
(2021) 12 UK CK 0251

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 591 Of 2018

Jagmohan Singh And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-12-2021

Acts Referred:

Uttar Pradesh Reorganization Act, 2000 — Section 73
Uttarakhand Government Servant Seniority Rules, 2002 — Rule 6, 7, 8, 8(3)2(i)
Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 12 UK CK 0251

Hon'ble Judges : S.K. Mishra, J;N.S. Dhanik, J

Bench : Division Bench

Advocate : Shobhit Saharia, Pradeep Joshi

Final Decision : Dismissed

Judgement

S.K. Mishra, J

1. Heard Mr. Shobhit Saharia, the learned counsel for the petitioners, and Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel, for the State of Uttarakhand-respondents.

2. The private respondent nos. 2 to 12 did not appear in this case inspite of sufficient notice.

3. In this Writ Petition, the petitioners have prayed for quashing of the judgment and order dated 20.06.2018 passed by the Uttarakhand Public Services Tribunal, hereinafter, referred as the Tribunal, for brevity, in Claim Petition No. 05/NB/DB/2014 (Anirudh Singh Bhandari and others v. State of Uttarakhand and others), whereby the Claim Petition of the petitioners was rejected. The petitioners have further prayed to issue a writ in the nature of certiorari to quash the Seniority List dated 01.04.2011 of the Assistant Engineer (Civil), which was promulgated after due promotion of the petitioners in the cadre of Executive Engineer, and the petitioners were shown juniors to the private respondents in

the cadre of the Assistant Engineer (Civil) in alleged disregard of Rule 8(3)2(i) of the Uttarakhand Government Servant Seniority Rules, 2002. The petitioners have further prayed to issue a writ in the nature of certiorari quashing the order dated 12.02.2013 and 13.02.2013 granting notional promotion in alleged violation of the Uttarakhand Government Servant Seniority Rules, 2002, as amended in 2009.

4. Originally, the petitioners filed a Claim Petition, being Claim Petition No. 05/NB/DB/2014, before the Uttarakhand Public Services Tribunal Bench at Nainital seeking the following reliefs :-

"a) To pass appropriate order and direction quashing the impugned orders dated 12.02.2013 and 13.02.2013, vide which absolutely illegally, improperly and irregularly State Government has granted notional promotion to the private respondents, belonging to S.T. category, to the post of the Executive Engineer w.e.f. 11.12.2009 & 13.08.2010 on the premise that juniors to them in the A.E. (Civil) P.W.D. have been promoted w.e.f. 11.12.2009.

b) To pass appropriate order and direction prohibiting the State Government from deeming and treating the petitioners as part of A.E. (Civil) PWD cadre after their substantive appointment and promotion to the post and cadre of Executive Engineer (Civil) PWD.

c) To pass appropriate orders and directions which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

d) To award cost of the claim petition to the petitioners.

e) To pass appropriate order and direction quashing the seniority list dated 01.04.2011, annexed as Annexure No. 4 to the claim petition."

5. The learned Tribunal took into consideration the facts of the case, and dismissed the Claim Petition.

6. The facts of the case, in brief, are narrated as follows :-

At the of creation of the State of Uttarakhand, the petitioners were working as Junior Engineers (Civil), while the private respondent nos. 2 to 12 were in the U.P. Cadre of the Assistant Engineers (Civil) through their direct selection by the Uttar Pradesh Public Service Commission in the years 1997 and 1999. The private respondents, who belong to the Scheduled Tribe category, were not initially allocated to the cadre of Uttarakhand, while the petitioners were allocated in the cadre of Junior Engineers (Civil) in the State of Uttarakhand. The petitioners got their promotion to the post of Assistant Engineer (Civil) in the State of Uttarakhand on 02.11.2002. Thereafter, on completion of seven years of their service as Assistant Engineer, they were further promoted to the post of Executive Engineer on 13.08.2010, on the basis of the seniority list dated 12.10.2009.

After a long litigation before the Hon'ble High Court and the Hon'ble Apex Court, the private respondent nos. 2 to 12 were allocated the Uttarakhand cadre, vide

allotment order dated 12.08.2010, passed by the Central Government. In compliance of that, the previous seniority list of Assistant Engineers, issued on 12.10.2009, was revised vide order dated 01.04.2011, which has been challenged by the petitioners. It is also pertinent to mention here that private respondents, who have been now placed above the petitioners in the seniority list, were also granted notional promotion to the post of Executive Engineer, vide orders dated 12.02.2013 and 13.02.2013, w.e.f. 11.12.2009, the date when their juniors were promoted. The petitioners have also challenged their notional promotion order dated 12.02.2013 and 13.02.2013, along with the seniority list dated 01.04.2011, on the ground that the said seniority list was amended and prepared illegally, and against the Rules.

According to the petitioners, the private respondents were allocated Uttarakhand cadre vide order dated 12.08.2010, Annexure: A1, to the Claim Petition before the Tribunal, in which it was specifically mentioned that in case number of persons then allocated exceed the posts allotted to the Uttarakhand earmarked for S.C. and S.T. categories, in such an event, excess personnel may be adjusted in future recruitment. The petitioners have contended that at that time total number of vacancies were 204, out of which 4 were of S.T. category, and against their quota, 4 persons were already working and 13 (private respondents) persons were allocated in excess. The petitioners contended that the persons allocated in excess of the vacancies could become the member of service only on their substantive appointment in the cadre of service against future vacancies, and their seniority could only be counted from the date of their substantive appointment in future. According to the petitioners, the private respondents, who were allocated in excess of the vacancies of their quota, will be deemed in service later in time, and they should be placed below the petitioners and they submitted their representations to this effect. The notional promotion of the private respondents, belonging to S.T. category, vide orders dated 12.02.2013 and 13.02.2013, to the post of Executive Engineer was illegal, improper and irregular. Therefore, it was argued that the impugned orders be quashed.

