

(2019) 03 UK CK 0127

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 460, 464, 467 Of 2018

Khushhal Singh Rawat & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Indian Forest Service (Appointment by Promotion) Regulations, 1996 — Regulation 5(2)

Citation : (2019) 03 UK CK 0127

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : D.S. Patni, Pradeep Joshi

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. D.S. Patni, learned counsel for the petitioners in all these three writ petitions and Mr. Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand and, with their consent, the writ petition is disposed of at the stage of admission. Learned counsel on either side are in agreement that, for the disposal of all these three writ petitions, it would suffice if the facts in Writ Petition (S/B) No. 460 of 2018 are noted.

2. Facts, to the extent necessary, are that the petitioners were appointed as Forest Range Officers (Forest Rangers) on 01.11.1982 and 03.07.1983 respectively in the erstwhile State of Uttar Pradesh. As per the then existing Uttar Pradesh Forest Service Rules, 1993, a Forest Range Officer was required to put in a minimum of eight years of service to be promoted to the post of Assistant Conservator of Forests. Both the petitioners claim to have completed eight years of continuous service on 01.11.1990 and 03.07.1997 respectively, and to have become eligible for promotion to the Provincial Forest Service on 01.11.1990 and 03.07.1997 respectively. They were, however, not promoted to

the Provincial Forest Service i.e. as an Assistant Conservator of Forest as per the then Government Orders in force. After 14 years of service, the first petitioner was sanctioned the first promotional pay-scale w.e.f. 01.01.1996 i.e. the pay-scale of Assistant Conservator of Forest, and the second petitioner was sanctioned the said pay-scale w.e.f. 03.07.1997.

3. The Principal Chief Conservator of Forest, Uttarakhand, by office order dated 19.07.2001, made the petitioners in-charge Assistant Conservator of Forests on 19.07.2001. The said order dated 19.07.2001 was issued with the approval of the Government of Uttarakhand. The petitioners joined the said post soon thereafter, and continued to discharge their duties as in-charge Assistant Conservator of Forests till 03.03.2010, when they were regularly promoted to the post of Assistant Conservator of Forests in a substantive manner. On the ground that a person should have put in a minimum of eight years of continuous service (whether officiating or substantive) in the post of an Assistant Conservator of Forests for induction into the Indian Forest Service, in terms of Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1996, the petitioners were not considered for such induction holding that they had not completed eight years' continuous service as on the first day of January, 2018 as they were regularly promoted and appointed to the substantive post of Assistant Conservator of Forests only by proceedings dated 03.03.2010.

4. The Principal Chief Conservator of Forest informed the Secretary, Forest and Environment, by his letter dated 06.08.2018, that, due to superannuation of six Indian Forest Service officers in the year 2017 from the State Forest Service quota, six vacancies were available as on 01.01.2018 for the select year 2018; six officers (all of whom have now invoked the jurisdiction of this Court) were promoted as Assistant Conservator of Forests by proceedings dated 03.03.2010 and had not completed eight years of service as on 01.01.2018; and since none of the State Forest Officers had completed eight years of qualifying service as on 01.01.2018, no proposal for induction could be made. Aggrieved thereby the present writ petitions.

5. Mr. D.S. Patni, learned counsel for the petitioners, would draw our attention to the third proviso to Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1996, as corrected upto 25.07.2000, to submit that a member of the State Forest Service is not entitled to be considered for induction into the Indian Forest Service by the committee unless, on the first day of January of the year for which the select list is prepared, he is substantively in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the posts included in the State Forest Service. Under Explanation I thereto, the powers of the State Government, under the third proviso, shall be exercised in relation to the members of the State Forest Service of a constituent State by the Government of that State.

6. The submission of Mr. D.S. Patni, learned counsel for the petitioners, is that,

since all the petitioners herein were appointed as in-charge Assistant Conservator of Forests vide proceedings of the Principal Chief Conservator of Forest dated 19.07.2001, which order was issued with the approval of the State Government, and since they continued as in-charge Assistant Conservator of Forests till they were regularly appointed vide proceedings dated 03.03.2010, they were entitled to have their services, as in-charge Assistant Conservator of Forests, from 19.07.2001 till 03.03.2010, reckoned in computing the minimum required eight years of continuous service, as Assistant Conservator of Forests, to be considered for induction into the Indian Forest Service.

