

(2020) 02 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 3691, 3692 Of 2017 (S/S)

Munna Lal & Others

APPELLANT

Vs

Chief General Manager & Others

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2020) 02 UK CK 0006

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : C.D. Bahuguna, Anup Kumar Verma, Rakesh Thapliyal, Neeti Rana, S.N. Babulkar, K.N. Joshi

Final Decision : Allowed

Judgement

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Lok Pal Singh, J

1) By means of invoking extraordinary writ jurisdiction of this Court under Section 226 of the Constitution of India, the petitioner(s), by way of filing

both these writ petitions have sought following reliefs, among others:

i) Issue a writ, order or direction in the nature of certiorari quashing of the impugned order dated 13.11.2017, passed by respondent no. 1, contained as

Annexure no. 1.

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to promote the petitioner to the post of Computer, with

effect from 13.11.2017, the date when his claim for promotion was rejected by the respondent no. 1.

iii) Issue a writ, order or direction in the nature of mandamus commanding the

respondents to pay all consequential benefits of service to the petitioner w.e.f. 13.11.2017.

iv) Issue a writ, order or direction in the nature of mandamus declaring that the new structure dated 21.09.2017, which has reduced or abolished the number of posts of Computer, as arbitrary and illegal.

2) Since identical question of law and facts are involved in the aforementioned writ petitions, therefore, the same are taken up together and are being decided by this common judgment for the sake of brevity and convenience.

3) Brief facts leading to filing of aforementioned writ petitions are that the petitioners were initially appointed as Pump Attendants on muster roll in the years 1990 & 1989 respectively in U.P. Jal Nigam. Later on, the petitioners were transferred as muster roll to the Kumaon Jal Sansthan and posted as

Pump Attendants and were retained in the service of Kumaon Jal Sansthan. Subsequently, they were granted the pay scales of Pump Operator.

Services of both the petitioners were regularized as Pump Operator on 01.11.2003. Thereafter, their names were included in the seniority list of the

Pump Operator of the Kumaon Jal Sansthan. In the year 2006, Ram Nagar Division was created in the Kumaon Jal Sansthan and the petitioners were transferred there. Presently, both the petitioners are posted at Kashipur, District Udham Singh Nagar.

4) State of Uttarakhand framed Uttarakhand Jal Sansthan Employees Service Regulations, 2004, as amended in the year 2009. The post of

â??Computerâ?? was to be filled up by promotion from amongst the employees holding post of Draftsman, as also from the employees who possess

diploma in Civil, Electrical, Mechanical or Electronics Engineering and requisite experience. Both the petitioners obtained diploma in Electrical

Engineering from J.R.N. Rajasthan Vidhyapeeth University, Udaipur (Rajasthan) in the year 2016. Since the petitioners are diploma holders in

Electrical Engineering, therefore, they were entitled to be considered for promotion on the posts of Computer. Two Pump Operators, namely, Vinod

Kumar Bhatt and Shyam Lal having the experience of 5 years were promoted. The petitioners being diploma holders and having satisfactory service

of more than 5 years were entitled to be promoted on the post of Computer. Though, the cases of the petitioners were considered, but they were not

promoted. Then, the petitioners were constrained to file Writ Petition no. 2242 (S/

S) of 2017 and Writ Petition no. 2243 (S/S) of 2017 before this Court. Both the writ petitions were disposed of by this Court vide separate judgment and order both dated 11.08.2017 with a direction to the respondent Chief General Manager, Uttarakhand Jal Sansthan, Dehradun to take appropriate decision regarding holding of promotional exercise for the post of Computer, within a period of six weeks from the date of presentation of certified copy of the order. It is alleged, that despite the Court's order dated 11.08.2017, the cases of the petitioners were not considered. Aggrieved against the same, the petitioners filed Civil Contempt Petition no. 502 of 2017 against the Chief General Manager, Uttarakhand Jal Sansthan, Dehradun. Thereafter, decision was taken and the claims of the petitioners were rejected vide order dated 13.11.2017 on the ground that the post of Computer has been declared dying cadre in view of the Government Order dated 12th September 2017. It is stated in the order dated 13.11.2017 that since the post of Computer has been declared dying cadre and no post is lying vacant, thus, the cases of the petitioners cannot be considered for promotion on said post. Hence, aforementioned writ petitions were filed by the petitioners.

