
(2019) 05 UK CK 0228

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 299 Of 2018

Bhagwat Kishor Mishra & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73, 73(1), 73(2), 73(3)

Citation : (2019) 05 UK CK 0228

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Siddhartha Singh, J.P. Joshi, Pradeep Joshi, A.S. Rawat, Charanjeet Kaur, Rajendra Dobhal, Shubhang Dobhal, K.P. Upadhyaya, H.M. Bhatia

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. This writ petition is filed seeking a writ of certiorari to quash the order passed by the Government of Uttarakhand dated 21.10.2015, in so far as it counted officers, who had either died or retired while in the service of the Government of Uttar Pradesh, and were drawing pension or terminal benefit from the exchequer of the Government of Uttar Pradesh, and who never joined their posts in Uttarakhand, in the cadre strength under the Government of Uttarakhand; to issue appropriate directions in the nature of mandamus directing the State Government to consider only those officers (Tehsildars/Deputy Collectors) who have been allotted to the State of Uttarakhand, who have actually joined, and been paid salary from out of the State exchequer of the State of Uttarakhand; and for a writ of mandamus directing the State Government to consider the vacancies in the promotees quota of those officers who were promoted in higher posts in Uttar Pradesh, and some of them had joined in the State of Uttarakhand in the same pay scale.

2. The petitioners herein were all Tehsildars and claimed promotion to the post of

Deputy Collectors (Entry Level). The cadre of Deputy Collectors consists of both Deputy Collectors (Entry Level) and Deputy Collectors (Selection Grade). While promotion from the post of Tehsildars is to the post of Deputy Collector (Entry Level), officers in the cadre of Deputy Collectors (Entry Level), who draw a particular pay scale, are promoted as Deputy Collectors (Selection Grade). Appointment to the post of Deputy Collector (Entry Level) is also made by way of direct recruitment.

3. The dispute in this writ petition relates mainly to the inter-se claims between the Tehsildars who seek promotion to the post of Deputy Collectors (Entry Level), and others who were appointed by direct recruitment as Deputy Collectors (Entry Level). The Tehsildars invoked the jurisdiction of this Court by way of WPSB Nos. 187, 188 and 220 of 2010; and a Division Bench of this Court, by its order dated 07.09.2011, allowed the writ petitions and struck down the seniority list of Deputy Collectors; and directed the State Government to prepare a final seniority list of Deputy Collectors afresh, within six months from the date of the order, treating the regular appointment, given to the petitioners on 01.03.2007, as relating back to the date of their appointment on an ad-hoc basis in the year 2004.

4. The Division Bench made it clear that, before the list was made and published, a tentative list must be published inviting objections, but no objections, contrary to the law laid down in the judgment, shall be entertained. Aggrieved thereby, both the direct recruits and the State of Uttarakhand carried the matter in appeal to the Supreme Court. In its order, in Special Leave to Appeal (c) No. 2779 of 2012 and batch dated 11.03.2015, the Supreme Court opined that it may be appropriate to determine the deficiencies in the direct recruits/promotees quota, at the time of creation of the State of Uttaranchal (now Uttarakhand), so as to determine the number of direct recruits/promotees who could have been accommodated against the vacancies which arose in the cadre of Deputy Collectors from year to year. After noting the agreement of the learned counsel for the rival parties, to the suggestion made by the Court, the Supreme Court recorded the submission, urged on behalf of rival parties, that the matter be remitted to the State Government for determining the deficiencies, in the direct recruits/promotees quota, from year to year.

5. The Supreme Court, thereafter, noted that the State of Uttarakhand had already filed an affidavit depicting the quota position for direct recruits and promotees; and it may choose to re-examine the matter, and record an order indicating their exact quota which may be made available to the rival parties within one week (i.e. by 18.03.2015); in case either of the parties had any objection, for the determination of the quota at the hands of the State Government, it would be open to them to raise objections by 25.03.2015; both the parties shall be afforded an opportunity of hearing, and a final decision shall be rendered by the State Government after hearing the objections; and the State Government shall record a firm finding, on the subject of quota posts occupied

by the direct recruits/promotees from year to year, within a further period of three weeks (i.e. by 15.04.2018).

