

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Writ Petition (S/B) No.486 of 2019

Pushpa Verma ...Petitioner

Vs.

The Chancellor & Others ...Respondents

With

Writ Petition (S/B) No. 492 of 2019

Kusum Lata Arya ...Petitioner

Vs.

The Chancellor & Others ...Respondents

With

Writ Petition (S/B) No.500 of 2019

Sakshi Tewari ...Petitioner

Vs.

The Chancellor & Others ...Respondents

With

Writ Petition (S/B) No. 503 of 2019

Mamta Joshi Lohumi ...Petitioner

Vs.

The Chancellor & Others ...Respondents

With

Writ Petition (S/B) No.504 of 2019

Lallan Kumar Singh ...Petitioner

Vs.

The Chancellor & Others ...Respondents

Presence:

Mr. S.S. Yadav, learned counsel for the petitioner(s).
Mr. B.D. Upadhyay, learned Senior Advocate assisted by Ms. Mamta Bisht, learned counsel for respondent nos.2, 3 & 4.
Mr. C.S. Rawat, learned counsel for respondent no.5.

**Coram: Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.**

Hon'ble Manoj Kumar Tiwari, J. (Oral)

Petitioners were appointed as teacher against leave vacancy in Kumaon University in different years. According to them, the leave vacancy has converted to a permanent vacancy, therefore, petitioners are now entitled to be appointed in substantive capacity. All the petitioners were appointed as teacher in Soban Singh Jeena College, which was a campus college of Kumaon University at the relevant point of time, except Ms. Mamta Joshi Lohumi (petitioner in WPSB No. 503 of 2019), who was appointed in DSB College of Kumaon University.

2. Since common questions of fact and law are involved in these writ petitions, therefore, these writ petitions are being heard and decided together by this common judgment. However, for the sake of brevity, facts of WPSS No.486 of 2019 alone are being considered in this case.

3. By means of this writ petition, Dr. Pushma Verma has sought the following reliefs:-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the advertisement dated 07.09.2019 (Annexure No.8 of the writ petition) so far concerned to the post of Sociology against which the petitioner is continuously working since 05.11.2012 (about 07 years).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent no.1, 2 & 3 to decide the case of the petitioner in the light of page no.29 & 30 of Chapter 6 (vi) of Section 31(3) (b) of Uttarakhand (U.P. Universities Act, 1973) (Adaptation and Modification Order, 2001) Act, 2005 (which is concerned to leave vacancy) and till then not complete the regular selection proceeding against the post of Assistant Professor (Sociology), which was advertised on

07.09.2019, till then permit to continue the petitioner on the post of Assistant Professor (Sociology) and pay the regular salary month-to-month.”

4. In the year, 2013, petitioner was appointed as teaching personnel in Sociology Department of Soban Singh Jeena Campus, Kumaon University, Nainital against a leave vacancy. According to the petitioner, she was appointed on the recommendation of a regularly constituted selection committee as per provisions of U.P. State Universities Act, 1973. The Leave vacancy had occurred on account of the regular incumbent, Dr. Himanshu Shekhar Jha proceeding on leave. Mr. Jha, as aforesaid, was appointed as Professor in Dr. Shakuntala Mishra National Rehabilitation University, Lucknow, therefore, the post in question, against which petitioner was appointed has fallen substantively vacant.

5. Petitioner contends that since she has put in more than ten years of service as Assistant Professor and now a substantive vacancy is available for her regular appointment on the post of Assistant Professor, therefore, the respondents are under a duty to consider her claim for regular appointment.

6. It is not in dispute that Soban Singh Jeena College, Almora was a Campus College of Kumaon University, Nainital, however, now Soban Singh Jeena College is constituent college of a separate University known as Soban Singh Jeena University and petitioner is presently serving in the said University.

7. Learned counsel for the petitioner refers to the provisions contained in Section 31(3)(b) of the Uttar Pradesh State Universities Act, 1973 (for short “ The Act, 1973”) which reads as under:-

“31(3)(b)Where before or after the commencement of this Act, any teacher is appointed (after reference to a Selection Committee) to a temporary post likely to last for more than six months, and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant or any post of same cadre and grade is newly created or falls vacant in the same department, then unless the Executive Council or the Management, as the case may be, decides to terminate his services after giving an opportunity to show cause, it may appoint such teacher in a substantive capacity to that post without reference to a Selection Committee :

Provided that this clause shall not apply unless the teacher concerned holds the prescribed qualifications for the post at the time of such substantive appointment, and he has served continuously, for a period of not less than one year after his appointment made after reference to a Selection Committee:

Provided further that appointment is a substantive capacity under this clause of a teacher who had served, before such appointment, continuously for a period of less than two years, shall be on probation for one year which may be extended for a period not exceeding one year, and the provisions of sub-section (2) shall apply accordingly.]”

8. Learned counsel for the petitioner submits that as petitioner was appointed in 2013 after due selection by a regularly constituted selection committee, therefore, upon conversion of leave vacancy into substantive vacancy, petitioner has earned right of substantive appointment, therefore, the advertisement, impugned in the writ petition, deserves to be quashed and the competent authority in the University be directed to consider petitioners' claim for regular appointment.

9. Learned counsel for the petitioner submits that no one could be appointed pursuant to advertisement dated 07.09.2019, impugned in the writ petition, thus the vacancy is available. He further submits that in view of provisions contained in Section 31(3) (b) of the Act, the Executive Council of the University is under a duty to take decision regarding regular appointment of petitioners against the substantive vacancy. It is further contended that the University-authority cannot sleep over the right of petitioners for indefinite period of time.

10. We find some force in the submission made by learned counsel for the petitioner. Since petitioners have put in more than ten years of service against the post of Assistant Professor; they were initially appointed against leave vacancy, which has now been converted to permanent vacancy, therefore, in view of provision contained in Section 31(3) (b) of the State Universities Act, 1973, it is incumbent upon the Executive Council to take decision after considering all relevant aspects of the matter.

11. Accordingly, writ petitions are disposed of with a direction to the Competent Authority in the University to take decision on the claim of the petitioners for substantive appointment on the post of Assistant Professor in the light of provision contained in Section 31(3)(b) of the State Universities Act, 1973, within four months from the date of production of certified copy of this order. Till such decision is taken, status quo as regards service of the petitioners shall be maintained.

12. Pending applications, if any, stand disposed of accordingly.

(Pankaj Purohit, J.)

(Manoj Kumar Tiwari, J.)

31.07.2024