
(2011) 07 UK CK 0135

In the Uttarakhand High Court

Case No : Writ Petition No. 380 of 2004 (S/B)

Birendra Singh Heet Bist

APPELLANT

Vs

Additional Chief Secretary and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Citation : (2012) 2 UC 1220 : (2011) 2 UD 289

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—The facts, to which there appears to be no dispute, are that the petitioner was Deputy Director in the Education Department of the State of Uttar Pradesh and, after creation of the State of Uttarakhand, he became Deputy Director in the Education Department of the State of Uttarakhand. While he was Deputy Director, Education Department, State of Uttarakhand; he was asked by the State of Uttarakhand on 6th June, 2002 to discharge the duties of Joint Director, in officiating capacity. According to Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 (hereinafter referred to as the said "Rules"), applicable to this State also, the criterion for promotion from the post of Deputy Director to the post of Joint Director is "seniority subject to the rejection of unfit" to be determined through a selection committee comprising of those mentioned in Sub-rule (2) of Rule 17 of the said Rules. On 13th February, 2004, when the Petitioner was already discharging the duties attached to the post of Joint Director in the Department of Education of the State of Uttarakhand, in officiating capacity, an exercise was undertaken for giving regular promotion to deserving Deputy Directors, Education, to the post of Joint Director, Education. The case of the Petitioner was also considered by the selection committee constituted by and under the said Rules. They recorded that the Petitioner is unfit. The reason for declaring the Petitioner unfit was not indicated. At the same time, juniors to the Petitioner were found fit and,

accordingly, ignoring the seniority of the Petitioner, juniors to the Petitioner were given regular promotion to the post of Joint Director. This action compelled the Petitioner to file a writ petition, which was presented on 4th December, 2004.

2. Though the State filed counter affidavit, but did not indicate therein the reason or a plausible reason for holding that the Petitioner was unfit. On the last occasion, when the matter was considered, it was contended that the Annual Confidential Report of the Petitioner, for the year 2002-03, is the reason for adjudging the Petitioner unfit. We found that the said Annual Confidential Report nowhere indicated that the Petitioner is unfit. In the circumstances, learned Counsel for the State sought further time to bring on record more documents likely to be useful for adjudicating the matter. On certain conditions imposed by an order dated 2nd December, 2010, the State was permitted to file a further affidavit to bring on record further documents the State intended to rely. Accordingly, an affidavit has been filed. In that, it has been indicated that because of the adverse Annual Confidential Report of the Petitioner, for the year 1995-96, Petitioner was found unfit. A copy of the Annual Confidential Report of the Petitioner, for the year 1995-96, has been annexed to the said affidavit. It appears that, in the said Annual Confidential Report, Director of Education (Madhyamik), Uttar Pradesh made an endorsement on 1st January, 1996 in his capacity as Reviewing Officer. In the said endorsement, it was stated that the Petitioner is an "ordinary officer". With that, it was added that while choosing examination halls for the Madhyamik Siksha Parishad, 1996, Petitioner did not choose the same correctly, resulting in the Parishad facing many a difficulties. In consequence, a case was filed by one school before the Hon'ble High Court. After having had written so, it was written that it is required for the Petitioner to be vigilant of his duties in future. It is contended that the said remark was approved by the Accepting Authority and, thereupon, the same was communicated to the Petitioner and the Petitioner, proceeding on the basis that the remark so given by the Reviewing Authority, was adverse; filed a representation unsuccessfully for expunging the same and, as such, Petitioner himself had accepted that the said remark was an adverse entry against him.

3. The remark, as above, under no stretch of imagination, can be read as an adverse entry. The same was incorporated only for the purpose of guiding the Petitioner for the future. In the event, the said entry was an adverse entry, the question of Reviewing Authority adjudging the Petitioner as an "ordinary officer" would never have arisen. He would have had adjudged him as a poor or a below standard officer. Despite many requests made by us, the learned Counsel for the State has not been able to bring to our notice rules governing adjudication of an officer as unfit. Adjudging an officer as an "ordinary officer" by the Reviewing Authority and by the Accepting Authority is an adjudgment that the officer as unfit, has not been brought on record. The conclusion, therefore, would be that the State has utterly failed to support the finding of the selection committee that the Petitioner was unfit for promotion, as was found by them on 13th February, 2004. That being the situation and there being no dispute that the Petitioner was

senior to many, who were selected for promotion by the selection committee on 13th February, 2004, the one and the only conclusion would be that, for no just reason, the promotion, otherwise due to the Petitioner on account of seniority, was unjustly denied to him, purporting to holdout that the Petitioner is unfit. Significant it is to mention that the entry, referred to above, given by the Reviewing Authority, is dated 1st January, 1996, whereas the entry, given by the first Adjudicating Authority, is dated 31st March, 1996, which suggested that the Petitioner is an excellent officer. It is not known which remark was accepted by the Accepting Authority, was it the remark dated 1st January, 1996 or the remark dated 31st March, 1996.

4. Admittedly, since prior to 13th February, 2004, Petitioner was discharging duties of Joint Director and continued to do so until his retirement during the pendency of the writ petition, we mould the relief while allowing the writ petition and declare that the Petitioner stands selected for being promoted on 13th February, 2004 itself, when the selection committee, for no just reason, found the Petitioner unfit for promotion, and direct the State to reach, to the Petitioner, the benefits of the said promotion. Petitioner shall not only be entitled to all the monetary benefits of that promotion from the date the others obtained such benefits on the basis of the selection made on 13th February, 2004, but such benefits shall also be reflected in the retiral and other dues of the Petitioner. We have, with great effort, restrained ourselves from imposing exemplary costs in the matter against the State.