

(2010) 06 UK CK 0211
In the Uttarakhand High Court

State of Uttarakhand and Others

APPELLANT

Vs

Beer Singh Bhandari

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Uttaranchal School Education Act, 2006 — Section 58

Citation : (2010) 2 UC 998

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—The respondent was appointed as a Junior Clerk on 21.10.1971 in the Basic Education Board. During the course of his employment with the aforesaid Board, he was promoted as Senior Clerk with effect from 01.08.2000.

2. The Uttaranchal School Education Act, 2006 (hereinafter referred to as the 2006 Act) was notified on 22.04.2006. By the mandate of the 2006 Act, all employees of the Basic Education Board were transferred to the employment of the Education Department of the State Government. In this behalf, Section 58 of the 2006 Act is relevant and the same is accordingly being reproduced hereunder:

58. The services of teachers and employees of Basic Shiksha Parishad to be under the control of State Government - All the teachers, officers and employees of Basic Shiksha Parishad, including any supervising or inspecting officer or employee working immediately before the date of the commencement of this Act, shall be transferred to the State Government and they shall become teachers, officers and employees of the State Government and their services shall be governed by the service rules prescribed by the State Government.

3. It is not a matter of dispute, that on having been absorbed as an employee of the Education Department of the State Government, the respondent was permitted to hold the post of Senior Clerk. He was also allowed to draw salary at the stage he was drawing at the time when the employees of the Basic Education Board were merged with the Education Department of the State Government.

4. When the claims of persons, who were appointed as Senior Clerks after the date of appointment of the respondent as such (01.08.2000) were considered, the respondent claimed similar promotion. On being denied such promotion at the hands of the appellants, he approached this Court by filing Writ Petition (S/S) No. 270 of 2009. A learned Single Judge of this Court, allowed the aforesaid writ petition by an order dated 23.12.2009.

5. Through the instant Special Appeal, the State Government has assailed the order rendered by the learned Single Judge dated 23.12.2009 allowing Writ Petition (S/S) No. 270 of 2009.

6. It is the sole vehement contention of the learned Counsel for the appellants, that the respondent was inducted into the employment of the Education Department of the State Government with effect from 22.04.2006, and as such, for all intents and purposes, benefits flowing to the respondent should be deemed to commence with effect from 22.04.2006. Accordingly, it is asserted by the learned Counsel for the appellants, that even for purposes of determining seniority in the cadre of Senior Clerks, the respondent's appointment, as such, should be deemed to be with effect from 22.04.2006 i.e. the date of his transfer into the employment of the Education Department of the State Government.

7. As against of the aforesaid solitary contention advanced by the learned Counsel for the appellants, learned Counsel for the respondent has invited our attention to Section 58 of the Uttaranchal School Education Act, 2006 and pointed out the mandate contained therein, that teachers, officers and employees transferred to the Education Department of the State Government would be governed by the service rules prescribed by the State Government. It is therefore submitted, that reference should be made to the service rules, so as to determine the issue of seniority of the respondent consequent upon the transfer of the employment of the respondent from the Basic Education Board to the Education Department of the State Government. It is not disputed between the learned Counsel for the parties, that the Uttaranchal Government Servants Seniority Rules, 2002 regulate the issue of service of all employees of the Education Department of the State Government. It is also not disputed by the learned Counsel for the rival parties, that under the aforesaid Rules, there is no provision regulating seniority of employees similarly situated as the respondent, namely, when an appointment is made by way of transfer. In the circumstances, it is submitted that in the absence of any statutory rules, seniority should be granted to the respondent on the basis of continuous length of service in the cadre of Senior Clerks.

8. We have considered the rival submissions advanced by the learned Counsel for the parties. In terms of the mandate Section 58 of the Uttaranchal School Education Act, 2006, the service rules of the State Government were liable to be referred to, so as to determine the issue of seniority of the respondent. However, in the absence of any explicit rules, which could be made applicable to the respondent under the Uttaranchal Government Servant Seniority Rules, 2002,

the continuous length of service rendered by the respondent in the cadre of Senior Clerks is liable to be given effect to, so as to determine inter se seniority viz. the other employees of Education Department of the State Government. Thus viewed, the respondent is liable to be given benefit of seniority with effect from 01.08.2000, which admittedly, is the date when the respondent was promoted as Senior Clerk in the Basic Education Board. This, in our view, shall also result in giving complete effect to the suo motu determination of the appellants, in absorbing the respondent as a Senior Clerk at the time of his induction into the service of Education Department of the State Government, as also, allowing him to draw salary at the stage he was drawing at the time of his appointment under the Education Department of the State Government. This is bound the basis and the manner of determination of the respondent's seniority also. It would be pertinent to mention, that there was no option with the respondent to continue in the employment of the Basic Education Board, inasmuch as, without obtaining his consent the respondent (as also, all other employees earlier rendering service under the Basic Education Board) was transferred by one stroke of pen to the employment of the Education Department of the State Government. The respondent could not have unilaterally been denied the benefit of service rendered by him as Senior Clerk with effect from 01.08.2000.

9. Despite the conclusion rendered hereinabove, learned Counsel for the appellants also submitted, that there was no justification, whatsoever, for the learned Single Judge to have ordered the consideration, as also, promotion of the respondent as Chief Assistant, one day before the date when the juniors of the respondent were promoted as such. In this behalf, it is submitted at the hands of the learned Counsel for the appellants, that at best the respondent was entitled to promotion with effect from the date his juniors were promoted as Chief Assistants. In so far as the instant contention is concerned, learned Counsel for the respondent very fairly conceded, that he has no objection if the order rendered by the learned Single Judge dated 23.12.2009 is modified, so as to incorporate a direction to the appellants to consider the claim of the respondent for promotion to the post of Chief Assistant with effect from the date when his juniors were promoted as such, and in case he is found suitable for promotion, to promote him as such with effect from the date when his juniors were promoted.

10. In view of the above, the order rendered by the learned Single Judge dated 23.12.2009 is modified, so as to direct the consideration of the claim of the respondent for promotion to the post of Chief Assistant with effect from the date when his juniors were promoted as such, and in case he is found suitable for the aforesaid promotion, to order his promotion from the date when his juniors were promoted as such.

11. The instant special appeal is disposed of in the aforesaid terms.

12. Since the main appeal has been disposed of on merits, it is not necessary for us to pass any formal order on the application for condonation of delay (CLMA

No. 2511 of 2010) in filing the appeal.