
(2019) 05 UK CK 0271

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 3561 Of 2017

Sri Ram Prakash Bharati & Others

APPELLANT

Vs

Government Of Uttarakhand & Others

RESPONDENT

Date of Decision : 27-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0271

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Ashish Joshi, Mamta Bisht, Pankaj Purohit, Vinay Kumar

Final Decision : Disposed Of

Judgement

Manoj K. Tiwari, J

1. Petitioners are serving as Assistant Teacher (HTC Grade) in Government Ashram Paddhati Vidyalayas, which are run by Department of Tribal Welfare of the State Government. Petitioners were appointed between the years 1990-2004.

2. According to the petitioners, as per the Service Rules governing their service, they were entitled to be considered for promotion against 50% posts of C.T. Grade Teacher. Their grievance is that since the cadre of C.T. Grade has been declared 'dying cadre' vide Government Order dated 21.09.2005, therefore, the only avenue of promotion available to the petitioners has been lost. Thus, petitioners' contend that they should be considered for promotion against the vacancies available on the next higher post of Assistant Teacher (L.T. Grade).

3. Learned counsel for the petitioner by relying upon the judgment rendered by Hon'ble Supreme Court in the case of Raghunath Prasad Singh Vs Secretary, Home (Police) Department reported in 1998 (Supp) SCC 519 submits that provision for promotion increases efficiency of public service while stagnation reduces efficiency and makes the service ineffective. He further submits that in view of the law laid down by Hon'ble Supreme Court, the State Government is

under a duty to create reasonable avenues of promotion to the Assistant Teacher (HTC Grade) to ensure that they do not suffer stagnation for want of promotional avenues.

4. Para No. 4 of the Raghunath Prasad Singh (Supra) is extracted below:-

"4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over the general cadre. He relied upon two or three communication which are a part of the record where it has been indicated that there is no promotion opportunity available in the wireless organization. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organization to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organization."

5. Learned counsel for the petitioners also relies upon the decision rendered in the case of Dr. Ms. O.Z. Hussain Vs Union of India & others reported in AIR 1990 SC 311. Para No. 7 of the said judgment is extracted below:-

"This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate"

6. Learned counsel for the petitioner submits that the difficulty faced by Assistant Teacher (HTC Grade) in Government Ashram Padhati School was considered by the Tribal Welfare Department and a proposal for creating promotional avenues to them was sent by Director, Tribal Welfare to the State Government vide letter

dated 06.01.2018. He further submits that due to inaction on the part of the State Government, no decision has been taken in the matter so far. Learned counsel for the petitioners further submits that in the said letter, Director had recommended for giving 20% quota to such Assistant Teacher (HTC Grade) for promotion to the post of Assistant Teacher (L.T. Grade), who are graduate and also possess B.Ed. qualification.

7. Although there is no vested right of promotion, however, a Government Servant has a Fundamental Right to be considered for promotion.

8. Hon'ble Supreme Court in various judgments has held that reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. Hon'ble Supreme Court has further held that in case where there are no promotional avenues available to members of a particular service then direction can also be issued for creation of the same in order to remove stagnation.

9. In the present case, since the Director, Tribal Welfare himself has recommended for creation of promotional avenues to Assistant Teacher (HTC Grade), therefore, this Court thinks that interest of justice would be met, if the State Government is directed to take decision on the said proposal as early as possible.

10. Accordingly, writ petition is disposed of with a direction to the Competent Authority in the State Government to take decision on the recommendation dated 06.01.2018 made by the Director, Tribal Welfare, within six weeks from the date of receipt of certified copy of this order. For a period of six weeks or till the decision is taken by the State Government, whichever is earlier, the available vacancies on the post of Assistant Teacher (L.T. Grade) shall not be filled.

11. Interim order, if any, stands vacated.