
(2011) 11 UK CK 0099

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 237 of 2006

Bhagwati Prasad Madhwal

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2011) 11 UK CK 0099

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—On 20th July, 1989, petitioner and respondent No. 5 were appointed as Assistant Director, Fisheries, by the State of Uttar Pradesh. The order, by which they were appointed, suggested that the petitioner is being appointed on a permanent post, whereas respondent No. 5 is being appointed on a temporary post. The position of the petitioner, in the said list, was also higher than the position of respondent No. 5. In 1994, State of Uttar Pradesh made rules regarding recruitment to the posts, in which the petitioner and respondent No. 5 were working, as well as higher posts in the cadre. In terms thereof, an Assistant Director, having had served for 5 years, would be entitled to be promoted to the post of Deputy Director, on the basis of seniority subject to rejection on the ground of unfit. Similarly, a Deputy Director shall be entitled to be promoted to the post of Joint Director after having had served as a Deputy Director for 5 years, on the basis of seniority subject to rejection on the ground of unfit. In 1995, respondent No. 5 had completed 5 years as Assistant Director and, accordingly, became eligible for being promoted to the post of Deputy Director. In 1995, a post of Deputy Director was available, which could only be supplied by an Assistant Director, who belongs to Scheduled Caste community. Accordingly, case of promotion of respondent No. 5 was taken up and he having been found senior-most to supply the said post and there being no ground to reject him, respondent No. 5 was promoted to the post of Deputy Director in the year 1995.

2. On 9th November, 2000, carving out a part of the State of Uttar Pradesh, State of Uttarakhand was created. Soon thereafter, respondent No. 5 was allocated to the State of Uttarakhand. At the time respondent No. 5 was allocated to the State of Uttarakhand, he was a Deputy Director and, accordingly, he joined the State of Uttarakhand as Deputy Director, Fisheries. Respondent No. 5 was accommodated in the post of Deputy Director, Dehradun, at the relevant time. On 3rd July, 2001, the post of Deputy Director, Dehradun, was upgraded to the post of Joint Director and, at the same time, respondent No. 5 was also upgraded from Deputy Director to Joint Director.

3. While the State of Uttarakhand was created, petitioner exercised his option for being allocated to the State of Uttar Pradesh. However, on 4th August, 2005, contrary to his option, petitioner was allocated to the State of Uttarakhand. On 27th September, 2005, petitioner joined the State of Uttarakhand. In the meantime, on 25th February, 2005, petitioner was promoted by the State of Uttar Pradesh to the post of Deputy Director, Fisheries. Accordingly, on 27th September, 2005, petitioner joined the services of the State of Uttarakhand as Deputy Director, Fisheries. No sooner he joined the State of Uttarakhand, petitioner came to learn that respondent No. 5 has been upgraded as Joint Director on 3rd July, 2001 and, accordingly, he made a representation to upgrade him to the post of Joint Director, Fisheries, also w.e.f. 3rd July, 2001. Since this representation remained in the cold storage, petitioner has filed the present writ petition seeking notional promotion / upgradation from 3rd July, 2001.

4. While a post is upgraded and, thereby, the post, which is being upgraded, is abolished and the post, to which the same is upgraded, is created, as was done on 3rd July, 2001, by abolishing one post of Deputy Director and creating one post of Joint Director; question of posting the person, serving in the abolished post, in the higher post created by abolishing the inferior post, did not arise, when the Rules made it absolutely clear that the higher post can be held by a person, who has been found by a selection committee to be fit to be posted there, although the criteria of selection may be seniority subject to rejection on the ground of unfit, inasmuch as, the selection committee is required to see whether the person is liable to be rejected on the ground of unfit. In the circumstances, respondent No. 5 could not be accommodated in the newly created post of Joint Director. However, that having been done on 3rd July, 2001, the clock cannot be put back at the instance of the petitioner, who became a member of the cadre of the State in the year 2005. In the matter of upgradation of respondent No. 5, the said respondent had no role to play. The power to upgrade, in terms of the Rules, was vested with the State Government. Though the Rules, then applicable, referred to the post of a Joint Director, but there was no Joint Director at the relevant time. Respondent No. 5, in such circumstances, if had moved a proposal for creation of a post of Joint Director, the same cannot be called in question.

5. Inasmuch as the post of Joint Director is the only post, question of keeping

the said post reserved for any community did never arise. In the circumstances, in the said post, anyone could be promoted, who was suitable for being promoted in accordance with the promotion policy envisaged in the Rules, namely, seniority subject to rejection on the ground of unfit. The fact remains that, on 3rd July, 2001, respondent No. 5 had acquired eligibility for being considered to be promoted to the post of Joint Director. As on that date, petitioner was not even a member of the cadre of the State and, accordingly, petitioner, on 3rd July, 2001, could not be considered for being promoted to the said post of Joint Director.

6. It is true that the petitioner is senior to respondent No. 5. But the fact remains that the petitioner became a Deputy Director only on 25th February, 2005 and, accordingly, he had to wait until 25th February, 2010 to acquire the basic required qualification for being promoted to the post of Joint Director. In 2006, when the petitioner filed the present writ petition, he had no basic required qualification for being promoted to the post of Joint Director. He, accordingly, could not ask for being promoted even on notional basis to the post of Joint Director as on the date of presentation of the writ petition.

7. Since the State Government has upgraded the post of Deputy Director, Dehradun, to the post of Joint Director, petitioner is also asking for a similar mandate for upgradation of the post of Deputy Director, in which he has been accommodated in the State of Uttarakhand. In other words, he is praying that the post of Deputy Director, held by him, be abolished and, in its place, a post of Joint Director be created. Whether the same would be appropriate or not will be required to be considered consistently with the touchstone of maintenance of efficiency of administration and the affairs of the State. It may be appropriate on the part of the State to consider the same, but, insofar as the petitioner is concerned, he has not been able to make out any case for issuing a direction upon the State to do so. As aforesaid, even if it is decided by the State to upgrade the post of Deputy Director, held by the petitioner, or any other post of Deputy Director available in the State to the post of Joint Director, question of the petitioner being upgraded to the post of Joint Director, de hors the Rules, will not arise. Because the State has done something, which is not permissible, and, accordingly, respondent No. 5 is getting certain advantages, the same will not permit the Court to direct the State to act contrary to the Rules and contrary to the conscience.

8. Since it has come on record that it may be useful to have more than one Joint Directors, it shall be open to the State to decide whether to create another post of Joint Director and, if such a decision is taken, it is hoped and expected that the said post, even if created by upgradation of a post of Deputy Director, shall be filled-up only in accordance with the Rules.

9. This disposes of the writ petition.