
(2019) 02 UK CK 0077

In the Uttarakhand High Court

Case No : Writ Petition No. 438 Of 2014 (S Of S)

Basant Ballabh Pant And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Uttar Pradesh Khadi And Village Industries Board Act, 1960 — Section 4, 10(3), 37

Citation : (2019) 02 UK CK 0077

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : J.C. Belwal, Shakti Singh, Ravi Babulkar

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

1. Khadi and Village Industries Board had come into existence and as constituted therein under Section 4 of the statute, named as "U.P. Khadi and Village Industries Board Act, 1960". The said Act would stand applicable in the state of Uttarakhand in view of the provisions contained under provisions of the Reorganization Act. This aspect is not disputed by any party to the writ petition. The constitution of the Board is contemplated under Section 4, which means that the Board, which has been notified by the State Government and which shall be a body corporate having perpetual succession and a common seal, with all powers subject to the provisions of the Act. Meaning thereby, the ambit of exercise of powers by the Board would be confined to the powers as vested to it under the Act of 1960. The power and function of the Board has been contained under Section 15 of the Act of 1860, which reads as under :-

"15. Function of the Board. - (1) Subject to the provisions of this Act, the functions of the Board shall generally be to plan organize, develop and regulate khadi and village industries (and to implement the schemes formulated by it for that purpose.)"

(2) In particular, and without prejudice to the generality of the foregoing power, the Commission may take such steps as it may think fit -

(a) to plan and organize the training of persons engaged or interested in production of khadi or village industries;

(b) to build up a reserve of raw materials and implements and to supply them to persons engaged in the production of khadi or in village industries at such economical rates as may be suitable in the opinion of the Board ;

(c) to provide for sale, publicity and marketing of khadi and products of village industries ;

(d) to encourage and promote research in the technique of production of khadi and development of village industries, or to provide facilities for study of the problem relating to khadi or village industries;

(e) to maintain, or assist in the maintenance of institutions for the development of khadi or village industries;

(f) to undertake, assist or encourage the production of Khadi or the development of village industries;

(g) to promote and encourage co-operative effort among manufacturers of khadi and / or persons engaged in village industries;

(h) to secure co-ordination between individuals and institutions, including co-operative societies, engaged in the work of khadi and village industries; and

(i) to carry out any other matter which may be prescribed."

2. To meet out any other exigency and to carry out or deal with any other issues, which are not covered by Section 15 of the Act, Section 15 contained a residuary clause under Sub-section (i) of Section 15 of the Act, but the said provision contains these acts, are that they have to be exercised under Section 15 (i), which would be done only in the matter, which has been "prescribed". The term "prescribed" as defined under Sub-section (v) of Section 2, prescribed under the Rules and the Act. The Board, while exercising its powers under Section 10 Sub-section (3) read with Section 37 of the Act of 1960 had framed the Regulations called as "U.P. Khadi Avam Gram Udhog Board Subordinate Service Regulations, 1996". Under the said Regulation, the source of the appointment is contained in its Part 3, which provides that the source of various posts would be in accordance with the provisions contained in Appendix-Kha, column 3 of the appendix attached to the Act. Appendix-Kha in serial No. 9 in its column 3 provides the sources of recruitment for the post of Accountant. The post of Accountant has been held out to be a promotional post to be filled in from the persons who are working in the feeder post as Clerk / Tankak / Store Keeper and Junior Assistant and the eligibility is that the incumbent, who had put in three years of the services as in the year of recruitment as defined under Regulation 3 (Dha).

