

(2010) 03 UK CK 0072

In the Uttarakhand High Court

Case No : Writ Petition No. 698 of 2009 (S/S) and Writ Petition No. 1177 of 2008 (S/S) , 1227 of 2008 (S/S) , 805 of 2009 (S/S) . 815 of 2009 (S/S) , 845 of 2009 (S/S) , 875 of 2009 (S/S) , 885 of 2009 (S/S) , 903 of 2009 (S/S) and 905 of 2009 (S/S)

Pushkar Singh Rawat and 15 others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2011) 1 UC 684

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Tarun Agarwala, J.—This group of petitions involves a common issue, namely that the advertisement inviting applications for appointment on the post of Forest Guard should be quashed and that the Petitioners should be given appointments on the post of Forest Guards on the basis of their names being found in the earlier select list. For facility, the facts in Writ Petition No. 698 of 2009 (S/S) is being taken into consideration. The Petitioners in this petition are from District Tehri Garhwal and have contended that they have worked on the post of Chaukidar as a seasonal worker for the last 18 months and, that an advertisement was issued in July, 2008 inviting applications for the post of Forest Guard. The Petitioner Nos. 1 to 8 were working in the Muni-ki-Reti Division and the Petitioner Nos. 9 to 16 were working in New Tehri Division. Based on the aforesaid advertisement, the Petitioners applied and underwent a physical test as well as a written test. The Petitioners were selected and their names were found in the select list. However, the Petitioners could not be given appointments on the post of Forest Guard since the vacancies so advertised were filled up from the candidates, who were above the Petitioners in the merit list.

2. It transpires that the Respondents took a policy decision on 08th August, 2008

resolving that if the eligible candidates in a division were more than the sanctioned post, then the excess candidates would be considered for giving appointments in other divisions or circle where a vacancy existed. The same policy decision was reiterated in the meeting held on 06th October, 2008 and again on 13th October, 2008. Based on the aforesaid policy decisions, the Chief Conservator of Forest, Bhagirathi Circle issued a letter dated 27.11.2008 directing the District Forest Officer to appoint eligible candidates from other divisions wherever the post of Forest Guard were found to be vacant. Similarly, on 06th March, 2009, the Deputy Conservator of Forest, Uttarkashi issued directions to the District Forest Officer to send the application form of such candidates. Similar directions were again issued by the Deputy Conservator of Forest by its letter dated 13.03.2009. By another letter dated 16th March, 2009, the Chief Conservator of Forest directed the Conservator of Forest, Bhagirathi Circle to direct the Divisional Forest Officer, Uttarkashi to make appointment from such eligible candidates. Similar directions were issued by the Chief Conservator of Forest, Garhwal Region, Dehradun by its letter dated 15th May, 2009. In spite of such directions, no such appointments were made and, eventually, an advertisement dated 23rd June, 2009 was issued inviting applications to fill up the vacant post of Forest Guards. The Petitioners, being aggrieved, have filed the writ petition praying for the quashing of the said advertisement and, further praying that the Petitioners should have been given appointment as per their merit list in the vacancy existing in the division or circle or in any other division in the State of Uttarakhand. Similar writ petitions for District Tehri Garhwal are Writ Petition No. 815 of 2009 (S/S) and No. 905 of 2009(S/S).

3. Writ Petition Nos. 875 of 2009 (S/ S), 1277 of 2008 (S/S) and 1177 of 2008 (S/S) have been filed by the Petitioners, who were working in the Champawat Division and have also contended that out of 23 vacancies, only 13 posts were filled up and therefore, the Petitioners should be absorbed in the remaining vacancy or in any other vacancy in any other division or in other circle in the State of Uttarakhand from the merit list in which their names were found.

4. Similarly, Writ Petition No. 805 of 2009 (S/S) relates to District Uttarkashi. It has been alleged in this petition that 203 posts in the State of Uttarakhand are vacant where the Petitioners could be adjusted and directions should be issued to the Respondents to appoint the Petitioners from the select list. Writ Petition No. 845 of 2009 (S/S) has been filed by the seasonal workers, who are working in various divisions in the State of Uttarakhand and it was contended that 590 posts are vacant in the State of Uttarakhand and as per the policy decision, which has been acted upon to a large extent, the Petitioners should be adjusted in the vacancy so existing and should not be allowed to undergo a fresh physical or a written test. Similar writ petitions have been filed for Nainital Division as well as for Pauri Garhwal i.e. Writ Petition No. 903 of 2009 (S/S) and 885 of 2009 (S/S) respectively.

