
(2019) 10 UK CK 0035
In the Uttarakhand High Court
Case No : Writ Petition No. 259 Of 2019 (S/S)

Pushpa Saini

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Citation : (2019) 10 UK CK 0035

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Ashish Sinha, Tej Singh Bisht, Indu Sharma

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of the present writ petition, petitioner has prayed for the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned seniority list dated 23.1.2019 (annexure-6) issued by respondent no.3.

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to place the petitioner in the seniority list by reckoning her seniority from the date of her initial appointment i.e. 6.2.1986.

(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to make any further promotion on the basis of impugned seniority list dated 23.1.2019 (Annexure-6) issued by respondent no.3.

2. Brief facts of the case are that the petitioner was initially appointed on the post of Health Worker (Female) in the Medical Health and Family Welfare Department of the erstwhile State of Uttar Pradesh on 06.02.1986 and was posted at District Saharanpur. Thereafter, in the year 1989, the District Saharanpur was reorganized and a new District Haridwar came in existence and

some part of District Saharanpur was merged in District Haridwar, Thereafter on 4.08.1994, having considered the fact that petitioner is a resident of District Haridwar and with her consent, the services of the petitioner were allocated/ absorbed in the District Haridwar. Thereafter, in the year 2001, on creation of new State of Uttarakhand, the services of the petitioner have been finally allocated to the State of Uttarakhand.

3. Thereafter, in the year 2017, for the purpose of promotion of the petitioner from the post of Health Worker (Female) to Health Supervisor (Female), the respondent no.3 issued a seniority list of the Health Worker (Female) of District Haridwar, wherein the name of the petitioner was placed at Sl. No. 97. It is further contended that in the said list, the seniority of the petitioner has been counted w.e.f.4.08.1994 i.e. the date when she was absorbed in the District Haridwar whereof the seniority of the petitioner is liable to be counted from her initial date of appointment i.e. 6.02.1986. Petitioner had moved objections/ representation before respondent no.3 against the seniority list with the request to consider her seniority from the date of her initial appointment. Thereafter, on 16.04.2017 a new seniority list was issued, wherein the name of the petitioner figured at Sl.N. 19.

4. It is further contended that pursuant to above seniority list, the respondent made promotion of incumbents up till serial no.14 of the said seniority list. However, after promotion of said 14 incumbents the Chief Medical Officer Haridwar adopting pick and choose policy started to make promotion and ignored the seniority list in which the petitioner was placed at Sl.No. 19 and various incumbents who were placed below the petitioner in the said seniority list were given promotion. The petitioner again moved a representation on 04.08.2018 before respondent no.3 regarding illegal promotion done by him ignoring the seniority list.

5. After receiving the aforesaid representation, the respondent no.3 vide order dated 22.09.2019 cancelled the earlier promotion order against which the objection was raised. Thereafter, instead of making promotion on the basis of above seniority list dated 16.04.2017, the respondent no.3 again issued a seniority list on 23.01.2019, wherein again the seniority of the petitioner has been counted from 04.08.1994 and she has been placed at Sl.No. 56. Feeling aggrieved, this writ petition has been filed.

6. Heard learned counsel for the parties and perused the material available on record.

7. In paragraph no. 4 of the writ petition, it is stated that in the earlier seniority list, in which the name of the petitioner was placed at Sl.No. 97, the seniority of the petitioner has been counted w.e.f. 04.8.1994 i.e. the date when she was absorbed in District Hardiwar whereas the seniority of the petitioner is liable to be counted from her initial date of appointment i.e. 06.02.1986. He would further submit that if the seniority of the petitioner would have been counted

from 06.02.1986 she would be placed at Sl. No. 17 after Sl. No. 16, on which name of Smt. Siya Devi is placed.

8. The averment made in paragraph no.4 of the writ petition that the petitioner was absorbed on bifurcation of District Saharanpur has not been specifically denied by learned counsel for the respondent in their counter affidavit.

9. It is settled position in law that averment made in the pleading, if not specifically denied or explained, it is assumed to be correct. As the contents of the writ petition has not been specifically refuted by the respondent, thus, the statements made in the writ petition is presumed to be correct. Since, the petitioner was appointed on 06.02.1986 in the Department, therefore, respondent have wrongly prepared impugned seniority list, wherein the petitioner has been placed at Sl.No. 56. As per the seniority list, the person, namely, Smt. Siya Devi was appointed in District Cadre on 15.01.1986 and her name found place in the seniority list at Sl.No. 6 and further Smt. Sushma Yadav, who was appointed in District Cadre on 13.02.1986, after the appointment of the petitioner, therefore, the respondents have wrongly prepared the final seniority list dated 23.01.2019 placing the petitioner at Sl.No. 56, whereas petitioner is liable to be placed in the seniority between Sl.No. 5 and 6 in the seniority list. Therefore, the seniority list dated 23.01.2019 is liable to be quashed. Same is hereby quashed.

10. The writ petition is allowed. A writ of mandamus is issued directing the respondents/competent authority to place the name of the petitioner after the name of Smt. Siya Devi and prepare fresh seniority list. Accordingly, respondents are further directed to fix the seniority of the petitioner from her initial date of appointment i.e. 06.02.1986 in District Haridwar.

11. Pending applications, if any, stand disposed of.

12. No order as to costs.