
(2015) 01 UK CK 0065

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 349 of 2014

Jyoti Prasad Bhatt

APPELLANT

Vs

District Judge, Tehri Garhwal and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 345

Citation : (2015) 3 UC 1775

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Anil Kumar Bisht, Advocate, for the Appellant; Bhagwat Mehra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—The petitioner before this Court is an employee of District Judgeship Tehri Garhwal. He is working on a Class-IV post in the said judgeship. The matter relates to promotion of Class-IV employees to Class-III post. Now Rules applicable in the service matter of the Ministerial Employees are known as "Uttarakhand Subordinate Civil Courts Establishment Rules, 2007", which states that 25 percent of Class III posts will be filled by way of promotion amongst Class IV employees. The eligible candidates for the aforesaid competitive examination have to appear in a written examination. The written examination consists of two papers of 50 marks each. In the present case there were five candidates for the two posts on which promotion exercise were to be made. In the said examination the candidates obtained the following marks.

2. As far as Mr. Karan Singh (Roll No. 201) is concerned, who has secured highest marks i.e. 43.7 marks and has been selected, is not in dispute. Regarding the second candidate Sri Kundan Singh (Roll No. 202), who had obtained 41 marks, he was declared disqualified, as his services were not satisfactory in the year 2013. Mr. Kaur Singh (Roll No. 203) and Mr. Jyoti Prasad Bhatt Singh - present petitioner (Roll No. 204), whose name has been wrongly

mentioned as Jyoti Singh, have obtained 38 marks each. However, the District Judge, Tehri Garhwal has appointed Mr. Kaur Singh for the Class III post. The reason assigned by the concerned authority is that though both of them have obtained equal marks i.e. 38 marks each but there were two papers and in second paper Kaur Singh has obtained 3 marks whereas the petitioner has obtained 0 (zero) marks, therefore, Mr. Kaur Singh is selected. This is the reasoning given for selecting respondent No. 2 i.e. Mr. Kaur Singh.

3. At this juncture, it would be necessary to note that second paper is of English language and out of five candidates, who appeared in the examination, three had obtained 0 (zero) marks in the said paper. In fact the one who has got the highest marks i.e. 43.7 marks also obtained 0 (zero) marks in the English language (second paper) and yet he has been selected, which is not under dispute. It is also necessary to note at this juncture that the entire work in the District Judgeship is in Hindi language, in fact the language of the district court is also Hindi. Hindi is also the declared official language of the State of Uttarakhand under Article 345 in the Constitution of India.

4. The learned counsel for the petitioner has challenged the said selection/appointment on various grounds. Firstly, that the reason assigned for not selecting the petitioner is totally arbitrary and illegal, inasmuch as, he has been rejected on the ground that he has obtained 0 (zero) marks in second paper, whereas another person, who has been selected i.e. Mr. Karan Singh has also obtained 0 (zero) marks in the second paper. Therefore, considering the same analogy, even Mr. Karan Singh, was not liable to be selected since he had secured 0 (zero) marks in the said examination, yet he has been selected. The second challenge of the petitioner is that as per the Rule 20(2) of the Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007, which deals with promotion reads as under:--

"20. Promotion (1).....

(2) Except in cases of Amins, promotion shall be made according to seniority subject to efficiency."

5. The petitioner contends that in case of a tie in marks of two candidates, the candidate who is senior in age or who is senior in service should be selected. Based on both these yardsticks, it was the petitioner who was liable to be selected as he was not only senior to respondent No. 2 in service but also senior in age as well. The petitioner joined his service on the Class -IV post on 01.03.1982 whereas respondent No. 2 has joined on 01.03.1995.

6. Although the Rules of 2007 are silent to this aspect on promotion but yet Rule 14 which gives criteria for direct appointment reads as under:--

"14. (1) Registrar General shall prepare a select list of candidates in order of merit, on the basis of the aggregate of marks obtained by them in the written examination Part-1 and Part-2;

Provided that if two or more candidates obtain equal marks, the name of the candidate senior in age, shall be placed higher in the select list.

Provided further that if two or more candidates of equal age obtain equal marks, the name of the candidate who has obtained higher marks in the written examination, shall be placed higher in select list."

(emphasis supplied)

7. Admittedly, the above provision applies in case of direct recruitments only. Yet it is a fair and equitable provision and therefore liable to be applied in the present case as well, though we are concerned with appointment on the basis of promotion.

8. Consequently, since there was a tie between the petitioner and respondent No. 2, the petitioner should have been given priority as not only he was senior in service but also senior in age. The selection of respondent No. 2 is totally arbitrary and illegal, and therefore the same is quashed. Accordingly, the writ petition is allowed. A mandamus is issued to respondent No. 1 to forthwith give appointment to the petitioner on the Class III post from the date on which appointment was initially given to respondent No. 2.