
(2019) 05 UK CK 0200

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 194 Of 2019

Suman Tyagi

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Uttarakhand Regularization Of Ad-Hoc Appointments (On Posts Within The Purview Of The Public Service Commission) Rules, 2002 — Rule 4
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0200

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Munish Bhardwaj, C.S. Rawat

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Munish Bhardwaj, learned counsel appearing on behalf of the petitioner and Mr. C.S. Rawat, learned Additional Chief Standing Counsel appearing on behalf of the State Government and, with their consent, the Writ Petition is disposed of at the stage of admission.

2. The petitioner has invoked the jurisdiction of this Court seeking a writ of mandamus directing the respondents to grant her post retiral benefits by treating the service of her husband as having been regularized with effect from the date when the services of other similarly situated ad-hoc Ayurvedic Medical Officers were regularized by the respondents.

3. The husband of the petitioner was selected as a Medical Officer on an ad-hoc basis in the Ayurvedic and Unani Service Cadre, and he assumed charge as Medical Officer (Ayurvedic), in the Government Allopathic Hospital Bodikhal, District Pauri Garhwal, on 10.03.1992. While the husband of the petitioner was posted as a Medical Officer at the Government Allopathic Hospital Chailusian,

District Pauri Garhwal, he died in a road accident on 26.05.2002. The Uttarakhand Regularization of Ad-hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 2002 (for short "2002 Rules") were made in the year 2002. Rule 4 of the 2002 Rules stipulated that any person, who is directly appointed on ad-hoc basis before 30.06.1998, was eligible to be considered for regularization under the 2002 Rules. It is the petitioner's case that several other ad-hoc Ayurvedic Medical Officers who were appointed prior to 30.06.1998, along with her husband, were regularized; the Director of the Ayurvedic Evam Unani Service, Uttarakhand, by his order dated 05.06.2009, had recommended the case of the husband of the petitioner for regularization; despite such a recommendation, no action was taken; the petitioner again submitted a representation on 23.12.2010 pointing out several cases where other employees were regularized by order dated 17.01.2006; and thereafter she invoked the jurisdiction of this Court by filing Writ Petition (S/B) No. 313 of 2013 which was dismissed by a Division Bench of this Court by its order dated 02.01.2014.

4. When we asked Mr. Munish Bhardwaj, learned counsel for the petitioner, as to how the petitioner could have again invoked the jurisdiction of this Court, when Writ Petition (S/B) No. 313 of 2013 filed by her was dismissed by a Division Bench of this Court by its order dated 02.01.2014, learned counsel would rely on the judgment of the Supreme Court in *K. Anbazhagan and another Vs. The Registrar General High Court of Madras and Another* and batch (judgment in Civil Appeal Nos. 8216-8217 of 2018 dated 13.08.2018) to contend that the said judgment of the Supreme Court applies with all force to the present case; and, since the law declared by the Supreme Court in the aforesaid case is applicable to the petitioner, the order of the Division Bench is of no avail.

5. In its order in Writ Petition (S/B) No. 313 of 2013 dated 02.01.2014, the Division Bench noted that the petitioner had died on 26 th May, 2002 as an ad-hoc employee; the Uttaranchal Regularisation of Ad-hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 2002 came into force on 7th August, 2002; in terms of the 2002 Rules, any person, who was directly appointed on an ad-hoc basis before 30th June, 1998 and was continuing in the service as such on the date of commencement of the 2002 Rules and possessed requisite qualifications as prescribed for regular appointment at the time of ad-hoc appointment, and had completed three years' service, was entitled to be considered for regular appointment in permanent or temporary vacancies as may be available; according to the petitioner, her husband was appointed on an ad-hoc basis before 30th June, 1998, and had the requisite qualification as prescribed for regular appointment at the time of ad-hoc appointment; the fact remained that he was not in service as on the date when the 2002 Rules came into force i.e. on 7th August, 2002; the case of the husband of the petitioner could not therefore be considered under the 2002 Rules; it appeared that, in the year 2009, a recommendation was made in favour of the husband of the petitioner for regularization, but that recommendation

remained at that stage and did not proceed any further; and that prompted the filing of the writ petition. The Division Bench, while expressing its inability to hold that in terms of the 2002 Rules the case of the husband of the petitioner should be considered, dismissed the writ petition.

6. As is evident from the order of the Division Bench in Writ Petition (S/B) No. 313 of 2014 dated 02.01.2014, it is only employees who were appointed on ad-hoc basis before 30th June, 1998, who were continuing in service on the date of commencement of the 2002 Rules on 7th August, 2002, and who had completed three years' service and possessed the requisite qualification, who were eligible to be considered for regular appointment in permanent or temporary vacancies. Among the requirements, stipulated under the 2002 Rules, was that an employee must be continuing in service when the 2002 Rules came into force on 7th August, 2002. The husband of the petitioner, however, died on 26th May, 2002 prior to the 2002 Rules coming into force on 7th August, 2002. It is in such circumstances that the Division Bench, in its order in Writ Petition (S/B) No. 313 of 2013 dated 02.01.2014, held that the 2002 Rules were inapplicable to the case of the husband of the petitioner; and dismissed the writ petition.

7. The said order of the Division Bench, a judgment inter-parties, has attained finality since the petitioner neither chose to prefer an appeal thereagainst, nor did she seek review of the said order. The judgment of a competent Court is binding inter-parties and cannot be re-agitated in collateral proceedings. An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is founded. (The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others : (1990) 2 SCC 715; U.P. State Road Transport Corporation vs. State of U.P. and Anr. : (2005) 1 SCC 444). Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court competent to decide it and which proceedings have attained finality, is binding inter-parties. (Gulabchand Chhotalal Parikh vs. State of Bombay (Now Gujarat) : AIR 1965 SC 1153; State of Punjab vs. Bua Das Kaushal : AIR 1971 SC 1676). Once a matter, which was the subject-matter of a lis, stood determined by a competent Court, no party can thereafter be permitted to reopen it in a subsequent litigation. (Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors. : AIR 2005 SC 2392; Ishwar Dutt vs. Land Acquisition Collector and Anr. : (2005) 7 SCC 190). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (State of Haryana vs. State of Punjab and Anr. : (2004) 12 SCC 673).

8. Since the order of the Division Bench in Writ Petition (S/B) No. 313 of 2014 dated 02.01.2014, a judgment inter-parties, has attained finality, it is not open to the petitioner to re-open the said dispute in subsequent legal proceedings, even if it is filed based on a judgment of the Supreme Court rendered long after

the Division Bench had dismissed the writ petition by its order in Writ Petition (S/B) No.313 of 2013 dated 02.01.2014.

9. On this ground alone, the writ petition must be and is, accordingly, dismissed.
No costs.