
(2019) 03 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No. 146 Of 2014 (S Of B)

Dinesh Kumar And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0028

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Alok Mahra, Pradeep Joshi, N.S. Pundir, Devendra Singh Bohra, B.D. Pande

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. The petitioners, twelve in number, were all selected pursuant to a recruitment process undertaken by the Uttarakhand Public Service Commission in the year 2004, and were appointed as Upper Division Assistants in the Uttarakhand Secretariat. From out of the 94 posts of Upper Division Assistants of the Secretariat, 13 posts were reserved for the Other Backward Classes, 19 in favour of the Scheduled Castes, and 3 in favour of the Scheduled Tribes. In addition, horizontal reservation was provided in each of these categories in favour of the dependants of freedom fighters, women, etc. All the petitioners herein were found meritorious in their respective categories, and were appointed as Upper Division Assistants, in the Uttarakhand Secretariat, in May, 2004. Respondents 4, 5 & 6 were appointed, under the Other Backward Classes category, in the Uttarakhand Secretariat as Upper Division Assistants pursuant to the very same process of selection.

2. In 2009, the Uttarakhand Public Service Commission realized its error in not having appointed four other meritorious candidates from the general category, though they had secured more marks, and they ought to have been appointed,

against the 94 sanctioned posts, of Upper Division Assistants in the Secretariat, on their merit. Having realized its error the Public Service Commission, while appointing these 4 candidates including respondents 7 and 8 as Upper Division Assistants in the Uttarakhand Secretariat, posted respondents 5 and 6 as Upper Division Assistants in the Uttarakhand Public Service Commission, and sought to dispense with the services of the fourth respondent as she was not entitled, on the basis of her merit, to be posted as an Upper Division Assistant either in the Secretariat or in the Public Service Commission.

3. Respondents 4, 5 and 6 invoked the jurisdiction of this Court filing Writ Petition (S/B) No. 09 of 2010. In its order in Writ Petition (S/B) No. 09 of 2010 dated 31.08.2010, the Division Bench observed that the petitioners therein (respondents 4 to 6 herein) had no role to play in the mixup in the selection process; they were appointed pursuant to their selection by the Public Service Commission which had evaluated their merit, and had made recommendations which were accepted by the State Government; they were also permitted to work for more than six years; and having accorded them the status of Upper Division Assistants, attached to the Secretariat, for a period in excess of six years, they could not be denied such status, for it was the State Government and the Public Service Commission which had played the entire role in the matter of conferment of such status, and the petitioners therein had nothing to do with the same. The Division Bench also opined that, for the mistake of the Uttarakhand Public Service Commission, those, who were not appointed earlier, could not be left in the lurch; and they should also be accommodated by the State Government but without disturbing the status of the petitioners (respondents 4 to 6 herein).

4. As a result, as against the 94 sanctioned posts of Upper Division Assistants in the Secretariat, 97 persons were appointed i.e. three more than the sanctioned strength. But for the aforementioned order of the Division Bench, respondents 4 to 6 herein would not have continued as Upper Division Assistants in the Secretariat, and the inter-se seniority of Upper Division Assistants in the Secretariat would have been reckoned only from among those who were selected, on their merit, against the 94 sanctioned posts. Respondents 4 to 6 did not form part of those selected on their merit for appointment against the 94 sanctioned posts, and their continuance, as Upper Division Assistants in the Secretariat, is only because of the aforesaid order of the Division Bench. It is only because the Division Bench, in its order in Writ Petition (S/B) No. 09 of 2010 dated 31.08.2010, had directed both the Public Service Commission and the State Government not to disturb their status, as Upper Division Assistants attached to the Secretariat, were they continued as Upper Division Assistants in the Secretariat.

5. It is relevant to note that the Division Bench was also of the view that the Public Service Commission had erred in not appointing the more meritorious candidates as Upper Division Assistants in the Secretariat and, it is in such circumstances, that those candidates who, for the mistake of the Public Service

Commission, were not appointed, were directed to be appointed by the State Government, however, without disturbing the status of respondents 4 to 6. Consequently, four candidates, who were erroneously not appointed as Upper Division Assistants in the selection process of 2004, were appointed as Upper Division Assistants in 2009, in the place of respondents 4 to 6 and one other candidate who belonged to the Scheduled Caste category and had resigned from service. Respondents 4 to 6 did not form part of the 94 candidates, selected on their merit, for appointment against the 94 sanctioned posts of Upper Division Assistants in the Uttarakhand Secretariat. While they are entitled, in view of the order of the Division Bench, to continue to hold the status of an Upper Division Assistant in the Secretariat, they are not entitled to be placed above those selected on their merit, and appointed against the 94 sanctioned posts of Upper Division Assistants, in the seniority list of Upper Division Assistants in the Secretariat.

6. The submission of Shri Devendra Singh Bohra, learned counsel for respondents 4 to 6, that respondents 4 to 6 had secured more marks than the petitioners herein is of no consequence. As noted hereinabove, separate posts were sanctioned for the Other Backward Classes, for the Scheduled Castes and for the Scheduled Tribes. Respondents 4 to 6 were erroneously selected and appointed to the posts, of Upper Division Assistants in the Secretariat, reserved in favour of the Other Backward Classes. The petitioners, on the other hand, were selected and appointed in other reserved categories. Respondents 4 to 6 cannot, therefore, equate themselves with the members of the Scheduled Castes who were selected and appointed in posts reserved in favour of the Scheduled Castes, and others who were selected and appointed in reserved categories other than those reserved in favour of the Other Backward Classes. But for the Public Service Commission having erred in failing to select candidates, in accordance with their merit in the year 2004, respondents 4 to 6 would not have been selected and appointed as Upper Division Assistants in the Secretariat in the first place. It is only because of the error of the Public Service Commission, and the indulgence of the Division Bench, are they continuing to hold the status of Upper Division Assistants in the Secretariat. That would, however, not justify their being placed above those who were rightly selected on their merit, and appointed against the 94 sanctioned posts, in the seniority list of Upper Division Assistants in the Secretariat of the 2004 batch.

7. The impugned seniority list, placing respondents 4 to 6 above the petitioners herein, is illegal and is, accordingly, set aside. Respondents 4 to 6 shall be placed in the seniority list of the Upper Division Assistant below those who were selected and appointed against the 94 sanctioned posts, of Upper Division Assistants in the Secretariat, of the 2004 batch.

8. The writ petition stands disposed of accordingly. No costs.