7. The learned Tribunal took into consideration the entire facts of the case and came to the conclusion that the private respondents were allocated in excess of their quota, but they were born in the cadre of Assistant Engineer in their substantive capacity earlier in time. Hence, they cannot be placed junior to the persons, who were born in that cadre by promotion later in time. The Tribunal was of the view that the allotment of cadre, though made later in time, would relate back to the date of creation of the State. It further held that the promotions that were granted to the private respondents, i.e. respondent nos. 2 to 12, were not granted on the basis of their S.T. quota, but they were granted notational promotion on the basis of their seniority. In that view of the matter, the Claim Petition was rejected, which is challenged in this Writ Petition.

8. Mr. Shobhit Saharia, the learned counsel appearing for the petitioners, would argue that the notional promotion of the private respondent nos. 2 to 12, is

illegal in view of the amendment of the Uttarakhand Government Servant Seniority Rules, 2002 in the year 2009. It provides as follows :-

"A- Notwithstanding anything contained in Rule 6, 7 or 8 of these Rules, the personnel finally allocated to the State of Uttarakhand under section 73 of the U.P. Reorganization Act, 2000, who was substantively appointed or regularly promoted on 8.11.2000 just before the date of organization of the State of Uttarakhand, 9.11.2000, shall not be demoted due to the reason that the personnel senior to him could not get promotion and no such senior personnel shall be entitled to the notional promotion on the basis of seniority. All personnels finally allocated to the Uttarakhand may get promotion on the higher vacant post after dated 9.11.2000 only when they actually hold the qualification determined in the related services rules even though their junior personnel have been regularly promoted on the higher post under any rules enforce for the time being just before the date 9.11.2000."

9. He would further argue that the private respondents, having been brought to the cadre of the Uttarakhand service, their seniority cannot date back to the date of formation of the State of Uttarakhand i.e. 9. 11.2000.

10. Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel for the State of Uttarakhand, on the other hand, would argue that the order passed by the learned Tribunal is not illegal, and there is no scope of interference in this case. He would further argue that the amended provision that is appearing in the rejoinder affidavit (Page No. 41, running Page No. 373), is not applicable to the present case.

11. In rebuttal, Mr. Shobhit Saharia, the learned counsel for the petitioners, took us to the interim order passed by a Coordinate Bench of this Court on 05.12.2018, whereby certain observations were made and an interim order, i.e., subject to the further orders in the Writ Petition, was issued in his favour on that date.

12. However, we are of the opinion that any observations made before hearing the opposite party, and before giving a reasonable opportunity of filing counter affidavit, will not have any bearing in the final decision of the case. The final decision of the case shall depend upon the pleadings that are available after the parties are noticed and the arguments are advanced thereon. So any observations made by the learned Coordinate Bench, at the time of issuing notice, will not have any conclusive binding effect on the final disposal of the Writ Petition.

13. Secondly, it is apparent from the record that the private respondent nos. 2 to 12 were recruited directly to the cadre of Assistant Engineer (Civil). After reorganization of the State of Uttar Pradesh, and creation of the new State of Uttarakhand, the petitioners were allocated the State. It is not disputed that the petitioners were also recruited directly in the cadre of Junior Engineer (Civil) in the State of Uttarakhand. However, on the representation, the private

respondents were allowed by the Central Government to be allocated in the Uttarakhand cadre later on with a condition that in case there is no vacancy in the Scheduled Caste and Scheduled Tribe category, they shall be absorbed in future vacancies and, in fact, in the State of Uttarakhand, vacancies were created later on by expanding the cadre.

14. Now, the question that arises further is whether the Junior Engineers of the Uttar Pradesh cadre, who were transferred to the Uttarakhand cadre, will become senior to those persons, who are deemed to be their seniors in the State of Uttarakhand, as they were directly recruited to the cadre of Assistant Engineer.

15. The learned Tribunal has come to the correct conclusion in holding that the private respondents were allocated in excess of their quota, but they were born in the cadre of Assistant Engineer in their substantive capacity earlier in time. Hence, they cannot be placed junior to the persons, who were born in that cadre by promotion on a later date. Moreover, the observations made by the learned Tribunal are approved by us, wherein they say that the promotion orders were granted in favour of the private respondents not on the basis of their S.T. quota, but they were granted notational promotion on the basis of their seniority.

16. In that view of the matter, this Court is of the opinion that there is hardly any scope for interference in this case. Moreover, in a writ of certiorari, the High Court shall only examine the jurisdictional issue of the Tribunal, or the jurisdictional error committed by the Tribunal. The Tribunal may decide a case wrongly, but that will not entitle the High Court to sit in appeal and re-appreciate the matter and pass an order. It is also a settled principle of law that in certiorari proceedings, the High court is not to treat itself as a Court of Appeal, and reassess the entire material available on record. Only when the order passed by the learned Tribunal is completely against the material available on record, or is passed in complete ignorance of the materials or evidences available on record, then only the question of facts is to be gone into.

17. In that view of the matter, this Court is of the opinion that this is not a case, where the High Court should exercise the jurisdiction of writ of certiorari, or writ of supervision under Articles 226 and 227 respectively, of the Constitution of India.

18. In that view of the matter, this Writ Petition is, hereby, dismissed.

19. There shall be no order as to costs.

20. Urgent certified copy of this judgment be granted on proper application.