

(2022) 08 UK CK 0048
In the Uttarakhand High Court
Case No : Special Appeal No. 164 Of 2017

Dheeraj Upreti

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Citation : (2022) 08 UK CK 0048

Hon'ble Judges : Vipin Sanghi, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Pankaj Miglani, K.N. Joshi

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. The present Special Appeal is directed against the judgment dated 12.04.2017 rendered by the learned Single Judge in Writ Petition (S/S) No. 986 of 2006, whereby the learned Single Judge dismissed the said Writ Petition. The impugned order is short, and we reproduce the same as under :-

"Applications were invited for filling up the posts of LT in Music on 24.06.2002. Petitioner participated in the selection process. He was given 57.73 quality point marks.

2. The U.P. Subordinate Education (Trained Graduate Grade) Service Rules, 1983 as amended on 1992 provides for following education and training qualification for the post of Assistant Teacher (Music).

"1. Bachelor's Degree from a recognized University or a degree by the Government as equivalent thereto.

2. Knowledge of vocal and instrumental music and senior diploma in music from Allahabad University or Sangeet Visharad from Bhatkhande Sangeet Mahavidyalaya or Sangeet Prabhakar Samiti, Allahabad."

3. Petitioner has passed his High School examination in the year 1994 and according to the petitioner, he has also obtained his degree of Tabla Visharad from Bhatkhandey Sangeet Mahavidhyalaya in the year 1994. He could not pursue two courses simultaneously.

4. According to the essential qualification, petitioner was supposed to have the knowledge of vocal as well as instrumental music. Petitioner has only obtained diploma in instrumental music. He has no knowledge of vocal music.

5. The petitioner has similarly obtained his graduation degree in the year 1998 and in the same year has obtained the Nipun Upadhi. He could not pursue these two courses simultaneously.

6. The last selected candidate has obtained 57.73 quality point marks and even if, as per the even if, contents of reply, the petitioner was granted marks for his degree even then the quality point marks would be 57.61.

7. Accordingly, there is no merit in this petition and the same is hereby dismissed.

8. Pending application, if any, stands disposed of accordingly.”

2. The appellant-writ petitioner had responded to an advertisement, whereby applications were invited for filling up the post of LT in Music. He participated in the selection process and was awarded 57.73 marks.

3. The appellant cleared his High School examination in the year 1994. In the same year, he also obtained the Visharad from Bhatkhande Sangeet Mahavidyalaya. He went on to obtain his Intermediate qualification in the year 1996; and B.A. degree in Vocal Music in the year 1999. In the meantime, he also obtained Nipun qualification in the year 1997, again from Bhatkhande Sangeet Mahavidyalaya. His grievance was that, while awarding the quality point marks, his Nipun qualification was not taken into account due to which he was awarded less marks and, on that basis, he was not selected.

4. The respondents filed their counter affidavit in response to the Writ Petition. From the same, it appears that the objection taken by the respondents was that the appellant could not have obtained the Tabla Visharad qualification from Bhatkhande Sangeet Mahavidyalaya in the year 1994, which was also the year he passed the High School examination. Similarly, an objection was also raised that he could not have obtained the Nipun qualification, before obtaining his B.A. degree in Vocal Music in the year 1999.

5. The submission of the learned counsel for the appellant is that the aforesaid stand of the respondents was contrary to the prevalent Rules. In this regard, he has placed before this Court a document with the title “About the Examination of Bhatkhande Sangit Vidhyapith”. The eligibility for admission to various examinations, held by the Bhatkhande Sangit Vidhyapith, have been enumerated in the said document. Insofar as it is relevant, the same reads as follows :-

“Eligibility for Admission to various Examination :-

(a) Admission to the Prathama Examination

Admission to the Prathama Examination shall be granted only to those who have completed the prescribed course of studies from :

- (i) The institutions affiliated to the Bhatkhande Sangit Vidyapith, Lucknow.
- (ii) The Institutions recognized by the Vidyapith.
- (iii) Under the private coaching of reputed musicians and qualified teachers.