5. In effect, the stand taken by the Petitioners is that the policy decision taken

by the Respondents was duly acted upon and the Respondents in principle had accepted that the Petitioners, whose names were found in the merit list, would be adjusted and given appointments in the vacancies which are existing in another division or in another circle, and that such vacancies would accordingly be filled up from the merit list, which had not been exhausted so far. The Petitioners contended that in view of the action initiated by the Respondents, the Petitioners had derived a certain kind of legitimate expectations and such denial of legitimate expectations by the issuance of an advertisement was wholly arbitrary and unwarranted in the eyes of law. The Petitioners, therefore, prayed that the action of the Respondents was not only arbitrary, but a policy decision, having being acted upon, the Respondents are estopped from reversing their stand by inviting applications for the post of Forest Guard. The Petitioners, therefore, prayed for the quashing of the said advertisement.

6. On the other hand, the stand adopted by the State Government is that even though, a policy decision was taken to absorb the excess eligible candidates in other division or in other circles, it did not mean that the same merit list would be taken into consideration. The said Petitioners were still required to apply afresh since the appointments are required to be made at the divisional level under the relevant rules. The Respondents contended that it was realized that such appointments from the earlier merit list could not be made in another division unless the Petitioners applied for the same and the vacancy was also advertised and, consequently, a policy decision was taken to advertise the post inviting applications in which the Petitioners could easily apply since there was no embargo to confine them in a particular division.

7. Heard Sri Vinay Kumar, Mr. Sanjay Bhatt, Mr. D.S. Patni, Mr. Pankaj Purohit and Mr. C.S. Rawat, Advocates for the Petitioners and Mr. Subhash Upadhyaya, Brief Holder for the Respondents.

8. The appointments on the post of Forest Guard is required to be made under the U.P. Lower Subordinate Forest Service Rules, 1980 (hereinafter referred to as Rules of 1980) as amended by Notification dated 25th September, 2007. For facility, certain provisions are required to be considered and the same are extracted hereunder:

3. Definitions.- In these Rules, unless there is anything repugnant in the subject or contexts-

(a) "Appointing authority" means the Divisional Forest Officer in respect of the posts of Jarnadars. Moharrirs and Forest Guards, in the Division under his charge and the Conservator, Wild Life Preservation Organization, Uttar Pradesh, in respect of the posts of Wild Life Guards, Game Guards and Fishing Guards:

(f) "Guard" includes Forest Guards, Grazing Guards, Catties Guards, Plantations Guards, Wire Guards, Game Guards, Wild Life Guards, Finishing Guard:

4. Cadre of Service.- (1) There shall be divisionwise cadres in various categories

of the posts in the Service.

5. Source of recruitment- Recruitment to the services shall be made from the following sources.

A. Jamadars and Moharrirs.-

(i)...

(ii)...

B. Guards.-

(1) 90 per cent of the vacancies by direct recruitments:

Provided that out of such 90 per cent vacancies, recruitment shall be so arranged as far as possible-

(a) 25 percent vacancies are filled by candidates from open market.

(b) 65 percent vacancies are filled from amongst seasonal workers.

8. Academic Qualification.- A candidate for direct recruitment to the various categories of posts must possess the following qualifications:

(1) Moharrir and Jamadar.-

(2) Guards Essential.- Must have passed the High School Examination with Science or

Agriculture of the U.P. Board of the High School and Intermediate Examination or and examination recognized as equivalent thereto.

Preferential- (1) In the case of recruitment of candidates from open market preference will be given to as-Home Guards who have worked as such for at least one year.

(2) In the case of seasonal workers weightage shall be given to the total length of service put in as seasonal worker and their record of service.

14. Determination of vacancies.- The appointing authority shall determine and in case of vacancies to be filled by direct recruitment, notify to the Employment Exchange, the number of vacancies through be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other Categories under Rule 6.

15. Procedure for direct recruitment. -

(1) For the purpose of recruitment, there shall be constituted a Selection Committee comprising:

(i) Appointing authority.

(ii) Two officers not below the rank of Assistant Conservator of Forests to be

nominated by the Conservator of Forest having jurisdiction.

(2) The Selection committee shall scrutinize the application and require the eligible candidates to appear in written test.

Note: the syllabus and procedure for written test is given in Appendix B.

(3) After the mark obtained by the candidates in the written test have been tabulated, the Selection committee shall have regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and Ors. under Rule 6, call for interview such number of candidates as, on the result of the written examination, have come up to the standard fixed by the committee in this respect. The marks awarded to each candidate in the interview shall be added to the marks obtained by him in the written test.

