
(2019) 04 UK CK 0115

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 2389, 2396, 3114, 4021 Of 2018

Dalbeer Singh Danu

APPELLANT

Vs

Uttarakhand Subordinate Service Selection Commission &
Others

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Uttarakhand Subordinate Education (Trained Graduate Grade) Service Rules, 2014 —
Rule 15(1)

Citation : (2019) 04 UK CK 0115

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Vinay Kumar, Sudha Tamta, Pankaj Purohit, N.S. Pundir, Seema Sah

Final Decision : Allowed

Judgement

Manoj K. Tiwari, J

1. Heard learned counsel for the parties and perused the record.
2. Since common questions of fact and law are involved in these petitions, therefore, all these petitions are clubbed together and are being heard & decided by a common judgment. However, for the sake of convenience, facts of WPSS No. 2389 of 2018 are being considered.
3. The Uttarakhand Subordinate Service Selection Commission (Selecting Body) issued an advertisement on 3.01.2017 inviting applications for appointment to various Group 'C' posts, including the post of Assistant Teacher L.T. Grade (Post Code No. 87). Petitioner submitted online application for the post of Assistant Teacher L.T. Grade and participated in the written examination. According to the petitioner, he scored 62.75 marks out of 100 marks in the written examination, but he was not called for document verification, while candidates, who scored less marks than the petitioner, were called for document verification in Garhwal Region. Thus, feeling aggrieved, petitioner approached this Court seeking the

following reliefs:-

(i) Issue a writ, order of direction in the nature of Mandamus directing the respondent Selecting Body to include the name of the petitioner in the Provisional Merit List dated 31st May, 2018 and in the Provisional Merit List dated 19th July 2018 for the post of Assistant Teacher, L.T. Grade (English) General Branch (60%) in open category pursuant to the advertisement dated 3rd January 2017 issued by the UKSSSC, according to the merit of the petitioner.

(ii) Issue a writ, order or direction in the nature of Mandamus directing the respondent Selecting Body to recommend the name of the petitioner for appointment on the post of Assistant Teacher, L.T. Grade (English) General Branch (60%) in open category pursuant to the advertisement dated 3rd January 2017 issued by the UKSSSC, according to the merit of the petitioner.

4. Learned counsel for the petitioner submits that candidates, who scored upto 61.25 marks out of 100 marks, were recommended for appointment in Garhwal Region against the post of Assistant Teacher L.T. Grade (English), for which petitioner had also applied. He further submits that since it was a combined selection for Kumaon Region and Garhwal Region, therefore, there is no justification for preparing separate merit list for the two regions.

5. A counter affidavit has been filed by the Selecting Body in which the principal defence taken is that since petitioner had given option only for Kumaon Region and had not given any option for Garhwal Region, therefore, he was not considered for appointment against any vacancy in Garhwal Region. Para 3 of the counter affidavit, filed on behalf of respondent No. 1, is extracted below:-

3. That before making the parawise reply deponent wants to submit few facts about this particular examination before this Hon'ble Court. Additional Director Education Kumaon and Additional Director Education Garhwal are separate appointing authority for the post of Sahayak Adhyapak LT Grade. Both the Additional Director sent separate requisition (Adhiyachyan) for this post to the UKSSSC. Posts for the Garhwal and Kumaon were published separately in the advertisement for recruitment.

It was open for the candidates to select one or more option in various categories of Garhwal and Kumaun. Result was obviously prepared on the basis of the option chosen by the candidates in their application form.

In this process of recruitment a candidate can not be selected for the category or post which he has not selected in his application form.

In this case petitioner wants to be select against the post of Garhwal division but he has not selected Garhwal General branch in his application, so this petition is devoid of merit. It is also submitted that UKSSSC has sent the recommendations of selected candidate to the Education Department as per the orders of this hon'ble court and this process can not be changed at this point of time.

