
(2015) 03 UK CK 0075

In the Uttarakhand High Court

Case No : Special Appeal Nos. 508, 394, 393, 392, 509 and 510 of 2013

Ajay Kumar Arya and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 UK CK 0075

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Bhagwat Mehra, Advocate, for the Appellant; Pradeep Joshi, Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, C.J.

1. These six appeals being connected, we are disposing of the same by a common judgment. Three appeals have been maintained by the Uttarakhand Public Service Commission (hereinafter referred to as the Commission"). The other three appeals are filed by the writ petitioners. The Commission initiated a selection process for appointment to the posts of Assistant Regional Inspector (Technical) in the Transport Department of the Uttarakhand Government. The advertisement was issued on 18th June, 2011 for filling up 15 posts of Assistant Regional Inspector (Technical) and 01 post of Regional Inspector (Technical). The writ petitioners were aspirants for the posts of Assistant Regional Inspector (Technical). The qualifications, which were fixed for the posts, were a candidate must possess High School with Science subject, three years" Diploma in Mechanical Engineering and three years" practical experience in any reputed workshop, where the work of repairing of light and heavy diesel and petrol vehicles is done. Besides the same, a candidate must have a driving licence and knowledge of Hindi. The selection process involved assessing the merit by way of written examination, for which the marks allotted was 150. Thereafter, the writ petitioners also had to undergo a practical examination for which 100 marks was

allotted and, thereafter, they were to undergo an interview for which 35 marks was allotted. Thus, the total marks was 285. The complaint of the writ petitioners was that their candidatures have been rejected on the ground that they have obtained three years" experience before they have done their respective Diplomas. It is, accordingly, that three writ petitions were filed as Writ Petition (S/S) Nos. 640 of 2012, 765 of 2012 and 817 of 2012, from which all these appeals arise. In Writ Petition (S/S) No. 640 of 2012, the petitioner obtained an interim order on 19th May, 2012, by which it was ordered that one post will be kept vacant. The petitioner in Writ Petition (S/S) No. 765 of 2012 obtained a similar order on 12th June, 2012. The petitioner in Writ Petition (S/S) No. 817 of 2012 obtained a similar order on 21st August, 2012. The result of the selection was declared on 31st May, 2012. The learned Single Judge considered the contentions of the parties and followed the judgment of the Hon"ble Supreme Court, reported in Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, and in 1995 Supp (3) SCC 332 (Subhash S/o. Shriram Dhonde versus State of Maharashtra and another) and took the view that the experience, which the writ petitioners had obtained even prior to obtaining of the Diploma, was a proper experience and took the view that the writ petitions were liable to be allowed and hence allowed the writ petitions. Thereafter, the learned Single Judge proceeded to order as follows:--

"3. At this stage, learned counsel for the Commission Mr. B.D. Kandpal states that although there were interim orders of this Court directing the respondents to keep seats vacant for the petitioners during the pendency of the writ petition, but even before such interim orders could be passed the result has already been declared and out of total 15 seats of Assistant Regional Instructor (Technical), 3 seats of general category, 3 seats of scheduled caste category and 2 seats of other backward class category have not been filled up and consequently they have been carried forward.

4. Since admittedly seats are presently vacant, the direction is hereby given to the Commission to make such recommendations to the State for appointments of the petitioners and thereafter State shall make such appointments in compliance of this order, as this Court is clearly of the view that denial/rejecting the selection of the petitioners on the said posts is totally arbitrary. However, this is subject to the fact that in case the Commission had placed a minimum cut off marks, all the petitioners must have marks above the said minimum cut off marks. Subject to the above, writ petitions stand allowed."

2. The bone of contention and the controversy involved in these cases essentially arise out of these two paragraphs.

3. We have heard Shri B.D. Kandpal, learned counsel for the Commission and Shri Bhagwat Mehra, learned counsel for the appellants/writ petitioners.

