

Uttarakhand High Court

Kamini Verma vs State Of Uttarakhand And Others on 1 August, 2022

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND

JUSTICE SHRI RAMESH CHANDRA KHULBE

1st AUGUST, 2022

WP(S/B) No.204 OF 2020

Kamini Verma

..... Petitioner

Vs.

State of Uttarakhand and others

..... Respondents

Presence: -

Shri Pankaj Miglani with Mr. Aakib Ahmed, learned counsel for the petitioner.

Shri Vikas Pande, learned Standing Counsel for the State. JUDGMENT: (Per Shri Ramesh Chandra Khulbe, J.) In this petition, petitioner has prayed to issue a Writ, Order or Direction in the nature of Certiorari quashing the dated 09.06.2020 and order dated 08.07.2020 (Annexure-12 & 13 respectively to the writ petition).

2. Briefly put, facts of the case are that the petitioner was initially appointed on 24.09.1984 as Assistant Teacher, Government Girls Inter College, Kotdwar. Before her retirement, a charge-sheet dated 05.01.2018 was issued against her. The petitioner denied all the charges vide her reply dated 05.02.2018. Vide relieving order dated 31.07.2018, the petitioner retired as Principal, Girls Inter College, Namjala, Pithoragarh. After her retirement, an inquiry was set up nominating one - Bhupinder Singh Negi as the inquiry officer.

3. The petitioner remained present before the Inquiry. She was supplied with the copy of the charge-sheet (a questionnaire and documents). Vide application dated 21.02.2019, the petitioner sought information about status of the inquiry against her. In reply to the said application, a note-sheet was provided on 13.03.2019 in which the inquiry report was mentioned. The petitioner, vide her explanation dated 23.03.2019, had mentioned that none of the charges were made out against her and her entire retiral dues had wrongly been withheld. Again, a show-cause notice dated 25.04.2019 was issued against the petitioner.

4. The said show-cause notice was again duly replied through registered post on 01.05.2019. When her retiral benefits were wrongly withheld, she filed a writ- petition WPSB No.399 of 2019, "Kamini Verma Vs. State of Uttarakhand". The said writ-petition was disposed of on 29.08.2019 with the direction to finalise the payment of retiral benefits as well as to conclude the disciplinary inquiry within two months.

3. - 10.02.2015 10000,
 14.09.2015 10900, 09.11.2015 30000, 02.12.2015 15000 ₹
 22.12.2015 < 10000 dgy o 75900.00 (ukS <)
 fd;k , « « lEcfU/kr iaftdk esa > > “
 tkap f ¢ mDr fdl , ¤ “
 “ ¤ « □ “
4. « f > (§) i ¤ >
 24.07.1958 “ < < bo o □□ 14.07.2017
 ¤ □ i ° 1973 § « § >
 > 24- 07-1968 □ ¤
 > 24.07.1960 □ i § vadu “
5. ¤ (□) , (>
) izk/kk ¤ □ i □□
 “ ¤ □ ¤ « □
 h ¤ § , 2002 “
6. 839/xxiv/ † /16-05 (05)/2016 14.10.2016
 ¤/kk ¤ > § < ck< b< o dk , < ck< b< o
 u , fiFkkSjkkx<+ ¤ > rfjr ¢
 § , > ¢ § vki }kjk
 "kklu ds funsZ"kkSa dh vogsyuk dh x;h gSA"

10. In response to the said charge, the petitioner submitted her explanation on 05.02.2018.

11. When the respondents did not submit the inquiry report to the petitioner, she filed an application under the RTI Act on 21.02.2019. Accordingly, the concerned Department furnished all the information regarding the inquiry and punishment related to the petitioner on 13.03.2019.

12. From the perusal of the note-sheet maintained at the Secretariat level, it is clear that after receiving the inquiry report, the matter was placed before the concerned Secretary, who approved the office note dated 11.01.2019 by which recovery of money was proposed against the writ-petitioner.

13. The following facts are not disputed by the respondents:-

- 1) The petitioner was appointed as Assistant Teacher vide order dated 24.09.1984 against the OBC quota.
- 2) As per order dated 02.11.2001, she was promoted as a Lecturer (Hindi).
- 3) Vide order dated 01.07.2008, she was promoted as Head Mistress.

4) Vide order dated 28.05.2010, she was promoted as Downgrade Principal in the Inter College.

