

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (S/B) NO. 304 OF 2023

21ST JULY, 2023

BETWEEN:

Sushil Kumar Srivastava

.....Petitioner.

And

State of Uttarakhand & another

....Respondents.

Counsel for the Petitioner : Mr. B.D. Pande, learned counsel.

Counsel for the State : Mr. K.N. Joshi, learned Deputy Advocate General.

Counsel for the Respondent No.2 : Mr. N.S. Pundir, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The petitioner has preferred the present writ petition to assail the order dated 27.03.2021, passed by respondent no.2, i.e Uttarakhand Seeds and Tarai Development Corporation Ltd., whereby the representation of the petitioner, dated 08.09.2020, has been rejected, and the petitioner has been denied the grant of higher pay-scale, claimed by him. The second prayer made in the petition is given up by the petitioner, as it has wrongly been made.

2. First and foremost, it is evident that the present petition is highly belated, inasmuch, as the impugned order was passed on 27.03.2021, and the present petition has been preferred after over two years of the passing of the said order.

3. Even on merits, we do not find any substance in the petitioner's case. The petitioner has been approaching the Court, time and again, claiming the fixation of higher pay-scales by the respondent- Corporation in the light of the 6th Central Pay Commission recommendations, in respect of which the State had directed all the Public Sector Undertakings/ Corporations to consider, and to rectify anomalies in the pay structure.

4. Earlier, when the petitioner preferred a writ petition, the same was disposed of with a direction to the respondents to consider his representation.

5. The petitioner's representation was considered. The matter was sent by the respondent-Corporation to obtain approval of the State Government. On 03.05.2016, the State sought information with regard to the financial condition of respondent no.2. On 09.05.2016, respondent no.2 informed the State that its financial condition was weak, and they were looking to extend the benefit of higher pay-scale to the petitioner, in case the funds are provided by the State.

6. It appears that on 09.06.2016, the petitioner was informed that on account of weak financial condition of respondent no.2, it is not possible to grant the benefit of higher pay-scale to the petitioner. It is not clear whether the said order was issued by respondent no.2, or by the State.

7. The petitioner then preferred Writ Petition (S/B) No.88 of 2017, which was decided on 13.02.2020. The Court noticed the aforesaid correspondence undertaken between the respondent- Corporation, and the State Government, and returned a finding in Paragraph No.9 that there is no illegality in the order passed by the State on 09.06.2016. The Court went on to observe that, ordinarily, the Court would have dismissed the petitioner. However, since it was contended by the petitioner that the financial condition of respondent- Corporation has since drastically improved, it was left open to the respondent- Corporation to consider the issue as to whether, or not the higher pay-scale should be granted to the petitioners. The Court further observed that it has not expressed any opinion on whether, or not, the respondent- Corporation should extend the monetary benefit to the petitioners, and the matter were left to be considered by the Board of Directors of the respondent- Corporation. Thereafter, the respondent- Corporation has issued the impugned order dated 27.03.2021, rejecting the claim for higher pay-scale.

8. As already ruled by this Court, in its judgment dated 13.02.2020, in Writ Petition (S/B) No.88 of 2017, there is no vested right in the petitioners to claim higher pay-scales, as recommended by the 6th Central Pay Commission. The right to receive the higher pay-scale, as recommended by

the 6th Central Pay Commission, is not automatic, and the said recommendations were specifically required to be accepted and adopted by the Corporations, such as respondent no.2. Respondent no.2 has not decided to adopt and implement those recommendations in the light of its financial condition.

9. No employee can insist that the said recommendations have to be adopted irrespective of the financial condition of employer- Corporation. Therefore, even on merits, there is no substance in the petitioner's claim. No specific case of discrimination is made out by the petitioner.

10. The writ petition is, accordingly, dismissed.

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

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 21st July, 2023

NISHANT