

(2018) 03 UK CK 0008

In the Uttarakhand High Court

Case No : WRIT PETITION (PIL) NO. 67 OF 2011

IN THE MATTER OF APPOINTMENTS OF ACTIVISTS ON
GROUP 'C' AND GROUP 'D' POSTS UNDER THE
UTTARAKHAND RAJYA ANDOLAN KE GHAYAL/JAIL GAYE
ANDOLANKARIYON KI SEWAYOJAN NIYAMAWALI, 2010

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Constitution of India, — Article 14, 16, 16(1), 16(4), 162, 226

Citation : (2018) 03 UK CK 0008

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Arvind Vashistha, S.N. Babulkar, Paresh Triapthi, Anjali Bhargava, M.S. Pal, Amir Malik, S.K. Jain, Siddhartha Jain, Mahesh Chandra Pant, Raman Kumar Shah

Final Decision : Allowed

Judgement

1). The appeal was heard at length by a Division Bench of this Court comprising Hon'ble Sudhanshu Dhulia, J. and Hon'ble U.C. Dhyani, J. Both the

Hon'ble Judges, having difference of opinion, decided to deliver separate judgments instead of giving a common judgment. Due to difference of opinion

among the members of the Division Bench, this matter has been referred to me, for my decision on the subject, by the order of Hon'ble the Chief

Justice.

2) The genesis of this writ petition (P.I.L.) is an order dated 11.05.2010 rendered by His Lordship Tarun Agarwala, J. on the review application filed in

WPSS No.945 of 2007.

3) In the backdrop, facts of the case are that a writ petition was filed by the

petitioner Karunesh Joshi, being WPSS No.945 of 2007, seeking appointment on Group 'D' post, pursuant to the Government Order dated 11th August, 2004. By means of G.O. dated 11.08.2004, one time reservation in government service was given to those persons, who were either injured or who remained in jail for seven days or more during agitation for creation of new State, subject to their qualifications for the posts. This was one time reservation for Class III and Class IV posts in government service, which were outside the purview of the State Public Service Commission.

4) The State of Uttarakhand was carved out on 09.11.2000 from the erstwhile State of Uttar Pradesh. After creation of new State, the State Government, in order to acknowledge the contribution of the 'andolkaris' (agitators), issued Government Order dated 11.08.2004. The G.O. dated 11.08.2004 further provided that those persons who are domicile of State of Uttarakhand and have participated in the Uttarakhand movement and have sustained injury during that movement and those who remained in jail for seven days or more, would be entitled for appointment in government service in the State of Uttarakhand. Thereafter, the District Magistrates of all the districts of Uttarakhand State were authorised by the Government of Uttarakhand to identify the injured who sustained injury in the Uttarakhand movement and those who remained in jail for seven days or more while participating in agitation for creation of new State. The District Magistrates were directed to prepare a list of persons who sustained injuries and those who remained in jail for seven days or more and Authorities were directed to issue such appointment on Group 'C' and Group 'B' posts to eligible persons as per their educational qualifications. The Government Order further stipulates that there would be relaxation in age in the selection process, as so many persons became overage, during agitation for creation of a separate State in the decade of 1990. On the basis of Government Order dated 11.08.2004, several lists were prepared by the concerned District Magistrates in the area of their jurisdiction and it was stated that several hundreds of people were given appointment pursuant to the Government Order dated 11.8.2004 in the last five years.

5) As far as petitioner Karunesh Joshi is concerned, he contented in the writ petition that he actively participated in the agitation for creation of new State of Uttarakhand and in incident of 19.09.1995 he sustained injury and remained

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8)Â Another Circular Letter no. 1270 of 2004 dated 11.08.2004 is also being reproduced here-inbelow:

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Justice or the Registrar General, raising issues of public interest, and deserving consideration on the judicial side at the hands of the High Court.Â

Rule 2 (c) defines Letter as under:Â

(c) Letter means a communication addressed to the Chief Justice or the Registrar General of the High Court of Uttarakhand, complaining of an issue, espousing a cause in public interest and desiring consideration on the judicial side by the High Court.Â

Rule 3 of the said Rules is regarding subject matter of PIL- Petition and PIL-Letter, which cover a wide range of subjects which are of public importance.Â Â

Maintainability of the Public Interest Litigation

14) Although, their Lordships have held that the present PIL is maintainable and this issue has been well-discussed in the judgment rendered by

Honorable Sudhanshu Dhulia, J., but as arguments have again been raised by the learned Advocate General on this issue, therefore, I take this duty on myself to decide this issue.

15) It is true that in view of Rule 4 sub-rule (b), a PIL is not maintainable in service matters but the issue before this Court is not in regard to matter

pertaining to service in broad sense. In the present case, the dispute is not between the employee and employer, rather it is a matter relating to appointment on class Cast and Dâ by the State Government to a particular group of persons, which is not other than but violative of Article 16 of the

Constitution of India.Â

16) A PIL cannot be thrown away under the guise that it is a service matter. Without in fact a decision of the State Government by giving the benefit of a

particular class affects the rights of every class, every citizen of the other classes of the Society and which in fact curtails the fundamental right of equal

opportunity in public employment and which cannot be challenged by an individual on the principle that no one should be left remediless and throwing a PIL

on the ground that it pertains to the service matter therefore the PIL is not maintainable. This argument of the learned Advocate General has no substance.

