
(2003) 02 UK CK 0003

In the Uttarakhand High Court

Case No : Civil Miscellaneous Writ Petition No. 90 (S/S) of 2001

Jai Chand Chauhan

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983
— Rule 15, 15(2)

Citation : (2003) 2 UC 1193

Hon'ble Judges : A.A. Desai, C.J; M.M. Ghildiyal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Ghildiyal, J.—By means of this writ petition the Petitioner has challenged the order dated 31.01.2000, passed by the Regional Joint Director, Education, Garhwal Region, Pauri, rejecting the representation of the Petitioner.

2. The brief facts of the case are that in pursuance to the advertisement issued in October 1997 for appointments to the posts of L.T. Grade teachers, the Petitioner alongwith several others applied. The Respondents appointed Respondent No. 4 who was lower in merit than the Petitioner. The Petitioner made a representation before the Joint Director, Education, Garhwal Mandal. Since no heed was paid by the said Joint Director, the Petitioner filed writ petition No. 49251 of 1999 before the High Court of Judicature at Allahabad and the High Court on 26.11.1999 while disposing of the writ petition directed the Joint Director of Education to decide the representation of the Petitioner within a period of three months. In compliance of the said order dated 26.11.99 of the High Court the Joint Director passed order on 31.01.2000 rejecting the representation of the Petitioner, which is annexure 6 to the writ petition.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel has filed counter affidavit. In para 11 of the counter

affidavit, it has been stated that the Respondent No. 4 has secured 50.34 marks whereas the Petitioner could secure only 45.18 marks and as such the contention of the Petitioner that the person having lower merit than the Petitioner was appointed is not correct.

5. For the purpose of appointment to the subordinate educational (trained graduate grade) service rules have been framed known as Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983. Part IV of the aforesaid rules provides for procedure for the recruitment. Rule 15 provides procedure for direct recruitment. Rule 15(2) provides that the Regional Deputy Director of Education shall scrutinize the applications and shall cause the lists of candidate to be prepared on the basis of quality points specified in Appendix "D". The quality points to be awarded to the candidates on the basis of formula given in Appendix "D" which is as under:

Appendix "D"

Quality points for selection by direct recruitment

Name of Examination Quality Points

1. High School The percentage of marks 10
2. Intermediate The percentage of marks $\times 2/10$
3. Graduate Degree Others: The percentage of marks $\times 4/10$
4. Training: D.P. Ed 1st Division I Ind Division II Ird Division
 - (a) Theory 12 6 3
 - (b) Practical 12 6 3
5. Post-Graduate Degree 15 10 5
6. We have perused the original record. The compilation of merit of the Petitioner as well as the Respondent No. 4 as per record is as under:

Petitioner

High School 294/600 49% $\times 1/10$ 4.9

Intermediate 225/500 45% $\times 2/10$ 9.0

B.A. 434/900 48.2% $\times 4/10$ 19.28

Training D.P. Ed.

(Theory) 321/600II 6.00

Practical 320/600 II

6.00

Total 45.18

Respondent No. 4

High School 276/600 45.83% 4.58

Intermediate 216/500 43.2% 8.64

B.A. 431/900 47.88% 19.12

D.P. Ed, (written) 300/600 II 6.00

Practical 355/600 II 6.00

Total 44.34

7. The Petitioner has submitted that the quality points awarded to the Respondent No. 4 for High School, Intermediate and B.A. are not disputed. As per Appendix "D" of the rules a candidate is entitled to get 12 quality points if he has got first division, 6 quality points in case of second division and 3 quality points in the case of third division both in theory as well as practical of the training. The Petitioner as well as Respondent No. 4 have passed Diploma in Physical Education (D.P. Ed.). The mark sheet of D.P. Ed. annexed alongwith the writ petition shows that the division has been awarded to the candidates separately for theory, practical and teaching. The Petitioner was awarded second division in theory, practical and teaching. Thus, the quality points awarded to the Petitioner for High School, Intermediate, B.A. and D.P. Ed. are as per appendix "D" of the rules. 45.18 points have been awarded to the Petitioner as per rules. So far the Respondent No. 4 is concerned, he has been awarded 50.34 quality points. The Respondent No. 4 was awarded second division in D.P. Ed, theory and practical. However, he got first division in teaching. The Respondents awarded 6 quality points for D.P. Ed (theory) and 12 quality points for D.P. Ed (practical) to Respondent No. 4 assuming teaching as practical. Appendix "D" of the rules clearly provides to award quality points for theory and practical. There is no mention of teaching and in case the teaching is to be treated as a practical then all the candidates should have been given quality point marks on the basis of division they have got in teaching. The Respondent No. 4 who has got second division both in practical and theory should have been awarded 12 points and not 18 as awarded by the Respondent authorities. Learned Standing Counsel could not show that all candidates were given quality point marks on the basis of division they have got in teaching. Thus, as per appendix "D" of the rules the total quality points of Respondent No. 4 comes to 44.34 and not 50.34. The Petitioner who has got 45.18 quality marks was higher in merit than Respondent No. 4 and should have been given appointment. Joint Director of Education in its order dated 26.11.1999 has not touched this aspect. In his order he has only mentioned that the Petitioner could secure only 45.18 quality point marks whereas the Respondent No. 4 has secured 50.34 quality point marks and as such there was no illegality in providing appointment to Respondent No. 4. Since the Respondent No. 4 is working from 2.8.1999 on the basis of appointment and in getting the aforesaid appointment order there is no fault on the part of

Respondent No. 4. The Apex Court in the case of M.S. Mudhol and Another Vs. S.D. Halegkar and Others, in para 6 has held as under:

Since we find that it was the default on the part of the 2nd Respondent, Director of Education in illegally approving the appointment of the first Respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st Respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd Respondent had chosen to acquiesce in the appointment, it would be iniquitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd Respondent. They are alone to be blamed for the same.

8. In the present case though the Petitioner is fully qualified for appointment to the post of Assistant Teacher in L.T. grade while making selection the Respondent has wrongly awarded 18 quantity marks to Petitioner instead of 12. Further Respondent No. 4 has continued for more than four years in service and as such it will not be proper to upset him.

9. For the reasons stated above it will not be in the interest of justice to quash appointment of Respondent No. 4 as there was no fault on the part of Respondent No. 4 in getting the aforesaid appointment. However, since the Petitioner has got high merit than the Respondent No. 4, the Respondents' authorities are directed to provide appointment to the Petitioner in L.T. grade in the State of Uttaranchal.

10. In the result the order dated 26.1.1999 passed by the Joint Director of Education Garhwal Mandal Pauri is quashed and the Respondent authority is directed to provide appointment to the Petitioner in L.T. grade in the State of Uttaranchal.

11. The writ petition is disposed of accordingly. No order as to the costs.