

(2018) 03 UK CK 0043

In the Uttarakhand High Court

Case No : Special Appeal No. 592, 594 of 2017

STATE OF UTTARAKHAND AND OTHERS

APPELLANT

Vs

DEEWANI RAM ARYA AND OTHERS

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Uttar Pradesh Technical Education Department Non-Gazetted?? Technical Service Rules, 1988

Uttar Pradesh Technical Education Gazetted Officers Service (First Amendment) Rules, 1998

U.P. Technical Education Gazetted Officers Rules, 1990

Citation : (2018) 03 UK CK 0043

Hon'ble Judges : RAJIV SHARMA, J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : J.P. Joshi, Anil Anthwal, Harendra Belwal, Rajesh Sharma

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J.

1. These are two special appeals arises out of the common judgment rendered by the learned Single Judge in Writ Petition No.2610 of 2015, Dewani

Ram Arya vs. State of Uttarakhand and others and in Writ Petition No.2347 of 2015, Kishori Lal Tamta vs. State of Uttarakhand and others.

2. By virtue of the judgment dated 14.02.2017 under challenge in these appeals, the learned Single Judge had allowed the writ petition and quashed the

impugned order dated 10.10.2014 passed by Respondent No.3 under challenge and directed that as both the petitioners have reached the age of

superannuation and retired from their services.Â The respondents were directed to grant promotional pay scales to the petitioners as per the Rules

and to calculate their pension accordingly. However, the monetary benefits have

been confined to be given only for the purposes of pension alone, for brevity paras 5 and 6 of the judgment are quoted hereunder:-

5. Both the petitioners are High School and have diploma in their respective trade i.e. Welder and Fitter respectively from the Industrial Training Institute, Almora and Nainital. Therefore, it cannot be said that the petitioners were not regularized inasmuch as there is a categorical finding of the Tribunal that the services of the petitioners stood absorbed as Instructors. There was no further question of their being regularized.

6. In view of the aforesaid, the writ petitions succeed. The order dated 10.10.2014 passed by respondent no.3 (Annexure No.23 in WPSS No.2347 of 2015) is hereby quashed. Both the petitioners by now have reached the age of superannuation and retired from service. Respondent authorities are hereby directed to grant promotional pay scales to the petitioners as per rules and calculate their pension accordingly. The actual monetary benefits will be given for the purposes of pension alone. Let the needful be done in the matter within a period of three months from the date of production of a certified copy of this order.

3. Before venturing into the grounds for challenge given to the judgment impugned in appeal, it is necessary to precisely deal with the facts as involved in the writ petition. The writ petitioner of Writ Petition No.2610 (S/S) of 2015, Dewani Ram Arya vs. State of Uttarakhand and others, has prayed for the following reliefs:-

(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant promotional pay scale Rs.2200-4000 (revised Rs.8000 to Rs.13500) to the petitioner and second promotional pay scale Rs.10000Rs.15200 w.e.f. July, 2002 and next promotional pay scale after completing 26 years service and entitled the pay scale of Rs.15600-39100 with a grade pay of Rs.7600/- and other consequential benefits including arrears of promotional pay scale.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant him pension for the post of Instructor Welder including arrears of pensionary benefits.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant notional regularization to the petitioner w.e.f. 12-03-

1987 under the State Government grant him all consequential benefits.

(iv) Issue a writ, order or direction in the nature of mandamus directing the respondents to restore the seniority to the petitioner by keeping him in service since 12-03-1987.

(v) Issue a writ, order or direction in the nature of mandamus directing the respondents to pay arrears of salary promotional pay scale which is due with department @ 15% interest on the delayed payment of promotional pay scale.

(vi) Issue any suitable order or direction as this Honâ??ble Court may deem fit and proper in the circumstance of the case.

(vii) Award the cost of the writ petition to the petitioner.â??