4. As far as the Commission is concerned, its appeals projected the complaint that the selection process was over on 31st May, 2012. In regard to the 15 posts

of Assistant Regional Inspector (Technical), it is the contention of the Commission that 7 posts were filled up. Thereafter, 3 in General, 3 in Scheduled Caste and 2 in Other Backward Class category, being unfilled on account of absence of proper qualification, were carried forward. In this regard, on 6th June, 2012, the Commission made a recommendation based on the result declared on 31st May, 2012 that 8 vacancies, as above, may be carried forward. It is submitted that this fact was also brought to the notice of the learned Single Judge. Pursuant to the recommendations of the Commission, it is submitted by the learned counsel for the Commission accepting the same the Government had directed that they be carried forward and, on the basis of the same, a fresh advertisement was issued including the fresh vacancies and the selection process pursuant to the said advertisement is underway. It is submitted that examination was conducted on 17th March 2015. He would, therefore, submit that while he does not dispute the legal proposition enunciated by the Hon'ble Supreme Court and accepted by the learned Single Judge that the experience may be obtained before or after, in the facts of this case, the learned Single Judge should not have issued a direction which has been issued. It is submitted that the writ petitioners, who have already sat for the written examination under the previous advertisement and have also undergone the practical examination can be ordered to be interviewed and, if they obtain minimum marks, their case can be considered alongwith the others who have also applied pursuant to the new advertisement. In this regard, he sought to draw support from the judgment of a Division Bench of this Court rendered in Special Appeal No. 83 of 2011 (Bal Krishna and others versus State of Uttarakhand and others) on 26th May, 2011.

5. Per contra, Shri Bhagwat Mehra, learned counsel for the appellants/writ petitioners, who have maintained appeals, would submit as follows:--

"The purport of the appeals filed by the writ petitioners is only to modify the judgment of the learned Single Judge, inasmuch as, the learned Single Judge has disposed of the writ petitions allowing the same and by directing that the Commission is to make recommendations for their appointments provided they obtain minimum cut off marks ignoring the requirement that selection is to be based on the conducting of the interview also. So, in essence, the only modification that is sought in their appeals is that it may be ordered that the writ petitioners may undergo the interview and if they obtain minimum marks which are to be reckoned after considering the marks obtained in the written examination also, they may be appointed as against the vacancies which were notified under the earlier advertisement. He would have emphasize that one of the writ petitioners has obtained an order reserving vacancy on 19 May, 2012 which was before the declaration of the result on 31st May, 2012. As far as the Writ Petition (S/S) No. 765 of 2012 is concerned, he would submit that the communication by the Commission dated 6th June, 2012 recommending for carrying forward, which was an internal communication, was not communicated to the writ petitioners. It is also brought to our notice that the Government acted upon the recommendation of the Commission for carrying forward the vacancies

only much after the passing of the interim orders in all the cases and the advertisement itself was issued only in December 2014. He would, therefore, pray that the case of the appellants/writ petitioners must be considered in terms of the earlier notification for which they were entitled as found by the learned Single Judge."

6. We have already narrated the facts which are not in dispute. Out of 15 vacancies, for which requisition was sent to the Commission by the Government, only 7 were filled. The petitioners' candidature was not considered and taken to its logical conclusion. It is only for the reason that the Commission took the wholly erroneous view regarding the nature of the experience that is required. This is a matter which was beyond the pale of any doubt as it stood covered by the pronouncements of the Apex Court. In fact, no attempt was made before us by the learned counsel for the appellants to dislodge the finding by the learned Single Judge in this regard. Therefore, for no fault of the writ petitioners their candidature was not considered. The matter was considered by this Court. We have noted the dates on which orders were passed. At least, in one case, there was order of this Court to keep the post vacant. It was done before the result was declared. Thereafter, two further writ petitions were also filed in which orders were obtained. Even if the Commission sent a communication on 6th June, 2012 to the Government and, at least, in two writ petitions the State was a party, we are at a loss to understand as to how the State could have ignored the orders of this Court directing the posts be kept vacant and directed that the posts be carried forward.