(b) Admission to the Madhyama Examination :-

Admission to the Madhyama Examination shall be granted to those who have passed the Prathama Examination of the Vidyapith and thereafter pursued likewise the further prescribed course of study for full one year.

Note:- No candidate will be eligible to appear direct at the Madhyama Examination unless he/she has passed the Prathama Examination.

Provided that those Candidates who have passed the Intermediate Examination of the Board of Education, U.P. or those who have passed the Higher Secondary Examination of any recognized University of India, with Music as one of their subjects in the Intermediate of Higher Secondary respectively, will be eligible to appear direct at the Madhyama Examination.

(c) Admission to the Visharad Examination :-

Admission to the examination for Visharad shall be granted only to those who have passed the Madhyama Examination of the Vidyapith or its equivalents and thereafter pursued likewise the further prescribed course of study for two complete years.

(d) Admission to the Nipun Examination :-

Admission to the examination for Sangit Nipun, Vadya Vipun Nritya Nipun shall be granted to those who have pursued for three complete years the courses of study prescribed by the Bhatkhande Sangit Vidyapith after having passed the Visharad Examination of the Vidyapith of its equivalent

(i) Candidates appearing at the Nipun Part I examination shall have passed the Matriculation examination or High School examination of a recognized University or Board of Examinations respectively.

(ii) No candidate who is less than seventeen yrs. of age will be permitted to appear at the Nipun Part I examination."

6. Mr. Pankaj Miglani, the learned counsel for the appellant submits that, in the light of the aforesaid, there is no basis to claim that the appellant could not have obtained Visharad, and also cleared the High School examination in the year 1994. Similarly, there was no bar to the appellant taking admission in Nipun course, and completing the said three years' course in the year 1997, having

completed Visharad in the year 1994.

7. On the other hand, the submission of the learned counsel for the respondents again is that the appellant could not have obtained the Visharad, and also cleared the High School examination in the year 1994, since they are two different courses. According to the respondents, the appellant could not have pursued both the courses simultaneously. The respondents also claim that the appellant could not have obtained the Nipun qualification in the year 1997 i.e. before obtaining the B.A. degree in Vocal Music, which he obtained in the year 1999.

8. We have considered the submissions of the learned counsels, and perused the record.

9. It is evident from the eligibility conditions laid down by the Bhatkhande Sangit Vidhyapith that, for admission to Visharad examination, those candidates are eligible, who have passed the Madhyama Examination of the Vidyapith, or its equivalent and, thereafter, pursued likewise the further prescribed course of study for two complete years. It is not the respondents' case that there was any lacuna in the admission granted to the appellant for the Visharad Examination. There is nothing to suggest that, alongwith his schooling, the appellant could not have pursued the Visharad course. Therefore, there is nothing unusual about the appellant having cleared the High School Examination, as well as obtained the Visharad in Tabla in the year 1994. Since the appellant had obtained Visharad in the year 1994, he could have pursued the three years' Nipun course, and obtained the Nipun qualification in the year 1997.

10. Since the appellant had cleared his High School Examination in the year 1994; and his Intermediate in the year 1996, he could pursue the three years' B.A. Vocal Music course, and he could have obtained the B.A. Vocal Music degree in the year 1999, which he did.

11. For the aforesaid reasons, we are of the view that the impugned order cannot be sustained, and we, accordingly, set aside the same.

12. We remit the matter back to the learned Single Judge for re-hearing the Writ Petition on other aspects, namely on the aspect of marks not being awarded to the appellant for the Nipun qualification, which is claimed by the appellant-writ petitioner to be equivalent to M.A. degree. Since the respondents had appointed other candidate(s) in preference to the appellant, the learned Single Judge would also examine whether it is necessary for the appellant to implead other successful candidates.

13. The learned Single Judge is requested to expedite the hearing of the Writ Petition, considering the fact that the matter is hanging fire since 2006.

14. The Special Appeal stands disposed of in the aforesaid terms.

15. In sequel thereto, all pending applications stand disposed of.