
(2010) 06 UK CK 0006
In the Uttarakhand High Court

Smt. Pushpa Budiyaal

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Citation : (2010) 06 UK CK 0006

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.S. Khehar, C.J.—The petitioner was inducted into the service of the Uttar Pradesh Public Service Commission as a Lower Division Assistant in 1999. At the time of induction of the petitioner into the service of the Commission, the Uttar Pradesh Public Service Commission was catering to the needs of the composite State of Uttar Pradesh.

2. Just before the reorganisation of the composite State of Uttar Pradesh, with effect from 9.11.2000 into the successor States of Uttarakhand and Uttar Pradesh, guidelines were issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions, through a communication dated 13.9.2000 pertaining to the principles and the modalities to be followed by the two successor State Governments, inter alia, for allocation of employees belonging to all services other than the All India Service. A copy of the aforesaid guidelines was appended to the communication dated 13.9.2000. The guidelines are a part of the record of the instant Writ Petition as Annexure-1. Insofar as allocation of employees of the erstwhile members of the Uttar Pradesh Public Service Commission is concerned, the guidelines expressly notice that the posts within the purview of the Commission, as also, similar posts in the Secretariat and the State Legislature would be bifurcated on the basis of provisional allocation on the basis of the ratio of the districts between the two successor States. In fact, during the course of hearing, learned Counsel for the rival parties were agreed, that the provisions of the Uttar Pradesh Re-organisation Act, 2000

were inapplicable to the allocation of employees of the erstwhile Uttar Pradesh Public Service Commission.

3. The issue of allocation of employees of the erstwhile Public Service Commission, as per the record of the pleadings in the instant case, was initiated by seeking options of the concerned employees. In this behalf, a letter dated 27.9.2000 (Annexure-2) has been brought to our notice by the learned Counsel for the petitioner. Through the aforesaid communication, options were sought from the employees of the erstwhile Uttar Pradesh Public Service Commission on the issue of allocation to the two successor States of Uttarakhand and Uttar Pradesh. The aforesaid options were, actually, received and processed, as is apparent from another letter dated 28.5.2001 addressed by the Secretary, Public Service Commission to the Secretary of the Uttaranchal Government. The aforesaid letter encloses a list of thirteen members of the ministerial staff holding different posts, who had opted for allocation to the Uttarakhand Public Service Commission. The next step forward is sought to have been demonstrated, when the Uttarakhand Public Service Commission demanded the release of the thirteen ministerial employees, who had opted for employment in the Uttarakhand Public Service Commission, by producing before this Court a communication dated 12.10.2001 (Annexure-5). A perusal of the aforesaid communication reveals, that the State Advisory Committee had no objection to the allocation of the said thirteen ministerial employees to the Uttarakhand Public Service Commission. According to the learned Counsel for the petitioner, the said communication also records the approval of the State Government, inasmuch as, the Reorganisation Commissioner, Uttarakhand Government, as per the aforesaid communication, had also approved the aforesaid determination. The instant latter aspect of the matter is, however, subject matter of serious dispute at the hands of the learned Counsel for the respondents, inasmuch as, it is the vehement contention of the learned Counsel representing respondent No. 5 and the interveners, that the Reorganisation Commissioner of Uttarakhand Government was only one of the members of the State Advisory Committee, and as such, his consent could not be treated as the consent of the State Government. The instant objection raised at the hands of the learned Counsel for the respondents has, however, been sought to be overcome by the learned Counsel for the petitioner by asserting that the very fact that the two have been mentioned separately. Firstly, the no objection at the hands of the State Advisory Committee and thereafter, the consent of the Reorganisation Commissioner of the Uttarakhand Government depicts that the same were in respect of the two separate and distinct authorities; firstly, the State Advisory Committee and secondly, the Government of Uttarakhand.

4. Irrespective of the conclusion that may be drawn on the basis of the submissions noticed in the foregoing paragraphs, it is not a matter of dispute, that ever since the creation of the Uttarakhand Public Service Commission, the petitioner, who had opted for serving the Uttarakhand Public Service Commission, was relieved by the State of Uttar Pradesh to assume her duties in the Uttarakhand Public Service Commission. As a matter of fact, she has

rendered service uninterruptedly in the Uttarakhand Public Service Commission ever since its inception. Having been relieved from the Uttar Pradesh Public Service Commission and having assumed her duties in the Uttarakhand Public Service Commission, the first order that was passed in respect to the petitioner by the Uttarakhand Public Service Commission (relevant to the present controversy) is available on the record of this case as Annexure-15 dated 4.6.2003. By the aforesaid order, the petitioner was confirmed against the post of Lower Division Assistant with effect from 1.1.2002. Based on the instant communication, it is the vehement contention of the learned Counsel for the petitioner, that such an order could not have been passed by the Uttarakhand Public Service Commission unless the petitioner was being treated as a member of the service of the Uttarakhand Public Service Commission. Through the second order dated 15.12.2003, the petitioner was promoted from the post of Lower Division Assistant to Upper Division Assistant. The instant communication available on the record as Annexure-16, according to the learned Counsel for the petitioner, further demonstrates that the petitioner had, ever since her induction into the service of the Uttarakhand Public Service Commission, been treated as a part and parcel of the ministerial staff of the said Commission. It is argued, that otherwise there was no question of the Uttarakhand Public Service Commission granting promotion to the petitioner from the post of Lower Division Assistant to the post of Upper Division Assistant.