(4) The Selection Committee shall prepare a list of candidates in order of merit as disclosed by the aggregate of marks obtains by them in the written test and interview of two or more candidates obtain equal marks the candidate obtaining higher marks in the written test shall be placed higher. The number of the names in the list shall be larger but not larger by more than 25 per cent of the vacancies.

(17) Combined Select List. - If appointment has to be made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of the candidates alternately from the list prepared under Rule 15 and Rule 16, the first name being from the list prepared under Rule 16.

(18) Appointment- (1) On the occurrence of substantive vacancies the appointing authority shall make appointment by taking candidates in the order in which they stand in the list prepared under Rules 15, 16 or 17, as the case may be.

(2) The appointing authority may make appointments in temporary and officiating vacancies also from the list referred to in the Sub-rule (1). If no candidate borne on these lists is available, he may make appointment in such vacancies from persons eligible, for appointment under these rules.

9. From the aforesaid provisions, it is clear that the appointing authority in respect of Forest Guard is the Divisional Forest Officer and the cadre of service is a division-wise cadre and the strength of each post is determined division wise. Under Rule 5 of the Rules of 1980, 90% of the vacancies on the post of Forest Guard is to be filled up by direct recruitment, out of which 25% vacancies are to be filled up from the open market and 65% of the vacancies are to be filled up from the seasonal workers. The Petitioners are claiming appointments in the 65% vacancies. Under Rule 8(2) of the Rules, a preference is given to a seasonal worker towards the total length of service which he has put in. Under Rule 14, the vacancies are determined during the course of the year and procedure has been given for recruitment under Rule 15. A combined select list is prepared under Rule 17 and an appointment is given under Rule 18.

10. In the light of the aforesaid, a vacancy on a post of Forest Guard is determined division wise. The recruitment process is done division wise. The appointing authority is the District Forest Officer of that division. In the light of the aforesaid, it is clear that the vacancies are required to be filled up by a Divisional Forest Officer in his division and such vacancies are required to be determined, thereafter advertised and thereafter to be filled up in the ratio as provided under Rule 5.

11. The Petitioners have also not disputed the number of vacancies so advertised and the manner and the way it was filled up from the merit list. There is no quarrel that the Petitioners were found below in the merit list and that they could not be selected for appointment because the candidates, who were above the Petitioners in the merit list, were appointed first.

12. The submission of the Learned Counsel for the Petitioners that they should be absorbed from the same merit list in any other division or in circle as per the policy decision taken by the Respondents is per-se erroneous and cannot be accepted. The reason is that the merit list gets exhausted, the moment the vacancy as per the advertisement is filled up and the said merit list cannot be utilized for filling up the vacancy, which may occur in future or to fill up a vacancy which are existing in another division or in circle. There is nothing to indicate that the merit list would remain alive even after the vacancy in that division was filled up as per the advertisement.

13. Further, merely because the Petitioners' names were found in the select list would not give them an indefeasible right for an appointment. This view has been reiterated by the Constitution Bench of the Supreme Court in the case of Shankarsan Dash Vs. Union of India, and thereafter in All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., , Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh and Others, and S. Renuka and Others Vs. State of Andhra Pradesh and Another, .

14. In the light of the aforesaid judgments, this Court holds that merely because the Petitioners' names were found in the merit list, does not give them an indefeasible right for an appointment. Further, the select list gets exhausted the moment the posts were filled up and the Petitioners have no right to seek an appointment in a vacancy existing in any other division or in other circle. The Petitioners cannot contend that the policy decision initiated by the Respondents should be enforced. Such policy decision was against the Rules of 1980. Such merit list could not be utilized for appointment in a vacancy existing in another division, where vacancies are determined separately and the appointing authority is the Divisional Forest Officer of that division. It is a settled law that a post can only be filled up after a vacancy is advertised and applications are invited. Consequently, merely because 590 posts of Forest Guards were found to be vacant in all the divisions and at the circle level in the State of Uttarakhand could not be filled up from the earlier merit list since the said post was not advertised. Consequently, the submission that the Petitioners (sic) a certain kind of

legitimate expectations (sic) their appointment on the basis c" the policy decision of the Respondents is patently erroneous. Such policy decision of the Respondents, namely, that the seasonal workers would be absorbed as Forest Guard, could not be enforced as it was not done in accordance with the Rules.

15. In the light of the aforesaid, this Court does not find any merit in the writ petitions. There is no error in the advertisement issued by various divisions inviting applications. It would be open to the Petitioners to apply afresh for being considered for the post of Forest Guard. The writ petitions fail and are dismissed. In the circumstances, the parties shall bear their own cost.