
(2019) 07 UK CK 0037
In the Uttarakhand High Court
Case No : Special Appeal No. 97 Of 2019

Ruchi Kandpal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0037

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : T.A. Khan, Vinay Bhatt, A.K. Arya, C.S. Rawat

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. T.A. Khan, learned Senior Counsel assisted by Mr. Vinay Bhatt and A.K. Arya, learned counsels for the appellant and Mr. C.S. Rawat, learned Addl. Chief Standing Counsel for the State of Uttarakhand.

2. A supplementary affidavit has now filed by the respondents admitted that 151 posts, which were to be included in the recruitment processes initiated pursuant to the advertisement issued on 03.01.2017, in terms of order passed by learned Single Judge in WPSS No. 2339 of 2016 dated 07.01.2017, have not been included. A feeble attempt is made by Mr. C.S. Rawat, learned Addl. Chief Standing Counsel, to submit that, since the requisition was sent by the Government in November, 2016/ December, 2016, prior to the order passed by learned Single Judge, the order dated 07.01.2017 would not apply to such requisition.

3. It is evident, from the order passed in WPSS No.2339 of 2016 dated 07.01.2017, that the learned Single Judge was aware that a requisition had already been made when he issued directions in the said writ petition. While disposing of the writ petition, learned Single Judge directed that, in the next selection process for which requisition had already been sent by the State Authorities to Uttarakhand Subordinate Service Selection Commission, 151 posts

of the last selection year shall be carried forward, and shall be included among the vacant posts for which the next selection has to be made by way of direct recruitment. It is evident, therefore, that, in addition to the number of posts for which a requisition was sent, in November, 2016/December, 2016, the State Government was obligated to send another requisition to fill up 151 posts along with the posts for which requisition had already been sent in November/December, 2016.

4. While the Uttarakhand Subordinate Service Selection Commission had, no doubt, already issued an advertisement on 03.01.2017 before the order was passed by the learned Single Judge on 07.01.2017, the State Government could have, in compliance with the said order dated 07.01.2017, sent a fresh requisition directing the Uttarakhand Subordinate Service Selection Commission to issue an errata, to its advertisement dated 03.01.2017, indicating that 151 more posts were sought to be filled up. As the last date of receipt of the application was 22.01.2017, an errata could have been issued before that date.

5. It is not as if the appellant had participated in the written examination, and on finding that she had not been selected, had thereafter sought to have these 151 posts clubbed to the posts for which an advertisement was issued on 03.01.2017. While the written examination, pursuant to advertisement dated 03.01.2017, was held on 22.01.2018, the appellant had, long prior thereto on 23.07.2017 itself, sought clarification from the Government whether 151 posts had, in fact, been included in the selection process underway. She was, however, misled by the authorities who informed her that these posts had, in fact, been included for recruitment.

6. Even in the counter affidavit filed in the writ petition, the stand of the respondent has been that these 151 posts had been included in the selection process undertaken pursuant to the advertisement dated 03.01.2017. It is only now, by way of the present supplementary affidavit dated 01.07.2019, that it is admitted that these 151 posts have not been included in the requisition pursuant to which an advertisement was issued on 03.01.2017, and that no such requisition was made thereafter. It is evident therefore, that the respondents have violated the directions issued by the learned Single Judge in WPSS No. 2339 of 2017.

7. Mr. T.A. Khan, learned Senior Counsel appearing on behalf of the appellant, would contend that the selection process undertaken, pursuant to the advertisement dated 03.01.2017, has not yet been completed; and appointment orders have not been issued to all the selection candidates, nor have all the advertised posts been filled up; and 25 advertised post still remain unfilled. He would state that these 151 posts can be filled up from among the candidates who had applied pursuant to the advertisement dated 03.01.2017, thereby ensuring that the order, passed in WPSS No. 2339 of 2016 dated 03.01.2017, is complied with.

8. Mr. C.S. Rawat, learned Additional Chief Standing Counsel, would contend that such a course of action would only result in further litigation as those, who had not applied pursuant to the advertisement dated 03.01.2017, may well approach this Court contending that 151 posts, which were not even included in the advertisement, are now sought to be filled up. The difficulty, which the respondents find themselves in, is of their own making. If they were of the view that these 151 posts should not be included in the selection process undertaken pursuant to the advertisement dated 03.01.2017, it was for them to question the order of the learned Single Judge by way of a special appeal before the Division Bench. If, on the other hand, they intended to comply with the said order, they could have issued an errata to the advertisement dated 03.01.2017, long before the written examination was held on 22.01.2018, including these 151 posts in the selection process. They have done neither, and yet seek indulgence of this Court to avoid compliance with the order passed by the learned Single Judge.

9. Orders of Courts necessitate compliance in letter and spirit. Having failed to question the said order in appeal, the respondent-officials cannot now be heard to contend that they have difficulty in now complying with the order of the learned Single Judge dated 07.01.2017. Accepting the submission of the learned Additional Chief Standing Counsel could result in judicial indiscipline, and in permitting the respondents to violate orders of Courts. Such a course of action is impermissible.

10. Since the selection process has not yet been completed, we were inclined to direct the respondents to fill up these 151 posts also, with the most meritorious of the remaining candidates. Mr. C.S. Rawat, learned Additional Chief Standing Counsel would request us to defer hearing of this Appeal by two weeks to enable the respondents to seek review of the order passed by the learned Single Judge in WPSS No.2339 of 2016 dated 07.01.2017. While it is debatable whether the respondents can now, after more than 2½ years, seek review of the order passed by the learned Single Judge in WPSS No. 2329 of 2016 dated 07.01.2017, we defer hearing of this appeal by two weeks, without expressing any opinion on whether or not such a review needs to be entertained.

11. Mr. T.A. Khan, learned Senior Counsel, would submit that the respondents have now sent a requisition to the Uttarakhand Subordinate Selection Commission directing inclusion of these 151 posts in the recruitment process to be undertaken in the year 2019; and, if an advertisement were to be issued including these posts in the 2019 recruitment process, it would render the appeal, preferred by the appellant, infructuous.

12. We find considerable force in this submission of Mr. T.A. Khan, learned Senior Counsel. Since it is the respondent who have sought for the hearing of the special appeal to be deferred by two weeks, it is but appropriate that, for a period of four weeks from today, the fifth respondent is directed not to issue an advertisement including the 151 posts, which were the subject matter of WPSS No. 2329 of 2016 dated 07.01.2017, therein.

13. Post this appeal on 16.07.2019 in the daily cause list.