7. It is also pertinent to note that out of 15 vacancies, 8 vacancies remained unfilled. But for the act of carrying forward the vacancies on the pronouncement of the judgment of the learned Single Judge there would have been vacancies available for the Commission to make recommendations in regard to the three candidates in question.

8. As far as the judgment of a Division Bench of this Court, which was brought to our notice by the learned counsel for the Commission is concerned, we would think that the said judgment was rendered on the facts, which are distinguishable. That was the case whereas requisition was sent to the Commission in respect of 70 vacancies for the posts of Junior Engineer (Civil). Thereafter, there was a restructuring on 12th July, 2006 and vacancies were reckoned at 258 instead of 70. Without there being a fresh advertisement or a corrigendum, the Commission proceeded to fill up those vacancies. The Division Bench took the view that this would amount to deprivation of the right of a person who would have acquired such qualifications in the interregnum. It was a case which turned on the concept of the vacancies being related to the recruitment year. In other words, 70 vacancies for one recruitment year were transformed into 258, which meant that 188 vacancies of the next year were also reckoned in the earlier recruitment year and that was done without issuing a fresh advertisement or corrigendum. In such circumstances, the Court issued

directions containing para 8, which we extract:--

"8. It has come to our knowledge that appointments, pursuant to the recommendations already made by the Commission, have not been accorded. We, accordingly, stay the appointment of 188 of such recommendees. It is made clear that it shall be open for the State to give appointment to 70 recommendees on 70 vacancies on the basis of their merit and in accordance with the reservation policy, as was originally advertised on 7th February, 2007. The Commission is directed to publish a fresh advertisement, indicating that during the recruitment year 1st July, 2006 to 30th June, 2007, 188 vacancies cropped up. In the advertisement, it must be indicated how many of those vacancies are reserved and for whom. After completing the process of selection of those people, who would be responding to the said advertisement, the Commission shall take into account their merit along with the merit of 188 people, who have already been recommended by the Commission and, thereafter, make a final recommendation to the State for appointment. It is made clear that if, after 1st July, 2007, any further vacancy has arisen, it shall be open for the State Government to give requisition therefor to the Commission in writing, but the same should be given before publication of the advertisement as above. The advertisement, to be published, must indicate that the people, who have already been recommended, shall also be entitled to participate in the new selection process for the purpose of improving their merit. We direct the above advertisement to be published as quickly as possible, but not later than three months from the date of service of a copy of this order upon the Commission."

9. We would think that the facts of the said case are distinguishable and the attempt of the learned counsel for the Commission to draw support from the same is misplaced. We would think that the interest of justice also requires relief to the writ petitioners even though we are not oblivious of the fact that the writ petitioners have not challenged either the decision of the Government to carry forward the vacancies or the advertisement which have been issued on the said basis. We cannot also ignore that the advertisement was issued after the pronouncement of the judgment by the learned Single Judge and when these appeals were admitted and were pending our consideration. In the facts of this case, we are of the view that the appeals filed by the Commission must stand rejected and the appeals filed by the writ petitioners must be allowed. Accordingly, the appeals are disposed of as follows:--

"The appeals filed by the Commission will stand dismissed without any order as to costs. As far as the appeals filed by the writ petitioners are concerned, they will stand allowed. The judgment of the learned Single Judge will stand modified and the writ petitions will stand disposed of by directing that the Commission will interview the writ petitioners and if they obtain minimum marks which are required, their case will be considered as against the vacancies for which they had applied in accordance with law."

10. Needless to say, necessarily the number of vacancies which will be available

on the basis of the carrying forward done and for which fresh advertisement has been issued will stand curtailed. We record the submission of the learned counsel for the appellants/writ petitioners that if the appellants/writ petitioners are selected, they will not lay any claim for back wages.