitioner as continuing in service and confirm her with all consequential relief.

33. It is pertinent to mention here that no reference of earlier petitions filed by the Petitioner was made by the Petitioner while filing the instant writ petition before this Court. On the other hand, in paragraph No. 2 the following averments were made:

2. That no other or similar petition has been filed by the Petitioners against the Respondent claiming the same relief in this or in any other Court.

34. From a narration of the above facts and circumstances, it is crystal clear that it was open for the Petitioner to have sought the relief at the time of filing earlier writ petition (No. W.P.S.S. 301 of 2005), as prayed for in the present writ petition. Moreover, it is evident from a perusal of the supplementary affidavit filed by the Petitioner that it was within the knowledge of the Petitioner that Writ Petition No. 301 of 2005 (S/S) was dismissed in default by this Court vide order dated 5-8-2010. It is pertinent to mention here that the Petitioner in her very first writ petition being W.P.S.S. No. 439 of 2004 had made first prayer for a writ in the nature of mandamus commanding the Respondents to pay the salary as a classical musical teacher. In that writ petition, the Petitioner made allegations of mala fide against the then Director-Respondent No. 3 herein. This Court vide order dated 19-5-2004 directed the Secretary, Culture, State of Uttaranchal, Dehradun to enquire into the whole episode and submit its report within two weeks from the date of order. The Secretary concerned submitted his report in which it has been categorically mentioned that a false statement was made by the Petitioner in the writ petition and that no such misconduct, as alleged by the Petitioner, was committed by the Director. The writ petition was dismissed on merits by order dated 22-6-2004 by this Court, which gave rise to special appeal, as detailed herein above. It is also significant to note that second round of litigation took place when the Petitioner challenged the decision of the State Government rejecting her representation and dispensing with her contractual services in WPSS No. 301 of 2005. In that writ petition the Petitioner had sought quashing of the alleged termination order dated 3-3-2005 (Annexure-10 to that petition). In that writ petition, counter affidavit was filed on behalf of the Respondent No. 2. The affidavit was duly sworn in by Shri Amitabh Srivastava, the then Director, Sanskriti Directorate, State of Uttaranchal, Dehradun; but the Petitioner did not prosecute the case and the writ petition was dismissed in default vide order dated 5-8-2010.

35. The Petitioner instead of filing recall/restoration application and without mentioning the factual aspect of the earlier writ petitions has filed the instant writ petition. It was only when an objection was raised from the side of the State that the Petitioner had earlier also filed two writ petitions for similar reliefs, the Petitioner chose to file supplementary affidavit, which has been filed in the Court today and therein the Petitioner has admitted the fact that earlier writ petitions

were filed by the Petitioner and that the Writ Petition No. 301 of 2005 (S/S) was dismissed in default on 5-8-2010.

36. The argument of the learned Counsel that the relief sought in the instant writ petition are all together different from the relief sought by the Petitioner in earlier writ petition is not at all acceptable for the simple reason that unless and until the order dated 3-3-2005, which was impugned in earlier W.P.S.S. No. 301 of 2005 is quashed, the relief sought by the Petitioner in the instant writ petition cannot be granted. Needless to reiterate that by order dated 3-3-2005 the representation of the Petitioner was rejected and her contractual engagement was dispensed with.

37. The Petitioner in paragraph 4.18 of the memo of petition has made an averment that the Petitioner had signed the attendance register at Dehradun till 5-4-2004 and was orally told on 5-4-2004 that on 2-4-2004 the Petitioner has been transferred back to Pauri Garhwal, against which he represented time and again as stated above. This averment of the Petitioner stands belied because the Petitioner had already assailed the order dated 1/2-4-2004 passed by the Director, Sanskriti Directorate, Uttaranchal, thereby the attachment of the Petitioner with Bhatkhande Sangeet Mahavidyalaya Dehradun was cancelled and she was relieved for Bhatkhande Sangeet Mahavidyalaya Pauri with immediate effect in the very first writ petition (WPSS No. 439 of 2004) by adding relief No. IA therein with permission of the Court.

38. From the discussion above, I hold that the core issue involved in the instant writ petition is the same, which had been the subject matter of earlier Writ Petition (S/S) No. 439 of 2004 and subsequent Writ Petition (S/S) No. 301 of 2005 between the same parties and for the same cause of action, more particularly because unless and until the decision of the State Government thereby dispensing with the contractual engagement of the Petitioner, which is impugned in Writ Petition No. 301 of 2005 (S/S) is quashed, no relief could be granted in favour of the Petitioner in the instant writ petition.

39. The argument of the learned Counsel for the Petitioner that the instant writ petition is not barred by Rule 7 of Chapter XXII of the Rules of the Court, 1952 and the principle of constructive res judicata is also not acceptable for the simple reason that the Petitioner had already filed two writ petitions involving similar cause of action between the same parties and the core issue being almost identical in all these writ petitions.

40. It is also established that the Petitioner has not disclosed the fact of earlier writ petitions worth the name in the instant writ petition, although the Petitioner has admittedly due knowledge of the earlier writ petitions having been filed before this Court as well as also of the fact that the orders passed in those writ petitions were not favourable to suit the purpose of the Petitioner. In my view the Petitioner cannot be allowed to play "hide and seek" or to "pick and choose". The Petitioner in the instant writ petition has not approached this Court with clean

hands. It is a case in which the material facts have been suppressed as well as distorted by the Petitioner. I also hold that filing of instant writ petition for the same core issue amounts to abuse of process of law. Following the ratio of the Division Bench judgment of the Allahabad High Court in the case of J.C. Saxena v. Union of India and Ors. 2007 (5) ALJ 811 (All) (supra), it is a fit case in which a token cost of Rs. 5000/- may be imposed against the Petitioner.

41. For what has been stated above, I am of the considered view that the Petitioner in the instant writ petition cannot claim equitable relief and the writ petition deserves to be dismissed outright with cost against the Petitioner.

42. The writ petition is accordingly dismissed summarily with cost quantified at Rs. 5,000/-(five thousand). The cost of Rs. 5,000/- shall be deposited by the Petitioner within a period of one month in the High Court Advocate Welfare Fund bearing Account No. 30789295695 standing with the State Bank of India, High Court Branch at Nainital. In case of failure to pay the amount of cost, it shall be recovered as arrears of land revenue for which the Registrar General of this Court shall take appropriate steps through Collected. The prayer of amendment as sought by the Petitioner in the supplementary affidavit stands rejected.

43. Certified copy of this order be issued to the learned Counsel for the parties on payment of usual charges by 19-8-2010.