

(2018) 11 UK CK 0261

In the Uttarakhand High Court

Case No : Special Appeal No. 853 Of 2018

State Of Uttarakhand And Others

APPELLANT

Vs

Maresh Singh Rawat

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Uttarakhand Subordinate Education (Trained Graduate Cadre) Service Rules, 2014 — Rule 8(1)(g)

Citation : (2018) 11 UK CK 0261

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

Bench : Division Bench

Advocate : Vikas Pandey, Ganesh Kandpal

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, C.J.

1. The Application for condonation of 200 days' delay in preferring the appeal is not opposed, and is therefore ordered.

2. This appeal is preferred by the State of Uttarakhand against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1406 of 2015 dated 23.02.2018.

3. The respondent-writ petitioner herein invoked the jurisdiction of this Court seeking a writ of mandamus to direct the third respondent to grant him promotion / adjustment to the post of L.T. Grade Teacher (Physical Education) with effect from the date his junior was promoted on 13.04.2015. The respondent-writ petitioner obtained a Post Graduate Diploma in Physical Education from the Indira Gandhi Institute of Physical Education and Sports Science, New Delhi in the year 1994. The said Institute sought recognition from the University Grants Commission, for the first time, on 17.05.1997.

4. Promotion to the post of L.T. Grade Teacher (Physical Education) is in terms of

Rule 8(1)(g) of the Uttarakhand Subordinate Education (Trained Graduate Cadre) Service Rules, 2014 whereunder qualifications for the post of Assistant Teacher, L.T. Grade (Physical Education) are prescribed. The prescribed qualifications read as under:

"v) Graduate degree from any University established in India.

vi) Diploma in Physical Education / Vyam Ratan from any Government or Government recognized Training Institute or B.P.Ed. from any University established by law.

vii) B.P.E. (Bachelor of Physical Education) from any University established by law in India.

viii) LT Diploma from a Government or Government recognized training Institute or B.Ed. from any University established by law."

5. It is only if the Diploma in Physical Education is from a Government, or a Government recognized, training Institute or Bachelors degree in Physical Education from any University established by law, is a candidate eligible to be considered for appointment as an Assistant Teacher, LT Grade (Physical Education). It is the case of the appellants that the respondent-writ petitioner does not possess such a qualification.

6. On the other hand, Sri Ganesh Kandpal, learned counsel for the respondent-writ petitioner, would submit that, since the appointment is to the post of a teacher in Physical Education, it is only the provisions of the NCTE Act and the Rules made thereunder which are applicable; and the petitioner possesses the educational qualifications prescribed in the Regulations made by the NCTE. It is his case that the NCTE has only changed the nomenclature of "Post Graduate Diploma in Physical Education" to "Bachelors degree in Physical Education", and as such the petitioner possesses the prescribed qualification.

7. All that has been observed by the learned Single Judge, in the order under Appeal, is that, since the nomenclature of the respondent-writ petitioner's qualification of "Post Graduate Diploma in Physical Education" has already been changed as "Bachelors in Physical Education", the appellants should consider his case for promotion from the due date, on the basis of the changed nomenclature of the qualification.

8. Whether the respondent-writ petitioner fulfils the qualifications prescribed under the Rules for being appointed to the post of L.T. Grade Teacher (Physical Education) has not even been examined by the learned Single Judge. We consider it appropriate, in such circumstances, to set aside the order under Appeal and to restore the writ petition to file. Since the appellants-respondents have already filed their counter affidavit, it is open to Sri Ganesh Kandpal, learned counsel for the respondent-writ petitioner, to request the learned Single Judge to take up the writ petition for hearing at an early date.

9. The Appeal is disposed of accordingly.