5) Respondent nos. 1 & 2 filed their counter affidavits, stating therein, that the petitioners possess their diploma in Electrical Engineering from J.R.N.

Vidhyapeeth, Rajasthan, the validity of which is subject to the decision of Writ Petition no. 8832 of 2015 before the Jodhpur Bench of Hon'ble

Rajasthan High Court. It is stated that since the post of Computer has been declared dying cadre and no vacancy exists in the department, the

petitioners cannot be promoted on the post of Computer. It is admitted that though every employee has a fundamental right to be considered for

promotion, but since the post is not vacant, the cases of the petitioners cannot be considered for promotion.

6) As the petitioners have sought a relief to declare the Government Order dated 21.09.2017 as illegal and arbitrary, respondent nos. 3 and 4 have

been impleaded as party respondents in the writ petitions.

7) Petitioners filed their rejoinder affidavits to the counter affidavits filed on behalf of respondent nos. 1 and 2, stating therein, that the post of

Computer has been reduced from 29 to 17 by the respondents for ulterior motive just to deny the promotion to the petitioners on said post. It is

contended that the petitioners were selected for promotion on the post of Computer as a select list-cum-seniority list was prepared on 11.09.2017. It is alleged that the petitioners were directed to submit affidavits to the effect that, in case, diplomas possessed by the petitioners were not found in order,

they shall be demoted / reverted on the post they are holding. It is further contended that two posts of Computer thereafter fell vacant as one Mr.

Kishan Chandra Sahi, who was posted in the office of Haldwani Unit of Uttarakhand Jal Sansthan got superannuated on 31.12.2017 and another

employee Mr. Mukesh Kumar Tamta, who was employed at Kashipur Unit of the Sansthan passed away on 12.01.2018, as such, the respondent nos.

1 and 2 can accommodate the petitioners against those vacant posts of Computer.

8) Petitioners have also filed supplementary affidavit stating therein that by G.O. dated 21.09.2017, the post of Computer at sl. no. 27 was declared

dying cadre and by the same G.O. the post of Asstt. Meter Inspector, which figures at sl. No. 62 of the new structuring order was also declared dying

cadre and only 14 posts of Asstt. Meter Inspector remained sanctioned, while the cadre of Asstt. Meter Inspector was declared dying cadre. It is also

contended that the respondent no. 1 is not promoting the petitioners on the post of Computer on the pretext that the post of Computer has been

declared dying cadre and the moment a person retires or dies, it will not be filled up by promotion or otherwise. However, in regard to the post of

Asstt. Meter Inspector which has also been declared dying cadre, the respondent nos. 1 and 2 have promoted one Mr. Pooran Chand Tiwari from the

post of Meter Reader to the post of Asstt. Meter Inspector vide promotion order dated 03.10.2017. Similarly, another employee named Ratnesh

Kumar has also been promoted on the post of Asstt. Meter Inspector. It is stated that respondent nos. 1 and 2 are acting in arbitrary and illegal

manner in not giving the promotion to the petitioners. The action of the respondents is discriminatory as the respondents are not giving the same

treatment as has been already given to Pooran Chand Tiwari and Ratnesh Kumar, who were promoted against the new structuring order dated

21.09.2017 on the dying cadre posts.

