

(2019) 10 UK CK 0021

In the Uttarakhand High Court

Case No : Special Appeal No. 889, 36 Of 2019, Delay Condonation Application
No. 13251 Of 2019,

State Of Uttarakhand And Others

APPELLANT

Vs

Kailash Singh Rawat And Others

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Uttaranchal School Education Act, 2006 — Section 39(9)
Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 14
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 UK CK 0021

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

Bench : Division Bench

Advocate : Vikas Pande, Navnish Negi, Devesh Upreti

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

Delay Condonation Application No. 13251 of 2019 in Special Appeal No. 889 of 2019 :

1. Delay of 251 days, in preferring Special Appeal No. 889 of 2019, is not opposed by Mr. Devesh Upreti, learned counsel for the respondent-writ petitioner; and the delay is, therefore, condoned. Delay Condonation Application is, accordingly, disposed of.

2. Heard Mr. Vikas Pande, learned Standing Counsel for the State of Uttarakhand-appellants in Special Appeal No. 889 of 2019, Mr. Navnish Negi, learned counsel for the appellant in Special Appeal No. 36 of 2019 and Mr. Devesh Upreti, learned counsel for the respondent-writ petitioner, in both the Special Appeals.

3. These two Special Appeals have been filed by the first and the sixth respondent in Writ Petition (S/S) No. 524 of 2014. The respondent-writ petitioner had invoked the jurisdiction of this Court seeking a writ of certiorari to quash the

order dated 29.05.2013, and to direct the respondents to promote him to the post of Lecturer (History) w.e.f. 27.01.2010; a writ of certiorari to quash the order dated 27.06.2013, and to direct the respondents to regularize his services in accordance with the order dated 25.08.2011; and a writ of certiorari to quash the order dated 01.02.2011, whereby the appellant-sixth respondent was appointed as a PTA teacher in history.

4. Facts, to the limited extent necessary, are that the respondent-writ petitioner was appointed as an Assistant Teacher (CT) on an ad-hoc basis in July, 1993. By order dated 22.09.2011 a decision was taken to regularize the eligible teachers, who had been appointed after 14.05.1989, and had assumed their initial appointment as LT pay-grade to LT pay-scale. By proceedings dated 17.12.2011, the services of the respondent-writ petitioner were regularized w.e.f. 27.01.2005. Two days thereafter, i.e. on 19.12.2011, an advertisement was published by the College for recruitment to the post of Lecturer (History), for which the educational qualifications were MA History, B.Ed. or LT. The respondent-writ petitioner submitted a representation on 16.05.2012 seeking his promotion to the post of Lecturer (History), which fell vacant consequent upon the retirement of Mr. Ram Chandra Singh Rawat on 31.10.2008. The respondent-writ petitioner applied for the post of Lecturer (History) pursuant to the advertisement dated 19.12.2011. However, his candidature was not considered by the College.

5. Thereafter, the Chief Education Officer, Pauri Garhwal called for an explanation from the College regarding appointment of the appellant-sixth respondent as a PTA teacher, and denial of promotion to the respondent-writ petitioner. The Managing Committee of the College is said to have passed a Resolution on 27.07.2012 promoting the respondent-writ petitioner to the post of Lecturer (History). The College, thereafter, forwarded the matter to the District Education Officer, Pauri Garhwal to obtain the legal opinion of the DGC. The respondent-writ petitioner, thereafter, filed Writ Petition (S/S) No. 1678 of 2012, which was disposed of directing the respondent-authorities to decide his representation. By the impugned order dated 29.05.2013, the respondent-writ petitioner's representation was rejected on the ground that, on the date when the post of Lecturer (History) fell vacant, he had not completed 5 years of service. Thereafter, on 27.06.2013, the Additional Director, Education, Garhwal Division amended the respondent-writ petitioner's regularization order dated 17.12.2011, and fixed the date of his regularization as 25.08.2011 instead of 27.01.2005. This order dated 27.06.2013 was also subjected to challenge in the Writ Petition. The respondent-writ petitioner also challenged appointment of the appellant-sixth respondent as a PTA teacher.

6. In the order under appeal, the learned Single Judge, relying on the Full Bench judgment of the Allahabad High Court in *Raesul Hasan v. State of U.P. and others* : AIR 2015 All 139, held that the Full Bench of the Allahabad High Court had held that it is not the date on which the vacancy had occurred, but the year of recruitment, which was relevant for determination of eligibility for promotion

as Lecturer grade; in the light of the said Full Bench judgment of the Allahabad High Court, the date when the vacancy was notified for recruitment would be relevant for the purpose of determination of eligibility for promotion to the post of Lecturer; and, since the advertisement for recruitment to the post of Lecturer (History) was published on 19.12.2011, and the respondent-writ petitioner had already completed 5 years of service way back in the year 2010, he was eligible for promotion.

