
(2014) 06 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (MS) No. 1438 of 2014

Committee of Management

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Uttaranchal School Education Act, 2006 — Section 37

Citation : (2015) 2 UC 1131

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Parikshit Saini, Advocate for the Appellant; Shailendra Singh Chauhan, learned Deputy Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Brief facts of the present case inter alia are that petitioner institution was permitted vide order dated 11.11.2011 to initiate recruitment process to fill up three vacant posts of Class IV; posts were advertised on 20.11.2011; interview was held on 20.12.2011; select list, as prepared by the Selection Committee, was sent for approval on 20.12.2011 to the District Education Officer (now Chief Education Officer); when nothing was heard, petitioners were compelled to file Writ Petition No. 2690 of 2013 (MS) before this Court; this Court, vide order dated 10.04.2014, was pleased to dispose of Writ Petition No. 2690 of 2013 (MS) with a direction to respondent No. 3 to take appropriate decision afresh on the representation of the petitioners dated 20.12.2011 seeking approval of the select list sent by the Selection Committee; it has further been held in the judgment dated 10.04.2014 that since selection process was initiated prior to the Government Order dated 14.12.2011 imposing ban on the recruitment of Class IV posts, therefore, Government Order dated 14.12.2011 shall have no application in the present case; Chief Education Officer, Haridwar/respondent No. 3 herein, vide impugned order (Annexure 8 to the writ petition), was pleased to reject the select list prepared and sent by the Selection

Committee on the ground that the Selection Committee was not constituted as per sub Section (4) of Section 37 of the Uttaranchal School Education Act, 2006 and no prior approval was sought and obtained for holding the interview; it was further observed in the impugned order that no material was placed before the Chief Education Officer to the effect that candidates were informed by registered post about the date of the interview; another ground for rejection was that Government has imposed ban on the recruitment of Class IV posts vide G.O. dated 14.12.2011, thus no appointment. Feeling aggrieved, petitioners have once again approached this Court by way of the present writ petition.

2. I have heard Mr. Parikshit Saini, Advocate, appearing for the petitioners and Mr. Shailendra Singh Chauhan, learned Deputy Advocate General assisted by Mr. Gajendra Tripathi, Brief Holder for the State of Uttarakhand/respondents, and have carefully perused the records. Section 37 of the Uttaranchal School Education Act, 2006 reads as under:

37. Constitution of Selection Committees-(1) For the selection of candidates for appointment as Head of an Institution, there shall be a Selection Committee consisting of-

(i) the President or any member of the Committee of Management nominated by the Committee by resolution in that behalf, who shall be the Chairman;

(ii) a member to the Committee of Management other than the one referred to in Clause (i), nominated by it in this behalf;

(iii) three experts nominated by the Regional Additional Director of Education from persons not belonging to the district in which the institution is situated, out of the panel of names prepared under this section.

(2) For the selection of candidates for appointment as teacher in an institution, there shall be a Selection Committee consisting of-

(i) the President or any member of the Committee of Management nominated by the Committee by resolution in that behalf who shall be the Chairman;

(ii) the Head of such institution;

(iii) three experts nominated by the District Education Officer from persons not belonging to the district in which the institution is situated, out of the panel of names prepared under this section.

(3) For the selection of candidates for appointment as clerical (ministerial) staff in an institution, there shall be a Selection Committee consisting of-

(i) the President or any member of the Committee of Management nominated by the Committee by resolution in that behalf who shall be the Chairman;

(ii) the Head of such institution;

(iii) one officer nominated by the District Education Officer not below the rank of

provincial education service cadre.

(4) For the selection of candidates for appointment as group-D employee in an institution, there shall be a Selection Committee consisting of-

- (i) the Head of such institution;
- (ii) two senior teachers of the institution.

Provided that if there be no member of Scheduled Castes/Scheduled Tribes/Other Backward Classes in the selection committee so constituted, a person from above mentioned categories, possessing appropriate qualifications shall be nominated by the Regional Additional Director of Education or the District Education Officer. For the selection of group-D employee such a person shall be nominated by the Head of the institution.

(5) In respect of any institution for which authorized Controller has been appointed under this Act, the authorized Controller shall, in relation to such institution be deemed substituted, for the person referred to in Clause (i) and (ii) of subsection (1), or clause (i) of sub-section (2), or clause (i) of sub-section (3), as the case may be.