6. Thereafter, in its order in Special Leave to Appeal (C) No. 2779 of 2012 and batch dated 30.09.2015, the Supreme Court observed that the list supplied to it, by the learned counsel for the State of Uttarakhand, needed to be added to; and that some further time may be granted to the State of Uttarakhand to update the list till 30.09.2015. Liberty was granted to the learned counsel for the writ petitioners before the High Court, and also the petitioners in the Special Leave Petitions, to furnish details which may have been omitted by the State Government in preparing the list sought for by the Court by its order dated 11.06.2015.

7. In its order in Special Leave to Appeal (C) No. 2779 of 2012 and batch dated 25.04.2018, the Supreme Court observed that the cases before it was a dispute between the direct recruits and the promotees arising from the State of Uttarakhand; they had, by order dated 30.09.2015, directed the State of Uttarakhand to conduct an exercise and ascertain the existing quota of direct recruits and promotees immediately after the State's reorganization; in pursuance of their direction, the State Government had passed an order dated 21.10.2015, in which the State had given details of the year-wise vacancies starting from the year 2000 to 2006-2007; learned Senior Counsel for the promotees had taken serious objections to the order of the State Government dated 21.10.2015; according to him, the State had shown the quota for promotees as occupied even by officers who only came to the State of Uttarakhand, but remained in the State of Uttar Pradesh; this submission was opposed by the learned counsel for the petitioners; a resolution of this contention would require determination whether the order of the State Government dated 21.10.2015 was in accordance with law, and whether it depicted the correct position of the quotas of direct recruits and promotees; and, in these circumstances, they considered it appropriate that this dispute be decided by the Uttarakhand High Court.

8. The Supreme Court, thereafter, recorded the submission, urged on behalf of the promotees, that they would approach the High Court of Uttarakhand against the order of the State Government dated 21.10.2015. This High Court was requested to decide the matter as expeditiously as possible, and not later than a period of six months from the date the respondents approached the High Court, since the Special Leave Petitions were pending before it.

9. After this order was passed by the Supreme Court on 25.04.2018, the promotees (petitioners) filed the present Writ Petition on 06.07.2018. While the six month period stipulated by the High Court no doubt expired on 05.12.2018, the various affidavits, supplementary affidavits, supplementary counter affidavits and several tabular statements filed by parties on either side has resulted in a delay in the disposal of the Writ Petition.

10. The validity of the order passed by the Government of Uttarakhand, in its Office Memorandum dated 21.10.2015, is under challenge in the Writ Petition. The sanctioned posts of Deputy Collectors (Entry Level), for the State of Uttarakhand, as on 09.11.2000, was 70 (35 sanctioned posts for promotees and 35 for the direct recruits). Subsequently in the year 2005-2006, 10 more posts of Deputy Collectors (Entry Level) were sanctioned, 05 under the promotees quota and 05 under the direct recruitment quota. In terms of the aforesaid order of the Supreme court, the scope of enquiry in this Writ Petition is confined to whether or not the Office Memorandum of the State Government dated 21.10.2015, furnishing details of the manner in which the posts of Deputy Collectors (Entry Level), (35 posts each under the direct recruits/promotees categories), were filled up year-wise from 2000-01 to 2004-05; the manner in which 80 sanctioned posts of Deputy Collectors (Entry Level) i.e. 40 sanctioned posts each for direct recruits and promotees were filled up for the two year period i.e. 2005-06 and 2006-07; and whether the said office memorandum reflects the true vacancy position, year wise, of Deputy Collectors (Entry Level) both under the direct recruits and the promotees quota.

11. Sri Siddhartha Singh, learned counsel for the petitioners, would submit that the office memorandum dated 21.10.2015 includes several employees, both under the direct recruits and the promotees quota, who never joined the State of Uttarakhand, and continued to serve the State of Uttar Pradesh till they were either promoted or retired from service or died or took voluntary retirement; despite their not having joined duty with the Government of Uttarakhand, they were still shown as having been allotted, and to be occupying the posts of Deputy Collectors (Entry Level) in the State of Uttarakhand; and, consequently, lesser number of vacancies were shown, than the actual number of vacancies which would be available if these officers had not been shown as occupying these posts.

