



2024:UHC:8493-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

14TH NOVEMBER, 2024

SPECIAL APPEAL No. 417 OF 2021

Naveen Chandra Pathak and others.

..Appellants

Versus

Secretary, School Education and others.

..Respondents

Counsel for the appellants. : Mr. Lalit Samant, learned counsel.

Counsel for respondent nos. 1 to 4. : Mr. K.N. Joshi, learned Deputy Advocate General for State of Uttarakhand.

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

This intra-Court appeal is directed against judgment dated 28.10.2021 rendered by learned Single Judge in Writ Petition (S/S) No. 1332/2021. Operative portion of said judgment is reproduced below :

"We are in 2021 now. Consciously the impugned orders dated 27.03.2019 and 12.04.2019, was solicited by the petitioners themselves, at the behest of their representation which was submitted before the authorities in view of the earlier orders, so the petitioners cannot have a case, that they were not conscious or aware of the orders of the 27.03.2019 and 12.04.2019. Preferring a writ petition by filing the same on 08th October, 2021, and that too, this Court being conscious of the fact that the limitation may not be specifically creating a bar in entertaining a writ petition at the belated stage, but still the petitioners simultaneously also owes a responsibility to rationally explained the laches for not approaching the court, within an appropriate or a reasonable time, there is not even a single word in the pleadings, as to what obstructed the petitioners to approach the writ court within an appropriate time. Hence, this writ petition would be barred by the laches too. Apart from the fact



that as I have already observed, that in fact under the garb of the decision of the 2019, what the petitioners are trying to endeavour to press is the same relief, which was earlier denied to be granted, or rather it would be presumed, that it was not pressed by the petitioners by seeking an alternative relief of getting the representation decided, without reserving the rights any further.

In that view of the matter, I am not inclined to interfere in the writ petition. The writ petition is dismissed.”

2. Learned counsel for appellants-writ petitioners submits that appellants had earlier filed Writ Petition (S/S) No. 1678/2011, which was allowed by learned Single Judge of this Court, vide order dated 05.03.2018. Operative portion of order dated 05.03.2018 is reproduced below :

“Case of the petitioners, in a nutshell, is that the similarly situate employees serving in other districts have been granted regular pay scale but the same has been denied to them who are serving in the Pithoragarh District.

There cannot be any discrimination only on the basis of geographical condition. Petitioners constitute a homogenous class vis-à-vis other employees who are serving in other parts of the State.

Accordingly, the writ petition is allowed. Order, under challenge, is quashed and set aside. Respondents are directed to consider the case of petitioners for regular pay scale on the analogy of their counterparts serving in other parts of the State within ten weeks from today.

3. Learned counsel for appellants-writ petitioners further submits that, pursuant to order passed by learned Single Judge, Director, Elementary Education passed an order on 27.03.2019, providing therein that appellants-writ petitioners shall be absorbed against sanctioned



Group-D posts, as and when vacancies are available, and service benefits will be paid to them only thereafter. District Education Officer, Elementary Education, Pithoragarh passed a consequential order on 12.04.2019, whereby some of appellants-writ petitioners were absorbed against sanctioned Group-D posts, but only from the date of availability of vacancy for such absorption.

4. Since appellants-writ petitioners were claiming all service benefits from date of their initial appointment on a Group-D post, and they were not satisfied with the orders passed by Director, Elementary Education and District Education Officer, Elementary Education, Pithoragarh, whereby they were given service benefits, only from the date of their absorption against sanctioned vacant Group-D posts, therefore, they challenged the orders passed by Director, Elementary Education and District Education Officer, Elementary Education, on 27.03.2019 & 12.04.2019 respectively, in Writ Petition (S/S) No. 1332/2021. The said Writ Petition was filed on 18.10.2021. Learned Single Judge dismissed said Writ Petition, on the ground of delay and laches. It was observed in the impugned judgment passed by learned



Single Judge that, since the relief, which the appellants-writ petitioners claimed in Writ Petition (S/S) No. 1332/2021, was earlier denied to them, or they had not pressed the relief claimed in said Writ Petition, and had prayed that Competent Authority be directed to take decision on their representation, therefore, subsequent Writ Petition for the same relief would be barred.

5. Learned counsel for appellants-writ petitioners submits that impugned judgment passed by learned Single Judge is unsustainable in the eyes of law. He submits that no limitation period is prescribed for Writ Petition, and provisions of Limitation Act are not attracted to proceedings under Article 226 of Constitution of India, therefore, dismissal of Writ Petition, on the ground of delay and laches, that too, when Writ Petition was filed after little more than two years of passing of impugned orders, cannot be sustained. He further submits that, between the date of passing of impugned orders and the date of filing of Writ Petition, lockdown was imposed in the country, due to COVID-19 pandemic. In view of unprecedented situation arising due to lockdown, Hon'ble Supreme Court had intervened by passing orders in *Suo Motu Writ Petition (C) No. 3/2020*, and by those



orders, it was provided that limitation would stop running from the date of passing of the first order in aforesaid *Suo Motu Writ Petition (C) No. 3/2020*. He, thus, submits that appellants-writ petitioners were entitled to the benefit of orders passed by Hon'ble Supreme Court, however, this vital aspect was completely overlooked by learned Single Judge. He submits that, due to outbreak of COVID-19 pandemic, and consequent lockdown, it was not possible for appellants-writ petitioners to immediately approach this Court by filing Writ Petition, therefore, dismissal of Writ Petition, on the ground of delay and laches, is improper and unsustainable.