7. Since the entire controversy revolves around the scope and ambit of the third proviso to Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1996, it is necessary to take note of the said provision in its entirety :

"Provided also that the Committee shall not consider the case of a member of the State Forest Service unless on the first day of January of the year for which the select list is prepared, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post(s) included in the State Forest Service."

8. In terms of the aforesaid proviso, a member of the State Forest Service is eligible to be considered for induction into the Indian Forest Service if, on the first day of January of the year for which the select list is prepared, he is substantively in the State Forest Service and has completed eight years of continuous service in posts included in the State Forest Service. The words referred to in brackets, in the third proviso to Regulation 5(2), are of considerable significance. It states that the eight years of continuous service should be officiating or substantive service. The fact that the post of Assistant Conservator of Forests is in State Forest Service is not in dispute. It is also not in dispute that the petitioners were in-charge Assistant Conservator of Forests from 19.07.2001 till they were regularly promoted to the said posts on 03.03.2010. If their in-charge service from 19.07.2001 is reckoned then, since the select year is 2018, they had, on the first day of January of the year (i.e. 01.01.2018), completed more than 16 years of continuous service in a post in the State Forest Service, and were thereby eligible (having completed far more than the required eight years of continuous service) to be considered for induction into the Indian Forest Service.

9. In the counter affidavit, filed on behalf of the third respondent, the fact that the petitioners were appointed as in-charge Assistant Conservator of Forests, by proceedings dated 19.07.2001, has not been disputed. It has also not been disputed that they worked continuously as in-charge Assistant Conservator of Forests till they were regularly promoted to the said posts on 03.03.2010. It is also admitted that they have been working as Assistant Conservator of Forests on a substantive basis ever since 03.03.2010 till date.

10. Mr. Pradeep Joshi, learned Standing Counsel for the State Government, would however draw a subtle distinction between the words "in-charge" and "officiating" and would contend that, since the third proviso to Regulation 5(2) required only continuous "officiating service" to be reckoned, and since the petitioners had continuously discharged duties as "in-charge Assistant Conservator of Forests" the service rendered by them as "in-charge Assistant Conservator of Forests" from 19.07.2001 till 03.03.2010 cannot be included in computing eight years of continuous service for induction into the Indian Forest Service.

11. When we asked Mr. Pradeep Joshi, learned Standing Counsel, to explain the distinction between "officiating" and "in-charge" appointment, learned Standing Counsel would state that, while an officiating appointment is for a longer period, an in-charge arrangement is for a shorter duration. If that alone be the distinction, the very fact that the petitioners continued as in-charge Assistant Conservator of Forests for a period of more than eight and a half years, ever since 19.07.2001 till they were regularly promoted on 03.03.2010, would require the "in-charge service" rendered by them to be treated as officiating continuous service.

12. We are satisfied, therefore, that the authorities were in error in holding that the petitioners had not put in the minimum required eight years of continuous service (whether substantive or officiating) in a post in the State Forest Service, as on 01.01.2018, to be eligible to be considered for induction into the Indian Forest Service.

13. The writ petition is, accordingly, disposed of quashing the proceedings dated 06.08.2018. The respondents are directed to consider the petitioners' names for inclusion in the select list for induction into the Indian Forest Service treating the service rendered by them, as in-charge Assistant Conservator of Forests from 19.07.2001 till they were regularly appointed on 03.03.2010, as officiating continuous service for the purpose of computing the required continuous eight years of service under the third proviso to Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1996.

14. Mr. D.S. Patni, learned counsel for the petitioners, would submit that, since names of eligible candidates for the 2019 batch have already been recommended, the respondents be directed to take a considered decision early. We consider it appropriate, in such circumstances, to direct the second and third respondents to consider the petitioners' names for inclusion in the select list for induction into the Indian Forest Service with utmost expedition and, in any event, within two months from the date of production of a certified copy of this judgment.

15. All these writ petitions are, accordingly, disposed of. No costs.