

(2011) 04 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 859 of 2010 (S/S)

Ashutosh Bhatt and Tara Chandra Ghildiyal and Others

APPELLANT

Vs

Uttarakhand Public Service Commission

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 3 UC 2241 : (2011) 1 UD 586

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard learned Counsel for the Petitioners as well as learned Counsel for the Uttarakhand Public Service Commission.

Since both the writ petitions have a common cause of action, they are decided by this common judgment.

2. The Petitioners have challenged the result declared by the Uttarakhand Public Service Commission (from hereinafter referred to as Commission) pertaining to the Preliminary Examination to the post of Review Officers and Assistant Review Officers in Secretariat and Lok Sewa Ayog in State of Uttarakhand.

3. For the conduct of its business, Commission has framed certain guidelines/instructions. One of the guidelines/instructions stipulates that in case there is a preliminary examination to the main examination, the candidates for the main examination should be called in the ratio of 1:20. In other words, if there are ten posts for which recruitment is to take place then 200 candidates are liable to be called for the main examination. The exact wordings are contained in the Instruction 5.2.1.1. which is reproduced below:

Preliminary Examination is aimed at serving as a screening test and comprises of multi option objective type questions. The number of candidates to be admitted to main written examination, is generally restricted to 20 times the number of

vacancies to be filled having regard to the various reservation categories. It is decided from an order of merit list of the preliminary examination.

4. The Petitioners contend that although the instructions clearly stipulate that the candidates in the ratio of 1:20 are liable to be called in the preliminary examination yet the Commission has called candidates, not at the ratio of 1:20 but at the ratio of 1:15. It is further contended that had the candidates been called as per the Instructions and in the ratio of 1:20 then the Petitioners would have made to the stage of writing the main examinations. This the Petitioners contend on the basis of the marks obtained by last candidate called, since the Petitioners have only one mark less than this candidate. All the same, since this has not been done, there has been a violation of the proceedings which adversely affects valuable rights of the Petitioners. Therefore the Petitioners have approached this Court with the following prayers:

i) Issue a writ or order in the nature of Certiorari quashing the Mains examination held for the post of Review Officer/Asstt. Review Officer Examination 2007.

ii) Issue a writ, order or direction in the nature of mandamus directing the Respondent to declare the result of the preliminary examination in the ratio of 1:20 according to the existing rules at the time of the notification.

iii) Issue a writ, order or direction in the nature of mandamus directing the Respondent to conduct the mains examination for the post of Review Officer/Asstt. Review Officer Examination 2007 afresh.

iv) Issue any other or further writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

v) To award the cost of the petition in favour of the Petitioner and against the Respondent.

5. Commission in its counter affidavit have admitted to the fact that candidates were called not in the ratio of 1:20 but in the ratio of 1:15. The reason for doing so was that there was a high level meeting held in the State Capital in Dehradun on 31.3.2009, which consisted of Chairman of the Commission as well as some senior officers of the Government of Uttarakhand, including Chief Secretary, which resolved that for the main examinations the Commission may call the candidates in the ratio of 1:15 instead 1:20 in future.

6. Learned Counsel for the Petitioners submits that firstly such an instruction would not be applicable in the case of the Petitioners as it could be applicable only for the future examinations and though the preliminary examinations were held on 22.11.2009 i.e. after such meeting had taken place yet the advertisement calling for the applications from the eligible candidates for such examination was published as far back on 28 th February, 2007. In short, the Petitioners contend that there has been a violation of Instructions inasmuch as candidates were liable to be called in the ratio of 1:20 and not in the ratio of

1:15. They further contend that the Petitioners are also liable to be called and they should be permitted to write the main examination. Moreover, the Petitioners would contend that the Commission has changed the Rules of the game, after the game has started, which is not permissible in law.

7. On the other hand, learned Counsel representing the Commission has stated that though admittedly candidates were called in the ratio of 1:15 but yet practically, for certain categories, including general category candidates that were called are effectively in the ratio of 1:19. This is so because on the last cut off mark there were several candidates and since all the candidates have been called therefore in any case the ratio is nearly 1:19, just short of 1:20.

8. It has further been stated by the counsel for the Commission that the Petitioners have been late in approaching this Court inasmuch as the result of the preliminary examination was declared on 11.3.2010 and the writ petition was filed on 18th September, 2010.

9. Moreover the candidates who had successfully passed the preliminary examination have also given their main examination on 3rd/4th September, 2010 and their result has been prepared, though due to the pendency of these writ petitions before this Court, the Commission in its wisdom has not declared the result!

10. On these contesting claims, first and foremost what has to be seen is the language of the Instructions (instructions No. 5.2.1.1. already quoted above), which is being relied upon by the Petitioners. The language of the Instructions, which has been relied upon by the Petitioners does not stipulate that it was mandatory for the Commission to call the candidates in the ratio of 1:20. The language says is "The number of candidates to be admitted to main examination, is generally restricted to 20 times the number of vacancies to be filled having regard to the various reservation categories." Therefore, what the Instructions say is that it is restricted to 20 times. In other words, it could be more than 20 times or even less than 20 times. In other words the "instructions" relied upon by the Petitioners are only directory and not mandatory in nature. Consequently, even though there may be a slight deviation from the above instructions yet no interference needs to be made by this Court. There is another aspect in the present matter, which is also weighing in the mind of this Court. It is this:

Any interference by this Court would necessarily mean that the main examination is liable to be cancelled and a fresh main examination will have to take place, which would be unfair for those candidates who have already cleared the preliminary examination and have given the main examination and by now may have been selected! Therefore, even though there may be same "equity" in favour of the Petitioners yet the Court is also conscious of the fact that there is also a "countervailing equity" in favour of those candidates who have cleared the preliminary examination and have appeared in the main examinations and are only awaiting their results, for the reason that if any order is to be granted in

favour of the Petitioners then it would result in the cancellation of this main examination. As this would disturb the equity, which already exists in favour of those, who have given main examination, and since there is no special equity in favour of the Petitioners, no interference is liable to be made. Moreover, as it has already been stated above what is so heavily being relied upon by the Petitioners i.e. the relevant instruction is only directory and not mandatory in nature. Both these writ petitions therefore fail and are hereby dismissed.

No order as to costs.

11. However, in order to enable the Petitioners to avail the remedy before the Division Bench in form of a Special Appeal, the order shall remain in abeyance for a period of one month from today. This is being done keeping in mind the fact that the result in question has not been declared as yet by the Commission. They will not do so for a period of one month from today.