5. In spite of the factual position noticed hereinabove, it is the contention of the learned Counsel for the petitioner, that the issue of allocation of employees, who were the employees of the erstwhile Uttar Pradesh Public Service Commission, has remained a matter of active consideration at the hands of the State Advisory Committee, the two successor Commissions, namely, the Uttarakhand Public Service Commission and the Uttar Pradesh Public Service Commission, as also, the two State Governments. It is however submitted, that the issue came to be settled by the Government of India, Ministry of Personnel, P.G. and Pensions, Department of Personnel Training through a communication dated 8.9.2009. The aforesaid communication is of extreme relevance to the present controversy and is accordingly a relevant extract thereof is being extracted hereunder for facility of reference:

I am directed to refer to representation dated 25.8.2009 for allocation/relieving for U.P. In this regard, it is informed that the SAC in its meeting held on 6.5.2009 decided that the bifurcation of Lok Sewa Ayog is out of the purview of the SAC and the matter needs to be decided by Lok Sewa Ayog of both the Successor States of U.P. and Uttarakhand in mutual consultation.

Further action as deemed fit may kindly be taken in view of the apprehension expressed by the employees. A copy of the representation is enclosed.

It would be pertinent to mention that the aforesaid communication came to be issued by the Government of India consequent upon a contrary decision having been taken on the same subject matter in a meeting of the State Advisory

Committee held on 22.2.2009. A perusal of the communication, extracted hereinabove, reveals that the issue of allocation of staff of the erstwhile Uttar Pradesh Public Service Commission to the two successor Commissions, namely, the Uttarakhand Public Service Commission and the Uttar Pradesh Public Service Commission, was to be adjudicated upon by the successor Commissions.

6. Based on the aforesaid communication, Mr. B.D. Kandpal, learned Counsel representing respondent No. 3 i.e. the Uttarakhand Public Service Commission states, that at the most, at the present juncture, the prayer that can be made by the petitioner is, for a consideration in terms of the directive contained in the Government of India letter dated 8.9.2009.

7. No counter affidavit has been filed by the State of Uttarakhand i.e. by respondent Nos. 1 and 2. However, the counter affidavit filed by the Uttarakhand Public Service Commission i.e. respondent No. 3 expressly notices in Paragraph 3 (M), that no decision in respect of the petitioner's allocation has been taken by the State Government.

8. The stance adopted by the State of Uttar Pradesh, as also, the successor Uttar Pradesh Public Service Commission are to the effect, that the factual position recorded in the pleadings of the writ petition in respect of the discharge of duties by the petitioners in the successor Uttarakhand Public Service Commission ever since its constitution are correct. It is also affirmed, that the successor Uttar Pradesh Public Service Commission has no objection to the final allocation of the petitioner to the successor Uttarakhand Public Service Commission.

9. The interveners have raised a serious objection about the absorption of the petitioner in the successor Uttarakhand Public Service Commission. In this behalf, it is the vehement contention of the learned Counsel representing the interveners, that there is no provision under the law, whereby the petitioner can either be allocated to, or absorbed in the employment of the successor Uttarakhand Public Service Commission. The grievance of the interveners is, that they were inducted into the service of Uttarakhand Public Service Commission by way of direct recruitment, and having been so inducted, have also gained promotions. The petitioner, according to the interveners, would seriously prejudice the avenues of the promotions of the interveners, in case, she is allowed to be absorbed into the service of the successor Uttarakhand Public Service Commission, or even if she is ordered to be finally allocated to the said service.

10. We have given our thoughtful consideration to the rival contentions noticed in the foregoing paragraphs. While adjudicating upon the controversy, we have accepted the stand adopted by the learned Counsel for the rival parties, to the effect that the Uttar Pradesh Reorganisation Act, 2000 is inapplicable to determine the present controversy. Be that as it may, the erstwhile Uttar Pradesh Public Service Commission, in our view, was catering to the requirements of the composite State of Uttar Pradesh. After the bifurcation of the composite State of