4. The brief backdrop of the case as put up by the petitioner in the writ petition was that he was claiming a promotional pay scale of Rs.2200-4000

later (revised toÂ Rs.8000-13500) and also the benefit of second promotional pay scale of Rs.10000-Rs.15200 with effect from July 2002.Â It was

further prayed for that he may be granted with the promotional pay scale for which he is entitled, as a consequence of completion of 26 years of

service making him entitled for the scale of Rs.15600-39100 with grade pay of Rs.7600/- with all consequential benefits arising out of it.

5. The contention of the petitioner was that the petitioner had earlier filed writ petition being, Writ Petition No.1693 (S/S) of 2012, Dewani Ram Arya

vs. State of Uttarakhand and others, it was withdrawn by the petitioner with a liberty to file fresh with better particulars annexing therewith.Â The

judgment of the Tribunal which has been passed in his favour, the learned Single Judge dismissed the writ petition as withdrawn on 28.11.2015, with

liberty to file fresh, consequently, the present writ petition.

6. The petitioners to the writ petition contended that they possess the qualification of I.T.I. in their respective trade having passed the same, from

Industrial Training Institute, Almora and Nainital respectively.Â It is the case of the petitioners that under the strength of the qualification of I.T.I. in

their trade, they were initially appointed as Workshop Attendant (Karyashala Anuchar) under the employment of the Nainital Polytechnic, as back as

on 14.06.1976 in the pay scale of Rs.165-215.Â In support of his contention, petitioners have placed on record the letter of appointment issued in their

favour on 14.06.1976.Â Though, the said letter showed that it was an

appointment made initially for a period of three months only.Â At the time of appointment of the petitioner, the Nainital Polytechnic was an aided institution which was governed by the Board of Management under the Chairmanship of Commissioner of Kumaou Division, Nainital.

7. It was the case of the petitioner of Writ Petition No.2610 of 2010, Dewani Ram Arya vs. State of Uttarakhand and others, that though he has worked since 1976 in Nainital Polytechnic as Workshop Attendant (Karyashala Anuchar), but after having come across the advertisement as published in Times of India and Amar Ujala in the year 1982, whereby, the applications were invited for appointment on the post of Workshop Instructor (Fitter).Â The petitioner applied against the said post and after undergoing the process of selection he was appointed on the post of Workshop Instructor (Fitter).Â Â

8. The case of the petitioner was that after the appointment made on the post of Workshop Attendant in pursuance to the selection of 1976, it was against a sanctioned vacant post under the employment of the respondent/department. The petitioner worked satisfactory and consequent thereto, by virtue of an order dated 15.07.1985, he was made permanent on the post of Workshop Attendant.Â Â

9. It is the case of the petitioner that he worked on the post of Workshop Attendant up to 9th July, 1986 and thereafter on the post of Workshop Instructor (Fitter) carrying the scale of Rs.550-940/- which he was deriving on the basis of the qualification possessed by him.Â The Principal, Nainital Polytechnic on 9th July, 1986 is said to have passed an order thereby appointing the petitioner as Workshop Instructor (Fitter) based on the qualification he possessed. Petitioner is said to have joined duties as Instructor on 10.07.1986.Â Though, the appointment of the petitioner was initially for a period of three months, but the respondent continued to extend the services of the petitioner from time to time and the last extension was given to the petitioner on 24.07.1986 on the post of Workshop Instructor (Fitter), initially for one year or till decision of the selection committee in future.

10. On 12th March, 1987, the Nainital Polytechnic was provincialized and was taken over by the State Government.Â Though without any basis.Â it is the case of the petitioner that after the provincialization of the Nainital Polytechnic, his services were reverted back to the Class IV posts as

Workshop Attendant by virtue of an order dated 02.04.1987, despite the fact that on the date of passing of the order of reversion dated 02.04.1987, he possessed the requisite qualification for being appointed on the post of Workshop Instructor (Fitter) and working after due selection.

