

(2017) 01 UK CK 0014
In the Uttarakhand High Court
Case No : 542 of 2015

U.P. Rajkiya Nirman Nigam Limited and others	APPELLANT
Vs	
Dinesh Chandra Bhaguna	RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 01 UK CK 0014

Hon'ble Judges : Rajiv Sharma, Sudhanshu Dhulia

Bench : Division Bench

Advocate : Anil Kumar Joshi, C.D. Bahuguna, Anup? Kumar Verma

Final Decision : Allowed

Judgement

1. The appellant i.e. U.P. Rajkiya Nirman Nigam Limited has filed this special appeal challenging the order of the learned Single Judge dated 18.08.2015, passed in Writ Petition (S/S) No. 1976 of 2014, allowing the writ petition and directing the respondents i.e. the present appellants to regularize the services of the petitioner with effect from 24.11.1998, if not from 6.3.1997.
2. Bare facts of the case are that the petitioner in the writ petition, namely, Dinesh Chandra Bahuguna was working as a Sub-Engineer (Civil) with effect from 24.11.1998 and was getting a regular pay-scale. His services were regularized as a Sub-Engineer with effect from 07.12.2010. The grievance of the petitioner, however, was that subsequently vide order dated 05.03.2013, twelve similarly situated Sub-Engineers were regularized with effect from 06.03.1997, though initially regularized from 13.06.2003. Hence, the petitioner claimed regularization from 06.03.1997 and if not then from the date he was getting scale of Sub-Engineer i.e. 24.11.1998.
3. The stand taken by the present appellants before the learned Single Judge was that the petitioner's services could only be regularized on the date when there was availability of the post and since the post was not available prior to 1997, services of the petitioner were not liable to be regularized from 1997. It

was further argued that in the 12 case of regularization of other 12 employees, the regularization was done as these candidates were belonging to Other Backward Classes for whom vacancies did exist in the department since 1997 and consequently their services were regularized against the vacant posts with effect from 1997. This, however, was not the factual situation with the petitioner and since the vacancy was not available for the petitioner on the said date, the services of the petitioner could not be regularized. The learned Single Judge, however, rejected the argument of the appellants as the perception of the learned Single Judge was that out of twelve candidates who were regularized, many of the candidates may not be actually Other Backward Class candidates and for this reason following observations were given by the learned Single Judge :

"Looking to the surnames of these 12 engineers, it reflects that some of them are "Rathore" or "Gupta" by caste and these castes are not the indicative of OBC caste."

4. The pointed contention of the appellants before this Court is that whether a person belongs to OBC or not, cannot be ascertained by his surname alone. In fact no evidence has been placed before the learned Single Judge refuting the claim of such candidates, who were regularized though they did not belong to OBC community.

5. The contention of the appellants seems to be correct. Even assuming that all OBC candidates who have so regularized do not belong to OBC category, then the correct prayer for the petitioner would be to cancel the regularization of such candidates who have been wrongly regularized. This is so in view of the Hon''ble Apex Court's decision in the case of Directorate of Film Festivals and Ors. V. Gaurav Ashwin Jain and Ors . reported in (2007) 4 SCC 737, where the Hon''ble Supreme Court has observed that two wrongs do not make a right, and if a benefit has been wrongly granted to one set of individuals then that itself cannot be a ground for the same benefit to others.

6. Since it has not specifically been pleaded by either of the side as to the claim of the petitioner for regularization or the validity of the regularization of twelve OBC candidates, we think it best that the matter be remanded back to the learned Single Judge and we request the learned Single Judge to determine the matter afresh, on due consideration. We leave it open to the petitioner (respondent herein) to amend his prayer making any other suitable prayer including the prayer for quashing the regularization order in the case of twelve candidates.

7. In view of the above, the appeal is allowed and the judgment and order dated 18.08.2015 passed by the learned Single Judge is hereby set aside. The matter is remanded for a fresh consideration in the light of the above observations.