

(2011) 12 UK CK 0049
In the Uttarakhand High Court
Case No : Special Appeal No. 125 of 2011

Neeraj Dobhal and others	Vs	APPELLANT
State of Uttarakhand and others		RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 15(1), 16(2), 311

Citation : (2011) 12 UK CK 0049

Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—All the applications filed for condonation of delay in preferring the present appeals stand allowed.

2. The advertisement, which was responded by each one of the appellants, held out that people interested to respond to the same can apply for being considered for appointment in one of the 13 Districts. It was stated in the advertisement that a person applying for one District will not be entitled to apply for any other District. While applying, each of the appellants, held out that they have applied for one District, and not for any other District. The advertisement mentioned that if applications in response to the advertisement are found correct in all respect, the applicants will be invited for measurement of height, etc. It is the contention of each of the appellants that their application was found correct in all respect, and accordingly, they were asked to appear for measurement of their height, chest etc. It is their contention that subsequent thereto, each of the appellants had gone through selection process, and were selected, whereupon, they were sent for training, and while they were undertaking training, their selection was cancelled without giving them an opportunity of being heard. There is no dispute that the reason for cancellation of selection / appointment of the appellants was that they applied to more than one Districts, in response to the said advertisement. The decisions to cancel the selection / appointments of the

appellants resulted in filing of several writ petitions, which having been dismissed, the present appeals have been filed. Since, the subject matter of these appeals are almost identical, we have decided to dispose of all of them by the present judgment and order. The learned counsel for the appellants in Special Appeal Nos. 123 and 124 of 2011, has submitted that by mistake the correct order by which selection / appointment of the appellants in those appeals were cancelled, were not annexed to the writ petitions, instead some other cancellation order was annexed. We permitted such mistake to be rectified, to which the learned counsel for the State has not raised any objection.

3. The contention of the appellants, which has been rejected by the judgment and order under appeal, are that (i) services of the appellant were terminated without giving any notice to them; (ii) the appellants having been selected and appointed, their services could only be terminated by following the procedure laid down in Article 311 of the Constitution of India, and not otherwise.

4. The learned counsel for the appellants further submitted that if an opportunity of hearing was given before cancellation of the employment of the appellants, the appellants could demonstrate that in view of sub Article (1) of Article 15 and sub Article (2) of Article 16 of the Constitution of India, the clause in the advertisement, that people interested to respond to the said advertisement can respond in respect of vacancies available in one District and not others, being unsustainable, what has been held out in the undertaking in consequence thereof, cannot go to the root of disqualification of any of the appellants. It was also submitted that factually none of the appellant took any advantage by applying in respect of more than one District, inasmuch as, one single written examination was held. The learned counsel for the State has pointed out that though, one written examination was held for all the Districts, but the fact remains, that the merit of the candidates were considered on the basis of Districts for which they had applied, and prior thereto physical test of the candidates was conducted on District wise basis. It was lastly contended by the learned counsel for the appellants that while the writ petitions of the appellants have been dismissed, similar writ petitions filed by similarly situated persons have been entertained, on which interim orders have been passed, and those writ petitions are awaiting final adjudication.

5. There cannot be any dispute that if a person has been appointed by the State, whether such appointment is a temporary appointment or a permanent appointment, the appointee cannot be removed from Government service without taking recourse to what has been provided in Article 311 of the Constitution of India, but when there is no such appointment, there is no question of applying Article 311 of the Constitution of India in relation to such appointee. Merely because an appointment letter has been issued would not signify an appointment. In order to be an appointment, within the meaning of Article 311 of the Constitution, it is to be shown and established that the appointment in fact, and in law has been made. In the instant case, it is the

contention of the State that no appointment in law was made, although infact an appointment letter was issued in favour of each of the appellants. The reason given by the State is that the appointments were in breach of representation made in relation to a specific term contained in the advertisement to the effect that a candidate responding to the advertisement will confine his response to only one District, and not to more than one District. There is no dispute that such a clause was incorporated in the advertisement, and to fulfill the said clause, it was held out by each of the appellants in writing that they have not applied in respect of any other District, when infact they had done so. We are, therefore, required to consider the contention of the learned counsel for the appellants, whether the said clause is violative of sub Article (1) of Article 15 and sub Article (2) of Article 16 of the Constitution of India. The said sub Articles are as follows:

15(1). The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

16(2). No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

6. A perusal thereof will make it absolutely clear that while no discrimination can be made on the ground of place of birth or place of residence, no citizen can be declared ineligible for, or can be discriminated against in respect of, any employment under the State on the ground of place of birth or residence. The said term in the advertisement nowhere held out that a person born or residing in one District will not be entitled to apply for any other District. At the same time, it was not stated in the advertisement that a person who was not born or who is not a resident of a particular District will be ineligible for being considered for appointment in the said District. That being the situation, the contention that the said term is in violation of sub Article (1) of Article 15 and sub Article (2) of Article 16 of the Constitution of India, is not acceptable.

7. Inasmuch as, insertion of the said term was not under challenge at any stage, the State has not been called upon to disclose the reason for insertion of the same. We would, therefore, not delve into the matter why the said clause was inserted. The fact remains, the advertisement in no uncertain terms, spelt out the said term. As a result anyone and everyone responding to the said advertisement could respond only in respect of one District. Having had done so, he was required to state the same in writing. Having had stated so, he held out that he has not applied for any other District. As it appears, people were debarred from taking more than one chance. Understanding the true purport of the said term read with the written discloser to be made in compliance thereof, many people took their chance in respect of one District, and did not take chance for more than one District. The appellants herein, despite knowing the purport of the said term, without challenging the veracity thereof, and even incorporating written disclosers to that effect, took chance not only in one District, but in more than one District, and thereby took advantage over those who scrupulously

followed the true purport of the said term read with the written discloser given by them. Such an action on the part of the appellants went to the root of the case, as the same tantamounted to misrepresentation, and accordingly, their appointment though made factually was not legal, as the same could be and was avoided by the State, requiring compliance of the provisions of Article 311 of the Constitution of India.

8. The fact remains that some similarly situated persons have also approached this court by filing writ petitions. On them certain interim orders have been passed. But those writ petitions have not yet been decided. The fact that those writ petitions have been entertained and some interim orders have been passed thereon, will not render the judgment and order under appeal, unsustainable. An action of admission of a writ petition and passing of interim orders thereon cannot be treated as precedent having binding force.

9. We, accordingly, refuse to interfere with the appeals, and accordingly, dismiss the same.