



2024:UHC:8996-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND

HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

04TH DECEMBER, 2024

WRIT PETITION(S/ B) No. 522 OF 2021

Dr. Nandan Singh and others.

..Petitioners

Versus

State of Uttarakhand and others.

..Respondents

With

WRIT PETITION(S/ B) No. 531 OF 2021

Dr. Naveen Chandra Bhatt.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents

With

WRIT PETITION(S/ B) No. 532 OF 2021

Dr. Maya Gola.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents

With

WRIT PETITION(S/ B) No. 533 OF 2021

Dr. Tej Pal Singh.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents



2024:UHC:8996-DB

With

WRIT PETITION(S/ B) No. 535 OF 2021

Dr.Hari Ram Kaushal.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents

With

WRIT PETITION(S/ B) No. 536 OF 2021

Smt. Mamta Pant.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents

With

WRIT PETITION(S/ B) No. 140 OF 2022

Dr. Harish Chandra Joshi.

..Petitioner

Versus

State of Uttarakhand and others.

..Respondents

Counsel for petitioners in WPSB : Mr. Suhaas Ratna Joshi and Mr. Narendra Singh, learned counsel.
No. 522/2021.

Counsel for petitioners in WPSB : Mr. Dushyant Mainali, learned counsel.
No. 531/2021, WPSB No. 532/2021, WPSB No. 533/2021, WPSB No. 535/2021& WPSB No. 536/2021.

Counsel for petitioner in WPSB : None.
No.140/2022.

Counsel for State of Uttarakhand. : Mr. B.S. Parihar, learned Standing Counsel and Mr. S.S. Chaudhary, learned Brief Holder for State of Uttarakhand.

Counsel for Kumaun University, Nainital. : Mr. Rajeev Singh Bisht, learned counsel.

Counsel for Soban Singh Jeena University, Almora. : Mr. C.S. Rawat, learned counsel.



JUDGMENT : (per Mr. Manoj Kumar Tiwari, A.C.J.)

Since common questions of law and facts are involved in all these Writ Petitions, therefore, they are being heard and decided together. However, for the sake of brevity, facts of Writ Petition (S/B) No. 522/2021 alone are being considered and discussed.

2. Kumaun University was established under the Uttar Pradesh State Universities Act, 1973, w.e.f. 23.11.1973. It had two Campus Colleges, namely DSB Campus, Nainital and Soban Singh Jeena Campus, Almora (“*SSJ Campus, Almora*”, for short). Petitioners were appointed, as Teacher, in Kumaun University in different years; while some of them were initially posted in DSB Campus, Nainital and, thereafter, they were transferred to Soban Singh Jeena Campus, Almora, as per exigencies of work, while others were posted directly in Soban Singh Jeena Campus, Almora, which was a Campus College of Kumaun University.

3. State Legislature enacted Soban Singh Jeena University Act, 2019, and a separate University, known as “Soban Singh Jeena University” came to be established under the provisions of the said Act, with SSJ Campus, Almora as the constituent College. Section 3(3) of Soban Singh Jeena University Act, 2019 provides that Soban



Singh Jeena University shall have three campuses at Bagheswar, Pithoragarh and Almora. For ready reference, Section 3(3), Section 3(4) & Section 4 of the said Act are extracted below:

<i>“University establishment and incorporation</i>	3	(1)
		(2)
		(3) Pandit Badri Dutt Pandey P.G. College, Bageshwar, Lakshman Singh Mahar P.G. College, Pithoragarh, and Soban Singh Jeena Campus, Almora inclusively, shall be its three campuses, which shall be transferred into the aforesaid University and also the campus of existing Residential University, Almora shall be merged in it. The University shall be headquartered in Soban Singh Jeena Campus, Almora. The University may establish other campuses in the future, as it thinks necessary.”
		(4) The University shall extend affiliation to all the post-graduate and degree colleges, in Almora, Pithoragarh, Bageshwar and Champawat districts, and it may affiliate established colleges in these districts Jurisdiction.
<i>Exercise of powers in the territorial area</i>	4	(1) Under this Act, the University shall be empowered for the use of its powers in those part of the Kumaun division as the State Government may fix, via notification in the Gazzette.
		(2) Every college or institution other than existing college, imparting higher/ vocational education in the state on the date of commencement of this act shall



with effect from such date as may be notified in this behalf affiliated by the university established under section 3 and shall not remain be affiliated to or associated with the university established by or under previously by Uttar Pradesh state university Act, 1973 (As applicable in Uttarakhand) in Present by Kumaun University, Nainital herein after referred to in this section as former University:

Provided that from the date that this Act comes into effect, a student pursuing education at an established college or institution other than the existing college, presently or hereafter under the former University, shall be fully entitled and allowed to continue and complete such education, and the former university shall conduct examinations as per the continuing process for the time being, and shall provide the degree or any other specialization.”

