
(2019) 05 UK CK 0127

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 175 Of 2019

Tarun Kumar Dhiman

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Uttarakhand Technical University Act, 2005 — Section 30

Citation : (2019) 05 UK CK 0127

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

Bench : Division Bench

Advocate : S.S. Yadav, Vikas Pande, Arvind Vashishta, Lalit Samant, Bhupesh Kandpal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. S.S. Yadav, learned counsel appearing on behalf of the petitioner, Mr. Vikas Pande, learned Standing Counsel appearing on behalf of the State of Uttarakhand-respondent no. 1, Mr. Arvind Vashishta, learned Senior Counsel appearing on behalf of the University-respondent no. 2, and Mr. Bhupesh Kandpal, learned Standing Counsel appearing on behalf of the Women Institute of Technology-respondent no. 3 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 certiorari to quash Advertisement, No. WIT/FACULTY/01/2019-20, whereby applications were invited for appointment to the posts of Assistant Professors (Mechanical Engineering) in the Women Institute of Technology, Dehradun; a writ of mandamus directing the respondents to take a decision in the petitioner's case in tune with the judgment passed in Writ Petition (S/B) No. 193 of 2014; and a writ of mandamus to release the salary of the petitioner w.e.f. September, 2012, which has not been paid to him till date.

3. This case has had a chequered history. The petitioner was engaged in the Women Institute of Technology in the year 2012, and continued to work in the said Institute till January, 2018. His services were, however, not extended after the academic session 2017-18. A batch of writ petitions were filed by the Technical Teachers Welfare Society and others, in Writ Petition (S/B) No. 568 of 2017 and batch, and a Division Bench of this Court, by its order dated, 31.05.2018, quashed the order impugned in the said writ petition; and issued the following directions :

"A. The respondent-State is directed to frame First Regulations under Section 30 of the Act, within three months from today.

B. The respondents are directed to complete the selection process for the post of Director within three months from today, as per the norms of UGC and the guidelines prescribed under the All India Council of Technical Education Act.

C. The respondent-Institution is also directed to engage the petitioners on contractual basis, in view of the observations made by the Division Bench of this Court in WPSB No.193 of 2014 and analogous matters on 01.12.2015 within three weeks from today.

D. The respondent-State is directed to ensure creation of posts as per Section 6(j) within a period of three months from today, to improve the academic standards in the respondent-Institution.

E. The respondent no.5 is directed to consider the leave applications of the petitioners sympathetically and give access to the facilities to the petitioners available in the University without causing any hindrance.

F. Petitioners shall file affidavits within two weeks' before this Court undertaking not to create any law and order problem in the eventuality of their contracts being renewed."

4. Aggrieved thereby, the third respondent herein filed Special Leave to Appeal (C) No (s). 18848-18867/2018, and the Supreme Court by its order dated 23.07.2018, while directing respondent Nos.12 to 46 in the Special Leave Petitions to file an affidavit as to whether they had complied with direction "F", observed that, in the meanwhile, there shall be stay of directions "C" & "E" of the impugned order till the next date of hearing.

5. When the matter was listed on 01.08.2018, the Supreme Court directed that, during the pendency of the Special Leave Petitions and without prejudice to the contentions available to the parties, the Women Institute of Technology, Dehradun shall subject the contesting respondents (the teaching faculty of the Women Institute of Technology) to scrutiny in accordance with law, and shall submit a report to it before the next date of hearing; and the scrutiny shall be completed within ten days from the date of the order.

6. In compliance with the directions of the Supreme Court, in its order dated

01.08.2018, a Scrutiny Committee was constituted by the Women Institute of Technology on 09.08.2018, and all the teaching faculty members of the Institute were called upon to appear before the Scrutiny Committee to enable them to scrutinize their performance. It does not appear to be in dispute that none of the teaching faculty members appeared before the Scrutiny Committee; and the third respondent-Women Institute of Technology herein filed its report informing the Supreme Court of what transpired before the Scrutiny Committee.

7. Thereafter, when the matter was listed on 25.09.2018, the Supreme Court observed :

"1. The State of Uttarakhand is directed to finalize the process of promulgation of Regulations under Section 30 of the Uttarakhand Technical University Act, 2005 positively within a period of three months from today.

