
(2011) 06 UK CK 0120

In the Uttarakhand High Court

Case No : Recall Application No. 445 of 2011, Delay Condonation Application No. 6161 of 2011 in Writ Petition No. 55 of 2006 (S/B)

Kishan Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0120

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—In the writ petition filed by the Petitioner, he contended that reservation policy applies to promotion of State Forest Officers to the cadre of Indian Forest Service. By the judgment and order under review, this contention has been rejected by accepting the statements made in paragraphs 17, 19, 20 and 22 of the counter affidavit filed by the Respondent Nos. 1 and 3, namely, the Union of India represented by Ministry of Public Grievances and Pension, Department of Personnel and Training and the Secretary, Ministry of Forest and Environment, Government of India. In those paragraphs, it was contended that for induction in Indian Forest Service from State Forest Service, reservation policy of the Central Government is not applicable. It was contended that benefit of reservation is obtained by State Forest Service Officers at the time of their induction in the service. It was contended that they obtained promotion in higher post in the State Forest Service in accordance with the reservation policy of the State. It was contended that at the time of induction to the Indian Forest Service, the State Forest Service Officers invariably hold Group-A post in the State Government and are appointed by promotion to senior time-scale posts (Group-A) in the Indian Forest Service in the Central Government. It was further contended that these promotions are accorded on the basis of merit. It was again contended that reservation in the Central Government is applicable only if

the mode of promotion from Group-A post to another Group-A post is by non-selection, i.e. by seniority subject to rejection of unfit. But the same does not apply when the selection criteria is merit.

2. In a rejoinder to the counter affidavit, it was stated that in the State of Uttar Pradesh, until 2003, there was no Group-A post in the State Forest Service and in the State of Uttarakhand, even upto the date of filing of the rejoinder, no such post was available. It appears that this assertion in the rejoinder affidavit was not dealt with in the judgment and order under review. Unless a superior court holds otherwise, it must be deemed in law that the said assertion has been rejected by the judgment and order under review. Accordingly, it may be possible that the judgment and order under review is not sustainable, but that is no ground for review.

3. The review application was permitted to be dismissed for default. An application for restoration has been filed where it has been stated that the advocate engaged by the Petitioner failed to mark the review application on the list. There is also an application for condonation of delay in filing the restoration application, inasmuch as, the restoration application was filed beyond time. The reasons furnished in the application for condonation of delay and also in the application for restoration of the review application, as it appears to us, are allegations pertaining to alleged laches or negligence on the part of the chosen advocate of the Petitioner. On the principle that for the laches and negligence on the part of the advocate, the litigant should not suffer, we allow both the said applications but upon payment of cost of Rs. 2,000/- to be deposited with the High Court Legal Services Committee within 15 days from today, as a condition precedent. At the same time, having gone into the merits of the review application and on finding that the review applicant has not been able to bring on record any error apparent on the face of records, we are constrained to dismiss the review application.