Uttar Pradesh and the creation of the successor States of Uttarakhand and Uttar Pradesh, the responsibilities of the erstwhile Uttar Pradesh Public Service Commission were limited to the successor State of Uttar Pradesh. With effect from 5.5.2001, the Uttarakhand Public Service Commission came into existence and the responsibilities pertaining to the State of Uttarakhand came to be entrusted to it. In sum and substance, the responsibilities which were singularly discharged by the erstwhile Uttar Pradesh Public Service Commission were divided between the successor Uttar Pradesh Public Service Commission and the successor Uttarakhand Public Service Commission. Options of the ministerial staff engaged in the erstwhile Uttar Pradesh Public Service Commission were invited and obtained, for allocation to either of the successor Commissions. Based on the aforesaid options, the Uttarakhand Public Service Commission insisted, that those members of the ministerial establishment of the erstwhile Uttar Pradesh Public Service Commission, who had opted for allocation to the Uttarakhand Public Service Commission be relieved and be allowed to join the service of the successor Uttarakhand Public Service Commission. This demand was achieved, inasmuch as, the petitioner who was one of the members of the ministerial staff, who had opted for the Uttarakhand Public Service Commission, was ordered to be relieved by the State of Uttar Pradesh whereupon she assumed her duties in the successor Uttarakhand Public Service Commission. During the course of her employment in the successor Uttarakhand Public Service Commission, she was in the first instance confirmed as a Lower Division Assistant, and thereafter, promoted to the higher rank of Upper Division Assistant. The aforesaid two orders dated 4.6.2003 and 15.12.2003 demonstrate the determination of the Uttarakhand Public Service Commission to accept the petitioner as its employee for all intents and purposes.

11. If one has to accept the submission advanced by the learned Counsel representing the Uttarakhand Public Service Commission i.e. respondent No. 3 and has to be guided by the letter issued by the Government of India dated 8.9.2009, extracted hereinabove, the determination of final allocation of the staff, including the petitioner is to be a collective decision between the successor Uttarakhand Public Service Commission and the successor Uttar Pradesh Public Service Commission. The order of confirmation of the petitioner (dated 4.6.2003) and the order of her promotion (dated 15.12.2003) issued by the Uttarakhand Public Service Commission, demonstrate that it (the Uttarakhand Public Service Commission) was treating the petitioner as its employee. We have also noticed hereinabove, that in the counter affidavit filed on behalf of respondent No. 5, it has been expressed, that the Uttar Pradesh Public Service Commission has no objection to the allocation of the petitioner to the successor Uttarakhand Public Service Commission. The aforesaid set of facts completely satisfy the pre-condition of consensus between the Uttarakhand Public Service Commission and the Uttar Pradesh Public Service Commission. Accordingly, as per the letter issued by the Government of India, dated 8.9.2009, extracted hereinabove, the petitioner was liable to be finally allocated to the Uttarakhand Public Service

Commission. We accordingly, therefore, hereby affirm the prayer made by the learned Counsel for the petitioner for allocation to the successor Uttarakhand Public Service Commission. In our view, a determination to the contrary would have been extremely unfair and unjust in the facts and circumstances of this case, inasmuch as, the petitioner's option having been sought, the petitioner having opted for the State of Uttarakhand, she having been relieved by her original employer i.e. the erstwhile Uttar Pradesh Public Service Commission, she having assumed her duties in the Uttarakhand Public Service Commission, wherein she uninterruptedly rendered her duties ever since its inception, whereafter she was also confirmed against the post of Lower Division Assistant, and thereafter, promoted to the next higher rank of Upper Division Assistant by the Uttarakhand Public Service Commission, to treat her as an employee of the Uttar Pradesh Public Service Commission would be both unfair and unreasonable. The basic principle of allocation is to ensure fair and equitable treatment, not only in the distribution of the employees amongst the two newly created States, but also to keep in mind the personal aspirations of the employees concerned. As already noticed hereinabove, the aforesaid basic principles will also be deemed to have been fully given effect to, if the petitioner's prayer is accepted for final allocation to the Uttarakhand Public Service Commission.

12. Having arrived at the aforesaid conclusion, it is imperative for us also to deal with the objection of the interveners. It is quite apparent, that the sole reason why the interveners have approached this Court is because the petitioner on becoming a member of the service of the Uttarakhand Public Service Commission, would be senior to them and would be holding a higher position over and above most of them. The petitioner may also be an impediment in the onward promotion of the interveners to the higher posts within the Uttarakhand Public Service Commission. Chances of promotion, however, are not conditions of service, and as such, there can hardly be any justification in the objection at the hands of the interveners. Moreover, the interveners have never assailed the continuation of the petitioner in the Uttarakhand Public Service Commission. Not only did the petitioner start serving the Uttarakhand Public Service Commission years before the interveners came to be inducted into its service, they have never assailed the petitioner's continuation in service, nor the petitioner's confirmation as Lower Division Assistant or further promotion as Upper Division Assistant. In the aforesaid view of the matter, we are satisfied that the objections raised by the interveners in the facts and circumstances of this case are wholly misconceived and deserve to be rejected. The same are, accordingly, hereby rejected.

13. In view of the above, the instant Writ Petition is allowed. The petitioner shall be treated as an employee finally allocated to the Uttarakhand Public Service Commission. She would be entitled to consideration for promotions to higher posts, as and when the same fall due, in accordance with law.