12. According to Sri Siddhartha Singh, learned counsel for the petitioners, 13 officers, who retired while serving in the State of Uttar Pradesh, were nonetheless shown as occupying the posts of Deputy Collectors (Entry Level) in the State of Uttarakhand; from out of the list of 39 Deputy Collectors, under the promotees quota, 16 did not join, 01 died, 16 retired (including 08 of those who retired in the State of Uttar Pradesh), and 06 were promoted as Deputy Collectors (Selection Grade); the State Government had erroneously treated Sri D.P. Giri as occupying one of the posts of Deputy Collectors (Entry Level) in the State of Uttarakhand though he continued to serve the State of Uttar Pradesh during the relevant period; the name of Sri B.S. Manral, who continued to work in the State of Uttarakhand during the relevant period, is not reflected in the list of Deputy Collectors (direct recruits) in the State of Uttarakhand, though he did not join the State of Uttar Pradesh during the relevant period; several posts of Deputy Collectors, in which officers never joined duty in the State of Uttarakhand, were treated as having been filled up; likewise those officers, who never joined duty in the State of Uttarakhand, but continued in service till they

retired from service in the State of Uttar Pradesh were also shown as occupying the posts of Deputy Collectors (Entry Level) in the State of Uttarakhand; though Sri Negi was promoted as Deputy Collector (Selection Grade), the post of Deputy Collectors (Entry Level) was treated as being occupied by him in the year 2000-01, and was not shown as vacant; even with respect to the inter-se seniority of Tehsildars, the petitioners were shown far below other Tehsildars in the seniority list, even though these Tehsildars never joined duty in the State of Uttarakhand; the Office Memorandum dated 21.10.2015 wrongly records 39 promotees having been finally allotted to the State of Uttarakhand, though only 14 promotees had joined duty in the State; the State Government has acted in an irrational and arbitrary manner in treating 39 officers as occupying the posts of Deputy Collectors (Entry Level) under the promotees quota; candidates who never joined duty in the State of Uttarakhand, both under the promotees quota and under the direct recruits quota, could not have been shown as occupying the posts of Deputy Collectors (Entry Level); these posts should have been shown as vacant; and by showing those Deputy Collectors (Entry Level), who never joined duty in the State of Uttarakhand, as occupying the posts of Deputy Collector (Entry Level) in the State of Uttarakhand, the State Government is showing lesser number of vacancies in the sanctioned posts of Deputy Collectors (Entry Level), though the actual vacancies, both under the direct recruits/promotees quota are far more.

13. Sri Siddhartha Singh, learned counsel for the petitioners, would further submit that 09 Tehsildars, who were promoted as Deputy Collectors (Entry Level) in the year 2006-07, never joined duty in the State of Uttarakhand, despite which they were promoted as Deputy Collectors (Entry Level) in the year 2006-07, and were erroneously shown as occupying the post of Deputy Collectors (Entry Level) in the State of Uttarakhand.

14. On the other hand Sri J.P. Joshi, learned Additional Advocate General appearing on behalf of the State of Uttarakhand, Sri Rajendra Dobhal and Sri A.S. Rawat, learned Senior Counsel, Sri K.P. Upadhyaya and Sri H.M. Bhatia, learned counsel, appearing on behalf of the direct recruits, would seek to sustain the Office Memorandum dated 21.10.2015, and would contend that the said list prepared by the State Government is in order.

15. The submission, urged on behalf of the respondents, is that a tentative list, for allotment of Deputy Collectors (Entry Level) to the State of Uttarakhand, was prepared on 04.12.2002, objections were invited, and a list of Deputy Collectors (Entry Level) finally allotted to the State of Uttarakhand was published on 22.04.2003, whereby 39 Deputy Collectors (Entry Level) were finally allotted (i.e. 11 direct recruits and 28 promotees); thereafter final allotment orders were periodically issued by the Central Government by its orders dated 08.4.2011, 20.09.2011, 09.01.2012, 08.12.2013 & 09.06.2013 under Section 73 of the Uttar Pradesh State Re-organization Act; as a result of these final allotment orders, 54 Deputy Collectors (Entry Level) (i.e. 21 direct recruits and 33

