

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 1505/2020

(Arising out of impugned final judgment and orders dated 11-04-2018 in WPSB No. 108/2018 and dated 26-07-2019 in RA No. 1669/2018 passed by the High Court of Uttarakhand at Nainital)

STATE OF UTTARAKHAND & ORS.

Petitioner(s)

VERSUS

MOHAN CHANDRA PATHAK

Respondent(s)

(FOR ADMISSION and I.R. and IA No.12560/2020-CONDONATION OF DELAY IN FILING and IA No.12562/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.12563/2020-EXEMPTION FROM FILING O.T.)

Date : 31-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Ms. Vanshaja Shukla, AOR  
Ms. Anuja Pethia, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Delay is condoned as it is largely predicated on the time taken to decide the review application.

We have heard the learned counsel for the petitioners at some length. Learned counsel for the petitioners contends that Rule 38 (2)(i) of the Uttarakhand School Education Council (First Amendment) Rules, 2011 framed under Section 18 of the Uttarakhand School Education Act, 2006 would stand in the way of the respondent getting the relief as regular principal can

only be appointed through the process prescribed and an officiating principal would be entitled to the same scale as that of a principal only after working for more than five years in that post in the officiating capacity. In the present case the respondent worked for more than five years as an officiating principal on the retirement of the earlier principal in 2011 but was appointed as a regular principal in accordance with the Rules only in the year 2016 and thereafter demitted office in 2017.

Learned counsel for the petitioners also submits that there are 46 officiating principals and on a query submits that as the petitioner is a hilly State, it takes more time to make appointments.

We are unable to agree with the contention of the learned counsel for the petitioners. No doubt the Rule has been framed in the context of an officiating principal to fill in the gap when the regular principal retires or is on long leave and the process of appointing regular principal is on. As to when a person would retire is known to the department in advance and thus logically steps should be taken earlier to make sure that there is no such requirement of stop gap arrangement. On the other hand what is happening is, as is apparent from the large number of officiating principals, that this work is taken from these persons for very long period of time as officiating principals and they are deprived of the financial benefits of working as a regular principal.

We find that such course of action is completely arbitrary and illegal.

We are thus of the view that the impugned judgment is based on the correct principle of law and if acting principals are as such acting for a long period of time by the process of not filling up of the vacancies, then they cannot be deprived of the benefits which shall accrue to them whether it is for the respondent or any of the other officiating principals.

We thus dismiss these special leave petitions but with the aforesaid order so that there is no further litigation on this aspect and officiating principals are dealt with in a fair and reasonable manner.

Pending applications shall also stand disposed of.

(ANITA MALHOTRA)  
COURT MASTER

(ANITA RANI AHUJA)  
COURT MASTER