7. With regards the order dated 27.06.2013, whereby the respondent-writ petitioner's regularization date was changed to 25.08.2011 instead of 27.01.2005, the learned Single Judge observed that the said order was passed without giving the respondent-writ petitioner an opportunity of hearing; the Manager appeared to be hand-in-glove with the appellant-sixth respondent as the said order was passed only to support the order dated 29.05.2013, whereby the respondent-writ petitioner's representation was rejected; and, since the services of the respondent-writ petitioner were regularized w.e.f. 27.01.2005 and he had already completed his five years of service by 27.01.2010, he was entitled to be considered for appointment as Lecturer (History).

8. With regards the appellant-sixth respondent, the learned Single Judge noted that he was the son of the Manager of the College, and his appointment was contrary to Section 39(9) of the Uttaranchal School Education Act, 2006. After perusing the Minutes of the Meeting of the PTA held on 19.01.2011, the learned Single Judge observed that the appellant-sixth respondent's father was a member of the Management Committee, and his appointment was against the provisions of Section 39(9) of the Uttaranchal School Education Act, 2006. The respondent-authorities were directed to re-consider appointment of the appellant-sixth respondent as a PTA teacher keeping in view the provisions of Section 39(9) of the Uttarakhand Education Act, 2006. The impugned orders dated 29.05.2013 and 27.06.2013 were quashed, the writ petition was allowed, and the official respondents were directed to promote the respondent-writ petitioner to the post of Lecturer (History) pursuant to the advertisement dated 19.12.2011. The respondent-writ petitioner was also held entitled to arrears of pay and allowances, and the same was directed to be calculated and paid to him within a period of one month from the date of the order. Aggrieved thereby, both the State Government and the sixth respondent in Writ Petition (S/S) No. 524 of 2014 are now in appeal before us.

9. Both Mr. Vikas Pande, learned Standing Counsel for the appellant-State Government and Mr. Navnish Negi, learned counsel for the appellant-sixth respondent, would submit that Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995, and Regulations 5 and 6 of the 2009 Regulations framed under the Uttaranchal School Education Act, 2006, are distinct and different; while Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995 requires a vacancy to be filled up by promotion from among those who possess the prescribed qualifications, and have completed five years'

continuous service as on the first day of the year of recruitment, Regulation 5(2) (a) and Regulation 6(1) of the 2009 Regulations, framed under the Uttaranchal School Education Act, 2006, requires five years' service to be computed on the date of accrual of the vacancy; the vacancy, admittedly, arose on the retirement of the previous incumbent on 31.10.2008; the minimum service of five years is required to be computed as on that date i.e. 31.10.2008; even if the respondent-writ petitioner's order of regularization dated 17.12.2011 is presumed to be valid, and his regularization is held to commence from 27.01.2005, the respondent-writ petitioner would have only completed a little less than four years of service as on the date on which the vacancy arose i.e. 31.10.2008; and the respondent-writ petitioner was, therefore, ineligible to be considered for promotion.

10. We find considerable force in the aforesaid submission. Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995, which fell for consideration before the Full Bench of the Allahabad High Court in *Raesul Hasan v. State of U.P. and others* : AIR 2015 All 139, stipulated that all those, who had completed five years of continuous service on the first day of the year of recruitment, would be considered for promotion, unlike the earlier 1983 Rules which required five years' continuous service as a teacher on the date of occurrence of the vacancy. It is in this context that the Full Bench of the Allahabad High Court, in *Raesul Hasan v. State of U.P. and others* : AIR 2015 All 139, held that five years' continuous service should be computed on the first day of the year of recruitment, and not on the date of occurrence of the vacancy. Unlike Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995, Regulation 5(2)(a) of the 2009 Regulations stipulates that the eligibility of a teacher, for promotion, would be considered on the date of accrual of the vacancy. Likewise Regulation 6(1) of the 2009 Regulations also provides that such teachers working in LT Grade, who had five years' continuous substantive service on the date of accrual of the vacancy, would be considered for promotion. We are satisfied, therefore, that the learned Single Judge had erred in relying on the Full Bench judgment of the Allahabad High Court, in *Raesul Hasan v. State of U.P. and others* : AIR 2015 All 139, even though the Rules under consideration therein, were at variance with the Rules applicable for promotion to the post of Lecturer in government-aided colleges in the State of Uttarakhand.

11. That does not, however, resolve this issue, for Regulation 6 of the 2009 Regulations was amended on 10.12.2015 and, consequent on its amendment, read as under :

"6. Where any vacancy in the Lecturers Grade as determined as Regulation 5 is to be filled by promotion, all teachers working in L.T. Grade having a minimum of five years of continuous substantive service to their credit on the dated of occurrence of vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same, provided that they possess prescribed minimum qualification for teaching the subject in which the

teacher in the Lecturers Grade is required.

But for any reason on the date of occurrence of vacancy no candidate having the requisite qualification is available then the Committee of Management may pass a resolution for the promotion of such teacher who possess requisite qualification on the first date of academic session for such post."