It is held that the matter affects the rights of public at large, therefore, in broader sense and considering the fact that it affects the equal opportunity of

appointments in public employment, present Public Interest Litigation is maintainable.

17) The arguments advanced by learned Advocate General in this regard are baseless and against the concurrence of the decision of the Honâ??ble

Judges, comprising the Division Bench. In my opinion, the Advocate General has no legal ground to challenge the maintainability of the writ petition.

18) Mr. S.N. Babulkar, learned Advocate General would submit that the persons who agitated for separate state and sacrificed their lives and those who

got injured and those who remained in jail cannot be treated with others on the same footing. Considering all these factors, the Government of Uttarakhand

has issued the Circular Letter dated 11.08.2004 for the welfare of these persons and they cannot be compared with others equally. Therefore, the

Government did not commit any wrong in issuing the Circular Letter to give one time appointment to those who were the victim of the agitation for State of

Uttarakhand. He also submitted that based on criteria and proper scrutiny, appointment on Class â??Câ?? and â??Dâ?? posts were offered to the

persons, who sustained injury and those who remained in jail for seven days or more than seven days and to the dependents of the persons who sacrificed

their lives during agitation for creation of separate State. He submitted that it was the pious duty of the State to honour them by giving employment so that

they may live respectfully.

19) Learned Advocate General also submitted that those appointment in view of G.O. dated 11.08.2004 is one time appointment and it cannot be termed as

regular appointment for an indefinite period and the same cannot be treated as violative of Article 16 of the Constitution of India.

20) Article 14 and Articles 16 of the Constitution of India mandates as under:

â??14.Â Equality before law. â??The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of

India.Â

16. Equality of opportunity in matters of public employment. â??(1) There shall be equality of opportunity for all citizens in matters relating to employment

or appointment to any office under the State.Â

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against

in respect of, any employment or office under the State.Â

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.Â

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.Â

[(4A) Nothing in this article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]Â

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]Â

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.Â??

21) The preamble of our Constitution proclaims to secure for all its citizens â?? Equality of status and of opportunityâ??.Â The â??Right to Equality?

under Article 14 of the Constitution of India mandates that â??the State shall not deny to any person equality before the law or the equal protection of the

laws within the territory of Indiaâ??.Â Article 16(1) of the Constitution, proclaims that â??there shall be equality of opportunity for all citizens in matters

relating to employment or appointment to any office under the Stateâ??.Â Clause (4) of Article 16 of the Constitution of India, however, provides that

â??Nothing in this Article shall prevent the State from making any provision for

the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State.

22) Article 14 gives the right of equality to all before the law. From the perusal of clause (4) of Article 16, it would reveal that this provision is meant for the reservation on appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. In the present case, the horizontal reservation by way of impugned Circular Letters have been made to give the appointments to the "andolankaris" of the State of Uttarakhand. Such a provision does not come within the ambit of provisions of Article 16(4) of the Constitution of India.

23) From the perusal of Circular Letters, it would reveal that the State Government had issued the Circulars to give appointment to such

"andolankaris" on Group "C" and Group "D" posts, who sustained injuries, were caused hurt and remained in jail for 7 or more

days. Appointments were also given to the dependants of such "andolankaris". But the State Government has not collected the data before

issuing the Circulars giving appointments to the aforesaid "andolankaris". Data was also not collected by the State Government to the effect as to

many vacancies on Group "C" and Group "D" posts are lying vacant and how many "andolankaris" comes within the zone of

consideration for appointment on the posts of Group "C" and Group "D" in the State of Uttarakhand.

24) Unless complete data has been collected by the State Government with regard to the posts of Group "C" and Group "D" available in the

State and without ascertaining the vacancy on its basis, there cannot be a horizontal reservation for unlimited posts. Though it is stated that it is a one

time appointment, but from the facts narrated above, it would reveal that the State Government issued Circulars from time to time for appointment of

"andolankaris" on Group "C" and Group "D" posts. The action of the State Government in issuing Circulars for giving appointment to

the "andolankaris" on Group "C" and Group "D" posts, without there been any assessment of vacancies and assessment of the strength of

the "andolankaris" is arbitrary.

