

(2018) 11 UK CK 0243
In the Uttarakhand High Court
Case No : Writ Petition No. 579 (SB) Of 2018

Arjun Kumar

APPELLANT

Vs

Uttarakhand Public Service Commission And Another

RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:

Citation : (2018) 11 UK CK 0243

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

Bench : Division Bench

Advocate : P.K. Sharma, B.D. Kandpal, Pankaj Chaturvedi

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. Heard Sri P.K. Sharma, learned counsel for the petitioner, Sri B.D. Kandpal, learned counsel for respondent no. 1 and Sri Pankaj Chaturvedi, learned counsel for respondent no. 2 and, with their consent, the writ petition is disposed of at the stage of admission.

2. Pursuant to the advertisement dated 04.08.2017, the petitioner applied for the post of Assistant Professor (Political Science). He submitted his application online, and appeared for the screening test conducted on 10/11 February, 2018. He secured 139. 50 marks which was higher than the cut off marks of 125. While no testimonials were required to be submitted to the Public Service Commission before the screening test such of those candidates, found eligible in the screening test, were then required to submit their testimonials either through post, or in person, to the Public Service Commission on or before 29.08.2018. The petitioner sent all his testimonials by speed post on 20.08.2018, and has filed a copy of the postal receipt as proof of his having sent his testimonials on that day. It is his grievance that the said envelope was returned on 20.09.2018. A photostat copy of the envelope, returned on 20.09.2018, is enclosed along with the writ petition. The petitioner's grievance is that, for no fault of his and

solely on account of the lapse of the Postal Department, he has been deprived of his right to be considered for selection, and for participation in the interview.

3. Sri Pankaj Sharma, learned counsel for the petitioner, would submit that, while interviews for other subjects have already commenced, the Public Service Commission has not yet commenced interviews for the post of Assistant Professor (Political Science).

4. We were initially inclined to take a sympathetic view, as it is evident that the petitioner has been deprived of an opportunity to participate in the selection process solely on account of the lapse of the Postal Department; and though he had sent his testimonials on 20.08.2018 by Speed Post, 9 days before the cut off date of 29.08.2018, the envelope was not delivered to the Public Service Commission before the prescribed cut off date.

5. Sri B. D. Kandpal, learned counsel for the first respondent - Public Service Commission, would however draw our attention to the Division Bench judgments of this High Court in Writ Petition No. 183 (SB) of 2011 (Savita Chandola Vs. Uttarkhand Public Service Commission) decided on 13.07.2011, and Sanjay Kumar Kumiyal Vs. Uttarakhand Public Service Commission reported in 2011 (1) UD 148 wherein it has been held that, since the Public Service Commission was not at fault for the delay in submitting the testimonials beyond the cut off date, the Public Service Commission cannot be required to conduct the process of selection; and, even if it be the fault of the Postal Department, the Public Service Commission cannot be blamed for the delay in delivery of the envelope containing the testimonials. Both the judgments, referred to hereinabove, have been delivered by Coordinate Division Benches of this Court, and are binding on us. Judicial discipline would require us to follow the law declared in the aforesaid judgments notwithstanding our view, that, in the present job market conditions where employment is hard to come by, a candidate should not be deprived of his opportunity of being considered for appointment, for no fault of his but solely for the fault of the Postal Department.

6. Following the aforesaid judgments of the Division Bench, the writ petition fails and is, accordingly, dismissed.