
(2015) 01 UK CK 0061

In the Uttarakhand High Court

Case No : Writ Petition (S/S) Nos. 464, 466 and 467 of 2010

Anil Chaudhary and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Citation : (2015) 3 UC 1759

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Bhagwat Mehra, Advocate, for the Appellant; N.P. Sah, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—The petitioners in all the three petitions before this Court are Class-IV employees in Education Department in the Government of Uttarakhand. There are Rules known as "The Uttarakhand Government Servants (Criterion for recruitment by promotion) Rules, 2004" by which Class-IV employees promoted to the post of Class-III. Since there is a written examination which will evaluate the candidates for promotion to the Class-III post, the petitioner challenged the said selection on the grounds that the promotion from the Class-IV to Class-III post for all posts except Head of the Department or the post below only on the basis of seniority. He further relied upon two decisions of this Court. One passed by the Single Judge of this Court in WPSS No. 945 of 2004 (decided on 20.10.2005), which has been upheld by the Division Bench of this Court in SPA No. 10 of 2006 (decided on 04.03.2006). Learned counsel for the State Mr. N.P. Sah on the other hand has apprised this Court that the two decisions on which the petitioner relied upon have been challenged by the State Government in Special Leave to Appeal before the Hon'ble Apex Court, in which leave has been granted and the appeal has now been allowed vide order dated 16.10.2014 and the two decisions of this Court are set aside by the Hon'ble Apex Court. The reasons recorded by the Hon'ble

Apex Court in paragraph Nos. 11 and 12 passed in Civil Appeal No. 7696 of 2009 (decided on 16.10.2014) reads as under:--

"11. We have extracted hereinabove both the Government Orders. We are satisfied that it was the endeavour of the Government to determine fitness of Group "D" employees, for onward promotion to the lowest rank of ministerial posts in Group "C" service. We say so because, it is apparent to us, that Group "D" posts comprise of posts in the nature of Peons, Messengers, Chaukidars, Malis, Farrashes, Sweepers, Watermen, Bhistis, Tindals, Thelamen, Recordfilters, Peon-Jamadars, Daftris, Book-binders, Cyclostyle Operators, Farrash-Jamadars, Sweeper-Jamadars and Head Malis. The nature of duties of the posts referred to hereinabove, are too well-known. Merely because an employee while holding a Group "D" post has been discharging the duties, of the nature referred to above, it cannot be presumed that he/she is suitable for onward promotion to a ministerial post. It is, therefore, that while determining the issue of onward promotion to ministerial posts, the State Government issued inter alia the above two Government Orders extracted hereinabove. Thereby, it would be possible to determine the fitness of those who fulfilled the conditions of eligibility for promotion. We are satisfied that the aforesaid two Government Orders squarely fall within the ambit of competence of the appointing authority, to determine the minimum fitness standards postulated under Rule 4 of the 2004 Rules.

12. In view of the above, we are satisfied that the impugned orders passed by the High Court, whereby, the above two Government Orders were quashed, deserve to be set aside. The two Government Orders dated 17.07.2004 and 08.11.2004 are hereby upheld. The instant appeals are accordingly allowed. The impugned orders passed by the High Court are therefore set aside."

2. In view thereof since in order to see the fitness of the employee, the Rules itself provide for evaluation, there is no anomaly in the selection process initiated by the respondents, as the selection process is merely to see whether the candidates, who have to be promoted to the Class-III posts are fit in that post or not. The seniority is still a criterion in the Rules. Hence there is no violation in the process, particularly, in view of the decision of Hon"ble Apex Court decision in Civil Appeal No. 7696 of 2009, which has been passed in consideration of the same Rules. Consequently there is nothing wrong if a "test" is held to judge the fitness of a candidate. Accordingly, all the writ petitions are dismissed. Interim orders passed in writ petitions stands vacated.