6. Learned counsel for the petitioner submits that available vacancies on the posts of Assistant Teacher L.T. Grade, in Kumaon Region as well as Garhwal Region, were notified through the same advertisement and in the absence of any stipulation in the advertisement that in case a candidate gives his option for only one region he will not be considered against vacancies in other region, petitioner cannot be denied his valuable right to be considered for appointment. He further submits that recruitment to the post of Assistant Teacher L.T. Grade was held in terms of Uttarakhand Subordinate Education (Trained Graduate Grade) Service Rules, 2014 and a common selection was held for appointment against available vacancies in both regions. Thus, learned counsel for the petitioner submits that the Selecting Body cannot read something in the advertisement, which was not mentioned there.

7. Learned counsel for the petitioner further submits that in terms of Rule 15(1) of the relevant Service Rules, the Selecting Body was required to disclose all information, which it deemed necessary, in the advertisement. Learned counsel for the petitioner, therefore, submits that since the Selecting Body, in its wisdom, did not disclose that a candidate, who opts for only one region will not be considered for appointment in another region, therefore, the Selecting Body cannot now be permitted to read such a condition in the advertisement.

8. Per contra, Mr. Pankaj Purohit and Mr. N.S. Pundir, learned counsels appearing for the Selecting Body, submit that the cadre of Assistant Teacher, L.T. Grade is a regional cadre and Additional Directors, Kumaon and Garhwal Region, are the Appointing Authority in respect of their respective regions. Mr. Panjak Purohit, learned counsel for the Selecting Body further submits that requisition in respect of both the regions was separately sent to the Selecting Body and the merit list would also be sent separately to the Appointing Authority, in respect of the two regions. He further submits that in the advertisement, all necessary particulars were given in terms of Rule 15(1) of the Recruitment Rules and break-up of posts was also given region-wise. He further submits that petitioner gave his option only for Kumaon Region, therefore, his name was rightly not considered for appointment in Garhwal Region, even though his score of marks was more than the marks scored by the last selected candidate in Garhwal Region.

9. There can be no manner of doubt that the selection in question is made for appointment under the State. It is settled position in law that selection for public employment has to be made purely on the criteria of merit. The purpose of holding selection for public appointment is to ensure that only the most meritorious candidate is appointed. Admittedly, petitioner is more meritorious than some of the candidates, who have been selected and appointed as Assistant Teacher L.T. Grade (English) in Garhwal Region.

10. The ground on which petitioner's right to be considered for appointment has been denied to him does not stand to reason. State of Uttarakhand is divided into two regions, namely, Kumaon and Garhwal. Petitioner gave his first option for Kumaon Region, which, in the absence of any condition in the advertisement,

cannot be construed as his disinclination towards accepting appointment in Garhwal Region. The respondents, therefore, were not justified in treating petitioner's option as his refusal to serve in Garhwal Region. In such view of the matter, the stand taken by the respondents is unsustainable in the eyes of law.

11. Even otherwise also, it was open to the respondents to impose appropriate condition in the advertisement in terms of Rule 15(1) of the Service Rules to deal with such eventuality. The respondents did not impose any condition, which required a candidate to opt for both the regions in order to be eligible for appointment in the two regions. In the absence of any such condition in the advertisement, the act of the Selecting Body of not summoning the petitioner for document verification and not recommending his name for appointment, cannot but be castigated as arbitrary and illegal.

12. It is settled position in law that benefit of any ambiguity in the advertisement should go to the candidate. Since there was nothing to indicate in the advertisement that a candidate, who does not give option for both the regions, shall be considered for appointment only in the region opted by him, therefore, option given by petitioner for Kumaon Region cannot be construed as his refusal to serve in the other region. It can only mean that his first preference is for Kumaon Region.

13. Learned counsel for the petitioner submits that a coordinate Bench of this Court vide order dated 22.10.2018 passed in WPSS No. 2396 of 2018 and other connected petitions has directed that four posts of Assistant Teacher L.T. Grade shall not be filled up, till final decision of the present writ petitions. Thus, according to him, no selected person would be disturbed, in case, present writ petitions are allowed.

14. In view of the aforesaid facts and circumstances of the case, the writ petitions are allowed. The Selecting Body is directed to verify the documents of the petitioners and to recommend their name for appointment, in either of the two regions, if found eligible, as per their merit.

15. Accordingly, the writ petitions are allowed.

16. All pending applications stand disposed of.