
(2019) 05 UK CK 0150

In the Uttarakhand High Court

Case No : Special Appeal No. 361, 266 Of 2016, 201 Of 2015, 89 Of 2013

Uttarakhand Public Service Commission, Haridwar And Others	APPELLANT
Vs	
Khemraj Bhatt & Others	RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0150

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Ashish Joshi, N.S. Pundir, Pradeep Joshi, Ravindra Singh Garia, Prabhakar Narayan

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Of these four appeals, three (SPA Nos. 361/2016, 201/2015 & 266/2016) are preferred against the common order passed by the learned Single Judge in WPSS Nos. 1791 and 1170 of 2012 dated 4.12.2014. While Special Appeal No. 201 of 2015 has been filed by the State of Uttarakhand against the common order passed in both WPSS Nos. 1791 and 1170 of 2012 dated 4.12.2014, the Uttarakhand Public Service Commission has filed two Special Appeals. Special Appeal No. 266 of 2016 is filed challenging the common order passed in WPSS Nos. 1791 and 1170 of 2012 dated 4.12.2014. The Commission again filed Special Appeal No. 361 of 2016 questioning the order passed by the learned Single Judge in WPSS No. 1170 of 2012 dated 4.12.2014. We shall, therefore, treat Special Appeal No. 266 of 2016 as having been preferred against the order passed by the learned Single Judge in WPSS No. 1791 of 2012 dated 4.12.2014, and dismiss the said Special Appeal to the extent a challenge has been mounted therein to the order passed in W.P. (S/S) No. 1170 of 2012. Consequently, Special Appeal No. 361 of 2016 shall be held to be the appeal preferred against the order passed in WPSS No. 1170 of 2012 dated 4.12.2014, and Special Appeal

No. 266 of 2016 shall be treated as the appeal preferred against the order passed by the learned Single Judge in WPSS No. 1791 of 2012 dated 4.12.2014. Special Appeal No. 89 of 2013 is preferred by the Government of Uttarakhand against the order passed by the learned Single Judge in WPSS No. 1896 of 2005 dated 8.11.2012.

2. Facts, to the limited extent necessary, are that an advertisement was issued by the Public Service Commission on 17.9.2010 inviting applications for the posts of Assistant Registrars in the State Universities, of which one was reserved in favour of the Scheduled Castes, and another was kept open for candidates under the General Category. The respondent-writ petitioner filed WPSS No. 1170 of 2012 seeking a mandamus directing the first respondent to issue appointment orders to him in the post of Assistant Registrar on the basis of the selection held on 14.5.2011.

3. While matters stood thus, the Commission, on receipt of certain complaints against the selection of petitioner and regarding his qualification and eligibility to be appointed to the post of Assistant Registrar, issued him a show cause notice; and, after considering his reply, passed order dated 8.11.2012 holding him ineligible to be considered for appointment to the post of Assistant Registrar. By the said proceedings dated 8.11.2012, the recommendation issued earlier, to appoint the respondent-writ petitioner as an Assistant Registrar, was withdrawn. Aggrieved thereby, the respondent-writ petitioner filed WPSS No. 1791 of 2012.

4. The petitioner was initially appointed, substantively, as a Driver in the Treasury Department of the erstwhile State of Uttar Pradesh by proceedings dated 5.7.1992. In an accident, which took place thereafter, the petitioner suffered injuries in his spinal chord while on duty, resulting in his inability to drive vehicles, particularly for long distances. He submitted a request, to the authorities concerned, that he be assigned clerical duties considering his medical condition. He moved an application, to the Government of Uttar Pradesh, under whom he was then working; and, after his final allocation to the State of Uttarakhand, he submitted another representation dated 25.7.2001. Thereafter the Director, Treasury passed an order on 4.8.2001 assigning clerical duties to the petitioner. He was assigned the duties of an Office Assistant/Clerk, but was extended the same scale of pay as was applicable to the post of Driver. The petitioner, however, contended before this Court that, at the relevant time, the clerical post, to which he was assigned, carried the same pay-scale of Rs. 3050-4590, which was the pay-scale applicable to a Driver; and while his name was reflected in the seniority list of Clerks, his name was subsequently removed from the said list in the year 2005. The respondent-writ petitioner filed WPSS No. 1896 of 2005 which was disposed of by order dated 8.11.2012 holding that there were provisions for change of cadre, particularly keeping in mind the medical condition of the petitioner.

5. After relying on the judgment of the Supreme Court, in *Narendra Kumar Chandla v. State of Haryana*, (1994) 4 SCC 460, the learned Single Judge held

that the petitioner had been rightly assigned the clerical cadre, and his name had been erroneously removed from the seniority list of Clerks. Against the order of the learned Single Judge, in WPSS 1896 of 2005 dated 8.11.2012, the Government of Uttarakhand preferred Special Appeal No. 89 of 2013, which is also being taken up for hearing along with the aforementioned three Special Appeals. It is not in dispute that the petitioner has been discharging the duties of a Clerk ever since 2001, till he was appointed as an Assistant Registrar, pursuant to the order under appeal, on 22.5.2015. He joined duty as an Assistant Registrar on 3.7.2015. He was confirmed as an Assistant Registrar on 16.8.2017, and was promoted as a Deputy Registrar thereafter.

6. The dispute, in these appeals, relate to the petitioner's appointment as an Assistant Registrar pursuant to the order of the learned Single Judge which, according to both the appellants, is illegal. It is contended, on behalf of the appellants that, the respondent-writ petitioner was not appointed in a clerical post, but was only permitted to discharge such duties. It is necessary, therefore, to briefly note the facts leading upto the petitioner being appointed as an Assistant Registrar.

