

HIGH COURT OF UTTARAKHAND AT NAINITAL

**Hon'ble Chief Justice Ms. Ritu Bahri
Hon'ble Justice Sri Rakesh Thapliyal**

24th April 2024

Special Appeal No. 425 of 2022

State & Ors.

..... Appellants

Vs.

Diwan Singh Aithani & Ors.

.....Respondents

Counsel for the Appellant :

Mr. C.S.Rawat, learned C.S.C.

Counsel for the Respondents :

Mr. Lalit Samant

With

Special Appeal No. 438 of 2022

State & Ors.

..... Appellants

Vs.

Kailash Chandra Pathak & Ors.

.....Respondents

Counsel for the Appellant :

Mr. C.S.Rawat, learned C.S.C.

Counsel for the Respondents :

Mr. Lalit Samant

And

Special Appeal No. 455 of 2022

State & Ors.

..... Appellants

Vs.

Naveen Chandra Singh

.....Respondent

Counsel for the Appellant :

Mr. C.S.Rawat, learned C.S.C.

Counsel for the Respondents :

Mr. Lalit Samant

Upon hearing the learned Counsel, the Court made the following Judgment:

(Per Mr. Rakesh Thapliyal, J.)

1. Since, subject matter of all these appeals are identical and decided by the learned Single Judge by a common judgment, and, therefore, all these appeals are being decided together with the consent of the counsel for the parties by a common judgment.

2. The respondents/petitioners preferred the writ petitions with a relief that the respondents/appellants be directed to give benefit of ACP after computing the period which they have rendered in the institutions which are under the purview of grant-in-aid before the provincialization of the institution. In addition to this relief of arrear of ACP was also sought along with interest.

3. The learned Single Judge by judgment and order dated 14.12.2021, allowed all the writ petitions and directions were issued to determine the extension of benefit of ACP to the petitioners/respondents after including the period of service which had been rendered by them in the institutions prior to its provincialization and the said period be also included for the purposes of extension of other service benefits including seniority.

4. We perused the judgment passed by the learned Single Judge, and after going through the judgment admittedly the petitioners/respondents were serving in the institution which was in fact within the purview of grant-in-aid. Subsequently, all these institutions were provincialized meaning thereby affairs of managing these institutions were taken over by the State Government. The issue, as raised in the petition, was with regard to the grant of benefit of ACP in terms of 1st, 2nd and 3rd ACP on completion of period of 10, 18, 26 years respectively.

5. This benefit was denied by the State on the ground that for computing the required period of service for grant of ACP, i.e., 10, 18 and 26 years period which they have rendered in the institution (within the purview of grant-in-aid before provincialization) cannot be taken into consideration.

6. The said action of the State/appellants denying the said benefit by computing the period which they have rendered in the non provincialized institution, i.e., institution which was earlier within the purview of grant-in-aid but subsequently provincialized is that the institutions which were within the purview of grant-in-aid prior to the provincialization were challenged on the ground that they have been engaged in services by due process of law against the substantive post, and, merely on the ground that these institutions were provincialized later on, the benefit for grant of ACP cannot be denied by non computing the period which they have rendered in the institution prior to the provincialization.

7. The judgment passed by the learned Single Judge is challenged in these appeals by the State on the ground that for the purposes of grant of benefit of ACP, the date when the institutions were provincialized would be relevant for the purposes of computation of length of service, therefore, for all purposes their substantive appointment is the date when the institutions were brought within the purview of grant in aid, and, as such, giving benefit of ACP by including their period of service

as rendered by them prior to the date of provincialization is not feasible as per rules.

8. Another ground which has been taken is that the Government Order dated 08.10.2003, followed by another Government Order dated 27.09.2016, which pertains to the provincialization of aided institutions wherein it has been clarified that on provincialization of the aided school, the employees/teachers working therein have to furnish a bond that they will be kept at bottom in the seniority. It is also submitted by the learned counsel for the appellant that the provincialization of the institution was done as per the demand of the employees and the proposal submitted by the Management Committee of the Institution and once the bond has been given then the petitioners/respondents cannot claim seniority by computing the period which they have rendered in the aided institution before provincialization.

9. The appellant further gives reference of para 2(viii) of the Government Order dated 08.03.2011, issued by the Finance Department wherein it is mentioned that period of past services rendered by an employee in Central Government/Local Body/ Autonomous Institution/ Public Enterprises and Nigam Government Order will not be counted for providing financial upgradation. By giving reference of this Government Order, the appellant submits that the same principle will apply in respect of the respondents/petitioners, and, as such, the services rendered by them in the aided

institutions will also fall in the same category, and, as such, services rendered by them prior to provincialization of the institutions shall not be computed for the purposes of grant of ACP benefits.

