
(2021) 08 UK CK 0226

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1022 Of 2011

Sanjay Kumar

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Citation : (2021) 08 UK CK 0226

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Parikshit Saini, R.C. Joshi, Davesb Bishnoi

Final Decision : Allowed

Judgement

Manoj Kumar Tiwari, J

1. Petitioner is challenging the order dated 27.07.2021¹¹ passed by Executive Officer, Nagar Palika Parishad, Manglour, whereby respondent no. 3

was appointed on the post of Daftari, on compassionate ground.

2. According to the petitioner, he was serving as Peon with respondent no. 2; on 29.11.2010, post of Daftari fell vacant and, vide order dated

25.07.2011, petitioner was promoted to the post of Daftari. Since respondent no. 3 has been appointed by direct recruitment to the post of Daftari in

the absence of any vacancy, moreover, appointment of respondent no. 3 is likely to interfere with petitioner's right to hold the post of Daftari,

therefore, he has approached this Court challenging appointment of respondent no.3.

3. The facts, on which there is no dispute, are that the post of Daftari is a promotional post for Peon and direct recruitment is not permissible on the

said post; petitioner was promoted to the said post on 25.07.2011 and, without

cancelling his promotion order, respondent no. 3 was appointed by direct recruitment as Daftari vide order dated 27.07.2011.

4. Learned counsel for the petitioner submitted that respondent no. 3 was initially given compassionate appointment as Peon in Nagar Palika Parishad Manglour; but, due to pressure from some power that be, the very next day, he was offered appointment on the superior post of Daftari. In support of this contention, he has referred to Annexure-6 to the writ petition, which is an order issued by Executive Officer, Nagar Palika Parishad on 26.07.2011.

5. The appointment given to respondent no.3 on the post of Daftari is unsustainable, as direct recruitment cannot be made on the post, which is to be filled only by promotion. Daftari is one such post on which direct recruitment is not permissible.

6. Even otherwise also, once respondent no.3 was given appointment on compassionate ground on the post of Peon, then there was no justification for offering him the post of Daftari, which is a superior post.

7. The right to get compassionate appointment is exhausted the moment appointment to any post is offered and no one can claim appointment to a post of his choice under Dying-in-Harness Rules, 1974.

8. Learned counsel for the petitioner has drawn attention of this Court to the averment made in paragraph no. 4 of the counter affidavit filed by Executive Officer, Nagar Palika Parishad, Manglour. Perusal of the said paragraph indicates that signatures of the Executive Officer were taken on the order dated 27.07.2011 under duress and the concerned Executive Officer had reported the matter to higher authorities and also the Minister, Urban Development Department of the State Government.

9. For the facts and reasons discussed above, the impugned order dated 27.07.2011 cannot be sustained in the eyes of law.

10. Accordingly, writ petition is allowed and the impugned order dated 27.07.2011 passed by respondent no. 2 is quashed. Since respondent no.3 was earlier given appointment on the post of Peon vide order dated 26.07.2011, therefore, he shall be entitled to serve as Peon with respondent no. 2.