3. The process of promotion under the Rules of 1996 is provided under Rule 16, which reads as under :-

"1. विभागीय पदोन्नति समिति के माध्यम से पदोन्नति द्वारा भर्ती की प्रक्रिया - पदोन्नति द्वारा भर्ती, विभागीय पदोन्नति समिति के माध्यम से अनुपयुक्त को अस्वीकार करते हुए, ज्येष्ठता के आधार पर की जायेगी, जिसमें

निम्नलिखित होंगे - एक - नियुक्ति प्राधिकारी या उसके द्वारा नाम निर्दिष्ट व्यक्ति, जो संयुक्त मुख्य कार्यपालक अधिकारी की श्रेणी से निम्न न हो-----अध्यक्ष दो- अधिष्ठान का प्रभारी अधिकारी - सदस्य तीन- नियुक्ति प्राधिकारी द्वारा नाम निर्दिष्ट अनुसूचित जाति या अनुसूचित जन जाति का एक अधिकारी -----सदस्य चार- नियुक्ति प्राधिकारी द्वारा नाम निर्दिष्ट एक तकनीकी अधिकारी जो उप मुख्य कार्यपालक अधिकारी की श्रेणी से निम्न न हो-----सदस्य। परन्तु यह कि यदि चयन समिति में पिछड़े वर्ग का कोई सदस्य न हो तो पिछड़े वर्ग के अधिकारी को नियुक्ति प्राधिकारी द्वारा चयन समिति के एक अतिरिक्त सदस्य के रूप में नाम निर्दिष्ट किया जायेगा।

2. नियुक्ति प्राधिकारी अभ्यर्थियों की पात्रता सूचियां समय-समय पर यथा संशोधित उत्तर प्रदेश लोक सेवा आयोग के क्षेत्र के बाहर के पदों पर चयनोन्नति पात्रता सूची नियमावली, 1986 के अनुसार तैयार करेगा और उसे उनकी चरित्र पंजिकाओं और उनके सम्बन्ध में अन्य ऐसे अभिलेखों के साथ जो उचित समझे जायें, विभागीय पदोन्नति समिति के समक्ष रखेगा।

3. विभागीय पदोन्नति समिति अपने समक्ष प्रस्तुत अभिलेखों के आधार पर अभ्यर्थियों के मामलों पर विचार करेगी और यदि यह आवश्यक समझे तो वह अभ्यर्थियों का साक्षात्कार भी कर सकती है।

4. विभागीय पदोन्नति समिति चयन किये गये अभ्यर्थियों की ज्येष्ठता के क्रम में, जैसी उस संवर्ग में हो जिससे उनकी पदोन्नति की जानी है, एक सूची तैयार करेगी और उसे नियुक्ति प्राधिकारी को अग्रसरित करेगी।"

4. On its simplicitor reading, it provides that the promotion to the post of Accountant, which is to be filled by promotion from the feeding cadre is defined under column 3 of appendix kha would be done through the departmental promotion committee, while complying with the procedure for promotion as contemplated under Rule 16 which is quoted hereinabove.

5. The cadre of Salesman to which the private respondent Nos. 3, 4 and 5 belonged is provided under Clause-Cha of Appendix (ka) framed under Regulation 4 of the Regulations of 1996, it falls in the distribution cadre and as per the designation provided therein, the salesman is contained in its Clause 10, which is a post to be filled in by direct recruitment. That would be the controversy, in question, as to the fact that the Salesman as appointed by direct recruitment under the Regulations of 1996, there is no promotional avenue available to them and thus there is stagnation in their services. However, the private respondents, herein, who were working as Salesman, carrying the same scale of 3050 -4590, which is the scale equivalent to scale of the petitioners, who are working as Junior Assistant / Computer Operator and they were falling within the post available for the Feeding Cadre for the post of Accountant as referred above, have raised a claim to be considered for promotion.

6. But the Board, in order to remove the so called anomaly of stagnation in service, it has been pleaded by the respondents that they had granted promotion to the private respondents an adhoc promotion on the post of Accountant by an order dated 18th November, 2011. To this status being provided to the

respondents as Accountant, on adhoc basis is not the issue agitated here by the petitioners as granted by the Board, is not a bone of contention of the petitioner, rather a decision dated 29th November, 2012, particularly as contained in Clause 6, had provided that since in absence of there any avenue of promotion, the Salesman would be considered by the Selection Committee for promotion as an Accountant and the decision of the Committee of their promotion was made part of the letter dated 29th November, 2012. Clause 6 is quoted hereunder :-

