
(2006) 03 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition No. 58 of 2004 (S/S)

Mukesh Chandra

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Citation : (2006) 2 UC 1213

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Shri K.N. Joshi, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Rajesh Tandon, J.—Heard Sri K.N. Joshi, counsel for the Petitioner and Standing Counsel for the Respondents.

2. By the present writ petition, the Petitioner has prayed for a writ of mandamus directing the Respondents to promote/confirm the Petitioner on the post of Electrician/Lineman in compliance of the recommendation of the Respondent No. 3 dated 26-5-2002 and 26-5-2003 and further to pay the salary of Electrician/Lineman to him since 1996.

3. Briefly stated the Petitioner was initially appointed in Bhawali Sanatorium, Bhawali in Class IV as Electrical Helper in the year 1995. The Chief Superintendent of Bhawali Sanatorium vide order dated 20-5-1996 directed Sri. K.D. Nainwal Electrician to give charge to the Petitioner as he was going to retire on 31-1-1997. The Chief Superintendent of the Sanatorium vide order dated 29-12-1997 directed the Petitioner to work as Assistant Electrician. The Petitioner has been doing work on the post of Electrician since 31-1-1997 continuously. The Petitioner has submitted that he fulfills all the qualifications for the post of Electrician and has been working on the post for more than 7 years against the substantive post.

4. Counter affidavit has been filed by the Respondents. They admitted in paragraph No. 4 and 5 of the counter affidavit that the Petitioner has been working on the post of Electrician from 25-5-1996, and after superannuation of Sri. K.D. Nainwal, Electrician/Lineman, the Petitioner was directed to look after his work. In paragraph No. 9 it has been submitted that the Petitioner had submitted his representation for promotion and for payment of salary on the post of Electrician/Lineman and his representation was forwarded by the Chief Superintendent, Bhawali Sanatorium to the Director, Medical Health & Family Welfare for consideration.

5. Thus it is an admitted fact that the Petitioner is in charge of the post of Electrician and has been working on that post since 25-5-1996 when Sri K.D. Nainwal who was posted as Electrician had proceeded on leave and after his retirement on 31-1-1997. The Petitioner has filed copy of the orders passed by the Chief Superintendent of Bhawali Sanatorium. The extract of both the orders reads as under:

6. From the documents submitted by the Petitioner along with the writ petition clearly go to show that the Petitioner has been working on the post of Electrician/Lineman after the retirement of Sri K.D. Nainwal, by order of the competent authority and he has requisite technical skill to fulfil the requirement of the job. Thus the Petitioner is entitled to get the salary of the post on which he has been working in view of the principle of law laid down in *Jaswant Singh Vs. Punjab Poultry Field Staff Association and Others*, . The Apex Court has observed as under:

The High Court's decision in *Gobind Singh* case did not direct the promotion of Gobind Singh. What was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of that post. Therefore, while the Appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the Appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the Appellant's promotion, we direct the Respondent Authorities to pay the Appellant for the period he rendered service as a Chick Sexers at the scales of pay together with all allowances to which Chick Sexers were entitled at the relevant time.

7. Thus the Petitioner is entitled to get salary and other allowance of the post of electrician for the period he worked on that post on officiating capacity prior to his actual promotion.

8. Thus in view of the above observations, a writ of mandamus is issued directing the Respondents to pay salary with all allowances of the post of Electrician/Lineman to the Petitioner from the date he has been working as such. The Respondents are also directed to consider the claim of the Petitioner for his

regular promotion on the post of Electrician/ Lineman against the vacant post.

9. Accordingly, the writ petition is allowed. No order as to costs.