

(2018) 12 UK CK 0097

In the Uttarakhand High Court

Case No : Special Appeal No. 697, 658, 694, 695, 696 Of 2018

**Kishan Singh Rawat & Others @APPELLANT@Hash State Of Uttarakhand
And Others**

Date of Decision : 07-12-2018

Acts Referred:

Uttaranchal Government Department Driver's Service Rules, 2003 — Rule 8, 11(ii), 16

Citation : (2018) 12 UK CK 0097

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Amar Shukla, Lata Negi, B.S. Parihar, Neeti Rana, Rakesh Thapliyal, Arvind Vashisth, Monika Pant

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Amar Shukla and Ms. Lata Negi, learned Counsel for the appellants, Mr. B.S. Parihar, learned Standing Counsel for the State of

Uttarakhand, Ms. Neeti Rana, learned Counsel holding the brief of Mr. Rakesh Thapliyal, learned Counsel for the Uttarakhand Technical Education

Board and Mr. Arvind Vashisth, learned Senior Counsel assisted by Mrs. Monika Pant, learned Counsel for the private respondent no.3.

2. It is represented by both Mr. Amar Shukla, the learned Counsel for the applicant in CLMA No.13115/18 and Mr. Arvind Vashisth, learned Senior

Counsel for the respondent-writ petitioner that similar appeals have already been admitted, and are pending on the file of this Court. Since the

applicants in CLMA No. 13115 of 2018 are also aggrieved by the order under appeal, and similar appeals have already been admitted, leave to prefer

the appeal in SPA No.694 of 2018 is granted. Application (CLMA 13115/18) is allowed accordingly.

3. Delay in preferring Special Appeal No.694 of 2018 of 38 days is not opposed and is, therefore, condoned.

4. These five appeals are preferred against the order passed by the learned Single Judge in WPSS No.378 of 2018 and batch dated 19.06.2018.

5. The third respondent/writ petitioner filed WPSS No.378 of 2018 seeking a writ of certiorari to quash the proceedings dated 22.02.2018 whereby the

petitioner, among others, was not found suitable for the Post Code G-30 (Vehicle Driver) in the selection process initiated for Group C posts called

â??Group C Combined Civil Service Examination 2011â? under the Post Code G-30(Vehicle Driver); a writ of mandamus directing the respondents

not to conclude the selection process initiated for Group C posts called â??Group C Combined Civil Service Examination 2011â? under the Post Code

G-30 (Vehicle Driver), and to consider the petitioner against the vacant post; and a writ of mandamus directing the respondents to consider the

petitionerâ??s candidature, for the post under G-30 (Vehicle Driver) LMV category, in the ongoing selection process.

6. Facts, to the extent necessary, are that an advertisement was issued on 20.12.2011 inviting applications from eligible candidates for appointment to

different posts of Drivers in various government departments; call letters were issued on 9.12.2012; the result of the written examination was declared

on 22.2.2014; call letters, for the driving test, were issued on 22.11.2017; and the final result was declared on 20.2.2018. The third respondent-writ

petitioner was declared unsuccessful on the ground that he did not possess a driving licence to drive heavy motor vehicles or transport vehicles. A

fresh select list was prepared on 27.2.2018 wherein the names of appellants figured, but the name of third respondent did not.

7. The appellantsâ?? case is that since, admittedly, the respondent-writ petitioner did not possess a heavy motor vehicle or a transport vehicle driving

licence, but only had a light motor vehicle driving licence, his candidature was rightly rejected by the authorities concerned; the third respondent did not

even choose to challenge the final select list dated 27.2.2018; and in the absence of any challenge thereto, the learned Single Judge should have

dismissed the writ petition in limine, instead of entertaining the writ petition and granting the relief sought for by the third respondent-writ petitioner.

8. In the order under appeal, the Learned Single Judge relied on a clause in the call letter dated 22.11.2017 (the contents of which we shall refer to

later in this order), and, thereafter, noted that, in the impugned order dated 20.2.2018, the roll number with which the petitioner appeared in the driving test finds place amongst the roll numbers whose candidature was rejected on the ground that they were not having a driving licence for a three year period prior to the advertisement dated 30.12.2011; the writ petitioner had enclosed a copy of the driving licence which he possessed on the date of the advertisement which stood renewed on 23.02.2015; the driving licence itself shows the number, and that it was valid from 02.09.2006 to 1.09.2026 for non-transport validity, and from 23.02.2015 to 22.02.2018 for transport validity; despite producing the driving licence, the petitioner's candidature was rejected and he was not considered for appointment; the petitioner had also asserted that the driving licence was produced in the original before the respondents prior to taking the driving test; it was only on being satisfied, was he permitted to participate in the said test; the stand of the respondents was that the driving licence, possessed by the petitioner, could not be treated as valid, as it was not a driving licence which was in accordance with Clause-3 of the call letter, and it did not bear the endorsement for driving of light motor vehicle; since this was not the reason, stated in the impugned order of rejection, such a stand did not repose confidence to the Court; and the ground of rejection was that the petitioner did not possess a valid driving licence for a period of three years prior to the date of advertisement. The Learned Single Judge, placing reliance on *Mohinder Singh Gill v. The Chief Election Officer* AIR 1978 S.C. 851, allowed the writ petition, quashed the order dated 20.2.2018 and issued a mandamus directing the respondents to consider the petitioner's candidature for appointment to the post of Group-C driver bearing Code No.G30 pursuant to the selection process called *Group-C Combined Civil Service Examination, 2011* for L.M.V. category.