9) Having heard learned counsel for the parties and on perusal of the orders under challenge, so far as relief sought for declaring the G.O. dated

21.09.2017 as arbitrary and illegal is concerned, the petitioners have not led any valid ground to this effect. Thus, the petitioners are not entitled for the relief sought by them. So far as the relief seeking promotion on the post of Computer is concerned, learned Senior Counsel appearing on behalf of the petitioners has placed reliance on the following judgments in support of his contention:

- i) (1989) 1 SCC 175, Union of India and others Vs Somasundaram Viswanath and others
- ii) (1989) 2 SCC 541, Paluru Ramkrishnaiah and others Vs Union of India and another
- iii) (1989) 4 SCC 318, Senior Superintendent of Post Offices, Allahabad Vs Izhar Hussain
- iv) (1982) 1 SCC 39, Bishambhar Dayal Chandra Mohan & others Vs State of Uttar Pradesh & others
- v) (2014) 5 SCC 101, Panchraj Tiwari Vs M.P. State Electricity Board & others
- vi) (1998) 3 SCC 495, Shri A.B. Krishna & others Vs State of Karnataka & others
- vii) (2002) 6 SCC 127, Chandra Prakash Tiwari & others Vs Shakuntala Shukla & others.

10) Having considered the submission of learned counsel for the parties, this Court is of the view that the petitioners who are working on the posts of

Pump Operator and their next promotion was scheduled on the post of Computer, but the post of Computer has been declared dying cadre by new

structuring order dated 21.09.2017. When the petitions earlier filed by the petitioners were decided by this Court vide order dated 11.08.2017, the new

structuring order was not in existence. Thus, at that point of time, the petitioners deserve to be considered for promotion. However, the cases of the

petitioners were considered and affidavits was taken from them that, in case, the diplomas in Electrical Engineer possessed by the petitioners were not

found in order pursuant to the order of Honâ??ble High Court of Rajasthan, Jodhpur Bench, the petitioners shall be reverted / demoted to the post

they are holding.

11) A careful perusal of the pleadings would reveal that respondent nos. 1 and 2 were willing to promote the petitioners, but their cases were not

considered, then they filed WPSS no. 2242 of 2017 and WPSS no. 2243 of 2017 before this Court, which were disposed of vide separate judgment

and order both dated 11.08.2017 with a direction to the respondent no. 1 to consider the cases of the petitioners, in accordance with law. It appears that the respondents just to defy the order passed by this Court have restructured the post of Computer by G.O. dated 21.09.2017. This Court finds favour with the petitioners that, on the one hand, respondent nos. 1 and 2 are not considering the cases of the petitioners for promotion on the post of Computer on the pretext that the said post has been declared dying cadre, on the other hand, respondent nos. 1 and 2 have promoted Pooran Chand Tiwari and Ratnesh Kumar on the post of Asstt. Meter Inspector which is also declared as dying cadre by them.

12) The respondent department being an instrumentality of State cannot discriminate the petitioners vis-à-vis other similarly situated persons who were promoted on the posts which were also declared dying cadre. It appears that the respondent nos. 1 and 2 have acted in an arbitrary manner which is violative of Articles 14 and 16 of the Constitution of India, inasmuch as, one of the imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. Right to consider for promotion is a fundamental right of every employee and even a single chance of promotion cannot be reduced on one pretext or another, as was done in the instant case. Though, chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of Article 14 and 16 of the Constitution of India.

13) In view of above discussion, I am of the firm view that the petitioners have been successful in making out a case calling for interference by this Court in the order impugned. Therefore, order dated 13.11.2017 is liable to be quashed. The same is hereby quashed.

14) Both the writ petitions are, accordingly, allowed. A mandamus is issued to respondent no. 1 and 2 to consider the cases of the petitioners for promotion on the post of Computer as was done in the case of similarly situated Asstt. Meter Inspectors, who were granted promotion despite the fact that the post of Asstt. Meter Inspector had been declared a dying cadre. The entire exercise in this regard be completed within a period of three months from the date of production of certified copy of this order. However, it is made clear that the promotion so granted to the petitioners on the

posts of Computer, shall be subject to the decision pending consideration before the Jodhpur Bench of Rajasthan High Court in Writ Petition no. 8832

of 2015 regarding validity of the diplomas of Electrical Engineering obtained from JRN Vidhyapeeth University, Rajasthan, which the petitioners

possess.

15) In the facts and circumstances of the case, the parties shall bear their own cost.