
(2010) 11 UK CK 0084

In the Uttarakhand High Court

Case No : Special Appeal No. 42 of 2010

Krishna Nand Joshi and Navin Chandra Joshi

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2010) 3 UC 2004

Hon'ble Judges : Barin Ghosh, C.J;Nirmal Yadav, J

Bench : Division Bench

Judgement

Barin Ghosh, C. J.

1. In this appeal, we are concerned with a judgment and order passed by a learned Single Judge of this Court, whereby and under several writ petitions filed by people similarly situate to that of the Appellants, including the writ petition filed by the Appellants, were dismissed. In all those writ petitions, same or similar contentions were raised. It was contended principally that for no just reason advertised vacancies are not being filled up. In answer to the contentions raised in the writ petitions, the Respondents in those writ petitions contended that those vacancies did not remain for being filled up, inasmuch as, those were supplied by transfer from other circles. The learned Single Judge, who dealt with writ petitions, has held that the Petitioners with their merit did not stand a chance and, accordingly, they did not have any right which could be said to have been defeated by the action complained of. As it appears to us, the learned Judge, while dealing with the writ petition, did not consider how the advertised vacancies could be filled in by transfer from other circles.

2. In terms of the appropriate Rules, Divisional Forest Officer is required to determine the vacancies and to take steps for filling up the same in accordance with the mandate of the Rules. In the instant case, the Divisional Forest Officer did determine the vacancies and found that there are 23 vacancies available for being supplied by people who had worked as seasonal workers and belong to open category. In the advertisement, it was mentioned that the said vacancies

may be increased or decreased. No doubt, if in the matter of determination of vacancies there had been a mistake, of course, the result-end effect thereof may be either increase or decrease in the vacancies. It is also possible that subsequent to determination but before filling up the vacancies, for reasons beyond control, like death, resignations, etc., vacancies may increase. At the same time, it was also possible that after such determination the strength of the sanctioned posts could be reduced by a Government decision resulting in decrease in the vacancies. The Rules nowhere provide that the vacancies thus determined could be reduced by transfers from other Divisions of the Forest. There was, therefore, no just reason not to recruit to the extent vacancies had been advertised. Learned Counsel for the State submitted that those transferees did not join; in those circumstances there was no just reason not to fill up those vacancies. We, accordingly, direct in modification of the order under appeal to fill up those vacancies in accordance with the mandate of the Rules from amongst the people who responded to the said advertisement. Let steps in that regard be taken as quickly as possible but not later than four months from the date of service of a copy of this order upon the concerned Divisional Forest Officer.