11. The effect of provincialization of Nainital Polytechnic was that all the posts which existed prior to the provincialization were abolished and the new posts were created in the said institution and those employees who were working against the posts available in Nainital Polytechnic were reappointed against the posts created in the Government Polytechnic, Nainital after provincialization.Â However, the protection of their salary and seniority was granted by the notification.

12. It is the case of the petitioner that, as a consequence of the provincialisation, he submitted his option for State Governmentâ??s services and on account of the fact that he possessed sufficient qualification and he was appointed on the post of Instructor and continued to discharge his duties on the post of Instructor till the age of superannuation.Â Â

13. The State has issued a Government Order on 30.05.1986, wherein, it was provided that the services rendered by an employee in Nainital Polytechnic would also be taken into consideration for grant of promotional pay scale and other benefits as a consequence of the provincialization of the Polytechnic by the Government Order dated 12.03.1987.

14. Apparently, as per the record, the petitioner continued to work in Nainital Polytechnic, ever since, his initial appointment as back as 14th June, 1976, till he attained the age of superannuation and according to the petitioner he possesses the qualification of the Workshop Instructor (Fitter), on account of the fact that in pursuance to the order dated 24.12.1986, he was working as a Workshop Instructor (Fitter) on the scale as admissible to it.Â The petitioner had challenged the order of reversion dated 02.04.1987 by filing a petition before the Public Services Tribunal, Bench at Lucknow.Â The proceedings thus drawn before the Public Services Tribunal, ultimately, culminated in favour of the petitioner by the judgment dated

19.09.2002.Â The Tribunal thus held as under:-

Â â??6.Â On a careful scrutiny of the entire material on record and hearing the parties, we are inclined to sustain the petitionerâ??s cause, because, from the counter filed by the respondents themselves, a number of

salient features emerged to support their version.Â In para 4 (IV) of the petition, they had pleaded their appointment as Workshop Instructors by way of an open selection process.Â This proposition was not denied in the written statement.Â Similarly, there was no controversy even about the extension granted to the petitioners for a period of one year as Workshop Instructors under orders dated 24.12.1986 contained in Annexure-12 of course, this extension was with the rider of its validity till the meeting of the next selection committee.

8.Â In the same sequence a reference would also be worth while to the letter dated 20.05.1987 as contained in Annexure 15, it was addressed by the Principal to the Director Technical Education, in continuation to his earlier correspondence dated 16.04.1987, conceding that due to some inadvertence the posts of Workshop Instructors held by the petitioners Dewani Ram Arya and Kishori Lal Tamta could not be mentioned in the field report and that factually they deserved to be included in the sanctioned staff.

10.Â The irresistible inference thus is that both the petitioners, who were legitimately holding the post of Workshop Instructors had acquired a vested statutory right under the 'Take over Scheme' and, could not be reverted in the cavalier fashion adopted by the respondents.Â This apart, no heed was paid to the Constitutional Scheme reserving 18% posts for the members of Scheduled Caste and Scheduled Tribes.Â At the risk of repetition it may be mentioned that the factum of the petitioners' belonging to the reserved category and assignment of all the nine posts to the members of the general category was not controverted in the written statement.Â The Respondents' explanation that the policy of reservation did not apply to the present case, is simply mentioned for the purpose of record, otherwise requires no serious attention, because, by no stretch of imagination the posts of Workshop Instructor could be elevated to a super specifically.Â

15. On scrutiny of the findings recorded by the Tribunal it is concluded that the petitioner was holding the post of Workshop Instructor (Fitter) after his appointment in the year 1986, till he was reverted by the impugned order under challenge before the Tribunal.