25) From the perusal of impugned Circulars, it would reveal that the impugned Circulars have been issued just to give appointment to the persons of their

choice under the guise of 'Andolan Karis'. However, since no Statute has been framed by the Cabinet in respect of grant of reservation to the

'Andolan Karis', reservation cannot be made in Government employment in the absence of any Statute, Rules or Notifications. A A

26) It is worth mentioning here that the Circular Letter dated 11.08.2004 was quashed by learned Single Judge of this Court, vide judgment and order dated

11.05.2010, passed in Writ Petition no. 945 (S/S) of 2007 and connected writ petition, holding the said Government Order as violative of Article 14 and 16

of the Constitution of India. Subsequent to the dismissal of said writ petition, the Government of Uttarakhand issued another Circular dated 05.08.2011 to

give facilities to those who agitated and sustained injury or remained in jail for less than 7 days and directed that the agitators shall be entitled for 10%

horizontal reservation for further 5 years i.e. upto 10.10.2016 and accordingly the authorities were directed to verify the names of all the

'Andolan Karis' by 20.10.2008. Second Circular Letter dated 22.10.2008 was got amended by subsequent letter dated 05.08.2011. This Circular Letter

was challenged in WPSB No.71 of 2014 and connected bunch of petitions. The Division Bench of this Court admitted the present writ petition (PIL) for

hearing and stayed the reservation being given to the Rajya Andolan Karis. Said interim order was challenged before the Hon'ble Apex Court. A

Hon'ble Supreme Court declined to interfere with the impugned order passed by this Court restraining the Government of Uttarakhand to make further

appointment of the persons who had taken part in the agitation for a separate State of Uttarakhand, till the disposal of present PIL. A It also directed that

any further appointment should await the disposal of the Writ Petition (PIL) by the High Court. A

27) Intervener Mr. Mahesh Chandra Pant, Advocate would also submit that during agitation for creation of new State, every citizen, more or less,

participated in the agitation. Thus, the contribution of those persons, who sustained injuries or those who remained in jail, cannot be said to be extraordinary

participant for a new State. Therefore, being the welfare State, the policy should be based on equality and there should not be any special reservation for a

particular class of persons. He further submitted that it is not known as to how

many persons actually participated in the agitation who sustained injury or who remained in jail, but the Government has decided to give appointment to the persons of their choice under the guise of Rajya Andolankari. He further submits that there cannot be horizontal reservation for a particular class of persons as contented in the Circular Letters.

28) The mute question before this Court is whether the Circular Letter dated 11.04.2008 and the subsequent letters dated 08.11.2006, 22.10.2008,

13.12.2011 are in consonance with Article 16 of the Constitution of India or whether they are in violative of Article 16 of the Constitution of India.

29) From the perusal of Circular Letter no. 1269 of 2004 and Circular Letter no. 1270 of 2004 both dated 11.08.2004, it would reveal that the same have

been issued without any survey in regard to the fact as to whether who are real agitators in the agitation for independent State, who sustained injury or

who remained in jail.Â

30) I am in complete agreement with the view taken by my learned Senior brother (Sudhanshu Dhulia, J.) that by giving appointment to the

â??andolankarisâ? in government service without holding any competitive examination amongst them (in view of C.L. no. 1269 of 2004 dated 11.08.2004)

is clearly in violation of Article 14 and 16(1) of the Constitution of India.Â In fact, this is not even a reservation, but a form of gratuitous or compassionate

appointment, which is clear violation of Article 14 and 16 of the Constitution of India.Â Also, the classification of â??andolankarisâ? is not based on any

intelligible differentia which can distinguish â??andolankarisâ? from the many left out of the group and secondly the classification has no rational relation

with the object sought to be achieved.Â Therefore, it can safely be said that the classification of â??andolankarisâ? is not based on any reasonable

criteria and it has no nexus with the objects sought to be achieved.Â As such, Circular Letter no. 1269 of 2004 dated 11.08.2004 has rightly been quashed

along with all other orders in furtherance of the said Circular Letter. Â The â??Uttarakhand Rajya Andolan Ke Ghayal / Jail Gaye Andolankariyon Ki

Sewayojan Niyamawali, 2010â?? has also been rightly set aside as unconstitutional and ultra vires.Â Â

31) I agree with what has been stated by my learned Senior brother that the classification of â??andolankarisâ? into a separate class for the purpose of

granting reservation in public employment is violative of Articles 14 and 16 of the

Constitution of India.Â The same is totally an arbitrary exercise of power.Â The classification of 'andolankaris' as a separate class for the purposes of reservation in Government Service does not satisfy any objective or social criteria.Â As such, Circular Letter no. 1270 of 2004 dated 11.08.2004 has also rightly been quashed along with subsequent orders dated 08.11.2006, 22.10.2008, 13.12.2011 and all other subsequent orders thereto.

32) To sum up my conclusions, I may add here that appointments in public service could only be made under the Act or the Rules framed therein by inviting applications through an open advertisement and such appointments are made strictly on merit so that every citizen should get equal opportunity in the matter of public appointments.Â In the present case, I am of the opinion that the Circular Letter dated 11.08.2004 has not been issue under any statutory provision and does not have a statutory force and the provision of Article 162 of the Constitution of India could not be invoked when the field was already occupied.Â The Circular Letter dated 11.08.2004 providing benefit, which is inconsistent with the Act and Rules framed in relation to the appointment in the public sector, violates Article 16 of the Constitution.Â Â Â Â

33) In view of the above discussion, I concur with the view taken by my learned Senior brother (Hon'ble Sudhanshu Dhulia, J.).Â Therefore, all consequential orders of the Government making appointments in pursuance of the above Circular Letters and Rules / Notifications shall stand quashed and set aside.

34) Writ Petition (PIL) stands allowed.Â

35) (All pending applications also stands disposed of).

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