

(2019) 02 UK CK 0070
In the Uttarakhand High Court
Case No : Special Appeal No. 886 Of 2017

State Of Uttarakhand And Another	Vs	APPELLANT
Kailash Chandra Chandola And Others		RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Citation : (2019) 02 UK CK 0070

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : C.S. Rawat, S.S. Yadav

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State and Mr. S.S. Yadav, learned counsel for the respondents.

2. This appeal is preferred against the order passed by the learned Single Judge in WP (S/S) No.2133 of 2016 dated 29.03.2017. On the premise that the respondent-writ petitioners were all appointed to the post of Instructor on contractual basis, but were merely paid the minimum pay scale, the learned Single Judge, relying on the letter dated 30.12.2008 whereby remuneration to contract faculties in ITIs, ITCs were to be kept equal to consolidated monthly salary of a regular newly appointed instructor in the Institute, directed the respondents to pay consolidated monthly salary, of a regular newly appointed instructor in the institute, to the petitioners, for the period between 31.12.2008 to 20.12.2011, within a period of ten weeks.

3. In the order under appeal, the learned Single Judge noted the stand taken by the State that the petitioners were only entitled for minimum pay scale. He, however, held that this contention could not be accepted in view of the letter dated 30.12.2008 whereby the council has recommended that remuneration to

contract faculty, in ITIs/ITCs, be kept equal to consolidated monthly salary of a regular newly appointed instructor of the institute.

4. In the counter affidavit, filed by the appellants herein in the writ petition, it is stated that Daily Wager Instructors were appointed by the erstwhile State of Uttar Pradesh between the years 1988-1998; they were granted daily wages which was periodically revised; from 29.05.2009 they were paid Rs.9,300 (consolidated) which is minimum of the pay scale provided by the 6th pay commission; they were continued to be paid this consolidated sum till the date of their regularization; after regularization, they have been granted all the benefits which were being given to regular incumbents; and the directions, issued by the Government of India on 30.12.2008, were in respect of contractual employees, whereas the petitioners were Daily Wagers Instructors.

5. As noted herein above, the case of the appellants-respondents, in the counter affidavit filed before the learned Single Judge, was that the writ petitioners were not contractual employees but were Daily Wage Instructors. While Shri S.S. Yadav, learned counsel for the respondents, would dispute this assertion, the fact remains that the learned Single Judge has not examined this question at all. He has proceeded on the premise that the respondent-writ petitioners were contractual faculty members of the institute; and has therefore applied the proceedings of the Government dated 30.12.2008, whereby contract faculty in ITIs, ITCs were directed to be paid the consolidated monthly salary of a regular newly appointed instructor in the institute, to the respondent-writ petitioners.

6. The question whether the contention of the appellants, that the respondents-writ petitioners were Daily Wager Instructors, or whether the contention of Shri S.S. Yadav, learned counsel for the respondents, that they were not Daily Wager Instructor but were contractual faculty member, is valid ought to have been examined by the learned Single Judge before granting the relief sought for in the writ petition.

7. The submission of Shri S.S. Yadav, learned counsel for the respondents, that persons junior to the petitioners were extended this benefit, and they should therefore be extended the same benefit, may merit acceptance only if persons, whom the petitioners claim to be juniors to them, were also appointed in the same post which the petitioners held. As this question has not been examined by the learned Single Judge, suffice it to set aside the order under appeal and restore WP (S/S) No. 2133 of 2016 to file. As pleadings are complete, it is open to Shri S.S. Yadav, learned counsel for the respondents, to request the learned Single Judge to take up the writ petition for hearing at an early date.

8. We have no reason to doubt that, on such a request being made, the learned Single Judge would give it its due consideration. The appeal is disposed of accordingly. No costs.