

(2019) 03 UK CK 0144

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 356 Of 2018, 567 Of 2017

Poornima Sharma & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0144

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Bhagwat Mehra, J.C. Pande, B.D. Kandpal, Ramji Srivastava

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Learned Counsel on either side are in agreement that, for the purpose of disposal of both these writ petitions, it would suffice if the facts in WPSB No. 356 of 2018 are noted.

2. WPSB No. 356 of 2018 was filed seeking a writ of mandamus to declare the inaction of the first respondent, in offering appointment to the petitioners in the posts of Assistant Prosecution Officers, as arbitrary and illegal; and for a writ of mandamus commanding the first respondent to issue appointment orders in favour of the petitioners in the posts of Assistant Prosecution Officers.

3. Facts, to the limited extent necessary, are that the fourth respondent issued an advertisement on 19.9.2009 inviting applications for 38 vacancies in the post of Assistant Prosecuting Officers in the Home Department of the State of Uttarakhand; out of these 38 vacancies, 11 were reserved in favour of the Scheduled Castes, 6 in favour of the Other Backward Classes, and the remaining posts were unreserved. The petitioner applied under the general category, and participated in the selection process where she was declared successful. On having been declared successful in the preliminary examination held on

31.10.2010, she appeared in the main examination held on 4th and 5th June, 2011 and, on being declared successful in the main examination, she was called for an interview, which was held between 13th to 17th February, 2012. As against the 38 vacancies advertised, the Public Service Commission issued a notification on 18.2.2012 declaring the final result whereby 71 candidates were declared successful in the said examination.

4. The action of the Public Service Commission in declaring and recommending the names of 71 candidates, as against 38 identified vacancies, was subjected to challenge in Writ Petition (S/B) No. 349 of 2011 and, by interim order dated 14.3.2012, this Court restrained the respondents from filling up the posts beyond the number of posts advertised. Thereafter, Writ Petition (S/B) No. 349 of 2011 was disposed of by order dated 10.5.2012 directing the State Government to consider the recommendation made, or to be made, by the Public Service Commission in respect of 38 vacancies, as were advertised, plus 25 per cent thereof; and, on the basis of such recommendation, the State was directed to make appointment only to 38 vacancies out of those recommendees, and not beyond. The fourth respondent, vide letter dated 28.6.2012, sent recommendation in respect of 37 candidates with the stipulation that the waiting list of 25 per cent candidates had already been prepared, and the same would be made available to the State Government as and when the State Government required the same.

5. Some of the candidates questioned the judgment, in Writ Petition (S/B) No. 349 of 2011 dated 10.5.2012, before the Supreme Court in Special Leave Petitions, which were dismissed by judgment dated 5.10.2016 affirming the judgment of the Division Bench dated 10.5.2012.

6. It is the petitioner's case that, after dismissal of the Special Leave Petitions, the State Government, vide letter dated 26.5.2017, called upon the Public Service Commission to furnish the wait list and, ultimately, the fourth respondent, vide letter dated 30.5.2017, furnished the said list in which the petitioner's name stood at serial no. 5, and she was recommended under the category of "Unreserved Uttarakhand Woman". The petitioner submitted a representation on 21.2.2018 seeking consideration of her appointment as an Assistant Public Prosecutor. Thereafter, the fourth respondent issued the memo dated 22.3.2018 to the petitioner stating that the Commission had already sent the required recommendation, regarding the waiting list, on 4.5.2017; and further action, in the matter, had to be taken at the State level. On the ground that, despite the petitioner's representation, no action was taken, the petitioner has invoked the jurisdiction of this Court.

7. Another candidate (Daood Siddiqui), whose name was included in the wait list, filed Writ Petition (S/B) No. 436 of 2017 and a Division Bench, in its order in Writ Petition (S/B) No. 436 of 2017 dated 20.9.2017, noted the submission of Sri B.D. Kandpal, learned Counsel for the Commission, that, as against the 38 advertised posts, the Public Service Commission had recommended 37 candidates, since

one post, reserved in favour of physically handicapped, had to be carried forward; and that the name of the petitioner therein was at serial no. 6 in the wait list. The Division Bench also noted the submission of the learned Standing Counsel that appointments would be made from the wait list without any delay. Despite such a submission being made to this Court, the State Government carried the matter in appeal by filing SLP (Civil) 46633/2018 against the order of the Division Bench in Writ Petition (S/B) No. 436 of 2017 dated 20.9.2017.

8. Sri Bhagwat Mehra, learned Counsel for the petitioner, has placed before us a copy of the order of the Supreme Court in SLP (Civil) 46633/2018 dated 25.2.2019 which shows that the Special Leave Petition, preferred by the State Government, was dismissed. As a result, the order passed by the Division Bench, in Writ Petition (S/B) No. 436 of 2017 dated 20.9.2017, has attained finality. Consequently, the State Government is obligated to make appointment of those candidates, whose names formed part of the list of candidates recommended by the Public Service Commission, to the post of Assistant Public Prosecutors.

9. Sri B.D. Kandpal, learned Standing Counsel for the Commission, would submit that, on 4.5.2017, a list of 9 wait listed candidates was forwarded to the State Government; on the State Government asking the Public Service Commission to furnish their certificates, the very same list was reiterated vide proceedings dated 23.5.2017; and it is for the State Government to take a suitable decision in this regard. It is not in dispute that the names of the petitioner, in both these writ petitions, along with Daood Siddiqui, are included in this wait list of 9 candidates. Consequently, what applies to Daood Siddiqui would also apply to the petitioners herein.

10. Both these writ petitions are, accordingly, disposed of in terms of the order of the Division Bench in Writ Petition (S/B) No. 436 of 2017 dated 20.9.2017, the Special Leave Petition against which was dismissed by the Supreme Court on 25.2.2019. No costs.