

(2019) 06 UK CK 0109

In the Uttarakhand High Court

Case No : Restoration Application No. 438 Of 2019 In Special Appeal No. 436 Of 2018

Udai Singh Rana

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 25-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0109

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Anil Anthwal, B.P.S. Mer

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

Restoration Application No. 438 of 2019

1. The application, to restore the Special Appeal to file, is not opposed by Mr. B.P.S. Mer, learned Brief Holder for the State of Uttarakhand, and the application for restoration is, therefore, allowed and the Special Appeal is restored to file.

Special Appeal No. 436 of 2018

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1675 of 2015 dated 05.04.2018. The appellant-writ petitioner filed the said writ petition seeking a writ of certiorari to quash the order dated 07.07.2015 passed by the fourth respondent; and for a writ of mandamus directing the respondents to appoint him to the post of Prashikshan Mitra (Stenographer Hindi) in ITI Barkot, District Uttarkashi pursuant to the Government Order dated 24.11.2001.

3. Facts, to the limited extent necessary, are that both the appellant-writ petitioner and the fifth respondent appeared for selection to the post of Stenographer Hindi on 27.04.2002. While the appellant-writ petitioner secured

77.5 marks, the fifth respondent secured 77 marks. However, the fifth respondent was appointed on 27.04.2002. On a complaint made by the appellant-writ petitioner, contending that the appointment of the fifth respondent was contrary to the Government Order dated 27.11.2001, an inquiry was caused by the District Magistrate, and the selection of the fifth respondent was held to be illegal, since the process of selection did not contemplate an interview. The appointment of the fifth respondent was cancelled by order dated 18.07.2002. The said cancellation was subjected to challenge in Writ Petition (S/S) No. 1019 of 2002 and this Court directed that, since appointment of the fifth respondent was on tenure basis which came to an end on 31.07.2002, she was not entitled to any relief. The fifth respondent was, however, permitted to apply afresh if a post was available.

4. The appellant-writ petitioner also invoked the jurisdiction of this Court by way of Writ Petition (S/S) No. 1109 of 2004 which was dismissed by order dated 22.02.2006 holding that he had failed to file the letter of appointment. The learned Single Judge, however, permitted the appellant-writ petitioner to make a representation before the authorities concerned regarding his grievance, and directed the fourth respondent to consider the same in accordance with law. The appellant-writ petitioner, thereafter, made representations on 14.09.2006 and 16.09.2006. The District Magistrate called for a report from the fourth respondent, who submitted his report on 23.09.2006 stating that the process of recruitment of Instructor in different trades was going on; and after appointment of a regular Instructor, appointment of Prashikshan Mitras was automatically stopped in the last week of October, 2006.

5. The appellant-writ petitioner, thereafter, filed Modification Application No. 694 of 2008 in Writ Petition (S/S) No. 1109 of 2004 and this Court, by its order dated 25.06.2008, granted liberty to the appellant-writ petitioner to make a fresh representation. The appellant-writ petitioner, thereafter, made another representation on 30.11.2009; and, on a report being sought from the District Magistrate, the Additional District Magistrate, in his report dated 27.09.2013, opined that permitting the fifth respondent to work in the post of Prashikshan Mitra was illegal. The District Magistrate, thereafter, informed the Director, Technical Education, by his letter dated 09.10.2013, that appointment of the fifth respondent was illegal; and her appointment should be cancelled.

6. The appellant-writ petitioner again filed Writ Petition (S/S) No.1523 of 2011 which was disposed of by order dated 08.07.2014 directing the second respondent to take a decision within eight weeks. The appellant-writ petitioner made a representation on 14.08.2014 to the second respondent who, by his letter dated 07.07.2015, rejected the appellant-writ petitioner's representation. Subsequently, by order dated 13.07.2015, the appointment of the fifth respondent was cancelled as she was appointed contrary to the Government Order dated 24.11.2001. On the ground that he should have been appointed in the place of the fifth respondent, the appellant-writ petitioner again invoked the

jurisdiction of this Court resulting in the order under appeal being passed.

7. In the order under appeal, the learned Single Judge observed that the counsel, appearing on behalf of the Director of Training and Employment, had filed his counter-affidavit in paragraph no. 15 of which it had been stated that the post in question had already been filled up by way of transfer, and there was no post vacant against which the appellant-writ petitioner could be appointed. While holding that the post of Prashikshan Mitra was a tenure appointment, such appointment was to be made only till a regularly selected candidate joined the post, the learned Single Judge held that, as a regularly selected candidate had joined the post, no further order need be passed in the matter. The writ petitions, filed by both the appellant-writ petitioner and the fifth respondent, were dismissed. Aggrieved thereby, the present appeal.

8. As noted hereinabove, the fifth respondent was illegally appointed as a Prashikshan Mitra for a period of one year on a contractual basis, though the appellant-writ petitioner had secured more marks than her. While the learned Single Judge has held against the appellant-writ petitioner on the ground that the post has already been filled up, Mr. Anil Anthwal, learned counsel appearing on behalf of the appellant-writ petitioner, would draw our attention to the proceedings, issued under the Right to Information Act, to contend that the post is still vacant. The appellant-writ petitioner has, no doubt, been fighting a long and arduous battle ever since July, 2001 when the fifth respondent was appointed. The fact, however, remains that appointment to the post of Prashikshan Mitra was only for a duration of one year which expired on 31.07.2002 nearly 17 years ago.

9. Since the very appointment of the fifth respondent was on a tenure basis for a period of one year, which period expired 17 years ago, it would be wholly inappropriate for us, as 17 years have since elapsed, to now direct the respondents to consider the appellant-writ petitioner's claim for appointment, on a tenure basis, in the year 2019, when the tenure would have ended on 31.07.2002 even if the appellant-writ petitioner had been appointed, instead of the fifth respondent, on 31.07.2001.

10. Suffice it to make it clear that the said post, if still vacant, shall be filled up by a regular process of selection with utmost expedition.

11. Subject to these observations, the Special Appeal fails and is, accordingly, dismissed. No costs.