(6) A panel of experts for every region shall be drawn by the Director in such manners as may be prescribed and shall be revised once-every three years.

(7) The business of the Selection Committee shall be conducted in such manner as may be prescribed:

Provided that the majority of the total membership of a Selection Committee shall form the quorum of such Committee:

Provided further that no recommendation made by the Selection Committee in respect of any candidate shall be valid, unless two of the experts referred to in Clause (iii) of sub-section (1) or subsection (2), as the case may be, have agreed to it.

(8) No proceeding of the Selection Committee shall be invalid by reason only of a defect in its constitution or vacancy among its members.

3. As per sub-section (4) of Section 37, Selection Committee for the appointment on the post of Group-D in an Institution shall be consisting of (i) the Head of such Institution; (ii) two senior teachers of the Institution. Proviso to sub-section (4) provides that if one of the senior teachers of the institution does not belong to Scheduled Castes/Scheduled Tribes/Other Backward Classes, then such other member shall be nominated by the Regional Additional Director of Education or the District Education Officer, from the other teachers available in the Institution.

4. In the present case, Selection Committee was consisted of Principal/Head of the institution as well as Om Singh, lecturer in the institution and Shri Mainpal Singh, teacher LT Grade, working in the institution. Mr. Parikshit Saini, Advocate, appearing for the petitioners fairly submits that there is another lecturer, who is

senior to Shri Mainpal Singh, an LT Grade teacher. Mr. Parikshit Saini, however, submits that since senior to Shri Mainpal Singh does not belong to Scheduled Castes/Scheduled Tribes/Other Backward Classes category, therefore, Shri Mainpal Singh, who belongs to OBC category, was made member of the Selection Committee in view of the fact that one of the members should be of the Scheduled Castes/Scheduled Tribes/Other Backward Classes category.

5. The language of proviso to sub-section (4) of Section 37 of the Act provides that if one of the senior teachers of the Selection Committee does not belong to Scheduled Castes/Scheduled Tribes/Other Backward Classes category, then, in that eventuality, Regional Additional Director of Education or Chief Education Officer shall have power to nominate another junior teacher belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes category as member of the Selection Committee. Undisputedly, in the present case, Shri Mainpal Singh, LT Grade teacher, was never nominated by Regional Additional Director of Education or Chief Education Officer as a member of the Selection Committee. Therefore, constitution of the Selection Committee was in violation of proviso of sub-section (4) of Section 37 of the Act.

6. Mr. Parikshit Saini, learned Advocate appearing for the petitioners while referring to sub-section (8) of Section 37 submits that even if it is presumed that there was some illegality or irregularity in the formation of the Selection Committee, select list prepared by the said Selection Committee shall not be declared invalid and has to be accepted.

7. Having perused Section 37 carefully, I am of the view that sub-section (8) of Section 37 does not come in the way of Chief Education Officer while rejecting the recommendation of the Selection Committee on the ground of the invalid constitution of the Selection Committee. In my considered opinion, sub-section (8) of Section 37 can be pressed in service only when approval is accorded by the Chief Education Officer and the third person intends to challenge the selection on the ground of invalid constitution of the Selection Committee. I am taking this view because if sub-section (8) of Section 37 can be read to say that Chief Education Officer cannot reject the select list on the ground that the Selection Committee was not constituted legally, it would mean that, in any case, nomination by the Regional Additional Director of Education or by the District Education Officer would not be required and, in that event, proviso to sub-section (4) shall become useless. Consequently, I find no justification to take a contrary view to the view taken by the learned Chief Education Officer that Selection Committee was not validly constituted thus recommendation made by invalid Selection Committee cannot be accepted.

8. Since, no material was placed before the Chief Education Officer or before this Court to say that all the candidates were informed about the date of interview, therefore, view taken by learned Chief Education Officer on this aspect seems to be correct.

9. This Court in WPMS No. 2690 of 2013 has taken the view that if recruitment process has commenced prior to the Government Order dated 14.12.2011, then G.O. dated 14.12.2011 shall have no application. Thus, third ground taken by the Chief Education Officer on this aspect does not stand.

10. In view of the discussion made hereinbefore on two grounds of rejection, writ petition fails and is hereby dismissed. CLMA No. 6424 of 2014 also stands disposed of accordingly. No cost.