

(2011) 01 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No"s. 163 of 2004 and 217 of 2003 (S/S)

Anil Kumar

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(3), 5

Citation : (2011) 1 UC 401

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The Petitioner was a candidate in the written examination to the post of "Patwari" in the State of Uttarakhand. The Petitioner, after duly filling up the form for the entrance examination, was called for the written examination, which he successfully qualified. Thereafter, he was sent for training in the month of July, 2003. While he was undergoing training for "Patwari" ("Patwari" is a Class III revenue official in the State of Uttarakhand), which is of one year, he was told by the Authorities that since he is not a "domicile" of Uttarakhand, his appointment to the post of "Patwari" cannot be made in the State of Uttarakhand. Consequently, the earlier domicile certificates submitted by the Petitioner, which were earlier issued by the competent authorities were cancelled vide order dated 5th March, 2003 by Additional Secretary, State of Uttarakhand (which is an order, inter alia, challenged in the present writ petition).

2. This Court had an occasion to see the rules, by which recruitment is made in the State of Uttarakhand to the post of "Patwari". These rules are known as "U.P. Patwari Service Rules, 1963", which are also applicable in the State of Uttarakhand. One of the essential conditions for eligibility as per Rule 7 is that a person should be a "citizen of India". A citizen of India has been defined as it was in Part II of the Constitution of India. The definition of citizen is given in Article 5

of the Constitution of India, which reads as under:

5. Citizenship at the commencement of the Constitution.-At the commencement of this Constitution, every person who has his domicile in the territory of India, and -

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

3. In other words, to be a citizen of India one has to be a domicile in the "territory of India" and has to be born in the territory of the India or either of whose parents was born in the territory of India or who has been ordinarily resident in the territory of India for not less than five years immediately preceding of the Constitution of India. In other words, the Constitution of India prescribes "five years" period of residing in the country for being a "citizen of India" and it does not speak of being domicile in a province or union territory but it speaks of "domicile" in the "territory of India".

4. This Court has an occasion to examine the concept of domicile in *Neha Saini v. State of Uttarakhand and Anr.* AIR 2010 Utt 36, in which the concept of domicile has been elaborated and defined. There is a lot of misconceptions running in the Government Authorities and elsewhere regarding the word "domicile" and "permanent resident". Invariably the word "permanent resident" and "domicile" are confused with each other. It is clarified that there is nothing like "provincial domicile". There is only one domicile, which is called "domicile of India". It is absolutely illegal, incorrect and misconceived to talk about "domicile of Uttarakhand" or of any other State. Regarding a permanent resident as well, there is no requirement under the Rules that a person should be permanent resident of Uttarakhand in order to gain a job in Uttarakhand. In fact, the Constitution of India specifically debars such a law to be made. Article 14 of the Constitution of India speaks about equality before the law. Article 16, which is regarding equality of opportunity in matters of public employment in Clause (2) clearly states that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. Such a condition for permanent resident on place of birth can be imposed under Article 16(3) only by the Parliament. Such restriction can not be imposed even by a State Legislature much less by executive authorities. The Respondents have relied upon a Government Order dated 20.11.2001, which inter alia states that a bona fide resident of Uttarakhand would be a person, who has been residing permanently in the State of Uttarakhand for the last "fifteen years". How and under what circumstances Government has arrived at this magic figure of fifteen years in order to make a bona fide resident of Uttarakhand has not been made clear. Moreover, in view of the fact that the State is debarred by the Constitution

from imposing such a restriction for grant of public employment, such an imposition is totally in violation of the Constitution of India and that too of the Part III of the Constitution of India. It is a clear invasion of the fundamental rights of the Petitioner.

5. Undoubtedly, certain preferences may be given to a person being a permanent resident of a place, in case he has acquired some special knowledge, etc being a permanent resident or for any such matter, but making it a mandatory condition for appointment in a public job is absolutely in violation of law and the Constitution of India.

6. Moreover, there is another aspect in this matter. The domicile certificate, which was issued in favour of the Petitioner, were cancelled by the authorities even without giving any opportunity of hearing to the Petitioner. Since by virtue of domicile/permanent certificate granted to the Petitioner, certain rights have accrued to the Petitioner, these rights cannot be taken away, without first affording any opportunity of hearing to the Petitioner. It was absolutely necessary in view of the principles of natural justice and fair play that an opportunity of hearing was liable to be given to the Petitioner. In view of this fact also, the order dated 5.3.2003 passed by Additional Secretary, State of Uttarakhand is absolutely illegal and is liable to be set aside.

7. The Writ Petition No. 163 of 2004 (S/S) therefore succeeds. The order dated 5.3.2003 by which the domicile/permanent resident certificate of the Petitioner was cancelled is set aside. Consequent order dated 25.3.2003 by which the Petitioner was removed from the training is also set aside. This Court has been informed that by virtue of an interim order dated 3.3.2004 of this Court, the Petitioner has already undergone training of "Patwari". The Petitioner will now be treated to be a permanent "Patwari".

8. The second writ petition was filed by the Petitioner when he had undergone training of Patwari. By virtue of an interim order dated 29.3.2003, the Petitioner is presently working as Patwari. There is a clear finding of this Court that the cancellation of a permanent resident certificate of the Petitioner is absolutely illegal, and therefore, this Court holds that the Petitioner shall be treated as a Patwari. Writ Petition No. 217 of 2003 is also allowed on the basis of findings recorded above.

9. No order as to costs.