4. From the scheme of Soban Singh Jeena University Act, 2019, especially Section 3(4) and Section 4 thereof, it can be seen that Colleges, earlier affiliated to Kumaun University, situated in Districts Almora, Pithoragarh, Bageshwar and Champawat, would be affiliated to the new University, known as “Soban Singh Jeena University”. It is not in dispute that the new University was established after bifurcating the Kumaun University, and the Colleges affiliated to Kumaun University, including Government Colleges, situated in



the aforesaid four districts, were to be granted affiliation by the new University.

5. Upon creation of the new University, the authorities of both the University formed a Joint Committee, to examine the issue of allotment of teachers between the two Universities, and to submit its report. The Committee made deliberations, and ultimately made a recommendation that the place of posting of teaching and non-teaching employees of Kumaun University, as on 22.06.2020, shall be seen, and if they were serving in SSJ Campus, Almora, then they shall stand transferred in the service of Soban Singh Jeena University, Almora, and if they were serving in DSB Campus of Kumaun University, on the said date, then they shall stand transferred in the service of the Kumaun University. The recommendation made by the Joint Committee was approved by the State Government, vide Government Order dated 12.10.2021, with a slight modification that the place of posting will be seen on 22.06.2021, instead of 22.06.2020, as per the recommendation made by the Joint Committee.

6. Subsequently, Registrar of Soban Singh Jeena University passed an order on 21.10.2021, in which it was provided that all teaching and non-teaching



employees, who were posted in SSJ Campus, Almora before Notification dated 22.06.2020, would be treated as teaching/ non-teaching employees of Soban Singh Jeena University, and other employees, who were posted in DSB Campus, Nainital, before the Notification dated 22.06.2020, shall be treated as employees of Kumaun University.

7. Petitioners are aggrieved by the aforesaid decision, whereby the status of petitioners, has been altered. Petitioners were serving in SSJ Campus, Almora before Notification dated 22.06.2020. Thus, by virtue of the impugned decision, they have become employees of the new University, namely Soban Singh Jeena University.

8. According to petitioners, they were appointed in Kumaun University, Nainital after due selection, and it was never made known to them that their services can be transferred to the new University, whenever Kumaun University is bifurcated, therefore, without their consent, their services cannot be transferred to Soban Singh Jeena University. It is further contended that petitioners are human-beings and not chattels, therefore, freedom of choice is available to them, and their employer cannot be changed without their consent. It is further contended



that, because of the impugned decision, petitioners have been deprived of their right to exercise option, and the criteria adopted, for allocating their services to either of the two Universities, is without any basis. It is further contended that, even though petitioners were posted in SSJ Campus, Almora till creation of the new University, however, the said Campus was part of the Kumaun University, and petitioners served there as employees of Kumaun University. Thus, according to petitioners, even though SSJ Campus, Almora had gone to the new University, however, the employees serving in the said Campus cannot be compelled to serve in the new University, against their wish, and petitioners are entitled to exercise their option for serving under either of the two Universities, and their employer cannot be changed without their consent.

9. It is further contended on behalf of petitioners that any understanding between the two Universities, which is arrived at behind the back of petitioners, is not binding upon them. It is also contended that Kumaun University is now more than 50 years old, and petitioners have also contributed for the growth of Kumaun University and also for the milestones it has achieved in academic field, and they would be denuded of the benefit



of serving in Kumaun University, and the funding, which petitioners would have received for research projects from different Government/ other agencies would also dry-up, if petitioners are made to serve under a new University, and in this manner their research activities would suffer a set-back. It is further contended on behalf of petitioners that, by the impugned decision, employer of petitioners has been changed, however, petitioners were not given any notice or opportunity of hearing; since change of employer means change in conditions of service, which cannot be done without providing reasonable opportunity of hearing, therefore, on this ground also, the impugned decision is unsustainable.

10. Learned counsel for petitioners has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of *Jawaharlal Nehru University v. Dr. K.S. Jawatkar and others*, 1989 Supp (1) SCC 679. Paragraph no. 7 of the said judgment is reproduced below :

"7. In this appeal the main contention of the appellant is that the respondent was appointed at the Centre of Post-graduate Studies, Imphal, and when the Centre was transferred to the Manipur University, his services were automatically transferred to that University, and consequently he could not claim to be an employee of the appellant University. The argument proceeds on the assumption that the Centre of Post-graduate Studies at Imphal was an independent entity which existed by itself and was not a department of the appellant University. The submission proceeds on a



fallacy. The Centre of Post-graduate Studies was set up at Imphal as an activity of the appellant University. To give expression to that activity, the appellant University set up and organised the Centre at Imphal and appointed a teaching and administrative staff to man it. Since the Centre represented an activity of the appellant University the teaching and administrative staff must be understood as employees of the appellant University. In the case of the respondent, there can be no doubt whatever that he was, and continues to be, an employee of the appellant University. There is also no doubt that his employment could not be transferred by the appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it, either expressly or by necessary implication, subject to the respondent's consent. When the Manipur University Act provides for the transfer of the services of the staff working at the Centre of Postgraduate Studies, Imphal, to employment in the Manipur University, it must be construed as a provision enabling such transfer of employment but only on the assumption that the employee concerned is a consenting party to such transfer. It makes no difference that the respondent was not shown in the list of Assistant Professors of the appellant University or that the provision was not indicated in its budget; that must be regarded as proceeding from an erroneous conception of the status of the respondent. The position in law is clear, that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied. We do not find it necessary to refer to any case law in support of this conclusion."

