

(2006) 03 UK CK 0038

In the Uttarakhand High Court

Case No : Writ Petition No. 1615 of 2004 (S/S)

Thakur Singh Adhikari and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Constitution of India, 1950 — Article 154, 309

Police Act, 1861 — Section 2, 4

Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 — Rule 1, 3, 4

Citation : (2006) 3 UC 1667

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : P.S. Adhikari, sisted by B.S. Adhikari, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri P.S. Adhikari, Senior Advocate assisted by Sri B.S. Adhikari, Advocate counsel for the Petitioners and Standing counsel for the Respondents.

2. By the present writ petition, the Petitioners have prayed for a writ of mandamus directing the Respondents to consider and promote the Petitioners to the post of Inspectors with effect from the date of promotion of their juniors by following the Rules of 2004.

3. According to the Petitioners, they are serving in the Police department as Sub-Inspectors from about 20 to 25 years and they have no adverse entry in their character roil. They were also rewarded for their efficient works. Ministry of Home Affairs, Government of Uttaranchal issued a notification on 23rd September 2004 for promotion of Sub-Inspectors to the vacant posts of Inspectors in Uttaranchal Police. In continuation of the process prescribed in the above notification, dates were fixed for interview of the candidates whose list

was prepared by the department on the basis of seniority. The Petitioners stood in the seniority list at serial Nos. 20, 21, 43, 84 and 98 respectively. Thereafter vide order dated 12-12-2004 of Additional Director General of Police, Uttaranchal, a list of promoted candidates was published. The Petitioners have submitted that in the list of promoted candidates, the persons who were junior to the Petitioners have found place and the seniority of the Petitioners have completely been ignored. The Petitioners have submitted that the Petitioner No. 1 made a representation to the Respondents on 13-12-2004 but no heed was paid to the representation of the Petitioners.

4. Counter affidavit has been filed by the Respondents. The Respondents have submitted that seniority list was prepared on the basis of merit and in pursuance of the said notification the result of promotion was declared on the basis of merit. According to the Respondents in the Police Department Police Regulation 1861 is applicable in the case of direct recruitment and promotion. In exercise of the powers given under Police regulation, the Government issued notification dated 23-09-2004 and promotions of the Sub-Inspectors to the post of Inspectors were made in accordance with the said notification. The Respondents have asserted that notification No. 743/XXX(2)/2004/55(40)/2004 dated 15-06-2004 is not applicable to the Police Department of Uttaranchal.

5. The main allegation of the Petitioners is that during promotion process of Sub-Inspectors to the posts of Inspectors, such standards have been adopted by the Respondents due to which seniority of the Petitioners have been completely ignored and the Departmental Selection Committee made for the promotion was successful in selecting candidates of its own choice for promotion.

6. On behalf of the Petitioners much stress has been drawn on the applicability of the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004. The Respondents have denied in their counter affidavit that such Rules are applicable to the Police Department of Uttaranchal. Sub-clause (3) of Rule 1 of the said Rules reads as under:

(3) They shall apply to recruitment by promotion to a post or service for which no consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttaranchal Public Service Commission (Limitation of Functions) Regulations, 2003 as amended from time to time.

7. Rule 4 of the said Rules provided as under:

4. Criterion for Recruitment by promotion - Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any service carrying the pay scale the maximum of which is Rs. 18,300 or above shall be made on the basis of merit and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a Non-Gazetted post to a Gazetted post or from one service to another service, shall be made on the basis of seniority to the rejection of the

unfit.

8. The post of Inspector in the Uttaranchal Police is neither a Head of the Department nor above the pay scale of Rs. 18,300. Thus certainly it comes within the preview of the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004. These rules have also overriding effect on other rules made by the Governor. Rule 2 reads as under:

2. Overriding effect - These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force.

9. From the above, it is clear that these rules are applicable to all service rules in the State of Uttaranchal made by the Governor under Article 309 of the Constitution of India. These rules were promulgated in the State of Uttaranchal vide notification dated 15th June 2004, by the Governor of Uttaranchal under Article 309 of the Constitution, while the notification for promotion of Sub-Inspectors to the posts of Inspectors was issued on 23rd September 2004, under Police Act, 1861. Though it is a duly notified rule under the Police Act but it is in the nature of executive instruction having the force of law in the absence of statutory rules to the contrary. The Governor is the executive head of the State and all executive powers of the State are vested in the Governor by virtue of Article 154 of the Constitution of India. The function of the Governor under the proviso to Article 309 is purely legislative which cannot be tattered by any executive order. The legislative power of the Governor under the proviso to Article 309 is coextensive with those of the State Legislature in the field of service under the State.

10. Thus the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004, was duly applicable to the Uttaranchal Police Department on the date of its promulgation i.e. 15-6-2004.

11. The procedure made for promotion of the Sub-Inspectors to the posts of Inspectors under notification dated 23-9-2004 cannot be said entirely in contravention of the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 but certainly the criteria provided u/s 4 of this Act i.e. "promotion shall be made on the basis of seniority to the rejection of unfit" has not been followed in its true spirit. Although seniority has been regarded in the rules framed for promotion of Sub-Inspectors to the posts of Inspectors by providing higher marks. Rule 3(Ka) of the said rules reads as under:

?? ? ? ? :

(?) - 20 9 ?

15 20 7 ?

11 15 5 ?

12. Counsel for the Petitioner has disputed the criteria prescribed in Clause 3 of the notification i.e. for Length of Service 9 marks, for Educational Qualification-9 marks, for Annual remarks-30 marks, for awards-24 marks, for sports and special courses-18 marks and for interview-10 marks.

13. The margin of marks awarded for seniority are too low. Further equal marks will be obtained by the candidates having service in five years difference. Thus there are much chances of promotion of the junior candidates ignoring the seniors.

14. Once the legislation has adopted the criteria that "promotion shall be made on the basis of seniority to the rejection of the unfit" it should be regarded in all its further actions.

15. Counsel for the Petitioners has placed reliance in the case State of U.P. and Ors. v. Shakuntla Shukla Special Appeal No. 191 of 1998 decided on July 9, 1999 where a Division Bench of Allahabad High Court has held that U.P. Govt. Servant (Criteria for Recruitment by Promotion) Rules 1994 has overriding effect over the Government Order dated 5th November, 1965 prescribing the method of selection of Sub-Inspectors for promotion to the Rank of Inspectors. G.O. was issued on the recommendation contained in Para 246 of the U.P. Police Commission Report, 1960. Thus the factual aspect of the present case is similar to that of the case before the Division Bench of Allahabad High Court. In the present case the Governor of Uttaranchal has issued a notification u/s 2 of the Police Act, providing procedure for promotion of Sub-Inspectors to the rank of Inspectors.

16. The present case the Petitioners have not prayed for a writ of certiorari quashing the order of promotion made by the Respondents.

17. Their prayer is that the criteria for promotion fixed by the Government under Rule 4 of the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004, should be regarded in all respects and they should be considered for promotion in view of their seniority, as there is nothing in their service record which rendered them unfit for promotion to the rank of Inspector.

18. In view of above, a writ of mandamus is issued directing the Respondents to consider the Petitioners for promotion to the rank of Inspector within a month after obtaining the certified copy of this order. If they found eligible for promotion, they shall be promoted on the date when junior to them were promoted.

19. Accordingly, the writ petition is allowed. No order as to costs.