16. The judgment of the Tribunal dated 19.09.2002, was not put to challenge.Â Consequently, the findings recorded therein with regards to the

qualification of the petitioner and the fact that they have worked as Workshop Instructor (Fitter) since 1986 has attained finality.Â This fact is also established because of the letter dated 16.10.2002, written by the Principal Government Polytechnic Nainital, whereby, he has requested the Director Technical Education, Uttarakhand, Srinagar, that as a consequence of the judgment of the Tribunal.Â The said communication of the Principal to the Director it also drew support from the opinion extended by D.G.C. (Civil) on 10.10.2002, wherein, he has advised to comply with the judgment of the Tribunal. The respondent based on the judgment of the Tribunal and in pursuance to the directive issued by the Director Technical Education had re-fixed the salary/pay scale of the petitioner from the date of his initial appointment i.e. 9th July, 1986.Â The records revealed that the petitioner has completed about 14 years of satisfactory service on the post of Workshop Instructor (Fitter), and thus according to the petitioner he claimed that he was entitled for the next promotion to the post of Senior Instructor (Fitter) in the pay scale of Rs.8000-13500 and second promotional pay scale of Rs.10000-15200 with effect from July, 2000.Â He further claimed that he would be entitled for the promotional pay scale of Rs.15600-39100 with grade pay of Rs.7600/- w.e.f. 2008 after completing 26 years of service.

17. In the writ petition it was thus pleaded that for the claim, for the pay scale, the petitioner had represented on 7th August, 2007, representing before the Director claiming the benefit of scale on completion of 14 years and 26 years of services respectively.Â The representation of the petitioner as submitted on 7th August, 2007 and 17th July, 2006 was duly recommended by the Principal Government, Polytechnic on 9th June, 2005, for grant of Senior Instructor Scale in the pay scale of Rs.8000-13500 with effect from July, 2000.Â In the communication made by the Principal on 9th June, 2005, he has rather settled that the petitioner was entitled to next pay scale as Senior Instructor with effect from July, 2000.

18. The petitioner in support of his contention for grant of benefit of the promotional pay scale has placed reliance on judgment rendered by the learned Single Judge on 26.11.2012 in Writ Petition No.420 (S/S) of 2005, L.K. Thussu vs. State of Uttarakhand and others, and claimed parity of the judgment contending thereof that the conditions prevailing and the issue involved herein has been settled by the learned Single Judge in the case of

L.K. Thussu vs. State of Uttarakhand and others, is an identical case and thus he is too entitled for the benefit.Â It was claimed by the petitioner that under the U.P. Technical Education Gazetted Officers Rules, 1990, as amended by the U.P. Technical Education Gazetted Officers Service (First Amendment) Rules, 1998.Â He was entitled for the first promotional pay scale on 14 years of service, and second promotional pay scale on 16 years of continuous service and third promotional pay scale on 26 years of continuous service.Â However, though the representation of the petitioner stood recommended by the Principal, but before the same should be decided.Â He attained the age of superannuation on 31st August, 2012, from the post of Workshop Instructor (Fitter).Â Hence he prayed for that in view of the Rules of 1990 as amended in 1998 to be read with the judgment rendered by the learned Single Judge in the case of L.K. Thussu vs. State of Uttarakhand and others, he was entitled for the promotional pay scale.

19. The respondents filed their counter affidavit and in response to which, the petitioner filed his rejoinder affidavit. The learned Single Judge on considering the rival contentions vide its judgment dated 04.02.2018, had allowed the writ petition and grant the relief as prayed for by the petitioner against which the State has preferred the present Special Appeal No.594 of 2017, State of Uttarakhand and others vs. Deewani Ram Arya and others, and Special Appeal No.592 of 2017, State of Uttarakhand and others vs. Kishori Lal Tamta and others. The philosophy and rational which has been agitated by the State, while giving challenged to the judgment of the learned Single Judge is that the proceedings by way of writ petition would amount to be unjust enrichment and abuse of process, because of the fact that, the claim for regularization on the post of Workshop Instructor (Fitter) of the petitioner already stood rejected on 10.10.2014, which remained unchallenged, hence also that the judgment of the learned Single Judge cannot be sustained. The learned Standing Counsel has placed reliance on the judgment of Ram Naresh Rawat and made an attempt to assail the order from the view point that the petitioners could not have claimed the benefit merely because of the fact of long service and also on account of the fact that they are discharging the same duties as a regular employee they cannot be permitted to claim the benefit of regular pay scale on the principle of equal pay for equal work.

