

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

WRIT PETITION (S/B) No. 243 of 2020

28TH MAY, 2021

BETWEEN:

Seema Rani BishnoiPetitioner.

Vs.

State of Uttarakhand and others.Respondents

Counsel for the petitioner: Mr. Anil Anthwal,
Advocate.

Counsel for the respondents: Mr. K.N. Joshi, learned
Deputy Advocate General
for the State of
Uttarakhand.

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner has challenged the legality of the order dated 07.08.2020 passed by the Additional Director, School Education (Secondary), Garhwal Region, Pauri, District-Pauri Garhwal, whereby the

learned Additional Director has rejected the proposal sent by the Chief Education Officer, Roshnabad, District Haridwar for promoting the petitioner as a Downgrade Principal of S.S.D.P.C. Girls Inter College, Roorkee, District-Haridwar.

2. Briefly the facts of the case are that the petitioner was appointed as an Assistant Teacher L.T. (Stitching Teacher), on *ad hoc* basis, on 01.08.1984 in Swami Dayal Bhatnagar Girls Higher Secondary School, Sikandarabad, District Bulandshahr, Uttar Pradesh. Subsequently, on 18.11.1996, she was transferred from the said School to S.S.D.P.C. Girls Inter College, Roorkee, District Haridwar. Since she had already completed ten years of service, she was granted the benefit of the Selection Grade in 1996. Thereafter, on 01.01.2006, she was granted the benefit of the Promotion Grade. On 21.03.2013, she was promoted to the post of Lecturer (Civics).

3. Moreover, on 31.03.2016, the Principal of the said Inter College retired. Since the petitioner was the senior most Lecturer of the College, she was appointed as Principal-in-charge.

4. Subsequently, the said Inter College recommended for the promotion of the petitioner as a Downgrade Principal. But despite the fact that the petitioner fulfills all the eligibility requirements, by the impugned order, the proposal of the College was rejected by the Additional Director. Hence, the present petition before this Court.

5. Mr. Anil Anthwal, the learned counsel for the petitioner, has raised the following contentions before this Court: -

Firstly, in the Kumaun Region, some persons who were working on the post of lecturer have been granted the benefit of being promoted to the post of Downgrade Principal. However, the said benefit is not being extended to the petitioner. Therefore, a hostile discrimination is being meted out to the petitioner.

Secondly, the petitioner does fulfill all the eligibility requirements. However, despite her fulfilling the eligibility requirements, she has been denied her promotion to the post of Principal (Downgrade). Therefore, according to the learned counsel, the writ petition should be allowed, and the impugned order dated 07.08.2020 should be set aside. Moreover, a

mandamus should be issued to the respondents directing them to consider the petitioner's case for promotion on the post of Principal (Downgrade).

6. On the other hand, Mr. K.N. Joshi, the learned Deputy Advocate General for the State of Uttarakhand, submits that firstly, there are certain requirements of the law, which cannot be ignored by the respondents. Secondly, according to the eligibility prescribed in Appendix-A of Chapter-2 of the Uttarakhand School Education Council Regulation, 2009, it is not just that a person should be the senior most lecturer of the educational institution, but more so that the person must have completed ten years on the post of lecturer, and must have been granted the Selection Pay Scale. However, in the present case, the petitioner has not completed ten years as a lecturer as she was promoted on the said post on 21.03.2013. Moreover, she has not been granted the Selection Pay Scale on the post of lecturer. Therefore, she does not fulfill part of the requirement prescribed by the law. Hence, the impugned order is legally justified. Thus, no mandamus should be issued. Lastly, even if an

illegality has been committed by appointing some one as a Principal (Downgrade) against the law, there is no estoppel against the statute. Moreover, there is no concept of negative equality under Article 14 of the Constitution of India. Therefore, the learned Deputy Advocate General has vehemently opposed the contentions raised by the learned counsel for the petitioner.

7. Heard the learned counsel for the parties, perused the impugned order, and considered the record submitted by the petitioner.

8. Admittedly, the petitioner was appointed as an Assistant Teacher, on *ad hoc* basis, on 01.08.1984. Her services were regularized as an Assistant Teacher on 06.08.1994. Subsequently, she was promoted to the post of lecturer on 21.03.2013. Therefore, obviously, she would complete ten years on the said post on 20.03.2023. Hence, presently she has not completed ten years on the post of lecturer. Since she has not completed ten years on the post of lecturer, naturally, she has not been granted the benefit of the Selection Pay Scale.

9. A bare perusal of Appendix-A of Chapter-2 of the Uttarakhand School Education Council Regulation, 2009 would clearly indicate that: -

Firstly, the eligibility requirements of the provision that the person should be the senior most lecturer.

Secondly, that the person should have completed ten years on the post of lecturership.

Lastly, the person should have been granted the benefit of the Selection Scale.

10. As mentioned above, the petitioner has neither completed her tenure of ten years on the post of lecturer, nor has been granted the Selection Scale. Therefore, she does not fulfill the eligibility requirements. Thus, the impugned order is legally valid and justified.

10. Needless to say, even if the senior most lecturers belonging to the Garhwal area may have been promoted to the post of Downgrade Principal in violation of the law, there is no estoppel against the statute. Therefore, the contention being raised by the learned counsel for the petitioner is clearly unacceptable.

11. It is indeed trite to state that the concept of equality, enshrined under Article 14 of the Constitution of India, is not in a negative sense. In fact, it is in the positive sense. Therefore, the contention raised by the learned counsel for the petitioner that there is violation of Article 14 of the Constitution of India is untenable.

12. For the reasons stated above, this Court does not find any merit in the present writ petition. It is hereby dismissed.

13. In sequel thereto, pending application, if any, also stands disposed of.

14. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 28th May, 2021
Rathour