2. In terms of the Regulations thus promulgated, the Women Institute of Technology, Dehradun and all stake-holders are concerned are directed to undertake the process of regular selection and appointment of regular Director and staff within another two months.

3. Needless to say, the State Government will pass necessary orders sanctioning the posts of Director and staff in the Institute along with promulgation of the Regulations.

4. We also make it clear that the appointment of regular staff will be made only after regular Director is appointed.

5. For the period the teachers have worked, they shall be paid salary and all other eligible benefits within one month from today.

6. All other questions raised in these Special Leave Petition will be decided at the time of final hearing."

The Special Leave Petitions were directed to be listed in the first week of February, 2019

8. When the Special Leave Petitions were listed on 04.02.2019, the Supreme Court directed the learned counsel for the respondents therein (the petitioners in Writ Petition (S/B) No. 568 of 2017 and batch) to obtain necessary instructions as to the manner in which appointment of the Director was made, and whether the same was in compliance with the Regulations. Thereafter, when the matter was finally heard on 01.04.2019, the Supreme Court observed that they were satisfied that the process, envisaged in their order dated 25.09.2018, had been complied with. The proceedings were closed in terms thereof, and all the Special Leave Petitions were accordingly disposed of.

9. The petitioner herein also preferred a Special Leave Petition against the order of the Division Bench of this Court in Writ Petition (S/B) No. 125 of 2014, which formed part of the batch of cases in Writ Petition (S/B) No. 568 of 2018 and batch; and the said Special Leave Petition, filed by the petitioner, was also

disposed of in terms of the order passed by the Supreme Court on 25.09.2018.

10. While Mr. S.S. Yadav, learned counsel for the petitioner, would submit that the order of the Division Bench of this Court, in Writ Petition (S/B) No. 568 of 2017 and batch dated 31.05.2018, has not been interdicted by the Supreme Court and, consequently, the directions issued in the said order dated 31.05.2018 necessitates compliance, both Mr. Arvind Vashishtha, learned Senior Counsel appearing on behalf of the second respondent-University, and Mr. Bhupesh Kandpal, learned Standing Counsel appearing on behalf of the third respondent-WIT, would submit to the contrary, and contend that, since the Special Leave Petitions were disposed of by the Supreme Court, by its order dated 01.04.2019, recording that the process envisaged by them in the order dated 25.09.2018 had been complied with and the proceedings were closed in terms thereof, the order of the Division Bench of this Court, in Writ Petition (S/B) No.568 of 2017 and batch dated 31.05.2018, would no longer survive; and it is the directions issued by the Supreme Court, in its order dated 25.09.2018, which necessitate compliance.

11. As noted hereinabove, the Supreme Court, in its order dated 25.09.2018, had directed the third respondent herein and others concerned to undertake the process of regular selection and appointment of a regular Director and staff within two months; the State Government was directed to pass necessary orders sanctioning the posts of Director and staff in the Institute, along with promulgation of the Regulations; it was directed that appointment of regular staff was to be made only after a regular Director was appointed; and the only relief, that the petitioners in Writ Petition (S/B) No. 568 of 2017 and batch were granted, was that, for the period for which they had worked as teachers, they should be paid salary and all other eligible benefits within one month.

12. The order of the Supreme Court dated 25.09.2018, which only required the third respondent to pay the salary and other benefits to the teachers for the period for which they worked, would itself show that direction "(C)" issued by the Division Bench of this Court, in Writ Petition (S/B) No. 568 of 2017 and batch dated 31.05.2018, to the effect that "the third respondent should engage the petitioners on contractual basis" (which direction was stayed by the Supreme Court, in its order dated 23.07.2018) was modified; and the third respondent was only required to pay them salary and other benefits for the period for which they worked, and nothing more.

