
(2023) 11 UK CK 0095

Uttarakhand High Court

Case No: Writ Petition (S/S) No. 404 Of 2022

Harish Chandra

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision: Nov. 21, 2023

Hon'ble Judges: Pankaj Purohit, J

Bench: Single Bench

Advocate: D.K. Joshi, Narayan Dutt

Final Decision: Dismissed

Judgement

Pankaj Purohit, J

1. By means of this writ petition, the petitioner has challenged the order dated 13.08.2021 passed by respondent no.2, whereby the representations of the petitioner dated 05.11.2019 and 19.07.2021 for fixation of his salary in the light of the judgment and order dated 13.09.2017 passed by the Coordinate Bench of this Court in Writ Petition No.1765 of 2016 (S/S) Harish Chandra Vs. State of Uttarakhand and others, have been rejected.

2. It is the contention of the petitioner that the earlier a writ petition No.1765 of 2016 (S/S) Harish Chandra Vs. State of Uttarakhand and others was filed by the petitioner, as petitioner was not allowed to participate in the selection process pursuant to the advertisement dated 04.08.2016 issued by the respondent no.4 for supplying vacancies of Assistant Teacher in Primary School, on the ground that the petitioner has not passed his D.El.Ed. from the State of Uttarakhand. The said challenge of the petitioner met with a success and the writ petition was allowed by reason of the judgment

and order dated 13.09.2017 and the State was directed to examine his certificates and all the qualifications and if they are in order, grant him

appointment order forthwith. In the said order, it has been specifically mentioned as quoted below:

“It is made clear that the appointment of the petitioner shall also be from the same date as is given to those candidates who have been

selected in the selection process. It is further made clear that the petitioner shall get the salary from the date he joins an institution and shall

not be entitled for back-wages”.

3. The petitioner was given appointment by the respondents/State on 24.05.2019 pursuant to the aforesaid judgment and order and he had joined at

Government Primary School, Kopa Basanta-Gularbhoj, Gadarpur, district Udham Singh Nagar on 30.05.2019. Subsequently, after joining, petitioner

moved a representation on 05.11.2019, in which, relying upon the aforementioned quoted portion of the judgment and order, he called upon the District

Education Officer (Elementary Education) to make fixation of his salary from the date when the appointments were given to the candidates selected

pursuant to the advertisement dated 04.08.2016. The said request of the petitioner was turned down by the respondent-authority vide impugned order

dated 13.08.2021.

4. Thus, feeling aggrieved, petitioner is before this Court by filing the present writ petition.

5. It is submitted by learned counsel for the petitioner that in operative portion of the judgment and order, it is clear that the petitioner shall be entitled

to get his pay fixed from the date when the selected candidates have been given appointment pursuant to the advertisement dated 04.08.2016. The

attention of this Court was drawn to the operative portion of the judgment.

6. Per contra, learned State Counsel submitted that the petitioner is not entitled to get the monetary benefit prior to date of his appointment. The

petitioner was given appointment on 24.05.2019 pursuant to the aforesaid judgment and order passed by Coordinate Bench of this Court and pursuant

to that appointment letter, he has joined his services as Assistant Teacher, Primary School on 30.05.2019.

7. It is submitted by learned State Counsel that all benefits which is admissible to the petitioner would be from the date of his joining and not from the earlier date as prayed by him. It is further submitted by learned State Counsel that the service benefits are to be given to the petitioner from the date of his initial appointment.

8. Learned counsel for the petitioner referred to Para 5 of his rejoinder affidavit, in which the contention made by the State has been denied saying that in view of the judgment and order passed by this Court, the petitioner is entitled to get the benefit from the date when the persons selected under the advertisement dated 04.08.2016, were given appointments.

9. Having heard learned counsel for the parties and having gone through the judgment and order, in particular the operative portion, passed by Coordinate Bench of this Court, it is a far-fetched conclusion, if the benefit of the pay-scale would be given to the petitioner in the light of the aforesaid judgment of Coordinate Bench of this Court. From the perusal of the aforesaid judgment, there is no manner of doubt that the appointment to the petitioner shall be given from the same date as is given to those candidates who have been selected in the selection process pursuant to the advertisement dated 04.08.2016. But, the petitioner accepted his appointment w.e.f. 24.05.2019 without any demur.

10. So far as the fixation of the salary and the monetary benefit is concerned, Coordinate Bench of this Court had made it clear that the petitioner shall get the salary from the date he joined the institution and he shall not be entitled for the back-wages.

11. From the bare reading of the judgment of the Coordinate Bench, it appears that the appointment of the petitioner shall be given from back date when candidates, who have been selected pursuant to the selection process in accordance with the advertisement dated 04.08.2016, but, he shall not be entitled to get any pecuniary benefits. Petitioner has not made any such prayer regarding the resettlement of his date of appointment rather misconstruing the judgment, he prayed for the fixation of the salary from the date when other candidates participating in the selection process were given appointment.

12. The prayer for monetary benefit and fixation of the salary appears to be fallacious and misconstrued and the same cannot be granted to the petitioner. However, no other prayer has been made by the petitioner regarding the pre-fixation of his date of appointment; therefore, no relief can be granted to him for the same. Moreover, for the last more than 4 years, he never raised any objection regarding the date of his appointment and rather he accepted it without any demur and objection.

13. In this view of the matter, the present writ petition being devoid of merit is dismissed. No order as to costs.