promotees) were finally allotted to the State of Uttarakhand; thereafter, by proceedings dated 02.09.2015, 13 Deputy Collectors (07 direct recruits and 06 Promotees) were allotted to the State of Uttarakhand; of these 67 finally allotted Deputy Collectors (Entry Level), 28 were direct recruits and 39 were promotees; and since the final allotment orders, of all these officers, specifically states that the allotment related back to 09.11.2000, when the State of Uttarakhand came into being, they were all rightly shown as occupying the posts of Deputy Collectors (Entry Level) (both under the promotees and the direct recruits quota) from the year 2000-2001 onwards, though they joined the State of Uttarakhand, consequent on final allotment orders being issued by the Central Government from time to time upto September, 2015, except those who either retired in the meanwhile in the State of Uttar Pradesh or had died or had sought voluntary retirement from service in the State of Uttar Pradesh.

16. It is also submitted, on behalf of the respondents, that, while the State of Uttarakhand exercises no control over when final allotment orders are to be issued by the Central Government, the information received by them, and which has been tabulated in the form of a chart, would show that the Central Government was disabled from passing orders, finally allotting them to the State of Uttarakhand, only because these Deputy Collectors (Entry Level) had initially obtained an interim order from the Allahabad High Court restraining the respondents therein from finally allotting them to the State of Uttarakhand; and, even after these writ petitions were dismissed by the Allahabad High Court, they had all approached the Supreme Court; and, in view of the interim orders passed in the Special Leave Petitions, final allotment orders were issued by the Government of India, several years thereafter, only after these interim orders were vacated by the Supreme Court.

17. Mr. Vikram Singh Negi, an officer in the cadre of Deputy Collector (Entry Level), was among those finally allotted to the State of Uttarakhand. He is shown, in the tables enclosed to the Office Memorandum dated 21.10.2015, as occupying the post of Deputy Collector (Entry Level) during the years 2000-01 to 2002-03. Since he was promoted as a Deputy Collector (Selection Grade) in the year 2003-04, the table enclosed to Office Memorandum dated 21.10.2015 records the vacancy, caused on the promotion of Mr. Vikram Singh Negi, as having arisen during the year 2003-04. We must, therefore, express our inability to agree with the submission of Mr. Siddhartha Singh, learned counsel for the petitioners, that the Office Memorandum dated 21.10.2015 wrongly reflects the name of Mr. Vikram Singh Negi as Deputy Collector (Entry Level) during the years 2001-02 and 2002-03.

18. Sri D.P. Giri was among the seventy Deputy Collectors (Entry Level) who were tentatively allotted to the State of Uttarakhand. He initially obtained an interim order in Writ Petition No. 46704 of 2004 from the Allahabad High Court on 11.02.2003; and, after the said writ petition was dismissed by the Allahabad High Court on 11.12.2003, he filed SLP Civil No.122 and 127 of 2004 before the

Supreme Court, and continued to serve the State of Uttar Pradesh in view of the interim order passed by the Supreme Court on 07.01.2004. Sri D.P. Giri, subsequently, withdrew the Special Leave Petition, and sought mutual transfer with Sri B.S. Manral, an officer allotted to the State of Uttar Pradesh, who sought to be allotted to the State of Uttarakhand; and this request for mutual transfer was acceded to on 13.03.2008. In the light of aforesaid orders, passed by the Allahabad High Court and the Supreme Court, Sri D.P. Giri, though tentatively allotted to the State of Uttarakhand, did not join duty in the State of Uttarakhand, and continued to serve the State of Uttar Pradesh.

19. As against the sanctioned strength of 70 Deputy Collectors (Entry Level) fixed for the State of Uttarakhand (35 promotees and 35 direct recruits), only 67 Deputy Collectors (Entry Level) were finally allotted to the State of Uttarakhand, and the remaining three i.e. Sri Shiv Shankar (promotee), Sri Bansh Gopal Maurya (promotee) and Sri D.P. Giri (direct recruit) were not finally allotted to the State of Uttarakhand, though their names were reflected in the tentative allotment list. As a result, the names of these three individuals, including Sri D.P. Giri, have not been shown, as having occupied any of the posts of Deputy Collectors (Entry Level), in the office memorandum dated 21.10.2015. Though Sri D.P. Manral continued to work in the State of Uttarakhand, his name is also not reflected in the office memorandum dated 21.10.2015 as having occupied any one of the posts of Deputy Collectors (Entry Level) since he was not finally allotted to the State of Uttarakhand during the relevant period 2000-01 to 2006-07.