11. Reliance is also placed by learned counsel for petitioners upon another judgment rendered by the Hon'ble Supreme Court in the case of *Balco Captive Power Plant Mazdoor Sangh and another v. National Thermal Power Corporation and others*, (2007) 14 SCC 234, dealing with transfer of employees from a Public Sector Undertaking to a private



organization, without their consent. Paragraph nos. 32, 33, 34, 35 & 37 of the said judgment are reproduced below :

“32. The next submission of the learned Senior Counsel for the employees was that transfer of employer is not permissible without tripartite agreement. As per the law laid down in Nokes v. Doncaster Amalgamated Collieries Ltd. and decision of this Court in Pyarchand Kesarimal Porwal Bidi Factory v. Omkar Laxman Thenge the consent must be express and consciously accorded in the course of negotiation contemporaneous with the process of transfer so as to amount to an informed consent. Consequently, in order to bind the appellants, there must be a tripartite agreement. Since there is no tripartite agreement, as observed above, the transfer from one employer to another cannot be effected.

33. In Nokes v. Doncaster Amalgamated Collieries Ltd. it was observed as under: (AC p. 1020 : All ER p. 552 H)

“It will be readily conceded that the result contended for by the respondents in this case would be at complete variance with a fundamental principle of our common law—the principle, namely, that a free citizen, in the exercise of his freedom, is entitled to choose the employer whom he promises to serve, so that the right to his services cannot be transferred from one employer to another without his assent.”

34. This Court in Pyarchand v. Omkar Laxman held thus: (SCC p. 827, para 8)

“8. A contract of service being thus incapable of transfer unilaterally, such a transfer of service from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party, the effect of which would be to terminate the original contract of service by mutual consent and to make a new contract between the employee and the third party.”

35. The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrary and violative of Article 14. As pointed out earlier, in the case on hand, the employees are neither party to tripartite agreement nor they have been heard before changing their service condition. Therefore, the action



of the management is violative of Article 14 of the Constitution of India. Similar view has been taken by this Court in H.L. Trehan v. Union of India. In para 11 of the judgment, this Court observed as under: (SCC pp. 769-70)

“11. ... It is now a well-established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice.”

37. It is clear that no employee could be transferred without his consent from one employer to another. Therefore, in view of the aforesaid rulings the transfer of employees from NTPC - a public sector undertaking to BALCO which is a private organization is bad in law.”

12. We find force in the contentions raised on behalf of petitioners. Since petitioners were employees of Kumaun University, therefore, upon bifurcation of Kumaun University into two Universities, petitioners had a right to exercise option for serving in either of the two successor Universities. Although, the option exercised by petitioners would not be binding upon the employer, and the employer would always be at liberty to formulate a policy for allotment of existing employees between the two Universities, however, the impugned decision, which provides that existing employees of Kumaun University



will not have any right to exercise option, cannot be sustained. The impugned decision results in change of employer, and petitioners were not given any notice or opportunity of hearing; since change of employer results in alteration in conditions of service, therefore, petitioners were entitled to a reasonable opportunity of hearing, which has not been given to them, therefore, the impugned decision is violative of principles of natural justice - thus unsustainable.

13. Even otherwise also, freedom of choice is available to every human-being, and the said right is not lost merely by accepting employment in an organization. As human-beings, petitioners have a right to express their desire regarding the employer, under which they want to serve. That right cannot be taken away from them, although it will not always be possible for the employer to accede to the request made by the employee, however, his request has to be considered by the employer. Since that has not been done in the present case, therefore, the impugned decision cannot be approved of. Even otherwise also, the criteria adopted by respondents for allotting teaching and non-teaching employees, to either of the two successor Universities, is without any rationale. Since petitioners were posted in



SSJ Campus, Almora by the Competent Authority, in view of administrative exigencies, therefore, they cannot be denied of their right to exercise option for serving in Kumaun University, under which they were appointed, and had been serving throughout.

14. For the aforesaid reasons, the impugned decisions taken by the Universities and the State Government cannot be sustained in the eyes of law. Accordingly, the impugned decisions are set-aside; the Writ Petitions are allowed, and the Vice Chancellors of both the Universities are directed to form a Joint Committee, consisting of Registrars and Senior Professors of both the Universities, which shall invite options from all teaching and non-teaching employees, who were serving in Kumaun University before creation of Soban Singh Jeena University, Almora.

15. Vice Chancellors of both the Universities shall formulate a policy regarding allotment of teaching and non-teaching employees to either of the two Universities, depending upon the number of options received from the employees for serving in a particular University. Both the Universities shall constitute a body, which shall consider the options received from teaching and non-teaching employees in the light of the policy formulated regarding



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allotment of employees, and shall pass fresh order regarding allotment of teaching and non-teaching employees to Kumaun University, or Soban Singh Jeena University, Almora, as the case may be.

16. Pending application(s), if any, also stand disposed of accordingly.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 04th December, 2024
Rahul

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PRAJAPATI

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