
(2015) 02 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (S/S) Nos. 256 and 257 of 2015

Man Singh and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Uttarakhand Police Act, 2007 — Section 2 (p), 2(p), 38, 38 (3), 38(3)

Citation : (2015) 109 ALR 854 : (2015) 145 FLR 934

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Mr. K.P. Upadhyay, Advocate with Mr. Vinay Kumar, Advocate, present for the petitioners.

2. Mr. V.B.S. Negi, learned Additional Advocate General with Mr. Subhash Upadhyay, learned Chief Standing Counsel, present for the State of Uttarakhand/respondents.

3. The petitioners, before this Court, in both the writ petitions, are either Constables or Head Constables who have presently challenged the selection process initiated by the State Government for filling up the vacancies of Ranker Sub Inspectors in civil police in Uttarakhand. This challenge was made even earlier in the first round of litigation (WPSS No. 741 of 2014 and WPSS No. 914 of 2014). The challenge was that under the Uttarakhand Police Act, 2007, a Police Establishment Committee (from hereinafter referred to as "the Committee") has been established. The Committee can take limited decisions regarding the matter of service in police department but only subject to the rules framed by the State Government under Section 87 of the Uttarakhand Police Act, 2007. This argument was not entirely agreed by this Court in its decision in the said writ petitions. Since the language of Section 87 of the Uttarakhand Police Act, 2007 is that the State "may" frame Rules, the Court was of the opinion that it was not binding upon the State to frame the Rules. On the other hand, Section 38 of the Uttarakhand Police Act, 2007 clearly states that the Police

Establishment Committee shall be responsible for laying down the procedure in service.

4. In the earlier round of litigation, the Police Establishment Committee, which consists of the Director General of Police and two senior most police officers had already taken a decision as to by what process the posts of Ranker Sub Inspectors in civil police be filled and the eligibility therein. While deciding the said writ petitions vide judgment and order dated 26.11.2014, this Court was of the view that though the powers lie with the Police Establishment Committee under Section 38 (3) of the Police Act, yet this decision has to be made public and prior to that it must have the acceptance of the Government. Further it was observed that since not only the Head Constables and Constables of civil police are amongst the feeding cadre of the said promotional exercise, but Head Constables and Constables of other branches of police, such as Armed, I.R.B., P.A.C. were also liable to be considered, this Court was of the view that for this there is no such provision, at least none that was shown. However, on the legality or illegality of this aspect, nothing was said, except that directions were given to the Police Establishment Committee to rethink on that issue, apply its mind on this aspect and thereafter get it approved by the State Government, in case they wish that member of other branches of the police are also liable to be included in the zone of consideration for promotion for the post of Ranker Sub Inspectors.

5. Paragraphs 31 and 32 of the judgment rendered in Writ Petition (S/S) No. 741 of 2014 and Writ Petition (S/S) No. 914 of 2014 read as under:-

"31. As regarding Constables and Head Constables of other branches of the Police being made eligible, this Court is in no position to take a formal stand, which is for various reasons, but primarily as the entire facts are not before this Court, as to what is the organisation of the police and what are the different cadres, what is the strength of different cadres, and more particularly, these Constables or Head Constables who have now been made eligible under the decision of the Committee are also not before this Court. Yet, this aspect needs consideration, both by the Committee as well as by the State Government, which is whether members of outside cadre (though of the same police force), can be included in the "feeding cadre" to the promotion of Sub Inspectors in Civil Police.

32. Let the decisions of the Committee be placed before the Principal Secretary (Home), Uttarakhand, who shall examine the decisions of the Committee and the entire procedures laid down by the Committee, and thereafter pass a formal order therein, which should then be made public and will be in the knowledge of entire Police Force so that they are well aware of the recruitment or promotional exercise. Subject to the above, this Court is presently not interfering with the decision of the Committee. However, this Court directs the Director General of Police, Uttarakhand to place its decision (under which the promotion exercise was to take place) before the State Government, which should then exercise its power under Section 38(3) if need be, and in the light of the observation of this

Court formalise the "decisions".

6. The order in the above writ petition had attained a finality as it was not challenged in a Special Appeal. Yet the Police Establishment Committee has not complied with the order.

7. The learned Chief Standing Counsel Mr. Subhash Upadhyay on 24.02.2015 was directed to place before this Court any document to establish that there was an application of mind by the Committee, subsequent to the order of this Court dated 26.11.2014, however, he has failed to show that there was any application of mind on this aspect.

8. Learned counsel for the petitioners Mr. K.P. Upadhyay as well as Mr. Vinay Kumar, therefore, submit that it is a clear violation of the order of this Court dated 26.11.2014. The illegality which was existing in the earlier decision of the Police Establishment Committee still continues, and therefore the examination which is scheduled for 1st March, 2015, which must be stayed.

9. This Court, prima facie, finds strength in the arguments of the learned counsels for the petitioners Mr. K.P. Upadhyay as well as Mr. Vinay Kumar, who in WPSS No. 257 of 2015 further argues that the post of Rankers Sub Inspector is a post of Police Officers, which is defined in Section 2(p) of the Uttarakhand Police Act, 2007. Section 2 (p) of the Uttarakhand Police Act, 2007 reads as under:-

2(p).-"Police Officer" means any officer, belonging to the Indian Police Service, Uttarakhand Police Service or Uttarakhand Police Service or Uttarakhand Police Subordinate Service and includes any other service, constituted under this Act.

10. He, thereafter submits that since members of P.A.C. and I.R.B. are from services, other than the services which has been defined under the Uttarakhand Police Act, 2007, that cannot be considered in the eligibility zone at all.

11. Let a detail reply to the aspects raised in the writ petitions be filed within a period of three weeks from today.

12. Learned Additional Advocate General as well as learned Chief Standing Counsel have apprised this Court that they have received instructions from the State that the State Government has already spent about Rs.15.00 lakhs (Rupees Fifteen Lakhs) in the promotional exercise as of now.

13. This may also not be the criteria for allowing the examination to take place, if the Court is of the view that the process is per se illegal. But what also has to be seen is that such candidates who fall in the eligibility zone are not present before this Court and the date of examination has been declared on 10th February, 2015 and the examination itself has to be conducted barely couple of days later i.e. on 1st March, 2015.

14. Consequently, though the respondents may go on with the written examination but nothing further will be done in the promotional exercise, such as physical test, etc. An interim mandamus is also issued to the respondents not to

declare the result of this examination until further orders of this Court.

15. It is made clear that the candidates who will appear in the examination will also be informed about the interim order of this Court and that the result would depend upon the final determination by this court in these writ petitions.

16. List this matter on 20th March, 2015 in a daily cause list.

17. At this stage, learned counsel for the petitioners Mr. K.P. Upadhyay as well as Mr. Vinay Kumar pray that at least 37 posts of Rankers Sub Inspector be kept vacant for the petitioners, however, since this Court has already directed the respondents not to declare the result, such order need not be made.