

relation to the seniority of the petitioner therein. This judgment of the learned Single Judge was put to challenge by the State before the Division Bench of this Court in **Special Appeal No. 28 of 2005, State of Uttarakhand and others Vs. Bhuwan Chandra Kandpal**. The said Special Appeal was dismissed by the Division Bench of this Court on 23.02.2006, against which a Civil Appeal being **Civil Appeal No. 3396 of 2006, State of Uttaranchal & Ors. Vs. Bhuwan Chandra Kandpal** was preferred by the State before the Hon'ble Apex Court, which too was dismissed and with specific observation in the judgment of the Hon'ble Apex Court dated 20.04.2011, whereby the Court has upheld the direction, which had been issued by the learned Single Judge of this Court, whereby the direction was issued that the services of the respondents therein were to be treated to have been regularised in L.T. Grade w.e.f. 01.10.1990.

3. The matter was again dealt with in a bunch of writ petitions, with leading Writ Petition (S/S) No. 1008 of 2014, *Trivikram Singh Kunwar and others Vs. State of Uttarakhand and others*, along with 15 other petitions, whereby the bunch of writ petitions was decided by the Division Bench of this Court vide its judgment dated 03.01.2019, whereby the issue, which was agitated was for inclusion of the period of ad-hoc services, which was rendered by the respective petitioners prior to 01.10.1990, as to be treated, as to be a continuation to the service for the purposes of determination of seniority.

4. The Division Bench, while dealing with the history of previous litigations, and particularly the impact of the judgment of the learned Single Judge rendered in WPSB No. 162 of 2002 dated 28.10.2004, has yet again passed a judgment as referred in para 29

of the said judgment of the Division Bench dated 03.01.2019, which is extracted hereunder:-

“28. It is no doubt true that, unlike in the present case where the respondents/interveners are opposing grant of the benefit of regularization w.e.f. 01.10.1990 to the petitioners, no such opposition was made to the regularization of Shri Bhuwan Chandra Kandpal in Civil Writ Petition (S/B) No.162 of 2002 dated 28.10.2004. The grievance of the respondents/ interveners is with respect to their inter-se seniority vis-a-vis the petitioners herein. As on date, the Government of Uttarakhand has not revised the seniority list prepared in the year 2005. The respondents/interveners cannot, therefore, be said to have any grievance, as at present, with regards their interse seniority vis-à-vis the petitioners herein.

29. While the petitioners have no doubt sought the benefit of being extended seniority w.e.f. 01.10.1990, we see no reason to grant them such a relief in this writ petition, as that would necessitate this Court having to adjudicate upon the inter-se seniority between the petitioners on the one hand and the private respondents/interveners on the other. Suffice it, therefore, to permit the petitioners herein to make a representation to the State Government with regards their claim for seniority, consequent upon the order now passed by us treating their services to have been regularized w.e.f. 01.10.1990. On any such representation being made, the Government of Uttarakhand shall, after giving all those affected a reasonable opportunity of being heard, take a decision, regarding revision of the seniority list, in accordance with law. We make it clear that we have not expressed any opinion on the petitioners’ claim of seniority, over and above the private respondents/interveners with effect from 1.10.1990.”

5. The Division Bench of this Court, while dealing with the backdrop of the aforesaid case, with regard to the respective date of regularisation, with regard to the fact as to whether the period of ad-hoc services which had been rendered prior to 01.10.1990, was to be considered for the purposes of determination of seniority or not, in fact, was not adjudicated by the Division Bench on its merit; rather the matter was once again relegated back to the respondent to decide the representation of the petitioner, of the said bunch of 16 writ petitions, who were there before the Division Bench. It is after the aforesaid judgment dated 03.01.2019, that respondent No. 1, herein, has passed the impugned order which is under challenge i.e. dated 13.07.2021 on various grounds.

6. There had been number of private individuals who had filed their respective caveats, who wanted to contest the writ petition, on

its hearing at the admission stage, for example, Mr. S.S. Yadav, Advocate, Mr. Shailendra Nauriyal, Advocate; Mr. B.D. Upadhyaya, Senior Advocate assisted by Mr. Sunil Upadhyay, Advocate for the caveators.

7. Initially, some of the counsel for the caveators raised an objection, that since they are the caveators they are also required to be heard on the motion of the writ petition, as had been raised by the petitioner, against the impugned order dated 13.07.2021, hence the copy of the writ petition was required to be served upon them.

8. The learned counsel for the petitioner opposed the said request, which was made by the counsel for the caveators, on his own interpretation that while he was giving challenge to the order dated 13.07.2021, in fact, the caveators are not required to be heard because in fact there seniority was not being affected at all.

9. This contention of the learned counsel for the petitioner could not be appreciated, without the caveators being supplied with the copy of the writ petition and they being also heard as to in what manner they are likely to be affected, but the learned counsel for the petitioner remained adamant and was hesitant to serve the copy of the writ petition despite the request being made by the Court.

10. During the course of the arguments, one of the caveators' counsel Mr. S.S. Yadav, Advocate, had informed the Court that as against the same order deciding the representation, which was affecting the inter-se seniority of the teachers, working in the Government Secondary Schools in the L.T. Grade, as well as in the Lecturers Grade, the selection process, for which was contemplated by the respondents, some of the L.T. Grade teachers had already approached the Public Services Tribunal.

11. In that view of the matter and by way of an utmost precaution, this Court is refraining itself to entertain the writ petition itself under Article 226 of the Constitution of India because the controversy itself has to be decided in its totality by one judicial platform available under law. If the matter in question is already sub-judice before the Public Services Tribunal, which would be an appropriate platform available to the petitioner also, as against the impugned order dated 13.07.2021, it would be in the interest of justice, as well as in the interest of all the litigants also, who are before this Court, that they should raise their claim compositively before the Public Services Tribunal itself. Hence, this Court relegates the matter and directs the petitioners to file appropriate proceedings before the Public Services Tribunal; as against the impugned order dated 13.07.2021, by virtue of which the representation of the petitioners, as directed by the Division Bench's judgment has been decided against them.

12. Subject to the above observation, the writ petition is dismissed, with liberty open to the petitioners to approach before the Public Services Tribunal, raising all their grievances and contentions as it has been raised in the present writ petition on the issue of determination of inter se seniority.

(Sharad Kumar Sharma, J.)
22.07.2021