

Uttarakhand High Court

Veronica Lal And Others ... vs State Of Uttarakhand And Others on 11 January, 2019

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No.55 of 2019

Veronica Lal and Others ...Appellants

Vs.

State of Uttarakhand and Others ...Respondents

And

Special Appeal No.65 of 2019

Santoshi Rani Gururani and Another ...Appellants

Vs.

State of Uttarakhand and Others ...Respondents

And

Special Appeal No.73 of 2019

Ramesh Chandra and Others ...Appellants

Vs.

State of Uttarakhand and Others ...Respondents

Present:

Mr. Aditya Singh, learned counsel for the appellants.

Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State.

Mr. Vinay Kumar, Mukesh Kapurwan, Ms. Niti Rana, Mr. Jitendra

Chaudhary and Mr. Bhagwat Mehra, learned counsel for the private respondents.

Dated: 11th January, 2019

Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble R.C. Khulbe, J.

Ramesh Ranganathan, C.J. (Oral) The petitioners, who seek leave to prefer an appeal against the order of the learned Single Judge in WPSS No. 154 of 2017 and 155 of 2017 dated 17.04.2018, are all employees appointed on contractual basis during the years 2006-08.

2. Regularization Rules, 2013, for persons employed on daily-wages or work-charge or on contract or on fix-pay or part-time or on ad-hoc basis, were notified by the State of Uttarakhand on 30.12.2013. These rules permit regularization of those who have completed five years of continuous employment on the date of commencement of the rules i.e. all those who were appointed by the

State of Uttarakhand on or before 30.12.2008, and have worked continuously thereafter, were eligible to have their services regularized under the 2013 Rules.

3. Amendment to the 2013 Rules were effected, by way of a notification dated 14.12.2016, i.e. the Regularization (Amendment) Rules, 2016. Thereunder all those who were appointed on contractual, daily-wages, part-time, work-charge, fix-pay basis etc on or before 31.12.2011 were entitled to seek for regularization of their services, if they had served continuously for five years before 31.12.2016.

4. The 2016 Regulations were under challenge in WPSS No. 154 and 155 of 2017; and the learned Single Judge, by his order dated 17.04.2018, struck down these rules relying on the judgment of the Supreme Court in the State of Karnataka Vs. Uma Devi (2006) 4 SCC 1. The learned Single Judge, however, made an exception of certain categories of employees, and observed as under:-

"..... A reference here of three intervention applications filed on behalf of those who were appointed as Staff Nurse and Lab Technician in a newly constituted State medical college in District Pauri Garhwal known as "Veer Chandra Singh Garhwali Government Medical Science and Research Institute, Srinagar", needs mention (In Application CLMA Nos. 8448 of 2017, 2273 of 2017 & 4713 of 2018). Their case is somewhat different. Admittedly, 18 the college itself was constituted in the year 2008 and on 25.2.2009 the posts of Lab Technician and Staff Nurse were created by the State Government in the said newly constituted college and thereafter on 28.2.2009, an advertisement was issued by the State Government inviting applications from eligible candidates for filling up these posts against which the interveners applied and were appointed. Yet their appointment was not a regular appointment and it was called a "contractual appointment", for the reason that till that time (and even now), no rules were framed for recruitment of Staff Nurse and Lab Technician in the said medical college. Therefore, in these peculiar facts and circumstances where there was an urgent need for manning the medical college by Staff Nurses and Lab Technicians, and there being no other option, such a measure was adopted. As there was no service rules, and in any case, the Government could have resorted later a one-time measure for regularization, this case is distinguished from the rest."

5. Shri Aditya Singh, learned counsel for the applicants, would submit that all the applicants fall within the ambit of the afore-extracted order; they are aggrieved by the observations in paragraph no. 24 that posts, which were hitherto held by contractual employees and whose services were regularized under the 2016 (amendment), cannot remain vacant; and, therefore, the Government shall take immediate steps for filling up these vacancies in accordance with law as per the prescribed selection procedure. The Learned Single Judge, however, left it open to the Government to grant reasonable weightage or age relaxation to such candidates, in making regular selection on those posts, by making these posts available to be filled up by way of open competition.

6. The apprehension expressed by the applicants, as put forth by Shri Aditya Singh, learned counsel appearing on their behalf, is unfounded. Learned Counsel would submit that, in the light of the aforesaid directions of the learned Single Judge, their services may be terminated on a regular

process of selection being undertaken by the Government, since their services were regularized under the 2016 regulations.

7. Reliance is placed by the learned counsel on the judgment of the Supreme Court in Narendra Kumar Tiwari Vs. State of Jharkhand & Others (2018) 8 SCC 238 to submit that, like Jharkhand, the State of Uttarakhand also came into being only on 09.11.2000; and this Court should, following the law declared in Narendra Kumar Tiwari, set aside the order under appeal.

8. In this context, it is necessary to note that the 2016 amendment, pursuant to which the services of the applicants were regularized, has alone been struck down and the 2013 regulations are still in force, albeit its operation having been stayed pursuant to the interim order passed by this Court. All the applicants herein claim to have been appointed, on contractual basis, during the years 2006-08 before the cut off date of 30.12.2008 prescribed under the 2013 Regulations.

9. It is their case that they are eligible for regularization even in terms of the 2013 regulations. Since any observation made by us on the directions to be issued, based on the judgment of the Supreme Court in Narendra Kumar Tiwari, would have a bearing in the writ petition wherein the 2013 Regulations were under challenge, we refrain from expressing any opinion on the applicability of the said judgment in examining the validity of the 2013 Regulations.

10. Leave to appeal would be granted, against the order of the learned Single Judge, only if the applicants are held to persons aggrieved. Since Shri Aditya Singh, learned counsel for the applicants, would submit that all the applicants fall within the ambit of the directions issued by the learned Single Judge, in paragraph no. 26 of the said order, they cannot be said to be persons aggrieved by the order of the learned Single Judge, as they claim protection thereunder. While they may be persons affected, if the 2013 Regulations were also to be struck down, as they were all appointed before 30.12.2008, their remedy is only to intervene in the Writ Petition wherein the validity of the 2013 Regulations are under challenge.

11. Even if, as is now contended before us by Shri Aditya Singh, learned counsel for the applicants, the Government takes any decision despite the directions issued by the learned Single Judge in paragraph no.26 of his judgment, it is always open to the applicants to avail their legal remedies against any such action taken by the Government. That would, however, not justify their being granted leave to prefer an appeal against the order of the learned Single Judge, since they cannot be said to be aggrieved thereby.

12. We see no reason, therefore, to grant leave to appeal. Subject to the observations aforementioned, the application seeking leave to appeal fails and is, accordingly, dismissed. Consequently all the connected appeals/applications are also dismissed. No costs.

(R.C. Khulbe, J.)
11.01.2019

(Ramesh Ranganathan, C.J.)
11.01.2019

Balwant /Sukhbant