

(2011) 06 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1152 of 2010

Pramod Kumar Shah and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0002

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Alok Mehra, Advocate for the Petitioners and Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand.

2. The Petitioners are administrative officers. Since the Petitioners were denied promotion to the post of Senior Administrative Officer and the Administrative Officers much junior to the Petitioners have been promoted to the post of Senior Administrative Officers vide order dated 2.7.2010 (Annexure No. 6 to the writ petition), the Petitioners are aggrieved and have filed the present writ petition claiming the following relief:

(i) issue a writ, order or direction in the nature of certiorari to quash the order dated 8.12.2009 issued by the Respondent No. 2 in so far as it relates to the Petitioners.

(ii) issue a writ, order or direction in the nature of mandamus commanding the Respondents to grant promotion to the Petitioners on the post of Senior Administrative Officer from the date when juniors to them were promoted.

(iii) Any other writ, order or direction which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award the cost of the petition in favor of the Petitioners.

3. Admittedly the promotion from the post of Administrative Officer to the post of Senior Administrative Officer depends upon seniority subject to rejection on unfit. The Petitioners have stated in the writ petition that earlier the Petitioners were promoted to the post of Administrative Officer Grade -I in the year 2007 but due to personal difficulties with the Petitioners they declined the promotion. The second promotion came in their way in the year 2009 which the Petitioners again declined for the same reasons. However, when the Petitioners were ignored for promotion, for the third time, as persons junior to them were promoted, ignoring them vide order dated 20.7.2010, they challenged the same. The Petitioners contend that they were aware of the earlier circular dated 3.7.2007 according to which if a person declines the promotion "thrice" then only he will not be considered for promotion and since they were only aware of this circular they took their chances in declining promotions twice. They have not declined promotion "thrice" so that they may not be considered for promotion for all times to come. The Petitioners hence moved a representation before the concerned authority to this effect which was rejected on 29.10.2010. The grounds for rejection are that circular dated 10.6.2009 was already in operation whereby if a person refuses the promotion "twice" he will not be promoted in future. Relying upon this circular the Petitioners have been denied promotion. The case of the Petitioners, on the other hand, is that at the time of their first refusal for promotion in the year 2007 the condition was that if a person refuses promotion "thrice" he will not be promoted in future.

4. It is an admitted case that the Petitioners have declined their two promotions, first in the year 2007 and second in the year 2009. It is also true that when the Petitioners declined their promotion for the first time, the first circular i.e. circular dated 3.7.2007 was in force whereby if an employee declined promotion "thrice" he was not liable to be promoted in future. The second circular dated 10.6.2009 came after the Petitioners already declined their promotion for the first time. Hence it would not operate retrospectively. What would operate at the relevant time is circular dated 3.7.2007 whereby the condition was that if a person declines promotion "thrice" he will not be promoted in future. Admittedly the Petitioners have declined promotions only twice and therefore it is not correct on the part of the Respondent not to consider them for further promotion and therefore the action of the Respondent for not considering the Petitioners for promotion to the post of Administrative Officer to Senior Administrative Officer while the persons junior to the Petitioners have been promoted is patently illegal.

5. In the counter affidavit, State has taken stand that second circular has been passed as this was the demand of the ministerial association of which the Petitioners were also a member. As such the Petitioners cannot claim the promotion.

6. Be that as it may, the fact of the matter is that at the relevant time the Petitioners could decline promotion for a maximum of three times. Therefore the Petitioners cannot be denied promotion particularly when they now want to be

promoted.

7. Therefore writ petition is allowed. The Respondent is directed to consider the promotion of the Petitioners from Administrative Officer to the post of Senior Administrative Officer as has been done regarding their juniors vide order dated 20.7.2010. This Court has been informed at the bar that promotion from Administrative Officer to the post of Senior Administrative Officer depends upon seniority subject to rejection on unfit. In case there is nothing against the Petitioners, the Petitioners are liable to be promoted from the date their juniors, as referred above, have been promoted. The authority concerned shall consider all the aspects and pass appropriate order.

8. No order as to costs.