10. We have perused the record of writ petition including counter affidavit and rejoinder affidavit. In the counter affidavit, it is submitted that one of the condition for provincialization of the institutions is that after provincialization the incumbents who submitted their bonds to accept their services in the provincialized institutions they will be kept at bottom in the seniority list. It is submitted that after provincialization of the institutions, employees who have submitted their bonds cannot claim seniority by computing their services rendered in the aided institutions , since, it was the condition precedent that after submitting the bond and as per the terms and condition of the provincialization they will be kept at the bottom in the seniority list.

11. In the rejoinder affidavit at para 3 it is submitted that as per the Government Order dated 01.07.2013, 1st, 2nd and 3rd ACP has to be given on completion of 10 years, 16 years and 26 years of satisfactory services, and, therefore, for the purposes of computation of satisfactory services, the services rendered by the petitioners (respondent herein) in the aided institution cannot be overlooked or ignored merely on the ground that the institution has been provincialized. It is also submitted in the rejoinder affidavit that if the institution would not have been provincialized, the petitioners

would have been entitled for the benefit of ACP as per the said G.O. in the interval of 10 years, 16 years and 26 years of services, and, therefore, merely that these institutions have been provincialized this benefit cannot be denied by not computing the period which they have rendered in the aided institutions before provincialization.

12. We have perused the judgment passed by the learned Single Judge whereby the writ petitions were allowed with a direction to the respondents to compute the period which the petitioners have rendered in the aided institutions for the benefit of ACP. Simultaneously another direction have been issued that the said period be also included for other service benefit including seniority. The directions issued by the learned Single Judge are in two folds: first for grant of ACP and second for computation of service for seniority. The first part of the direction with regard to the grant of benefit of ACP we do not find any illegality in the judgment since for grant of benefit of ACP satisfactory length of serve is required, i.e., 10 years, 16 years and 18 years of service and therefore period rendered prior to the provincialization cannot be overlooked.

13. No doubt, the institution in which initially the petitioners were inducted was within the purview of grant-in-aid and subsequently these institutions were provincialized meaning thereby management of the institutions were taken over by the State, therefore, merely on the ground that the institutions were

provincialized the period which the petitioners have rendered in the aided institutions cannot be ignored, since requirement for grant of 1st , 2nd and 3rd ACP is nothing but required length of satisfactory service, therefore, for the said purposes services which the respondents have rendered in the aided institution before provincialization cannot be ignored and it has to be computed for grant of 1st ACP, 2nd ACP and 3rd ACP, therefore, to this extent the judgment passed by the learned Single judge is perfect and we do not find any error and to this extent the judgment passed by the learned Single Judge is affirmed.

14. So far as second part of the judgment whereby the directions have been issued that the service rendered by respondents/petitioners in the aided institutions to be computed for the purposes of seniority is concerned, we are not agreeable for this since the Government Order whereby the institutions were provincialized stipulates a condition that persons who submitted their bonds to serve in the institution after provincialization they will be kept in the bottom in the seniority list. This condition is not challenged by the respondents/petitioners. There may be a reason in not challenging the said condition, i.e., bond which the respondents/petitioners have submitted. There is another aspect which is required to be considered with regard to the directions of the learned Single Judge for the purposes of computation of seniority by computing the period rendered by the respondents/petitioners in the aided institutions, since, there are other incumbents

who were already in the institutions which were already provincialized or in the institutions run by the Government and if the period which these respondents/writ petitioners were rendered in the aided institutions to be taken into consideration for computing their seniority then certainly those who were already serving in the provincialized institutions their seniority would likely to be affected and that was also one of the reason that there was a condition if the institutions is provincialized then persons serving in the institutions will be kept below in the seniority list for which bonds were asked to be furnished and these respondents/writ petitioners voluntarily submitted their bonds.

15. Therefore keeping in view the fact, since, there is no challenge to the condition as stipulated in the Government Order pursuant to which the institutions were provincialized that the persons who submit their bonds to serve in the institutions to be provincialized will be kept at bottom in the seniority list, therefore, claim of the petitioners for the purposes of computation of their seniority by computing the period which they have rendered in the institution (grant-in-aid) prior to the provincialization cannot be accepted. Even otherwise there was no occasion for grant of benefit of seniority by computing the period which the respondents have rendered in the institution since there was no relief in the petition, therefore, direction issued by the learned Single Judge that period of the respondents/petitioners rendered in the institution prior

to the provincialization be also computed for the seniority are set aside.

16. In view of the aforesaid observation, the special appeal is allowed in part. The judgment passed by the learned Single Judge is up held so far as it relates to grant of ACP benefit. However, the judgment passed by the learned Single Judge is set aside to the extent whereby directions were issued for computation of service rendered by the respondents/petitioners in the institution prior provincialiation for the purposes of computation of seniority.

(Ritu Bahri, C.J.)

(Rakesh Thapliyal, J.)