6. He further submits that Writ Petition (S/S) No. 1678/2011, filed by appellants-writ petitioners, was allowed, and respondents were directed to consider the case of appellants-writ petitioners for regular pay-scale, on the analogy of their counterparts serving in other parts of the State, within ten weeks from the date of order. He submits that order dated 05.03.2018, passed in Writ Petition (S/S) No. 1678/2011, nowhere indicates that appellants-writ petitioners did not press the reliefs claimed in said Writ Petition, or they sought alternate relief of getting the representation decided. He submits



that, in fact, the submission made by appellants-writ petitioners found favour with the learned Single Judge, and the learned Single Judge, not only allowed the Writ Petition, but also directed the authorities to consider the case of appellants-writ petitioners for regular pay-scale. He, thus, submits that the second reason assigned by learned Single Judge, for dismissing the Writ Petition, is also unsustainable.

7. This Court finds substance in the aforesaid submission. Provisions of Limitation Act are not applicable to writ proceedings. There is no Statute, which lays down period of limitation for filing a Writ Petition. A Writ Petition can be dismissed on the ground of delay and laches, if it is found that the person filing Writ Petition was not diligently pursuing the remedy, or he/ she is a fence sitter, who was sleeping over his/ her rights. In the present case, there is no material to form such an opinion. The orders, impugned in the Writ Petition, were passed on 27.03.2019 & 12.04.2019, and the Writ Petition was filed about 2½ years thereafter. However, in the meantime, lockdown was imposed due to outbreak of COVID-19 pandemic, and Hon'ble Supreme Court had also passed orders in *Suo Motu Writ Petition*



(C) No. 3/2020, which were meant to protect the rights of persons, who could not seek remedy before higher judicial/ quasi-judicial forums, within period of limitation prescribed in the relevant Statute. Since COVID-19 pandemic broke-out in the month of March, 2020, and lockdown was also imposed in the country within less than a year of passing the orders impugned in the Writ Petition, therefore, the delay, if any, has to be seen in the backdrop of then prevailing circumstances. Therefore, appellants-writ petitioners were entitled to the benefit of orders passed by Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3/2020*. This material aspect, however, appears to have been overlooked by learned Single Judge, thus, the impugned judgment deserves to be set-aside.

8. The second reason assigned by learned Single Judge that the relief, which appellants-writ petitioners claimed in Writ Petition (S/S) No. 1332/2021, was not pressed by them in the earlier Writ Petition (S/S) No. 1678/2011, and appellants-writ petitioners sought alternate relief of getting the representation decided in their earlier Writ Petition, without reserving any right to further agitate the matter, also does not appear to be



correct. Learned Single Judge was referring to the order passed in Writ Petition (S/S) No. 1678/2011, which was allowed vide judgment dated 05.03.2018. Operative portion of the said judgment is already extracted above. From perusal of the said judgment, it is revealed that the adverse inference drawn by learned Single Judge is not supported by the judgment dated 05.03.2018; the said judgment does not indicate that appellants-writ petitioners had not pressed their principal reliefs, and asked for decision on their representation; on the other hand, learned Writ Court had not only set-aside the orders passed against appellants-writ petitioners, but had also directed the authorities to consider their case for regular pay-scale, on the analogy of their counterparts serving in other districts.

9. Learned counsel for appellants-writ petitioners has also placed reliance upon judgment rendered by a Coordinate Bench of this Court in Writ Petition (M/S) No. 1243/2022, *Rajkumar Adlakha v. The Cantonment Board Landour & others*, 2022 (2) U.D. 43. Relevant paragraphs of the said judgment are extracted below :

“10. In that view of the matter, we are of the opinion that Section 20 of the Act generally barred the Court from giving any liberty to the petitioner to reagitate the issue, especially, when we have already held in the case of Pradeep Singh vs. Director General, Assam Rifles UPAO Branch



(NEIII) & others, 2022 SCC Online Utt 428, that Order II Rule 2 read with Section 141 of the Code of Civil Procedure, 1908 leads to the conclusion that Order II Rule 2 of Code is not applicable to a petition for a high prerogative writ under Article 226 of the Constitution. We have also taken note of the reported case of Brahma Singh & others vs. Union of India & others, (2020) 12 SCC 762, wherein the Hon'ble Supreme Court has held as under:-

"9. As far as the second submission made on behalf of the Union of India is concerned, we have carefully gone through the earlier order and the writ petition. Though it is correct that in the writ petition there was a general claim to grant all the benefits under Rule 6 which would include retiral benefits but it appears that the Court did not go into the same. There is no rejection of the plea and as such we are of the considered view that this petition is maintainable and cannot be rejected on this hypertechnical ground.

10. In relation to applicability of Order II Rule 2 of the Civil Procedure Code, 1908 this Court has held in Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and Others as follows:

"12. ...The bar of Order 2 Rule 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Article 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercise of its discretion by the High Court." Placing reliance on the case of Devendra Pratap Narain Rai Sharma (supra), this Court in Gulabchand Chhotalal Parikh v. State of Gujarat in relation to Order II Rule 2 held as follows (AIR p. 1159, para 26):

"26. ..By its very language, these provisions do not apply to the contents of a writ petition and consequently do not apply to the contents of a subsequent suit."

10. For the reasons, already indicated above, we are of the considered opinion that the impugned judgment, rendered by learned Single Judge, cannot be sustained in the eyes of law.



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11. We, accordingly, allow the present Special Appeal, and set-aside impugned judgment dated 28.10.2021 passed by learned Single Judge in Writ Petition (S/S) No. 1332/2021, and the matter is remanded back to learned Single Judge to decide the Writ Petition afresh, on merits.

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

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 14th November, 2024
Rahul

Digitally signed by RAHUL PRAJAPATI
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