5) Vide order dated 26.07.2013, she was promoted as Principal.

6) She completed her age of superannuation on 31.07.2018.

14. As per the order dated 02.11.2001, the petitioner was promoted as a Lecturer. Although, her name figured at serial no.20 but it is not clear whether she was promoted against OBC quota or SC quota. Presuming that she was promoted as a Lecturer against the SC quota whereas she was initially selected against OBC quota but it was not the mistake of the writ-petitioner. The concerned Department promoted her along with other teachers. When she was promoted as Head Mistress vide amended order dated 18.07.2008, her name figured at serial no.1 but in the said order, the caste of the applicant is not mentioned. Even no caste is mentioned regarding the other candidates.

15. The State Government issued a list of 96 candidates by which the writ-petitioner was promoted along with other candidates as Principal in Government Inter College vide order dated 26.07.2013 in which the name of the petitioner was mentioned at serial no.94. In the impugned order, no caste is mentioned against the candidates.

16. From the above documents, it is clear that neither in the order dated 18.07.2008 nor in the order dated 26.07.2013, the caste of the petitioner was mentioned.

17. The above orders were passed by the State Government from time to time. It was not in the knowledge of the petitioner that she was wrongly promoted against the SC quota. Neither the concerned Department nor the State has given any information to her. Even no explanation was sought for from her. The applicant did not conceal any fact either from the Department or the State Government, rather she was doing her job smoothly and completed her age of superannuation on 31.07.2018.

18. From the note-sheet, maintained at the Secretariat level, which was obtained by the petitioner under the RTI Act, it reveals that the Government collected information regarding her caste from the concerned Department, however, no information was sought from the petitioner and the inquiry was initiated.

19. From the record, it is clear that before issuing order dated 09.06.2020 (Annexure-12) and order dated 08.07.2020 (Annexure-13) no sufficient opportunity of hearing was given to the petitioner.

20. It is well settled principle of jurisprudence that the proceedings qua a delinquent employee must be just, fair and reasonable, and negation thereof offend Articles 14 & 21 of the Constitution of India. It is also well settled law that principle of natural justice is an integral part of Article 14 of the Constitution. No decision prejudicial to a party should be taken without affording an opportunity of being heard along with supplying the material, which is the basis for the decision. The inquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary

authority. The failure to supply copy of proceedings to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice.

21. Admittedly, the petitioner was promoted initially vide order dated 02.11.2001 as a Lecturer and vide order dated 18.07.2008 as a Head Mistress and again lastly, she was promoted as Principal vide order dated 26.07.2013 but in the promotion order dated 18.07.2008 and 26.07.2013 no caste was mentioned against her name, which shows that the department and the State Government had given promotion to her on their own. The petitioner has also performed her duties on these posts in an un-blemished manner.

22. In *Shyam Babu Varma and others v. Union of India and others* (1994) 2 SCC 521, the Apex Court, while dealing with a similar situation, held out that since the petitioner received higher pay scale not due to fault or his own, it shall not be just and proper to recover the salary already paid to him.

23. Similarly, in *State of Punjab and others Vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334, the Hon'ble Supreme Court has held as follows:-

"13.....if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time....."

24. From the above discussion, the writ-petition is liable to be allowed on the following grounds:-

(A) The writ-petitioner was promoted as Head Mistress vide order dated 18.07.2008 in which no caste was mentioned against her name.

(B) She was promoted vide order dated
26.07.2013 as Principal, Government Inter

College in which no caste was mentioned against her name.

(C) She has completed her age of superannuation on 31.07.2018. (D) She discharged her duties on the above posts efficiently and smoothly. (E) Before passing order dated 09.06.2020 regarding cancellation of her promotion as Principal and regarding recovery of Rs.13,33,688/- no proper opportunity of hearing was given to the petitioner, which is in violation of Articles 14, 16 and 21 of the Constitution of India.

(F) No inquiry report was provided to the petitioner.

(G) The petitioner has been punished in this case without there being any fault of her.

25. Accordingly, the present writ-petition is allowed and the impugned order 09.06.2020 (Annexure-12) as well as the order dated 08.07.2020 (Annexure-13) are hereby quashed and set aside.

26. In sequel thereto, all pending applications stand disposed of.

_____ VIPIN SANGHI, C.J.

_____ RAMESH CHANDRA KHULBE, J.

Dated: 1st August, 2022 SS