20. As neither Sri D.P. Giri nor Sri B.P. Manral are shown as occupying any one of the posts of Deputy Collectors (Entry Level) in the office memorandum dated 21.10.2015, their cases have no bearing on the vacancy position of officers in the cadre of Deputy Collectors (Entry Level). The State Government has placed before us a list of 18 Deputy Collectors Entry Level (4 direct recruits and 14 promotees) who did not join the State of Uttarakhand despite which they were shown to have occupied the posts of Deputy Collectors (Entry Level). Of the 67 Deputy Collectors (Entry Level), who were finally allotted to the State of Uttarakhand by the Government of India, only 49 officers joined. The list of the 18 officers who did not join duty in the State of Uttarakhand, and their details, are as under:

Sr. No.

Name of the Officers

Source of Appointment

Cat.

High Court Cases

Supreme Court Cases

Remarks

Case Nos

Case Status

Case Nos

Case Status

1

Sh. Sanjeev Kumar Yadav

Direct Rec.

OBC

-

-

-

-

Resigned from service on 31-10- 2002

2

Sh. Moh. Tahi

Promotee

GEN

Stay in writ no. 19883/200 3 dated 08.05.2003.

Writ dismissed on 11.12.2003

SLP(C) 24221- 24243/200 3

Dismissed on 12.02.2015

Voluntary Retirement on 31-07-2011

3

Sh. Moh. Ayub

Promotee

GEN

Stay in writ no. 45841/200 2 dated 25.10.2002.

Writ dismissed on 25.01.2012

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Retired on 31.08.2009

4

Sh. Matafer Saroj

Promotee

GEN

Stay in writ no. 20075/200 3 dated 09.05.2003.

Writ Dismissed on 11.12.2003

SLP(C) 943/2004 Stay granted on 14.01.2004

Dismissed on 12.02.2015

Retired on 31.12.2012

5

Sh. Nizamud din

Promotee

GEN

Stay in writ no. 47847/200 2 dated 11.11.2002.

Writ dismissed on 11.12.2003

SLP(C) 24221- 24243/200 3

Dismissed on 12.02.2015

Retired on 31.08.2016

6

Sh. Surendra Dutt

Promotee

GEN

Stay in writ no. 1601(SB)/ 2002 dated 22.11.2002.

Writ dismissed on 11.12.2003

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Retired on 31.12.2016

7

Sh. Jaipal Singh

Promotee

GEN

Stay in writ no. 19982/2003 dated 08.05.2003.

Writ dismissed on 11.12.2003

SLP(C)880 -882/2004 Stay granted on 14.01.2004

Dismissed on 12.02.2015

Retired on 30.11.2010

8

Sh. Chaturbh ugi Gupta

Promotee

GEN

Stay in writ no. 48289/2002 dated 13.11.02. Writ no. 17659/2016

Writ dismissed on 11.12.2003 Dismissed on 23.08.2016

SLP(C) 000145/2004 status quo on 07.01.2014 SLP Civil 27531/2016 Status quo granted on 16.09.2016

Dismissed on 12.02.2015 PENDING Matter listed for next hearing on 13.09.2019

Currently serving in Uttar Pradesh

9

Sh. Harikrish na Nath Tripathi

Direct Rec.

GEN

Stay in writ no. 47425/2002 dated 31.10.2002

Writ dismissed on 11.12.2003

SLP(C) 24078-85 of 2003 Stay granted on 18.12.2003

Dismissed on 12.02.2015

Died on 25.02.2014 pending final allocation

10

Sh. Sita Ram Gupta

Promotee

GEN

Stay in writ no. 48286/200 2 dated 18.10.2002

Writ dismissed on 11.12.2003

SLP(C) 143/2004 status quo on 07.01.2014 SLP Civil 30313/201 6 Status quo granted on 16.09.2016

Dismissed on 12.02.2015 PENDING Matter last listed on 10.04.2018

Currently serving in Uttar Pradesh

11

Sh. Ram Shankar Pandey

Promotee

GEN

Stay in writ no. 47872/200 2 dated 11.11.02

Writ dismissed on 11.12.2003

SLP(C) 144/2004 status quo on 07.01.2014

Dismissed on 12.02.2015

Retired on 31.07.2008 pending final allocation

12

Sh. Vijay Kumar Yadav

Direct Rec.