9. The clause, referred to in the call letter, is a reproduction of Rule 11(ii) of the Uttaranchal Government Department Driver's Service Rules 2003 and, thereunder, a candidate for direct recruitment must possess a valid driving licence for heavy or light motor vehicle, as the case may be, for a period of not less than three years preceding the date on which the vacancy is notified to the employment exchange under Rule 16. Rule 16 requires the appointing authority to determine the number of vacancies to be filled during the course of the year, as also the number of vacancies to be

reserved for the categories belonging to the Scheduled Castes, the Scheduled Tribes and other categories under Rule 8; and to notify the vacancies to the employment exchange in accordance with the rules and orders of the Government for the time being in force; and he may also advertise the vacancies in the leading newspapers.

10. While it is no doubt true that Rule 11(ii) stipulates that a candidate must possess a valid driving licence for heavy or light vehicle, as the case may be, and such a licence must be for a period of not less than three years preceding the date on which the vacancy was notified to the employment exchange, the words "as the case may be" in Rule 11(ii) should be read in the context of the post advertised, and would depend on whether the employer (the State Government) intended to recruit candidates only with a heavy motor vehicle/transport vehicle driving licence or for both such a vehicle and a light motor vehicle driving licence holder, for appointment to such posts.

11. While Mr. Arvind Vashisth, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would vehemently contend that, since the selected drivers were to be appointed in several departments, a substantial number of which only required drivers with a light motor vehicle licence, the words "as the case may be", in the call letter, only meant that the requirement of holding a heavy vehicle /transport vehicle driving licence or a light motor vehicle driving licence would depend on the Department in which the selected driver was to be appointed; and since the respondent-writ petitioner possessed a light motor vehicle driving licence, he was eligible, in terms of the call letter, to be considered for appointment, in such departments which required only a driver possessing a light motor vehicle driving license.

12. On the other hand, Mr. Amar Shukla, learned Counsel for the appellant, would submit that no plea has been taken, either in the writ affidavit or in the supplementary affidavit, that several other drivers holding a light motor vehicle driving licence were also selected; there is also no plea that several Departments required Drivers only with a light motor vehicle driving licence; the order of the learned Single Judge has the effect of obligating the State Government to appoint a driver who does not possess a heavy motor vehicle driving licence; such directions are illegal; and the order under

appeal is, therefore, liable to be set aside.

13. From the material on record, it is not clear whether any other driver, possessing a light motor vehicle driving licence, was also selected and appointed as a driver pursuant to the advertisement issued on 20. 12.2011. If only candidates, with a heavy motor vehicle or transport vehicle driving licence, were alone selected for appointment as drivers, then the employer cannot be faulted for rejecting the respondent-writ petitioner's claim to be considered for appointment, as he held only a light motor vehicle driving licence, and not a heavy motor/transport vehicle driving licence; upholding the order of the learned Single Judge would then mean that the petitioner alone would be required to be selected even without having a heavy motor vehicle or a transport vehicle driving licence. This, however, is an aspect which the respondent officials are required to consider.

14. As the petitioner, admittedly, does not possess a heavy motor or a transport motor vehicle driving licence, the respondent officials shall first examine whether the requirement of the advertisement and the call letter was only to select drivers with a heavy motor vehicle / transport vehicle driving licence or whether the requirement of the call letter and the advertisement was for drivers, who possessed either a heavy motor vehicle / transport vehicle driving licence or a light motor driving licence. If other drivers, who possessed a light motor vehicle driving licence, have been selected for appointment, it would then mean that the respondent officials intended to recruit drivers who hold either heavy or light motor vehicle driving licence, in which event the petitioner would also be eligible to be considered, since he claims to possess a light motor vehicle driving licence.

15. As Mr. Amar Shukla, Learned Counsel for the appellant, expresses doubts as to whether the respondent-writ petitioner even possesses a valid light motor vehicle driving licence, the authorities shall also examine whether or not the licence, which the respondent-writ petitioner has in his possession, was in force for a period of three years prior thereto when the advertisement was issued, as also on the date on which the driving test was held. It is only if the respondent-writ petitioner is held to have a valid driving licence during the period commencing from three years prior to the date of the advertisement and till the date on which a driving test was held, would he then be entitled to be considered for appointment to the post of driver.

Yet another aspect which the authorities may be required to consider, even if the respondent-writ petitioner is found to possess a valid light motor

vehicle driving licence, is whether he stood high up in the merit list for being considered for appointment to the post of Drivers.

16. We consider it appropriate, in such circumstances, to modify the order of the learned Single Judge and, instead, issue the following directions: -

(a.) the respondent officials shall first examine whether the requirement, in terms of the advertisement, was only for drivers with a heavy motor

vehicle or transport vehicle driving licence or whether the requirement was for drivers holding either a light motor vehicle driving licence or a heavy

motor vehicle/transport vehicle driving licence.

(b.) it is only if other candidates, who only have a light motor vehicle driving licence and not a heavy motor vehicle / transport vehicle driving licence,

have been selected and appointed as drivers, would the respondent officials then be required to consider the petitioner's candidature as he,

admittedly, possessed only a light motor vehicle driving licence.

(c.) if the requirement is for both categories (drivers holding heavy motor vehicle/transport vehicle driving licence or only a light motor vehicle driving

licence), the authorities shall then examine whether the petitioner had a valid light motor vehicle driving licence, both three years prior to when the

advertisement was issued, and on the date on which the driving test was held.

(d.) in case it is found that the respondent-writ petitioner had a valid driving licence, the respondent officials shall then examine whether inclusion of

the name of petitioner in the select list of drivers, based on his merit, would result in his being required to be appointed as a driver, since it is only if

candidates lower than him in merit have been appointed as drivers, can the petitioner justifiably claim that he should also be appointed as a driver.

17. All the appeals are disposed of with the aforesaid directions. However, in the circumstances, without costs.