

(2005) 09 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition No. 781 of 2005 (M/B)

Jayendra Singh and Another

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Citation : (2006) 1 UC 392

Hon'ble Judges : Cyriac Joseph, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : N.S. Pundir, for the Appellant; K.P. Upadhyaya for State of Uttaranchal, Raman Kumar Shah, for Respondents Nos. 7 to 9 and Rajendra Dobhal, for the Respondent

Judgement

Cyriac Joseph, C.J.—The two Petitioners in this writ petition are Livestock Extension Officers working in the Department of Animal Husbandry, Government of Uttaranchal. They challenge Annexure 10 letter dated 21-07-2005 from the Secretary, Animal Husbandry Department, Government of Uttaranchal to the Additional Director, Animal Husbandry, Government of Uttaranchal recommending/nominating four Livestock Extension Officers as candidates sponsored by the State Government for admission to the Bachelor of Veterinary Science and Animal Husbandry (BVSc and AH) Course of the Govind Ballabh Pant University of Agriculture and Technology (hereinafter referred to as the University) for the year 2005-2006. Three of the four sponsored candidates have been impleaded in the writ petition as Respondents Nos. 7, 8 and 9. The fourth sponsored candidate Sri Dinesh Kumar belongs to Scheduled Caste and he has already been admitted to the Course. In view of an interim order passed in a connected case, Respondents Nos. 7, 8 and 9 have not been admitted to the Course so far. Mr. N.S. Pundir, learned Counsel for the Petitioners submitted that since the Petitioners do not belong to Scheduled Caste, the challenge in the writ petition is confined to the nomination of Respondents Nos. 7, 8 and 9 and that the Petitioners do not challenge the nomination of Sri Dinesh Kumar.

2. According to the Government, the first Petitioner was not eligible for admission as per the prescribed minimum eligibility qualifications for candidates sponsored by the Government of Uttaranchal and therefore, he was not sponsored by the Government. In the case of the second Petitioner who is eligible for admission, it is stated that he was not sponsored by the Government, as his rank was too low in the merit list prepared by the Selection Committee. It is not disputed by the Respondents that the selection of sponsored candidates was not made on the basis of seniority among the eligible Livestock Extension Officers who applied. According to the Petitioners, the selection should have been made on the basis of seniority among the eligible candidates.

3. As per the Prospectus 2005-2006 issued by the University, out of the 62 seats for the BVSc and AH Course, five seats are set apart for candidates sponsored by the Government of Uttaranchal. As per Clause 11 of Chapter II of the Prospectus, the candidates sponsored by the State Government shall not be required to take the Entrance Examination and their admission shall be governed by the eligibility requirements, as prescribed in Appendix 1 to the Prospectus. As per Clause A(II) of Appendix 1, minimum eligibility qualifications for Livestock Extension Officers nominated by the Government of Uttaranchal shall be:

i. 50% marks in Intermediate Science with Biology with at least 50% marks in High School examination.

ii. A pass in 2 years Diploma course in Veterinary Sciences and Animal Husbandry together with 5 years experience as Livestock Extension Officer or in a higher capacity.

Or

A pass in 1? years Diploma course in Veterinary Sciences and Animal Husbandry together with 7 years experience as Livestock Extension Officer or in a higher capacity.

Though the minimum eligibility qualifications for the sponsored candidates are prescribed in the Prospectus, it does not lay down any criteria for selection of sponsored candidates from among the eligible Applicants.

4. Admittedly, there is no Government Order laying down the criteria for selection of the sponsored candidates. However, it is not disputed that in the previous years, selection of sponsored candidates was made by a Selection Committee constituted by the Head of the Animal Husbandry Department on the basis of merit assessed in accordance with certain specified norms. Those norms have been stated in paragraphs 4 and 5 of the Additional Affidavit dated 28-08-2005 filed by Smt. Damyanti Dohare, Additional Director, Animal Husbandry, Gopeshwar, Chamoli. For convenience, the said paragraphs 4 and 5 of the additional affidavit are extracted hereunder:

4. That as in the previous years, the selection committee computed quality points of the candidates and awarded 10 percent of the percentage of the marks

obtained in High School and Intermediate each and 20 percent of the percentage of marks obtained by the candidates in their two years training examination. So far as ACR entries are concerned, 2.0 quality points have been prescribed for Excellent (✓), 1.5 quality points for Very Good (✓ ✓), 1.0 quality point for Good (✓), 0.5 quality point for satisfactory (✓) ACR entry. On the basis of total quality points secured by the candidates, their merit list was prepared.

It is pertinent to submit here that after the creation of State of Uttaranchal 3 batches of departmental candidates have been nominated by the Government for the aforesaid course in G.B. Pant University of Agriculture and Technology Pantnagar and in each of the Academic Sessions the selection for the departmental candidates was made on the merit criterion as disclosed herein above.