OBC

Stay in writ no. 45201/200 2 dated 28.10.2002

Writ dismissed on 11.12.2003

SLP(C) 24221- 24243/200 3 Status quo granted on 07.01.2004 SLP Civil 15065/201 8. Status quo granted on 06.07.2018.

Dismissed on 12.02.2015 PENDING Matter listed for hearing in Hon'ble Supreme Court

Relieved by Govt. of Uttar Pradesh on 03.04.2018. Not joined Uttarakhand

13

Sh. Prakash Chandra Tiwari

Promotee

GEN

Stay in writ no. 46468/200 2 dated 28.10.2002

Writ dismissed on 11.12.2003

SLP(C) 122- 127/2004 Status quo granted on 07.01.2004

Dismissed on 12.02.2015

Retired on 31.08.2009 pending final allocation

14

Sh. Vijay Bahadur

Promotee

SC

Stay in writ no. 40239/200 2 dated 31.10.2002

Writ dismissed on 11.12.2003

SLP(C) 93/2004 status quo on 07.01.2004

Dismissed on 12.02.2015

Retired on 31.12.2009 pending final allocation

15

Sh. Ashok Kumar Singh

Direct Rec.

SC

Stay in writ no. 47333/200 2 dated 31.10.2002

Writ dismissed on 11.12.2003

SLP(C) 880- 882/2004 Interim order on 14.01.2004

Dismissed on 12.02.2015

Dismissed from service on 10.05.2007

16

Sh. Jhillu Ram

Promotee

SC

Stay in writ no. 46469/200 2 dated 28.10.2002

Writ dismissed on 11.12.2003

SLP(C) 94/2004 status quo on 07.01.2014

Dismissed on 12.02.2015

Retired on 31.12.2008 pending final allocation

17

Sh. Arvind Kumar Vishnoi

Promotee

GEN

Stay in writ no. 48613/200 2 dated 14.11.2002

Writ dismissed on 11.12.2003

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Retired on 31.07.2010 pending final allocation

18

Sh. Krishna Lal

Promotee

GEN

Stay in writ no. 46517/200 2 dated 28.10.2002. Writ no. 17659/201 6 filed.

Writ dismissed on 17.01.2012 Writ dismissed on 23.08.2016

SLP Civil 18324/201 6 Status quo granted on 27.09.2016

PENDING Matter last listed on 10.04.2018

Currently serving in Uttar Pradesh.

21. The aforesaid table discloses that, except for Sri Sanjeev Kumar Yadav who resigned from service on 31.10.2002 on his selection to the IRS, the remaining 17 Deputy Collectors (Entry Level) continued to serve in the State of Uttar Pradesh, during the relevant period 2000-01 to 2006-07, in view of the interim orders passed by the Allahabad High Court initially, and thereafter by the Supreme Court. Since Sri Sanjeev Kumar Yadav was among the 67 Deputy Collectors (Entry Level) who were finally allotted to the State of Uttarakhand, and as he resigned from service on 31.10.2002 even before he joined the State of Uttarakhand, his name was reflected, among the officers holding the posts of Deputy Collectors (Entry Level) in the State of Uttarakhand, only for the first year 2001-2002. The post occupied by him is however shown, in the table enclosed to the Office Memorandum dated 21.10.2015, as vacant in the year 2002-03.

22. Section 73(1) of the Uttar Pradesh Re-organization Act (for short "the Act")

stipulates that, every person who immediately before the appointed day (09.11.2000) was serving, in connection with the affairs of the existing State of Uttar Pradesh, shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of the State of Uttaranchal. In terms of Section 73 (1) of the Act, a tentative list of 70 Officers in the Cadre of Deputy Collectors (Entry Level) was prepared which included the names of the 18 Officers, referred to in the afore-extracted table, who continued to serve the State of Uttar Pradesh, and had demitted office therefrom (because of retirement, death, voluntary retirement, resignation, promotion etc).

