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**(2011) 11 UK CK 0049**  
**In the Uttarakhand High Court**  
**Case No : Writ Petition (S/B) No. 44 of 2010**

Dr. Radhey Shyam

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

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**Date of Decision :** 15-11-2011

**Acts Referred:**

Constitution of India, 1950 — Article 16(2)

**Citation :** (2011) 11 UK CK 0049

**Hon'ble Judges :** Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Barin Ghosh, C.J.—On 26th November, 2007, an advertisement was published for the purpose of supplying certain vacancies in the posts of Lecturer. Petitioner responded to the said advertisement. The advertisement held out that some of those advertised posts are reserved for scheduled caste community. Petitioner, while responding to the said advertisement, held out that he is a member of scheduled caste community. Petitioner substantiated his contention that he is a member of scheduled caste community by producing copy of a certificate issued by the Tehsildar, Najibabad alongwith his application in response to the said advertisement. In the said certificate, it was stated that the same has been issued on 15th June, 1990, and that, the petitioner is a resident of Najibabad. The said response of the petitioner led to selection of the petitioner, whereupon on 23rd July, 2008, petitioner was appointed as a Lecturer of D.B.S. (P.G.) College, Dehradun. On 19th February, 2010, the said college held out to the petitioner that the Director of Higher Education, Uttarakhand, by his letter dated 16th February, 2010, has withheld payment of salary to the petitioner on the ground that he is not a domicile of Uttarakhand.

2. We are of the view that the stand, thus, taken by the Director of Higher Education, Uttarakhand is not sustainable. Sub-Article (2) of Article 16 of the Constitution of India debars, amongst others, discrimination on the ground of

residence in the matter of public employment. At the same time, it is now well settled by a large number of judgments rendered by the Hon"ble Supreme Court that there is no concept in India of domicile of a person in the State within the Union of India. A citizen of India is domicile in the territory of India. That being the situation, we are of the view that the stand taken by the Director of Higher Education, Uttarakhand that the petitioner is not entitled to payment of salary for he is not a domicile of Uttarakhand is misplaced and contrary to law.

3. The writ petition is allowed and, accordingly, the order of Director of Higher Education, Uttarakhand dated 16th February, 2010 as well as the communication thereof by D.B.S. (P.G.) College, Dehradun are set aside.