13. In this context, it is also relevant to note that it is only because the services of some of these teachers were not continued, from the beginning of the academic session 2017-18, that the Division Bench had, in its order in Writ Petition (S/B) No. 568 of 2017 and batch dated 31.05.2018, directed the third respondent-Institute to engage them on a contractual basis. Since the Supreme Court had, in its order dated 23.07.2018, granted interim stay of the aforesaid direction "C", issued by the Division Bench of this Court in its order dated 31.05.2018 and had thereafter, by its order dated 25.09.2018, directed the third

respondent herein only to pay them salary, it is evident that the order of the Division Bench, directing the third respondent to engage the services of these Teachers including the petitioner on contractual basis, has been modified by the Supreme Court in its order dated 25.09.2018. While the order dated 25.09.2018 is, undoubtedly, an interim order, the Supreme Court had, by its final order dated 01.04.2019, disposed of the Special Leave Petitions in terms of the order passed by it on 25.09.2018. It is evident, therefore, that the directions issued by the Division Bench of this Court, in its order in Writ Petition (S/B) No. 568 of 2017 and batch dated 31.05.2018, to the third respondent to continue the petitioner as a Teacher on contractual basis, was modified by the Supreme Court; and no reliance can thereafter be placed on the aforesaid directions of the Division Bench of this Court.

14. Mr. S.S. Yadav, learned counsel appearing on behalf of the petitioner, would further submit that, despite the aforesaid directions of the Supreme Court to undertake the process of appointment of regular staff only after a regular Director is appointed, the third respondent had not appointed a regular Director through a fair and transparent process of selection; and appointment of a regular Director is, therefore, illegal.

15. While the order of the Supreme Court dated 25.09.2018, no doubt, required the respondents to appoint regular staff only after a regular Director was appointed, the third respondent appears to have submitted a report to the Supreme Court that it had undertaken a regular process of selection, and had appointed a regular Director pursuant thereto. This fact was noted by the Supreme Court in its order dated 04.02.2019, and the learned counsel for the respondents therein (the petitioners in Writ Petition (S/B) No. 568 of 2017 and batch) were directed to obtain necessary instructions as to the manner in which appointment of a Director was made; and whether the same was in compliance with the Regulations. However, in its final order dated 01.04.2019, the Supreme Court has not interdicted the appointment of a regular Director in the third respondent-Institute.

16. While we may not be understood to have held that the appointment of a regular Director, in the third respondent-Institute, is valid or otherwise, for the validity of such an appointment can only be examined in duly constituted legal proceedings, we see no reason to undertake such an exercise in the present writ petition wherein the appointment of the Director has not even been subjected to challenge.

17. In so far as the first prayer in this Writ Petition is concerned, the advertisement issued, inviting applications for the post of Assistant Professors, is in accordance with the directions issued by the Supreme Court in its order dated 25.09.2018. The second prayer, whereby the petitioner claims that a direction should be issued to the respondents to consider his case in the light of the judgment of this Court in Writ Petition (S/B) No. 193 of 2014, is the very same direction which was issued by the Division Bench of this Court, in its order in Writ

Petition (S/B) No. 568 of 2017 and batch dated 31.05.2018; and, since this direction was modified by the Supreme Court in its order dated 25.09.2018, and the Special Leave Petitions were disposed of by order dated 01.04.2019 in terms of the interim order dated 25.09.2018, the second prayer cannot also be granted. With respect to the third prayer, which relates to payment of salary to the petitioner w.e.f. September, 2012, Mr. Bhupesh Kandpal, learned counsel for the third respondent, would submit that salary, as directed by the Supreme Court, was paid to the petitioner.

18. While fairly stating that the petitioner was paid a consolidated sum in terms of the order of the Supreme Court dated 25.09.2018, Mr. S.S. Yadav, learned counsel for the petitioner, would submit that the petitioner is entitled to the grade-pay as stipulated in the order of appointment, and this grade-pay has not been extended to the petitioner ever since September, 2012.

19. While we see no reason to issue a mandamus to the third respondent in this regard, suffice it to permit the petitioner to make a representation to the third respondent furnishing details of the amount which he claims he is entitled to. If such a representation is made within a period of two weeks from the date of receipt of a certified copy of this order, the third respondent shall consider the said representation in accordance with law, and pass a reasoned order thereupon within four weeks from the date of receipt of the representation.

20. Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. No costs.