

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE PANKAJ PUROHIT

12TH March, 2024

WRIT PETITION (S/B) No. 23 OF 2022

Between:

Dr. Aruna Rani Mital

...Petitioner

Versus

State of Uttarakhand & others.

...Respondents

Counsel for the petitioner. : Mr. Siddhartha Sah, learned counsel.

Counsel for the respondent Nos. 1 & 2 : Mr. Puran Singh Bisht, learned Additional
Chief Standing Counsel for the State of
Uttarakhand.

Counsel for the respondent no. 4 : Dr. Kartikey Hari Gupta, learned counsel

Counsel for the respondent no. 5 : Ms. Anjali Bhargava, learned counsel.

JUDGMENT : (per Sri Manoj Kumar Tiwari, J.)

Petitioner was appointed as Lecturer (Political Science) in a government aided Post Graduate College, namely, Sri Guru Ram Rai PG College, Dehradun, and she joined duties as such on 15.11.1989. Petitioner was given designation of Associate Professor w.e.f. 01.01.2006. She completed age of superannuation on 09.10.2018. She is aggrieved by rejection of her claim for promotion as Professor under Career Advancement Scheme by the Director, Higher Education. The Director has held that petitioner was not in service on 11.11.2019, when Screening-cum-Selection

Committee was constituted, therefore, she is not eligible for promotion.

2. By means of this writ petition, petitioner has sought the following reliefs:-

“(i) To issue writ, order, rule or direction in the nature of certiorari to quash the letters of Director of Higher Education of Uttarakhand No. Degree-Arth/Ek-3-1(11)/3194/201-20 dated 20.08.2020 and No. Degree/Arth/EK-3-1(11)/5296/2020-21 dated 20.10.2020 (contained in Annexure Nos. 28 & 30 respectively.

(ii) To issue writ, order, rule or direction in the nature of mandamus directing the respondents 1 & 2 (Principal Secretary & Director of Higher Education of Uttarakhand) to sanction the CAS personal promotion to Professor designation & grade pay under UGC-Regulations-2010 to the petitioner from her eligibility date 27th June, 2016 as per unanimous recommendation for the sanction of Professor designation & grade pay to the petitioner by the duly constituted Screening cum Evaluation Committee meeting held on 11.11.2019.”

3. The order passed by Director, impugned in this writ petition, is on record as Annexure-28 to the writ petition. In the said order, Director has referred to Clause-C (7) of the Career Advancement Scheme adopted by the State Government, vide Government Order dated 28.05.2013, which reads as under:-

“(7) The incumbent teacher must be on the role and active service of the University/College on the date of consideration by the Screening cum Evaluation Committee for CAS promotion.”

4. Admittedly, petitioner completed age of superannuation on 09.10.2018, thus, she was not on the role and active service of the college on the date of consideration

by the Screening-cum-Evaluation Committee.

5. Learned counsel for the petitioner submits that petitioner's claim for promotion was not only considered but also recommended by the Screening-cum-Selection Committee, therefore, Director's order is unsustainable in the eyes of law. He further submits that delay in constituting Selection Committee was not attributable to the petitioner, therefore, petitioner could not be denied the benefit available to her, as per UGC Regulations. He refers to UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010. Relevant clauses of the aforesaid Regulations are extracted below:-

“6.3.8. CAS promotions being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre.

6.3.9 The incumbent teacher must be on the role and active service of the Universities/Colleges on the date of consideration by the Selection Committee for Selection/CAS Promotion.

6.4.10. Ten percent of the positions of Professors in a university, with a minimum of ten years of teaching and research experience as professor either in the pre-revised scale of Professor's pay or the revised scale pay will be eligible for promotion to the higher grade of Professorship (stage 6), on satisfying the required API score as per Tables I and II through the PBAS methodology stipulated in these Regulations through a duly constituted Expert committee, and such teachers promoted to the higher grade shall continue to be designated as 'Professor'. As this AGP elevation for Professor is applicable to only university departments, additional credentials are to be

evidenced by:

(a) post-doctoral research outputs of high standard;

(b) award/honours/and recognitions;

(c) Additional research degrees like D.Sc., D.Litt., LID, etc.; patents and IPR on products and processes developed / technology transfer achieved in the case of teachers in science and technology.

The selection is to be conducted by the university by receiving duly filled PBAS proformas from eligible professors based on seniority, three times in number of the available vacancies in each faculty. In case the number of candidates available is less than three times the number of vacancies, the zone of consideration will be limited to the actual number of candidates available. The assessment process shall be through an Expert-Committee evaluation of all credentials submitted as stipulated in Table-II(A) of Appendix-III for teachers in University departments. No separate interview need to be conducted for this category”

6. Learned counsel for the petitioner contends that as petitioner had submitted completely filled PBAS proforma on 03.10.2018 while serving as Associate Professor, therefore, she cannot be non-suited for promotion, merely because she completed age of superannuation by the time the selection committee was constituted. He further contends that Government Order dated 28.05.2013 relied by Director for denying promotion to petitioner is contrary to the UGC Regulations, 2010, therefore, UGC Regulations would prevail and petitioner's eligibility for promotion under Career Advancement Scheme cannot be questioned.