5. That so far as the government order or policy decision prescribing the aforesaid criterion is concerned, it is submitted that there is no government order of the State of Uttaranchal whereby the aforesaid criterion of merit for selection to the B.V.Sc. and A.H. Degree Course in the G.B. Pant University of Agriculture and Technology, Pantnagar has been prescribed. The State Government has been approving the recommendations of the departmental selection committee right since 2001. The deponent tried her level best to ascertain from the State of U.P. regarding the existence of any such Government Order, however, the deponent has failed to find any such Government Order prescribing merit as the criterion for selection of the departmental candidates. At the same time, it is pertinent to point out before the Hon'ble Court that the deponent has also failed to get any Government Order of the State of U.P. specifically providing for seniority as the selection criterion for selection of the departmental candidates for the aforesaid course.

5. A copy of the list prepared by the Selection Committee after considering all the Applicants for admission in the seats for sponsored candidates, has been produced as Annexure CA 2 to the counter affidavit filed on behalf of Respondents Nos. 4 to 6. As directed by this Court, a list of Livestock Extension Officers considered for BVSc and AH Degree Course in the order of their seniority has been produced as Annexure 8 to the additional affidavit filed by Smt. Damyanti Dohare, Additional Director. The names of the five candidates whose applications were rejected on the ground of ineligibility are also included at the end of the above-mentioned list as Serial Nos. 33 to 37.

6. In the above background, the first question that arises for consideration is whether the rejection of the application of the first Petitioner Sri Jayendra Singh is legal and valid. According to the Respondents, his application was rejected on the ground that he had not obtained 50% marks in the High School Examination and therefore, he did not satisfy the minimum eligibility qualifications prescribed by the University. As already stated, according to Clause A(II) of Appendix 1 to the Prospectus, the minimum eligibility qualifications for Livestock Extension Officers sponsored by the Government of Uttaranchal include "at least 50%

marks in High School Examination". It is admitted in the writ petition that the first Petitioner had obtained only 49.6% marks in the High School Examination. Therefore, the first Petitioner did not satisfy the minimum eligibility qualifications prescribed by the University and hence, his application was rightly rejected by the Selection Committee. Though learned Counsel for the Petitioners contended that 49.6% should have been rounded off as 50%, in the absence of any enabling provision in the Prospectus for such rounding off, the contention cannot be accepted.

7. Learned Counsel for the Petitioners also submitted that since the first Petitioner belongs to Other Backward Classes, he was required to get only 40% marks in the High School Examination for making him eligible for selection. In support of the above contention, learned Counsel invited our attention to Clause 12(C) of Chapter II of the Prospectus wherein it is stated that for BVSc and AH Undergraduate Programme, the minimum eligibility qualifications are "50% marks in aggregate in case of General Category and 40% in case of other categories in Intermediate Science with Physics, Chemistry and Biology or equivalent examination". However, the above provision can apply only to the candidates who seek admission through the Entrance Examination and not to candidates sponsored by the Government of Uttaranchal, because Clause 11 of Chapter II of the Prospectus specifically provides that the admission of candidates sponsored by the State Government shall be governed by the eligibility requirements, as prescribed in Appendix 1. In Appendix 1 to the Prospectus, the minimum eligibility qualifications for Livestock Extension Officers nominated by the Government of Uttaranchal, irrespective of the Class or Caste to which they belong, is "50% marks in Intermediate Science with Biology with at least 50% marks in High School Examination". No relaxation is provided in the case of candidates belonging to Scheduled Caste or Other Backward Classes. Hence, the contention that the first Petitioner, being a member of Other Backward Classes, should be treated as eligible for selection as he had obtained more than 40% marks in the High School Examination, is devoid of merit and is liable to be rejected.

8. It is not disputed by the Respondents that the second Petitioner was eligible for admission to the Course as per the minimum eligibility qualifications mentioned in Appendix 1 to the Prospectus. It is also not disputed that the name of the second Petitioner was considered by the Selection Committee and was included in the merit list prepared by the Committee at serial No. 17. The list produced as Annexure A to the additional affidavit filed by Smt. Damyanti Dohare, Additional Director shows that among the eligible candidates, the second Petitioner was ranked No. 4 according to the seniority. It is contended by the learned Counsel for the Petitioners that, since there are five seats and only one seat is reserved for Scheduled Caste, if the remaining four seats are filled-up on the basis of seniority among the eligible Applicants, the second Petitioner will be entitled for selection as a sponsored candidate. It is contended that the second Petitioner was denied nomination only because the Respondents ignored seniority

and followed a method of selection which is not authorised by any Rule or Government Order and which is also illegal and unjust. Hence, the next question to be considered is whether selection of sponsored candidates should have been made on the basis of seniority among the eligible Applicants or on the basis of merit assessed as per the criteria by the Respondents.

