
(2014) 07 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 914 of 2014

Mohan Singh Tomkiyal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Uttarakhand Police Act, 2007 — Section 38, 38(2), 87

Citation : (2014) 106 ALR 56 : (2014) 143 FLR 715

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : K.P. Upadhyay and Vinay Kumar, Advocate for the Appellant; V.B.S. Negi, Learned Deputy Advocate General and Subhash Upadhyay, Learned Chief Standing Counsel, Advocate for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioners are constables in Uttarakhand Civil Police. They have presently challenged the promotional exercise undertaken by the Government of Uttarakhand and the Police Department of Uttarakhand for promotion of Constables and Head Constables to the post of Sub-Inspector in Uttarakhand Civil Police.

2. The main grievance of the petitioners, before this Court, is that in the promotion exercise in the State not only the Constables and Head Constables of Civil Police are being considered but Constables and Head Constables of other cadres in the Police Department, such as, Provincial Armed Constabulary (from herein after referred to as "PAC") as well as Indian Reserve Battalion (from herein after referred to as the "IRB") are also being considered.

3. The petitioners contend that this cannot be done as they belong to different cadre and from different establishments.

4. After the decision of the Hon'ble Apex Court in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, which was regarding police reforms in the country, the State of Uttarakhand enacted its own Police Act, which is know

as "Uttarakhand Police Act, 2007. Earlier it was governed by the Police Act, 1861. Two provisions of the said Act have been placed before this Court, which have some relevance as of now. These are Section 38 and Section 87, in which the establishment of a Police Establishment Committee and the powers are given. Section 38 of the Act, reads as under:-

38. (1) The State Government shall, as soon as may be, constitute a Police Establishment Committee (hereinafter referred to as the "Committee") with the Director General of Police as its Chairperson and two other senior most police officers in the Department, not below the rank of Inspector General of Police, as members.

(2) Establishment Committee shall perform the following functions and duties, namely:-

(a) lay procedures for the selection and promotions in the Subordinate Ranks;

(b) transfer of subordinate officers from one Range to another;

(c) transfer of officers of the rank of Deputy Superintendent of Police/Assistant Superintendent of Police;

(d) recommend to the State Government, regarding the transfer and posting of police officers of the rank of Additional Superintendent of Police and above;

(e) prescribe guidelines and instruction for transfer of subordinate officers from one Police District to another; and

(f) analyse and redress the grievances of the police personnel and wherever necessary, suggest remedial measures to the State Government.

(3) The State Government may, in such matters as it may deem fit, for reasons to be recorded in writing, alter or amend the decisions of the Committee.

5. u/s 87 of the Uttarakhand Police Act, 2007, powers have been given to make rules and regulations. Section 87 of the Uttarakhand Police Act, 2007 reads as under:-

87. (1) The State Government may make Rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, before the House of the State Legislature.

(3) The Director General of Police may frame Regulations, with the approval of the State Government, in respect of matters, specified in this Act.

(4) State Government may direct the Director General of Police to amend any Regulation made by him in such manner, as it may direct and thereupon, the Director General of Police shall amend the Regulation in the manner as directed.

(5) Every Rule and Regulation made this Act shall be notified by the State

Government in the Official Gazette.

6. According to the petitioner the committee has to determine the procedure, inter alia, for promotion to the post of Sub-Inspector in Civil Police. However, in the said notification (which is annexure no. 1 to the writ petition), dated 07.11.2008 not only the Constables and Head Constable of Civil Police but of Armed Police, PAC as well as IRB have also been made eligible for promotion as Sub Inspectors in Civil Police.

7. Consequent to this, advertisement has also been issued on 12.02.2014 (Annexure No. 4 to the writ petition).

8. In another bunch of writ petitions, this Court had though not interfered with the promotional exercise but had directed the respondents not to declare the result.

9. The issue raised in the present writ petition, however, challenges the very powers of the Establishment Committee and the challenge is that the said Committee has gone beyond its powers and has also fixed the eligibility for promotion to the post of Sub-Inspector in Civil Police, thereby adversely affecting the chance of promotion of the present petitioners who are the members of the Civil police.

10. The contention of the petitioners is that u/s 38(2) of the Uttarakhand Police Act, 2007, the Establishment Committee can only prescribe a "procedure", inter alia, for promotion. It cannot fix the very eligibility which only the State Government can do u/s 87 of the Uttarakhand Police Act, 2007, by framing Rules.

11. Prime facie, this Court is satisfied with this argument of the petitioners and also the fact that Constables and Head Constables of outside the cadre of Civil Police are being considered for promotion on the post of Sub Inspector in Civil Police.

12. Mr. V.B.S. Negi, learned Deputy Advocate General, has vehemently opposed the contention of the petitioners that the entire police department is a civil force and after the mandate of Hon"ble Apex Court in case of Prakash Singh & Ors. Vs. Union of India & Ors., such promotion exercise is being undertaken and moreover Section 87 of the Uttarakhand Police Act only says that the State may frame Rules whereas u/s 38, the word used is "shall".

13. After hearing the above arguments, this Court finds that an interference is called for in the present case. I therefore, direct that until the next date of listing, the respondents/State shall not proceed with the ongoing promotion exercise for the post of Sub-Inspectors.

14. Let a counter affidavit be filed by the respondents/State within two weeks.

15. List this matter after two weeks on 21.07.2014 in daily cause list along with Writ Petition No. 918 (SS) of 2014 and Writ Petition No. 923 (SS) of 2014.

16. Interim relief application (CLMA) No. 6928 of 2014 stands disposed of.