7. The said contention, however, is without any substance. Clause 6.3.9 of the UGC Regulations, 2010 specifically provides that a teacher, who is on the role and

active service of the University/College on the date of consideration by the Selection Committee, alone can be considered for promotion under Career Advancement Scheme. The Government Order, relied by Director in the impugned order, merely reproduces the said condition in Clause-C(7). Thus, there is no dichotomy between the UGC Regulations and the Government Order.

8. Learned counsel for the petitioner contended that petitioner is eligible for promotion as per Clause 6.4.10(c) of the UGC regulations, 2010, as she had submitted PBAS proformas while she was still in service, therefore, her subsequent superannuation will not have any affect on her eligibility for promotion. The said contention though seems attractive at the first blush; however, on deeper scrutiny it is without any substance. Clause 6.3.9, in unequivocal term, provided that only serving teacher can be considered by the Selection Committee for promotion under Career Advancement Scheme. Clause 6.4.10(c) deals with procedural aspect of promotion under Career Advancement Scheme. It is absolutely silent on the question of eligibility. Thus, anyone, who is not eligible under Clause 6.3.9, cannot be treated as eligible with the aid of Clause 6.4.10(c).

9. Learned counsel for HNB Garhwal University points out that University Grants Commission by a notification dated

18.07.2018 enforced new Regulations known as 'UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018'. He submits that Clause 6.3-V of UGC Regulations, 2018 also provides that for promotion under CAS, the applicant teacher must be on the role and in active service of the University/College on the date of consideration by the Selection Committee. Clause 6.3, I, II, III, IV, V, VI of the UGC Regulations, 2018 are reproduced below:-

"6.3 The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them, for being considered for promotions under the existing Regulations. This option can be exercised only within three years from the date of notification of these Regulations.

I. A teacher who wishes to be considered for promotion under the CAS may submit in writing to the university/college, within three months in advance of the due date, that he/she fulfils all the requirements under the CAS and submit to the university/college the Assessment Criteria and Methodology Proforma as evolved by the university concerned supported by all credentials as per the Assessment Criteria and Methodology guidelines set out in these Regulations. In order to avoid any delay in holding the Selection Committee meetings for various positions under the CAS, the University/College may initiate the process of screening/selection, and complete the process within six months from the receipt of application. Further, in order to avoid any hardship, the candidates who fulfil all other criteria mentioned in these Regulations, as on and till the date on which these regulations are notified, can be considered for promotion from the date, on or after the date, on which they fulfil these eligibility conditions.

II. The Selection Committee specifications as contained in Clauses 5.1 to 5.4 shall be applicable to all direct recruitments of faculty positions and equivalent cadres and Career Advancement promotions from Assistant Professor to Associate Professor, from Associate Professor to Professor, Professor to Senior Professor (in University) and for equivalent cadres.

III. The CAS promotion from a lower stage to a higher stage of Assistant Professor shall be conducted through a "Screening-cum-Evaluation Committee", following the criteria laid down in Table1 of Appendix II.

IV. The promotion under the CAS being a personal promotion to a teacher holding a substantive sanctioned post, on his/her superannuation, the said post shall revert back to its original cadre.

V. For the promotion under the CAS, the applicant teacher must be on the role and in active service of the University/College on the date of consideration by the Selection Committee.

(VI) The candidate shall offer himself/herself for assessment for promotion, if he/she fulfils the minimum grading specified in the relevant Assessment Criteria and Methodology Tables, by submitting an application and the required Assessment Criteria and Methodology Proforma. He/she can do so three months before the due date. The university shall send a general circular twice a year, inviting applications for the CAS promotions from the eligible candidates.

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.

iii) 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."

10. In view of the specific provision contained in Clause 6.3.9 of the UGC Regulations, 2010, petitioner cannot be treated as eligible for promotion under Career Advancement Scheme, as she had retired on the date of constitution of Selection Committee. As observed earlier, there is no dichotomy between UGC Regulations, 2010 and the Government Order dated 28.05.2013. In fact, the Government Order is inline with UGC Regulations. Thus, the order passed by Director cannot be faulted.

11. Learned counsel for the petitioner relied upon a judgment rendered by learned Single Judge of Hon'ble Telangana High Court in W.P. No. 27263 of 2012. The said judgment is distinguishable on facts. In that case, Hon'ble Telangana High Court resolved the dichotomy between Career Advancement Scheme Regulations framed by the University and the UGC Regulations and held that the Regulations framed by the University are contrary to UGC Regulations, hence unsustainable.

12. In the present case, however, there is no such dichotomy, and the UGC Regulations itself provide that retired teachers will not be eligible for promotion under Career Advancement Scheme. Thus, there is no scope for interference with the view taken by Director, Higher Education.

13. There is no force in the writ petition. Accordingly, writ petition fails and is dismissed. No order as to costs.

MANOJ KUMAR TIWARI, J.

PANKAJ PUROHIT, J.

Dt: 12.03.2024
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