9. It is not disputed that only Livestock Extension Officers possessing the Degree of BVSc and AH are eligible for promotion to the cadre of Veterinary Medical Officer Grade B. Admittedly, a certain percentage of the posts in the said cadre are earmarked for promotion of Livestock Extension Officers. It is also not disputed that such promotion is based on seniority subject to suitability. In such circumstances, it is only just and reasonable that candidates are sponsored for admission to the BVSc and AH Course by the State Government on the basis of the seniority of the eligible Applicants. Otherwise, if a junior is sponsored for admission to the Course purportedly based on merit and overlooking the claims of his senior who also is eligible for admission to the Course, the junior will steal a march over the senior in the matter of promotion to the higher cadre of Veterinary Medical Officer Grade B. The senior will lose the right to be considered for promotion earlier than or at least along with his junior, only on account of the selection of the junior as a sponsored candidate and his acquiring the qualification of the degree in BVSc and AH earlier than the senior. This will naturally result in undeserving advantage to the juniors and serious prejudice and heartburn to the seniors. It is in public interest that such a situation is avoided. Moreover, there is no proper authority to subject the seniors to such a disadvantage in the matter of promotion to the higher cadre, which is based on seniority subject to suitability and not based on merit alone. It has to be noted that even though the University has not prescribed any criteria for selection of sponsored candidates, the Government has not framed any Rules or issued any order providing for selection based on merit and prescribing the criteria for assessing merit. What is stated by the Respondents is that, during the previous years also selection was made on the basis of merit assessed as per the criteria mentioned in the counter affidavit. But the Respondents have not offered any satisfactory explanation for overlooking seniority in the matter of selection when the advantage of promotion to the higher cadre will be available to the sponsored candidate on his passing the BVSc and AH Examination. Therefore, we are of the view that the selection of sponsored candidates should have been on the basis of seniority among eligible Applicants. The action of the Respondents in making the selection on the basis of merit assessed as per the criteria mentioned in the counter affidavit is not only unauthorized and arbitrary, but also unjust. Hence, the impugned selection of the sponsored candidates, except in the case of the Scheduled Caste candidate, is liable to be set aside.

10. At the same time, we make it clear that in certain contingencies the Government will have the right and discretion to refuse nomination to a Livestock Extension Officer even if he is senior among the eligible Applicants. For example, if any disciplinary proceeding is pending against the Applicant or his service

records show that he is unsuitable for promotion to any higher cadre, it will not be mandatory for the Government to sponsor such an Applicant on the basis of seniority. If such a candidate is sponsored and if he passes the BVSc and AH Examination and consequently, becomes qualified for promotion to the cadre of Veterinary Medical Officer Grade B, still he will not be promoted in view of the pendency of disciplinary proceeding or in view of the service records which make him unsuitable for promotion. In such a situation, the sponsorship and the acquisition of BVSc and AH qualification by the candidate will become a total waste. Hence, it is better that a junior candidate who is suitable for promotion to the higher cadre is preferred to a senior who is unsuitable for promotion. Hence, we are inclined to uphold the right for the Government to deny sponsorship or nomination to a senior candidate in the above-mentioned circumstances.

11. Mr. N.S. Pundir, learned Counsel for the Petitioners raised a contention that the rules relating to reservation were not correctly applied in the impugned selection. According to the learned Counsel, if the rules of reservation were correctly applied, one seat would have been reserved for Other Backward Classes in which event, the first Petitioner would have been entitled to nomination. This claim is disputed by the learned Standing Counsel for the State of Uttaranchal. However, we do not propose to consider or adjudicate the above contention for two reasons. Firstly, the first Petitioner is not eligible for admission to the Course and therefore, it is unnecessary to consider the above contention at his instance. Secondly, it is not stated in the writ petition that there was no other senior or better Other Backward Class candidate than the first Petitioner.

12. In the above circumstances, the writ petition is disposed of in the following terms:

i. Annexure 10 Government letter/order dated 21-07-2005 is quashed to the extent it nominates Respondents Nos. 7, 8 and 9 as candidates sponsored by the State Government for admission to the BVSc and AH Course of the University for the year 2005-2006. It is made clear that the nomination or admission of Sri Dinesh Kumar will not be affected by this judgement.

ii. Respondents Nos. 1 to 4 are directed to nominate/sponsor candidates for the remaining four seats on the basis of seniority of the eligible Applicants in the cadre of Livestock Extension Officers. Since the Course has already started, the nomination/sponsorship shall be made within one week from today.

iii. Since it is not disputed that the rules of reservation are applicable to the selection of candidates for sponsorship, the Respondents shall apply the rules of reservation correctly.

iv. It will be open to the Government to deny nomination/sponsorship to a senior Applicant, if any disciplinary proceeding is pending against him or his service records show that he is unsuitable for promotion to any higher cadre.

v. Since the Course has already started and there will be some more delay in

admitting the candidates sponsored by the Government of Uttaranchal, the 10th Respondent is directed to condone the delay, if any, in taking admission by the sponsored candidates.

vi. The first Respondent is directed to issue necessary orders laying down the method and criteria for nomination or selection of candidates sponsored by the Government for admission to the BVSc and AH Course of the University in future.