
(2019) 12 UK CK 0067

In the Uttarakhand High Court

Case No : Special Appeal No. 619 Of 2019

State Of Uttarakhand And Another

APPELLANT

Vs

Satya Prakash Thapliyal

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Citation : (2019) 12 UK CK 0067

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Pradeep Joshi, Rajendra Dobhal, Shubhang Dobhal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

Delay Condonation Application (CLMA) No.8040 of 2019

1. The application seeking condonation of delay in preferring the appeal is not opposed by Mr. Rajendra Dobhal, learned Senior Counsel appearing on

behalf of the respondent-writ petitioner and the delay is, therefore, condoned.

2. This appeal is preferred by the State of Uttarakhand and another against the order passed by the learned Single Judge in WPSS No.714 of 2010

dated 03.04.2018. The respondent in this Special Appeal invoked the jurisdiction of this Court, filing WPSS No. 714 of 2010, seeking a writ of

certiorari to quash the orders dated 16.02.2009, 12.11.2009 and 19.05.2010; and a writ of mandamus commanding the respondents to grant them the

pay scale i.e. Rs. 2200-4000 (revised as Rs.8000-13500) from the date when the respondent-writ petitioner acquired the necessary qualifications

mentioned in the Government Order dated 29.02.1996, and became eligible for payment of the said pay scale in the post of Librarian in Shri Guru Ram

Rai (P.G.) College, Dehradun.

3. This case has had a checkered history. The respondent-writ petitioner was appointed as a Library Clerk by order dated 29.07.1985. Consequent, on

the retirement of the then Librarian Mr. S.P. Nautiyal, the petitioner was given charge of the post of Librarian on 02.04.1994, and has been

discharging the duties of a Librarian, in the institution, ever since.

4. After the respondent-writ petitioner took charge of the post of Librarian, in compliance with the order dated 24.03.1994, he also obtained his post-

graduate degree in Library Science. He invoked the jurisdiction of this Court, filing WPSS No.946 of 2001, claiming entitlement of the salary

applicable to the post of Librarian. In their counter affidavit, in WPSS No.946 of 2001, the appellants herein contended that the respondent-writ

petitioner was handed charge of the books only, and not the charge of the post of Librarian.

5. This contention, urged on behalf of the appellant, was rejected by the learned Single Judge holding that an experience certificate dated 20.06.1998

had been issued by the Principal of the institution wherein it was certified that the respondent-writ petitioner was holding charge of the post of

Librarian ever since 1.04.1994 which established that he was given charge of the post of Librarian; and, since he was discharging the duties of a

Librarian, he was entitled to get the pay and allowances applicable to the said post.

6. The learned Single Judge, thereafter, referred to Rule 22-B(1) of the Financial Handbook, and the judgment of the Supreme Court in *Jaswant*

Singh Vs. Punjab Poultry Field Staff Association and others : (2002) 1 SCC 26,1 wherein it was held that, when an employee discharges the

duties of a higher post, bearing duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time

scale of the higher post shall be fixed at the scale next above the pay in respect of the lower post by one increment. The learned Single Judge directed

that the respondent-writ petitioner shall be paid the salary and allowances, applicable to the post of a Librarian, with effect from the date he was

discharging the duties applicable to the said post.

7. Aggrieved thereby the appellants herein filed Special Appeal No.205 of 2008 and a Division Bench of this Court, in its order dated 19.11.2008,

observed that the learned Single Judge had rightly issued a mandamus directing that the respondent-writ petitioner be paid salary and allowances of the post of Librarian for the period he discharged the functions of the post; the directions contained in the said judgment did not suffer from any illegality and irregularity, since the respondent-writ petitioner was asked to perform, for some period, functions and to discharge the obligations of a Librarian after the retirement of Mr. Satya Prakash Nautiyal w.e.f. 02.04.1994. The appeal preferred by the appellants herein was dismissed by the Division Bench by its order dated 19.11.2008 and the said order has attained finality as the appellant chose not to question the validity of the said order before the Supreme Court. As a consequence of the order of the Division Bench, which attained finality, the respondent-writ petitioner was placed in the scale of pay of Rs. 2000-3200. The consequence of the order of the Division Bench is only that the pay scale of Rs. 2000-3200, as revised from time to time, should be extended to him. The respondent-writ petitioner, thereafter, filed the present writ petition contending that, since he had obtained a post graduate degree in Library Science in the year 1995, albeit after he joined service, he was entitled to be given the benefit of selection grade in terms of the Government Order dated 29.02.1996.

8. What was claimed before the learned Single Judge, by the respondent-writ petitioner herein, was not payment of the revised pay-scales equivalent to the scale of Rs. 2000-3200, but for a higher pay scale of Rs. 2200-4000 called the selection grade scale of pay. This claim of the respondent-writ petitioner was based on his acquiring a post graduate degree in Library Science after he was appointed as a Library Clerk. The relief claimed by the respondent-writ petitioner, in WPSS No.714 of 2010, does not flow from the order of the Division Bench in SPA No.205 of 2008 dated 19.11.2008.

9. Mr. Pradeep Joshi, learned Standing Counsel, may, therefore, be justified in his submission that the learned Single Judge had erred in tracing the respondent-writ petitioner's entitlement, to the scale of pay of Rs. 2200-4000, to the earlier order of the Division Bench.

10. The fact, however, remains that, besides observing that the respondent-writ petitioner was entitled to the pay-scale of Rs.2200-4000 as a result of the earlier order of the Division Bench, the learned Single Judge has also referred to Appendix A of the Government Order dated 29.02.1996.

In this context, it needs to be noted that the respondent-writ petitioner obtained a post graduate degree in Library Science with 50.16% marks. The

Government Order dated 29.02.1996 provides for the revision of scales for different categories of posts in a Library. While Appendix A, thereof

is applicable to those who are already working, Appendix B is applicable to those who are appointed later. The respondent-writ

petitioner's claim for being granted selection grade of Rs. 2200-4000 was rejected by the appellant on the ground that, in terms of Appendix

B, only those candidates, who secured a minimum of 55% marks in their post graduation in Library Science, were entitled for the benefit of

the selection grade-pay.

11. As noted herein above, Appendix B related to those employees who are not already in service and, since the respondent-writ petitioner

was already in service, it is Appendix A, and not Appendix B, which is applicable to him. Unlike Appendix B which requires

the candidate to have a post graduate degree in Library Science with a minimum of 55% marks, Appendix A only requires the candidates,

who claims entitlement to be extended the benefit of selection grade, to have a post graduate degree in Library Science either with a first class or a

second class. The respondent-writ petitioner secured 50.16 marks in his post graduation in library science, which is more than 50% (the minimum

marks to be awarded a second division). He, therefore, fulfills the education qualifications stipulated in Appendix A to be extended the benefit

of the selection grade pay of Rs. 2200-4000.

12. Albeit for reasons, other than those which weighed with the learned Single Judge, we are satisfied that the respondent-writ petitioner is entitled to

be granted the relief of being extended the revised pay-scale of Rs. 2200-4000 since he fulfills the educational qualifications prescribed in Appendix

A. We see no reason, therefore, to interfere with the order under appeal whereby the appellant was directed to extend, to the respondent-writ

petitioner, the benefits of the revised pay scale of Rs. 2200-4000 as revised from time to time.

13. The Special Appeal fails and is, accordingly, dismissed.

No costs.