"उत्तर प्रदेश खादी तथा ग्रामोद्योग बोर्ड की सेवा नियमावली के अनुसार विक्री कर्ता एवं बिक्री सहायक की पदोन्नति की कोई व्यवस्था न होने के कारण चयन समिति द्वारा बिक्री कर्ताओं को आंकिक के पदों पर पदोन्नति की गयी है। चयन समिति के निर्णय की प्रमाणिक छायाप्रति प्रति संलग्न है।"

7. The administrative decision, in the absence of the residuary clause cannot override the statutory provisions, i.e. the Regulations framed under Sections 37 of the Act of 1960. To deprive the petitioners of their right being considered for promotion on the post of Accountant, as per Regulation 16 read with Appendix Kha, serial No. 9, column 3, when they belong to the feeding cadre and fulfill all the eligibility, more particularly so as to merely adjust the Salesman who had no other source of promotion and there was stagnation in their services.

8. Be that as it may. The petitioners have filed the writ petition for the following reliefs :-

"i) issue a writ, order or direction in the nature of mandamus directing the respondent no.1 and 2 to promote the petitioners to the vacant post of Senior Assistant / Accountant in the department from the date the respondent no. 3 to 5 have been promoted to the said post.

ii) issue any suitable order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) award the cost of the writ petition to the petitioner."

9. They have contended in the writ petition that as per the Regulation of 1996, since they are working as Junior Clerk / Computer Operator and are having three years of experience as contemplated to be the criteria for promotion on the post of Accountant and they hold the eligibility but they have been deprived to be considered for promotion on account of arrangement made by Clause-6 of the letter dated 29th November, 2012, the claim of the petitioner for promotion is not being considered despite of the fact that there exists vacant post of Accountant in the department to be filled up by promotion, against which the petitioners could be considered. According to the pleadings of writ petition, the petitioners have pleaded that they have been working as Junior Clerk / Computer Operator, after being promoted by the Selection Committee as back as on 14th November, 2006, and hence, they would be eligible to be considered for promotion on the post of Accountant as per the Regulations of 1996. They have contended that they have raised their claim before the competent authority, including, the Board to consider them for promotion but no action has been

taken on the same and the petitioners contended that their claim is not being considered on account of the Board's decision dated 29th November, 2012, as contained in its clause-6, which may be treated as if there exists no vacancy against which the petitioners could be considered for promotion on the post of Accountant.

10. The nomenclature of adhoc Accountant, as it has been assigned to the respondents, who had been adjusted in view of Clause 6 of letter dated 29.11.2012, may not be treated as to be creating any lien or right as against the statutory promotional avenues available to the petitioners for promotion who belong to the feeding cadre on the sanctioned post of Accountant in accordance with the procedure for promotion contemplated under Rule 16 read with appendix Kha.

11. Without disturbing the arrangement as made by the Board and even without observing or dealing with the issue about the competence of the Board to pass such a resolution dated 18th November, 2011, granting the status of adhoc promotion as Accountant to the respondent Nos. 3 to 5, a writ of mandamus is issued to the respondent No. 2 to consider the claim of the petitioners for promotion on the post of Accountant without being influenced by the order of arrangement dated 18th November, 2011 as made in favour of the private respondent Nos. 3 to 5 by permitting to work as adhoc Accountant by the order dated 18.11.2011.

12. The claim of the petitioners for promotion would be considered strictly as per Regulation of 1996 as against the post available for promotion for the post of Accountant. The entire exercise is expected to be completed within a period of three months from the date of production of certified copy of this order.

13. On conclusion of the judgment, an apprehension has been expressed by the learned counsel for the petitioners and rightly so that since the respondents have been granted the status of adhoc Accountant/ Senior Assistant, since 18th November, 2011, their claim for promotion as Accountant / Senior Assistant, it is to be considered to be in accordance with the law, should be made effective from the date from which the respondents have been given the adhoc status of Accountant / Senior Assistant. The Court finds that this claim of the petitioners to be reasonable as they were deprived of consideration for promotion due to the decision made by Clause-6 of the letter dated 29.11.2012 and order of adhoc promotion dated 18.11.2011, which is absolutely in violation of rules and in contravention to the Act of 1960 and Regulation of 1996.

14. Subject to the above observations, the Writ Petition stands disposed of.