

(2019) 05 UK CK 0077

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 9836 Of 2017 In Special Appeal
No. 547 Of 2017, Delay Condonation Application No. 16133 Of 2017
In Special Appeal No. 1047 Of 2017

State Of Uttarakhand And Others

APPELLANT

Vs

Suman Diwedi And Others

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0077

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Anil Kumar Bisht, Shruti Joshi, Ajay Veer Pundir

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The applications to condone the delay in preferring these appeals are not opposed by Mrs. Shruti Joshi, learned counsel for the respondent-writ

petitioner in SPA No. 547 of 2017, and Mr. Ajay Veer Pundir, learned counsel for the respondent-writ petitioner in SPA No. 1047 of 2017; and the

delay is, therefore, condoned.

2. Special Appeal No. 547 of 2017 is preferred by the State of Uttarakhand against the order passed by the learned Single Judge in Writ Petition (S/S)

No. 682 of 2016 dated 13.02.2017, and Special Appeal No. 1047 of 2017 is preferred by the State of Uttarakhand against the order passed by the

learned Single Judge in Writ Petition (S/S) No. 665 of 2016 dated 12.04.2017.

3. In both the aforesaid writ petitions, the candidature of the respondent-writ petitioners was rejected on the sole ground that they had not submitted a

valid document relating to their registration with the employment exchange. The case of the respondents-writ petitioners is that, though they were both registered with the employment exchange, they had mistakenly filed copies of the registration certificate which had already expired; they had, thereafter, filed the updated copy of a valid certificate evidencing registration with the employment exchange; and their candidature was rejected on the ground that the document submitted by them, along with the application form, did not disclose that their registration, with the employment exchange, was in force when they had submitted their application.

4. In the order passed in Writ Petition (S/S) No. 665 of 2016 dated 12.04.2017, the learned Single Judge observed that the candidature of the respondent-writ petitioner had been rejected purportedly on the ground that he had not annexed the latest employment exchange certificate from the concerned exchange; the posts, in question, were also advertised in the newspapers; and it was not necessary that the name of the person should be sponsored by the employment exchange, particularly when the posts have been advertised in the newspapers.

5. The learned Single Judge relied on *Union of India and others Vs. Pritilata Nanda* : (2010) 11 SCC 674 wherein the Supreme Court, following its earlier order in *Union of India Vs. N. Hargopal* : (1987) 3 SCC 30,8 held that failure, to have his/her name sponsored from the employment exchange, would not disentitle the applicant from being considered for appointment to the post sought to be filled up.

6. In the present cases, the condition stipulated, for participation in the selection process, is not even that the name of the applicant should be sponsored by the employment exchange. All that is required is for the applicant's name to be registered with the employment exchange.

7. As the prescribed procedure does not even require the applicant's name to be sponsored by the employment exchange, and as the learned Single Judge, in the orders under appeal, have held that the respondent-writ petitioners were, in fact, registered with the employment exchange, but had submitted their registration certificate belatedly, the appellants were wholly unjustified in rejecting their candidature on this flimsy ground, though both the aforementioned judgments of the Supreme Court, declaring the law on this aspect, were passed long before the advertisement was issued in

the year 2016.

8. Interference in an intra-Court appeal is extremely limited, and it is only if the order under appeal suffers from a patent illegality would interference

be justified. As we find no such infirmity in the order under appeal, we see no reason to interfere with the order under appeal in Writ Petition (S/S)

No. 665 of 2016 dated 12.04.2017, since the appellants herein have only been directed to consider the case of the respondent-writ petitioner for the

post of Assistant Teacher (Primary Science), which would require the appellants to consider his candidature strictly in the order of merit, without

insisting on a certificate to show that his name continues to be registered with the employment exchange.

9. In the order passed in Writ Petition (S/S) No. 682 of 2016 dated 13.02.2017, the learned Single Judge has issued a mandamus to the respondents to

give appointment to the respondent-writ petitioner according to her marks obtained in the selection. Mr. Anil Kumar Bisht, learned Standing Counsel

for the State Government, would submit that there are other candidates more meritorious than the appellant-writ petitioner; and even if the respondent-

writ petitioner's candidature were to be considered strictly in the order of merit, she would be ineligible to be appointed as an Assistant Teacher.

10. As these are all matters for the appellants to examine in accordance with law, suffice it to modify the order passed in Writ Petition (S/S) No. 682

of 2016 dated 13.02.2017, and instead direct the appellants to consider the case of the respondent-writ petitioner, in Writ Petition (S/S) No. 682 of

2016, strictly in accordance with her merit, without insisting on compliance with the condition that she should have a valid registration with the

employment exchange in force as on the date on which she submitted her application.

11. Except for the modification aforementioned, of the order passed in Writ Petition (S/S) No. 682 of 2016 dated 13.02.2017, both the appeals fail and

are, accordingly, dismissed.

12. No costs.