12. While it is true that the amendment had provided for the consideration of a candidate for promotion, in case no candidate having the requisite qualification was available on the date of occurrence of the vacancy, who possess requisite qualification, on the first date of the academic session, for such post, the question which would necessitate examination is whether the amendment made on 10.12.2015 can be applied retrospectively to the advertisement issued earlier on 19.12.2011. It is unnecessary for us to dwell on this aspect any further, since a Division Bench of this Court, in *Dr. Babita Dhasmana v. Director School Education Uttarakhand and others* : (2019) 1 Uttarakhand Judgments 277, has held that the said amendment would apply to vacancies which had occurred prior to the amendment, as it would provide for remedying a situation which was in the mind of the law-giver, and, at the same time, it would not adversely affect the right of any person.

13. In the light of the law declared by the Division Bench of this Court, in *Dr. Babita Dhasmana v. Director School Education Uttarakhand and others* : (2019) 1 Uttarakhand Judgments 277, and on applying the amendment made to Regulation 6 of the 2009 Regulations on 10.12.2015 retrospectively, the respondent-writ petitioner's candidature is required to be considered for promotion to the post of Lecturer (History) on the first date of the academic session for such post.

14. Mr. Navnish Negi, learned counsel for the appellant-sixth respondent, would submit that, even if the amendment made on 10.12.2015 is held to be retrospective, the first date of the academic session would be the academic session immediately following the date on which the vacancy arose; and, since the vacancy had occurred on 31.10.2008, the first date of the academic session must be taken as 01.04.2009, which is the date on which the academic session commenced after the vacancy had occurred; and, even on that date, the respondent-writ petitioner was ineligible for promotion as he had not completed five years' service even by then. We must express our inability to agree.

Accepting the submission, urged by Mr. Navnish Negi, learned counsel for the appellant-sixth respondent, would require us to read the word "next" into the proviso to Regulation 6(1) of the 2009 Regulations. In the absence of any such limitation in the proviso, we must necessarily reckon the first date of the academic session to be the first date of the academic session for the year in which the recruitment process has been undertaken. Since, in the present case, the advertisement was issued on 19.12.2011, the first date of commencement of the academic session would be 01.04.2011 and not 01.04.2009.

15. It is not in dispute that the respondent-writ petitioner had completed five years of regular service on 27.01.2010 as a result of the order dated 17.12.2011 regularizing his services w.e.f. 27.01.2005; and he, therefore, fulfilled the prescribed qualifications as on 01.04.2011, in terms of the proviso to Regulation 6(2) of the 2009 Regulations, and was entitled to be considered for promotion to the post of Lecturer (History).

16. Mr. Navnish Negi, learned counsel for the appellant-sixth respondent, would then contend that, in the light of the law laid down by the Supreme Court in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others v. State of U.P. and others* : (2006) 10 SCC 346, retrospective regularization is impermissible and, consequently, the State Government was justified in setting aside the order of regularization of the respondent-writ petitioner dated 17.12.2011.

17. It would be wholly inappropriate for us to examine the aforesaid contention, urged by Mr. Navnish Negi, learned counsel for the appellant-sixth respondent, since it is the respondent-writ petitioner who had invoked the jurisdiction of this Court by filing Writ Petition (S/S) No.524 of 2014, and not the appellant-sixth respondent. If the appellant-sixth respondent had any grievance regarding the order of regularization issued to the respondent-writ petitioner on 17.12.2011 (regularizing his services retrospectively from 27.01.2005), he ought to have availed his judicial remedies, including by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It would be wholly inappropriate for us to set-aside the order of regularization dated 17.12.2011, not in a Writ Petition filed by the appellant-sixth respondent, but in a Writ Petition filed by the respondent-writ petitioner. We see no reason, in such circumstances, to interfere with the order under appeal on this ground also.

18. Mr. Vikas Pande, learned Standing Counsel for the appellant-State Government, would contend that the impugned order dated 27.06.2013 related to four employees, including the respondent-writ petitioner; and, instead of quashing the said order only to the extent it related to the respondent-writ petitioner, the learned Single Judge had quashed the said order in its entirety. Since it is only the respondent-writ petitioner, and not other employees, who had questioned the validity of the said order, the order under appeal, quashing the impugned order dated 27.06.2013, must be held as applicable only to the respondent-writ petitioner, and not to others.

19. While we see no justification, for the aforesaid reasons, to interfere with the order passed by the learned Single Judge directing that the respondent-writ petitioner be promoted to the post of Lecturer (History) as he had completed five years of service and was, therefore, eligible for promotion, we are satisfied that the learned Single Judge had erred in granting the respondent-writ petitioner the relief of arrears of pay and allowances in the higher post of Lecturer (History), for it is only after the respondent-writ petitioner is promoted to the said post, would he thereafter be entitled to the pay and allowances applicable thereto.

20. The order under appeal is set aside to the limited extent the respondent-writ petitioner was held entitled to arrears of pay and allowances, and the respondent-authorities were directed to pay the same to the respondent-writ petitioner. In all other aspects we see no reason to interfere with the order under appeal.

21. Subject to the limited extent indicated hereinabove, both the Special Appeals fail and are, accordingly, dismissed. However, in the circumstances, without costs.