

HIGH COURT OF UTTARAKHAND AT NAINITAL

Contempt Petition (CLCON No. 126 of 2015)

Dr. Ram Gopal Nautiyal and Others ...Petitioners
Vs.
R.K. Sudhansu and Others ...Respondents

Present: Mr. Rajesh S Nagarkoti, Advocate for the petitioners
Mr. H.M. Raturi, Deputy Advocate General for the State

Hon'ble Sharad Kumar Sharma, J.

The petitioners of the present contempt petition had been the employees of a private Hospital, which was initially managed and its affairs was conducted by the then Uttarakhand Forest Hospital Trust and later on, in pursuance to the decision taken by the State Government on 04.02.2010, the Hospital was notified to be nationalized. The said parameters of its nationalization and its consequential effect on the service condition of the employees, who were already working with the hospital trust then, was protected by clause (3) of the said promise made by the State Government as a consequence of nationalization of the Hospital.

2. The effect of clause (3) of the proposal of nationalization dated 04.02.2010 reads as under:-.

“(3) ट्रस्ट के नियमित कर्मियों की सेवाओं को नियुक्ति तिथि से माने जाने के सम्बन्ध में : राजकीयकरण के परिप्रेक्ष्य में ट्रस्ट के नियमित कर्मियों की सेवाओं को ट्रस्ट/समिति के भंग होने की तिथि से राजकीय माना जाना होगा परन्तु उनकी प्रान्ति व अन्य सेवा लाभ प्रभावित न हों, इसलिए ट्रस्ट के अधीन की गई सेवाओं को भी इस हेतु गणना में लिया जाना होगा।”

3. The basic intention and purpose as per the opinion of this Court of clause (3) of the said proposal dated 04.02.2010, was that as a consequence of the nationalization of the hospital, the interest of the employees who were already working therein in the hospital with the then Trust as its employees, it was to be protected and those employees who were already in services, their service benefits, seniority was to be determined and reckoned on the basis of their initial appointments i.e. induction level as it existed prior to the nationalization of the hospital in question. Meaning thereby, their

service conditions will not lead to their disadvantage as a consequence of nationalization of the Hospital by notification dated 04.02.2010.

4. It is not in controversy that when the said issue of nationalization of the hospital was taken up, the petitioners filed a Writ Petition (S/B) No. 143 of 2013, *Dr. Ram Gopal Nautiyal and others Vs. State of Uttarakhand and Others*, involving the issue of its effect on their service conditions as a consequence of nationalisation of the Trust hospital by notification dated 04.02.2010.

5. The said writ petition came up for consideration before the Division Bench of this Court and the Division Bench of this Court vide its judgement dated 01.08.2013, had disposed of the writ petition directing therewith to ensure the enforcement of the commitment made in clause (3) of the proposal of nationalization dated 04.02.2010, as quoted above. The following observation was made by the Division Bench of this Court in its judgement dated 01.08.2013.

“.....In paragraph 3 of the said minutes, it was recorded that the employees of the hospital will be treated as employees of the State with effect from the date of nationalization, i.e. 1st May, 2010, but in relation to promotion and other benefits, the services, rendered by those employees, will be counted from the date of their appointment in the hospital even before the nationalization was done. The State Government, in the counter affidavit, has stated that they are bound by the said decision, but the matter is pending in the Finance and Personnel Departments. We direct the State Government to implement the promise, thus held out, forthwith and, for that matter, to activate its Finance and Personnel Departments appropriately.

6. Alleging its non-compliance, the present contempt petition has been filed by the petitioners on 28.04.2015, wherein they have submitted that the decision as rendered by the Division Bench of this Court on 01.08.2013, has not been complied with by the respondents in its letter and spirit. The compliance affidavit which has been filed by the respondents, wherein they have submitted that

in furtherance to clause (3) of the proposal of nationalization of the hospital dated 04.02.2010, as well as that of the judgement rendered by the Division Bench of this Court on 01.08.2013, the issue of nationalization of the hospital has been laid to rest because the hospital in question at present has been nationalized. As far as the benefit which was extended to the employees, who were already working, their respective seniority has already been reckoned from the date of their respective induction level appointments which is not a bone of contention in the present contempt petition that their seniority has not been determined based on their respective date of initial appointment.

7. The grievance which has been raised by the petitioners is that with regards to the inter se determination of seniority amongst the employees who were already working on the date when the hospital was nationalized and those who were employed later. The aspects pertaining to a determination of inter se seniority as a consequence of nationalization made on the basis of a policy decision dated 04.02.2010, and its covenants contained therewith, it was an individual issue which was required and has to be determined by the competent authority or the competent Court but not the writ Courts where the issue of nationalization and the flowing of the consequential benefit out of nationalisation was under consideration. Hence, in principal, the basic spirit, intention and purpose of the policy of nationalization dated 04.02.2010 has already been complied with. The issue of interse seniority in accordance with clause (3) of the notification, admittedly has been recurring in nature. In case if they have got any claim with regards to the promotion and the specific date from which they would be entitled to those promotional benefits due to determination of seniority would be a subject matter to be adjudicated in altogether in an independent proceedings to be drawn before the competent authority or before the competent Court in accordance with law by the private individuals

who consider themselves to be adversely effected in extension of their respective promotional benefits.

8. Subject to the aforesaid exception, leaving respective rights open to the petitioners, that considering in case if they are aggrieved due to non determination of their age of promotion, they may raise an appropriate proceedings before an appropriate authority or Court whichever is available to them in accordance with law.

9. Subject to above observations, the contempt petition is closed. The notices issued to the respondents are hereby discharged.

10. The connected Writ Petition (WPSB No. 143/2013), since already stands decided by this Court is hereby de-linked.

(Sharad Kumar Sharma, J.)

28.02.2020

Mahinder/