23. Section 73 (2) of the Act stipulates that, as soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person, referred to in sub-section (1), shall be finally allotted for service on the date with effect from which such allotment shall take effect, or be deemed to have taken effect. Section 73 (3) stipulates that, every person who is finally allotted under the provisions of Section 73(2) to a successor State, shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or, in default of such agreement, as may be determined by the Central Government.

24. As is evident from the Office Memorandum dated 21.10.2015, 67 Deputy Collectors (Entry Level) were finally allotted to the State of Uttarakhand, albeit on different dates. While final allotment orders were issued by the Government of India till the last such order was issued on 02.09.2015, all the final allotment orders, beginning from 22.04.2003 till 02.09.2015, provide that the final allotment is with effect from 09.11.2000 (the appointing day). The final allotment order issued to 67, of the 70, tentatively allotted Deputy Collectors (Entry Level) with effect from 09.11.2000 is in terms of Section 73(2) of the Act which requires the Central Government, by general or special order, not only to determine the successor State to which the officer should be finally allotted to, but also the date from which such allotment shall be deemed to have taken effect.

25. While Sri Siddharth Singh, learned counsel for the petitioners, is justified in his submission that these 18 Officers never joined the State of Uttarakhand (4 Direct Recruits and 14 Promotees), the aforesaid table shows that the final allotment orders could not be issued with respect to 17 of these Officers (other than Sri Sanjeev Kumar Yadav who resigned on 31.10.2002) earlier, since they had obtained interim orders firstly from the Allahabad High Court and, after the Writ Petitions filed by them were dismissed by the Allahabad High Court, then from the Supreme Court.

26. Sri A.S. Rawat, learned Senior Counsel appearing on behalf of some of the direct recruits, has placed before us a copy of the order passed by the Supreme

Court, in Special Leave Petition (C) No. 24079-24081 and 24085 of 2003 dated 12.02.2015, to submit that it is pursuant to this order that the last batch of 13 Officers were finally allotted to the State of Uttarakhand vide proceedings dated 02.09.2015, making it clear that they were being recommended for final allotment to the State of Uttarakhand w.e.f. 09.11.2000. It does appear, therefore, that it is because of the interim orders passed by the Allahabad High Court, and the Supreme Court, that the Central Government was disabled from finally allotting these 17 Officers to the State of Uttarkhand. However, as they were all tentatively allotted to the State of Uttarakhand, vide proceedings dated 04.12.2002, their names are reflected, in the Office Memorandum of the Government of Uttarakhand dated 21.10.2015, as occupying the posts of Deputy Collectors (Entry Level) during the relevant period 2000-01 to 2006-07.

27. Sri Siddharth Singh, learned counsel for the petitioners, would submit that some Tehsildars, who did not join duty in the State of Uttarakhand and retired from service in the State of Uttar Pradesh, were also shown to have been promoted as Deputy Collectors (Entry Level) in the State of Uttarakhand in the year 2006-07. While Sri J.P. Joshi, learned Additional Advocate General for the State, would submit that this contention, urged on behalf of the petitioners, is an after-thought and is not supported by any pleadings on record, Sri A.S. Rawat, learned Senior Counsel appearing on behalf of respondent nos. 6, 17, 18 & 19, would contend that all the Tehsildars were promoted, as Deputy Collectors (Entry Level) in the year 2006-07, only because they were working in the State of Uttarakhand; and this is evident from the fact that their promotions were effected by the Departmental Promotion Committee constituted by the Uttarakhand Public Service Commission.

28. It is true that 09 Teshildars i.e. (1) Jitendra Bahadur Singh (2) Satish Chandra Shukla (3) Ramkher Yadav (4) Ghasi Ram Rathaur (5) Ram Prasad (6) Ram Bhawan Singh (7) Satish Chandra Shukla (8) Bhairpal (9) Satendra Kumar Singh did not join duty in the State of Uttarakhand during the subject period ending 2006-2007. As noted hereinabove, the order of the Supreme Court dated 25.04.2018 requires us only to examine whether the office memorandum, issued by the State Government on 21.10.2015, depicts the correct position of the quotas of direct recruits and promotees in the Cadre of Deputy Collectors (Entry Level). The said order of the Supreme Court does not require us to examine whether the Teshildars, finally allotted to the State of Uttarakhand, could have been shown as occupying the posts of Tehsildars in the State of Uttarakhand, though they continued to serve in the State of Uttar Pradesh during the relevant period from 2001-2002 and 2006-2007.

