

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

WRIT PETITION (S/B) NO. 155 OF 2023

06TH DECEMBER, 2023

Kailash Chandra Petwal Petitioner.

Versus

Union of India & others Respondents.

With

WRIT PETITION (S/B) NO. 165 OF 2023

Umraw Singh Negi Petitioner.

Versus

Union of India & others Respondents.

With

WRIT PETITION (S/B) NO. 166 OF 2023

Shankar Lal Petitioner.

Versus

Union of India & others Respondents.

Counsel for the Petitioner(s) : Mr. M.C. Pant, learned counsel.

Counsel for the Respondent Nos.2, 3 & 5 : Dr. Kartikey Hari Gupta, learned counsel.

Counsel for the Respondent No.4 : Ms. Anjali Bhargava, learned counsel.

The Court made the following:

COMMON JUDGMENT:(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

Since common questions of fact and law are involved in these writ petitions, therefore, these petitions are clubbed together and are being heard and decided together. However, for the sake of brevity and convenience, facts of

Writ Petition (S/B) No.155 of 2023 along are being considered.

2. Petitioner is serving as Assistant Professor in Hemwati Nandan Bahuguna Garhwal University (*for short "HNBGU"*). He applied for promotion under the Career Advancement Scheme in terms of Regulations 6.3 (VI)(i) & (ii), of the UGC Regulations which are extracted below :

"(i) If a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion shall be from that of minimum period of eligibility.

(ii) If, however, the candidate finds that he/ she would fulfils the CAS promotion criteria, as defined in Tables 1, 2, 4 and 5 of Appendix II at a later date and applies on that date and is successful, his/ her promotion shall be effected from that date of the candidate fulfilling the eligibility criteria".

3. Petitioner appeared before the Selection Committee and on the recommendation of Selection Committee, petitioner was given promotion to the post of Associate Professor. However, such promotion was given only with effect from the date of joining on the promoted post and not from the date of eligibility. Thus, feeling aggrieved, petitioner has approached this Court.

4. Learned counsel for the petitioner submits that identical issue has been decided by Co-ordinate Bench of this Court by judgment dated 27.04.2023, in Writ Petition (S/B) No.128 of 2021. He relies upon Paragraph No.7 of the said judgment, which is reproduced below.

"7. On a plain reading of the Regulations, both of the year 2010 and of the year 2018, it is clear that they, in no uncertain terms, provide that once a candidate is found to be eligible for promotion, the date of his promotion, necessarily, has to be read as the date on which he became eligible for promotion. Thus, the date, on which his case is considered for promotion is irrelevant. The only mandate of the Selection Committee is to consider whether the candidate is eligible, or not. Once a candidate is found eligible, he is bound to be given his promotion from the date of his eligibility. The only exception to this Rule is where a candidate does not succeed in the first assessment, and he is re-assessed. In that regard, Regulation 6.3.12(c) of the UGC Regulations, 2010 provided that "If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment, his/her promotion will be deemed to be from the later date of successful assessment." Similarly, Regulation 6.3(VI)(iii) of the UGC Regulations, 2018 provides that "The candidate who does not succeed in the first assessment, he/she shall have to be re-assessed only after one year. When such a candidate succeeds in the eventual assessment, his/her promotion shall be deemed to be one year from the date of rejection."

5. Dr. Kartikey Hari Gupta, learned counsel for the University also do not dispute the submission made by learned counsel for the petitioner, and fairly submits that the issue involved in these writ petitions is squarely covered by the judgment rendered in Writ Petition (S/B) No.128 of 2021. He, however, submits that research papers/ publications of the petitioner were found to be of inferior quality, therefore, petitioner was given promotion only from the date of joining.

6. The contention raised on behalf of the respondent-University is without any substance. Once the Selection

Committee finds that petitioner is eligible for promotion under Career Advancement Scheme, upon evaluation of his research papers/ publications, then promotion has to be given from the date of eligibility. There is no provision in the UGC Regulations which enables the University to restrict promotion only from the date of joining. This aspect has been dealt with by co-ordinate bench in Writ Petition (S/B) No. 128 of 2021.

7. In such view of the matter, writ petitions are allowed and impugned order dated 03.11.2022 is quashed. The University is directed to give promotion to the petitioner(s) from the date of their eligibility with all consequential benefits.

8. Pending application, if any, also stands disposed of.

(MANOJ KUMAR TIWARI, A.C.J.)

(VIVEK BHARTI SHARMA, J.)

Dated: 06th December, 2023

NISHANT