20. On scrutiny of the grounds taken for giving challenge to the impugned judgment passed by the learned Single Judge, as a matter of fact, it was nothing but a deliberate effort made by the State to de novo scrutinize the judgment of the learned Tribunal, which had otherwise settled the controversy holding thereof that the petitioners were qualified and they had been appointed on the substantive post of Workshop Instructor (Fitter) in pursuance to the selection process held way back in the year 1986.Â State effort was motivated to overcome the legal impact of non challenge to the judgment of the Tribunal.Â

21. On scrutiny of the findings recorded by the learned Single Judge, the following unrebuttable conclusions could be drawn:-

Â (i)Â The petitioners as per the findings recorded by the Tribunal, as per the case in the writ petition are person belonging to a Scheduled Caste Community.

(ii) The petitioners were working as a Workshop Attendant in a private polytechnic and thereafter they worked as Workshop Instructor (Fitter) against the vacant post being in the discipline of Welder and Fitter.

(iii) The un-assailed finding of the Tribunal held there were two posts of Instructor created upon provincialization of Polytechnic.Â

(iv) As per the findings recorded by the Tribunal they were having all requisite qualification for being appointed as Workshop Instructor (Fitter), but yet they were wrongfully reverted.Â The propriety of the qualification possessed by the petitioner and the propriety of the reversion has attained finality as the judgment rendered by the Public Services Tribunal has not been challenged.

(v) The petitioner was holding the post of Workshop Instructor (Fitter) and had vested statutory rights under the scheme of provincialisation to be treated as regularized.Â Petitioner was entitled for grant of next higher promotional grade which was not being given to the petitioner.

(vi) As such, one of the appellant, namely, Kishori Lal Tamta had filed earlier Writ Petition No.1576 of 2007, which was disposed of by the learned Single Judge of this Court on 22nd July, 2014, with a direction to the respondents to decide the representation.Â The representation submitted by the Kishori Lal Tamta, one of the petitioner before the Director Technical Education was rejected on the ground that the petitioner was not having the

requisite qualification and he was never regularized on the post of Workshop Instructor (Fitter).â??

22. Looking to the backdrop as already narrated in the above paragraphs, the twin conditions that the petitioners were not qualified and hence they

were not regularized on the post of Instructor is erroneous in view of the findings recorded in the judgment of the Tribunal to the effect that the

petitioner carried all the qualifications as it has been held by the Tribunal that the petitioner was having three years of certificates in the concerned

trade from G.S.T.S. or High School Certificate in the concerned trade of ITI/GITI / Pol./Diploma in respective Branch.â?â?â?

23. The Tribunal has already determined merits of the rival contentions that the qualification possessed by the petitioner was well in accordance with

the qualification as contemplated under the Uttar Pradesh Technical Education Department Non-Gazetted Technical Service Rules, 1988, as the

petitioners are High School and they have diploma in respective Trade. They have valid recognized certificate of Welder and Fitter, hence they were

qualified.â? The learned Single Judge rightly held that looking to the fact that the petitioners were regularly appointed after the selection process in

pursuance to the advertisement way back in 1986.â? The Tribunal had held that the petitioners were working on regular basis and the services stood

regularized.

24. In view of the said findings, there was no necessity to take any contrary view because the findings of the Tribunal pertaining to the qualification as

well as the status of the regularization remain unassailed.â?â?

25. For the reasons assigned above, we do not find any error apparent on the face of record which would call for interference against the judgment

rendered by the learned Single Judge.â? Thus, the Special Appeal fails and the judgment of the learned Single Judge has affirmed.â?â?