

# **SUPREME COURT OF INDIA**

State of Uttarakhand

Vs.

Kanhaya Lal

(Dipak Misra and Vikramajit Sen JJ.)

29.04.2014

## **JUDGMENT**

### **VIKRAMAJIT SEN,J.**

1. By means of this Special Leave Petition the endeavour of the petitioner, State of Uttarakhand, is to dislodge and reverse the findings of the learned Single Judge of the High Court of Uttarakhand at Nainital in Writ Petition No.1478 of 2003, which Order has been affirmed by the Division Bench of the High Court in Special Appeal No.146 of 2008. After going into the factual matrix of the case, the learned Single Judge had directed by Order dated 10.3.2008 that the case of the Respondent before us, (namely, Kanhaya Lal, the petitioner in Writ Petition No.1478 of 2003) be considered within three months for appointment to the post of Assistant Teacher (Language) L.T. Grade, if there is no other impediment in his selection (emphasis added). Dissatisfied with this direction, the Special Appeal came to be filed in which the Honble Division Bench had opined that there was no error in the impugned Order of the learned Single Judge, and, accordingly, the Special Appeal deserved to be dismissed. There are, accordingly, concurrent findings of facts and law before us.

2. On the first date of hearing before this Court, the submission of the learned counsel appearing for the State of Uttarakhand to the effect that he is not challenging the appointment as such but his only grievance is that respondent cannot claim appointment from 1997, had been recorded.

3. On a perusal of the SLP paper book, we are disturbed to note that pursuant to the

Orders of the learned Single Judge, the Additional Director of Education, Garwal Division, Pohri, instead of investigating the aspect whether or not any other obstacles existed, has revisited the entire case and has virtually over-ruled the Order passed by the learned Single Judge. Having perused the Report/Order of the Additional Director of Education, Pohri dated 23.5.2008, it would be possible to view his action as contemptuous of the Orders of the High Court. The learned Single Judge had directed for appointment to the post of Assistant Teacher (Language) L.T. Grade unless there was some other impediment in selection. As we have already opined, the Additional Director of Education has not disclosed any other impediment and instead has merely reiterated the already articulated case of the State, which had not found favour with the High Court. It is palpably clear that the Additional Director of Education, Garwal Division, Pauri, has contumaciously adorned itself with appellate powers over the decision of the learned Single Judge of the High Court. We shall desist from making any further directions, however, leaving it open to the respondent to initiate proceedings, if so advised.

4. In the impugned Order, the learned Division Bench has noted that the first advertisement clearly indicated the last date for submission of Application to be 21st November, 1997, which was advanced and preponed to 10th November, 1997 in terms of a vague corrigendum issued on 24th October, 1997. It is trite that in matters concerning appointment to Government posts, fair play and good conscience, along with adherence to equity, are paramount prescriptions. In the case in hand, the only infirmity in the Application of the Respondent was that he had failed to include his Marksheet along with his Application Form, which was submitted by him on 4.11.1997; he had made full compliance by personally filing his Marksheet on 12.11.1997. Keeping in perspective the fact that a corrigendum has been issued preponing the last date of submission of Forms from 21.11.1997 to 10.11.1997, it would have been advisable and prudent to infuse some elasticity or laxity in the observance of the last date for submission of forms. The Respondent is justifiably perturbed by the situation that the last appointed candidate had 55.6 quality points whereas he possessed much higher merit, i.e. 58.4 quality points.

5. We do not wish to make any further observations on the approach and the conduct of the Additional Director of Education, Garwal Region, Pohri, in terms of his Order dated 23.5.2008. In this case, the writ petitioner is a Teacher and it is unfair to him to be repeatedly drawn into fighting futile, if not frivolous litigation by the State. It has

become the practice of the State to carry on filing appeals even where the case does not deserve it, knowing fully well that private respondents will be physically fatigued and economically emasculated in pursuing protracted litigation.

6. The Order/Report of the Additional Director of Education, Garwal Division, Pohri, passed on 23.5.2008 is wholly contrary to the directions given by the learned Single Judge, inasmuch as it fails to unravel any other impediment in granting appointment to the writ petitioner after treating his Application to be in conformity with the subject advertisement as per the judgment of the learned Single Judge. We also note the averment in the Special Leave Petition to the effect that the Respondent (writ petitioner) already stands selected and appointed as Assistant Teacher (Language) L.T. Grade on 4.10.2005 in Government Inter-college, Kamadh, Uttarakashi. To scotch any further misunderstanding, we direct the State of Uttarakhand to appoint the Respondent to the post of Assistant Teacher (Language) L.T. Grade, i.e. the advertised post, treating the writ petitioner to have been appointed along with the other candidates who were selected in response to the subject advertisement for appointment to the post of Assistant Teacher (Language) L.T. Grade. His seniority shall, therefore, be fixed such that it is not detrimental to the services already rendered by him.

7. The Special Leave Petition is wholly devoid of merit and is dismissed. Interim Orders are recalled. We would have awarded costs but refrain from doing so because the respondent-Kanhaya Lal has not put in any representation.