29. This issue need not detain us, since Sri H.M. Bhatia, learned counsel appearing on behalf of some of the direct recruits-Deputy Collectors, would rightly submit that, of the 16 Tehsildars who were promoted as Deputy Collectors (Entry Level) in 2006-07, 12 of them were the petitioners themselves; and the remaining 04 who were promoted, i.e. Sri Narayan Dutt Pandey, Sri Dharmanand

Ghildiyal, Sri Manmohan Singh and Sri Parvesh Chandra, were all working in the State of Uttarakhand as Tehsildars when they were promoted as Deputy Collectors (Entry Level) in 2006-07.

30. When we asked Sri Siddharth Singh, learned counsel for the petitioners, to show us from the material on record whether the nine Tehsildars, as referred to hereinabove, were in fact promoted as Deputy Collectors (Entry Level) in the State of Uttarakhand, learned counsel would submit that, while these nine Tehsildars may not have been promoted, they were nonetheless considered for promotion as Deputy Collectors (Entry Level); and such consideration itself is illegal. The exercise which we are required to undertake, in terms of the order of the Supreme Court dated 25.04.2018, is only to determine the vacancies available in the cadre of Deputy Collectors (Entry Level) both under the promotees quota, and under the direct recruits quota, for the relevant period 2000-01 to 2006-07. It is only if the aforesaid nine Tehsildars had been promoted, would they then have occupied the posts of Deputy Collector (Entry Level), resulting in a reduction in the number of vacancies available in the said posts. It is not for us to examine, in these proceedings, whether these nine Tehsildars, who are said to be still working in the State of Uttar Pradesh, could have been considered for promotion or not, since it does not appear to be in dispute that none of these nine Tehsildars were promoted as Deputy Collectors (Entry Level). Even otherwise, mere consideration of a Tehsildar for promotion as Deputy Collector (Entry Level), without his actually being promoted as such, would have no bearing on the vacancy position of Deputy Collectors (Entry Level), under the promotees quota, for the relevant period 2000-01 to 2006-07

31. The year-wise vacancy position, in the promotees and direct recruits quota in the cadre of Deputy Collectors (Entry Level), for the years 2000-01 to 2006-07, is as under:-

End of the Year

Promotee Quota

Direct Recruits Quota

2000-01

(-) 02 [(-)6 General and (+) 4 SC]

07 (03 General, 02 SC and 02 OBC) (3 ST in excess of Quota accommodated against General category)

2001-02

(-) 02 [(-)2 General]

07 (05 General and 02 SC)

2002-03

03 [(-) 1 General and 4 SC]

08 (06 General and 02 SC)

2003-04

06 (02 General and 04 SC)

09 (07 General and 02 SC)

2004-05

10 (05 General, 04 SC and 01 ST)

09 (07 General and 02 SC)

2005-06

17 (10 General, 05 SC and 02 ST)

15 (12 General and 03 SC)

2006-07

02 [(-) 05 General, 05 SC and 02 ST]

(-) 03 [(+)1 General, (-3) OBC and (-)1 SC]

32. We are satisfied, therefore, that the Office Memorandum issued by the State Government dated 21.10.2015, determining the vacancy position at the end of 2006-7 as 02, (05 excess in general category plus 05 vacancies for Scheduled Castes and 02 vacancies for the Scheduled Tribes) in the quota earmarked for Deputy Collectors (Entry Level) by promotion, is in order. Likewise, the cumulative vacancies at the end of the year 2006-07, with respect to Deputy Collectors (Entry Level) in the direct recruits quota, is (-) 03 i.e. (01 vacancy in the general category, 03 excess in the OBC category and 01 excess in the Scheduled Caste category), and has been rightly reflected in the office memorandum dated 21.10.2015.

33. The Writ Petition is disposed of holding that the year-wise vacancy position of Deputy Collectors (Entry Level), both under the promotees/direct recruits quota, during the period 2000-01 to 2006-07, has been correctly reflected in the office memorandum of the Government of Uttarakhand dated 21.10.2015. No costs.