

(2019) 08 UK CK 0204

In the Uttarakhand High Court

Case No : Writ Petition No. 493 Of 2012 (S/B)

Anil Kumar

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Uttar Pradesh Public Service (Reservation For Physically Handicapped, Dependents Of Freedom Fighters And ExServicemen) Act, 1993 — Section 2(b)(ii), 2(d)

Citation : (2019) 08 UK CK 0204

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, S.S. Chaudhary, B.D. Kandpal, Vinay Kumar, Pooran Singh Rawat

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The petitioner herein has invoked the jurisdiction of this Court seeking a writ of mandamus directing the respondents to include the name of the petitioner in the select list, of the selection process held by respondent No.2, for the post of Medical Officer (Ayurved) pursuant to advertisement No.3/Seva-1/2020-11 as against horizontal reservation of freedom fighter available for the general category candidates.

2. During the pendency of this writ petition, respondent Nos.3 to 5 were appointed under the dependents of Uttarakhand Freedom Fighters quota. While respondent Nos.3 and 4 joined the post of Medical Officer (Ayurved), the fifth respondent did not. She also remained ex-parte, despite service of notice in the writ petition on her. Consequent thereto, the petitioner had the prayer in the writ petition amended. He sought a writ of certiorari to quash the appointment order dated 26.07.2013, issued by the respondents in so far as it related to respondent Nos.3 and 4 whose name appeared in the select list; and for a writ of mandamus commanding the respondents to grant appointment to the petitioner in the post

of Medical Officer (Ayurved) under the Freedom Fighter category, as against the post held by the third respondent, after setting aside his appointment.

3. Facts, to the limited extent necessary, are that the petitioner applied for the post of Medical Officer (Ayurved) pursuant to an advertisement issued by the Uttarakhand Public Service Commission on 25.08.2010. Out of a total numbers of 564 posts of Medical Officers (Ayurved) for which applications were invited, 06 posts were horizontally reserved for dependents of Freedom Fighters in the General category. The petitioner sought the benefit of horizontal reservation under the dependents of Freedom Fighters category. He was, however, informed, by letter dated 22.11.2012, that the certificate produced by him was not issued by the competent authority in the State of Uttarakhand, but was issued by the Additional District Magistrate, Muzaffarnagar; and, since reservation could be given only residents of Uttarakhand, the certificate should also have been issued by the competent authority in Uttarakhand. While this letter of the Public Service Commission was not subjected to challenge in the present writ petition, the contention urged on behalf of the petitioner, by Mr. Aditya Singh, learned Counsel appearing on his behalf, is that neither the applicable statutory provisions nor the relevant Government Orders expressly stipulate.

4. That the certificate should be issued only by the competent authority in the State of Uttarakhand; the requirement is only that the applicant should be a resident of the State of Uttarakhand; if only the petitioner had been informed that he should have secured a certificate from the competent authority in the State of Uttarakhand, he would have done so; the dispute now sought to be raised, by the Public Service Commission, that the petitioner's grandfather has not been shown to be a domicile of Uttarakhand was not the ground for rejection in the proceedings dated 22.11.2012; and the subsequent certificate, produced by the petitioner on 08.06.2015, would show that the petitioner's grandfather is a freedom fighter; and the petitioner is a resident of Uttarakhand. It does appear that the forms, in which the certificate for each of the reserved categories should be issued formed part of the advertisement. A copy of the advertisement, filed before this Court by the petitioner, contains the prescribed form for all other categories except for dependents of freedom fighters. While Mr. Aditya Singh, learned counsel for the petitioner, would express ignorance as to why that portion of the advertisement was left blank, Mr. B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that the contents of the said was left blank in the copy of the advertisement filed before this Court only because the certificate produced by the petitioner is not in accordance with the said form.

5. Mr. B.D. Kandpal, learned Standing Counsel, has now placed before us a copy of the form in terms of which the certificate was required to be produced. The said form bears the heading dependents of freedom fighters of Uttarakhand, and that the certificate issued for dependents of freedom fighter of Uttarakhand was in terms of Government Order No.4/23/1982-2/1997 dated 26.12.1997 as per

the U.P. Reorganization Act, 2000 as applicable in Uttarakhand. The form of the said certificate stipulates that the person, in whose favour the certificate is issued, has satisfied the requirements of the Uttar Pradesh Public Service (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 (for short, the Act), as is applicable to the State of Uttarakhand; and the person in whose favour the certificate is issued is the son, daughter, grandson and unmarried granddaughter in accordance with the Act. The said certificate is also required to be signed by the District Magistrate.

6. While it is evident that neither the certificate submitted by the petitioner to the Public Service Commission, nor the certificate subsequently produced by him on 08.06.2015, is in strict compliance with the contents of the prescribed form both the advertisement and the form in which the certificate is required to be produced by a dependent of a freedom fighter, specifically refer to the Act. Section 2(b)(ii) of the Act includes the grandson (son of a son) as a dependent of a freedom fighter. Clause (d) of Section 2 defines freedom fighter to be a person domiciled in Uttar Pradesh who had participated in the freedom struggle of India; and had fulfilled the criteria laid down in clauses (i) to (x) thereunder. The Act was adopted by the State of Uttarakhand by Adaptation Order dated 07.11.2002, which stipulates that, wherever the word Uttar Pradesh occurs, it should be read as Uttarakhand. Consequently, it is only a freedom fighter, whose domicile is in Uttarakhand, who would satisfy the definition of a "freedom fighter" under Section 2(d) of the Act; and it is only the dependent of such a freedom fighter who is entitled for the benefit of such reservation. The Government Order dated 20.11.2001, on which reliance is placed, stipulates the conditions for being considered to be a permanent resident in the State of Uttarakhand. It is unnecessary for us to examine whether the petitioner has fulfilled these parameters, since he was required to submit a certificate, as prescribed in the advertisement, certifying that he fulfilled the requirements, as stipulated in the Act, as applicable to the State of Uttarakhand. The petitioner, admittedly, did not furnish any such certificate.

7. While we find considerable force in the submission of Mr. Aditya Singh, learned counsel for the petitioner, that the grounds for rejection, in the proceedings dated 22.11.2012, makes no mention of the ground, now urged before us, as the basis for rejection we must bear in mind that the validity of the said proceedings dated 22.11.2002 has not been subjected to challenge in the present writ proceedings. The question which we are required to consider, is whether the Public Service Commission was justified in rejecting the petitioner's candidature under the dependents of freedom fighters category.

8. We are satisfied that, since the petitioner did not submit the certificate in the prescribed form nor does the certificate furnished by him disclose that his grandfather (a freedom fighter) was domiciled in the State of Uttarakhand, which is the requirement of Section 2(d) of the Act, rejection of his candidature, under the dependents of freedom fighter category, by the Public Service Commission

does not necessitate interference, notwithstanding that the proceedings dated 22.11.2012 does not expressly state this to be the ground of rejection.

9. The writ petition fails and is, accordingly, dismissed. No costs.