
(2011) 04 UK CK 0032

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 113 of 2010

Jagdish Chandra Kandpal and Others

APPELLANT

Vs

Uttarakhand Public Service Commission and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 UK CK 0032

Hon'ble Judges : Barin Ghosh, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—Notice of this writ petition was served upon the private Respondents, namely, Respondent Nos. 3 to 13 by registered post with A.D. Neither the A. Ds. nor the postal packets containing the notices sent to the said Respondents returned to this Court. The Court proceeded on the basis that the said Respondents have been deemed to be served. On the last occasion, when the matter was taken up for consideration, the Court felt that an attempt should be made to serve the said Respondents personally. Accordingly, copies of the writ petition were handed over to the learned Counsel for the State with a request to the Secretary, Personnel Department to effect service upon the said Respondents of those copies of the writ petition. The Secretary, Personnel Department, by a fax, has informed the learned Counsel for the State that such service has been effected. Copy of the fax produced before the Court is kept with the record. In the circumstances, it must be deemed that all the Respondents stand served. Respondent Nos. 1 and 2 have filed their counter affidavits. Respondent Nos. 3 to 13, despite such service, have not bothered either to appear before this Court or to file any pleading in opposition to the writ petition.

2. In the writ petition, Petitioners, four in number, who are Tehsildars have challenged promotion granted to Respondent Nos. 3 to 13. Respondent Nos. 12 and 13 were accorded promotions in 2006. Subsequent thereto, in 2010, a fresh exercise was undertaken to give promotions to 19 posts. Respondent Nos. 3 to 11 were accorded promotions in 2010. Inasmuch as, Respondent Nos. 12 and 13

were accorded promotions in 2006 and the Petitioners accepted the same until 2010, we refuse to interfere with the promotions, thus, granted to Respondent Nos. 12 and 13 only on the ground of delay.

3. In terms of the Rules governing the promotions in question, merit is the only criteria. In order to be promoted, the person is required to be a Tehsildar. There is no dispute that the Petitioners and Respondent Nos. 3 to 11 were Tehsildars at the relevant time. There is also no dispute that the case of promotion of the Petitioners as well as of Respondent Nos. 3 to 11 was considered in 2010 against 19 available vacancies.

4. Although the Rules prescribe that merit is the only criteria for promotion but they do not direct how such merit is to be determined. At the same time in terms of the Rules, it is the Public Service Commission, who alone is entitled to determine merit. Inasmuch as, the Rules are silent as to determination of merit, the Public Service Commission on 12 September, 2006 resolved to adopt a particular method for the purpose of determination of merit. In that, it has been provided, on what basis merit is to be determined, what would be the minimum required merit for being eligible to be promoted, and that, if two persons or more are adjudged on such criteria to be of same merit to apply seniority. In other words, the resolution depicts that a person who has obtained the minimum merit prescribed in the said resolution will be deemed to be eligible for being promoted on the criteria of merit and only those people who have obtained such minimum benchmark will compete amongst each other for the purpose of supplying the available vacancies in the promotional posts. Only in the event there is equality of merit, principles of seniority will be applicable.

5. In 2010, as has been stated by the Public Service Commission in its counter affidavit, for no just reason, the Commission deviated from the criteria set down in its said resolution by applying seniority inter se those people who obtained the minimum prescribed benchmark. As a result, people, who obtained better merit, lost to people who obtained lesser merit on account of seniority. That being contrary to the said principle adopted by the Commission, selection of Respondent Nos. 3 to 11, who, according to the Petitioners, received less than 27 marks, which assertion has not been denied in the counter affidavit filed by the Commission, got promotion on the ground that they were senior to the Petitioners, although the Petitioners obtained more than 27 marks according to the standard prescribed in the said resolution which contention, too, has not been denied by the Commission in its counter affidavit.

6. In the circumstances, the writ petition succeeds. The Commission is directed to apply the marks obtained by the Petitioners and Respondent Nos. 3 to 11 on the basis of the criteria laid down in its said resolution and thereupon determine inter se merit of the Petitioners and the said Respondents and give recommendation for promotion to those who have obtained better merit in chronological order. This exercise be completed as quickly as possible but not later than two months from the date of service of a copy of this order upon the

Commission. After the above exercise is made, the Commission shall make its appropriate altered recommendation to the State Government. The State Government then shall cancel the promotions given to Respondent Nos. 3 to 11 or to so many of them who would not find place in the revised recommendation of the Commission. The State Government shall, at the same time, give promotion to those who are re-recommended by the Commission.

7. The writ petition, accordingly, stands disposed of.