7. As noted hereinabove, the Public Service Commission issued an advertisement on 17.9.2010, pursuant to which the respondent-writ petitioner submitted an application along with his experience certificate, of having worked for seven years as a Clerk, issued by the Joint Director, Lekha and Hakdari. The petitioner was found eligible and was called for the written test, in which 28 candidates participated. Eight candidates, including the petitioner, were selected for interview, of which five belonged to the general category and three from the reserved category. Interviews were held on 13.5.2011, and among the interviewees, the petitioner was found successful under the general category, and another individual was selected under the reserved category, on the basis of their respective merit. A select list was prepared by the Public Service Commission and the names of these two candidates were recommended, by letter dated 25.5.2011, to the Principal Secretary, Department of Personnel, Dehradun for appointment. A police verification was caused of the antecedents of both the candidates, and after verification a clean chit was given to the petitioner. Though a letter of appointment was issued to the other candidate Sri Dinesh Chandra, who joined duty as an Assistant Registrar pursuant thereto, no such letter of appointment was issued to the petitioner though the Government Order, issued by the State of U.P dated 2.2.1981, mandated that an appointment letter should be issued within three months from the date of selection.

8. It is the petitioner's case that he came to know that one Sri Ajay Singh Chauhan, who had appeared in the written test along with the petitioner and 26 others, had made a complaint with the Governor alleging that the Interview Committee had awarded higher marks to the petitioner; and the petitioner lacked the requisite experience. The Public Service Commission, by its letter dated 9.8.2011, informed the Governor that the Interview Committee consisted of the

Vice-Chancellor, two Pro Vice-Chancellors, and one finance expert; marks were given as per norms and rules; experience certificate was issued to the petitioner by the competent authority; and there was no validity in the complaint of Sri Ajay Singh Chauhan. The Governor is said to have rejected the said complaint, despite which no appointment letter was issued to the petitioner.

9. Sri Ajay Singh Chauhan is said to have lodged another complainant with the Governor seeking review of the earlier order, and the said complaint was referred to the Public Service Commission. An explanation was sought from the petitioner, by letter dated 15.9.2011, calling upon him to explain the validity of the certificate reflecting his experience of seven years in the field of Accountancy. By his explanation dated 30.9.2011, the petitioner informed the Public Service Commission that he had put in more than seven years of service in the field of Accountancy; and he had not produced any false certificate in this regard. An enquiry is said to have been caused on the genuineness of the experience certificate of the petitioner, of having worked in the office of Director, Lekha and Hakdari. The Director was called upon to verify the genuineness of the experience certificate issued to the petitioner. In his report dated 9.3.2012, the Director stated that the experience certificate was correct, and the petitioner had been working as a Clerk for seven years, and he had wide experience in correspondence in Hindi and English languages besides experience in Accountancy, Budget, etc. On receipt of the report from the Director, vide letter dated 22.6.2012, the State Government requested the Public Service Commission to take necessary steps.

10. As he was not appointed as an Assistant Registrar, the respondent-writ petitioner filed WPSS No. 1170 of 2012. After the Writ Petition was filed, the Public Service Commission, vide letter dated 12.9.2012, informed the petitioner that he had failed to provide correct information at the time of submitting his application, and had concealed the fact that, on 13.10.2006, he was relieved from the post of Driver. On being asked to show cause why his candidature should not be rejected, the petitioner submitted his reply dated 18.10.2012; an Enquiry Officer was appointed who submitted his report to the State Government on 8.11.2012 stating that the experience certificate, issued to the petitioner, was genuine; and the petitioner fulfilled the requisite eligibility criteria for being appointed to the post of Assistant Registrar in the University.

11. In the meanwhile, Writ Petition (S/S) No. 1896 of 2005 filed by the petitioner was disposed of, by a learned Single Judge, vide his order dated 8.11.2012. The order impugned therein, whereby the petitioner was downgraded and his name was deleted from the seniority list of ministerial employees (clerical cadre), was quashed by this Court holding that the petitioner could not be treated as an ordinary driver and his name ought to have been included in the seniority list of Clerks in the ministerial cadre. On the same day, the Public Service Commission passed the order dated 8.11.2012 informing the petitioner that he had concealed the fact that he was relieved from the post of Driver on 13.10.2006; and he had

only referred to his experience in clerical/accountancy work, and had not stated that his name was removed from the seniority list of ministerial employees.

12. The petitioner again invoked the jurisdiction of this Court by way of WPSS No. 1170 of 2012 contending that, since he suffered from a major accident while on duty as a Driver, and was no longer in a position to discharge his duties as a Driver, he was appointed in the clerical cadre on 4.8.2001 in an ex-cadre post; and he has been working as a Clerk ever since then. The contention of the appellants (respondents in the Writ Petition), however, was that, since the petitioner was not regularly appointed to the post of a Clerk in a sanctioned post, he continued to remain a Driver; he could not, therefore, be treated as a Clerk; his experience as a Clerk could not, therefore, be reckoned as experience in the regular post of a Clerk; and he, therefore, lacked the required experience of seven years in the field of Accountancy, to be eligible to be considered for appointment to the post of Assistant Registrar.

13. The advertisement issued by the Public Service Commission on 17.9.2010, inviting applications for appointment to the post of Assistant Registrar, required the applicant to possess experience in correspondence in Hindi and English, and to have working experience in the field of Accountancy for a period of seven years in a Government Office or a University. By the time the petitioner submitted his application, pursuant to the advertisement dated 17.9.2010, he had acquired more than nine years' experience in the field of Accountancy in a Government Office, as he continued to discharge the duties of a Clerk ever since 20.8.2001, albeit in an ex-cadre post. The requirement of the advertisement was not that the petitioner should have been appointed in the regular post of Clerk, but only that he should have working experience in the field of Accountancy for a period of seven years in a Government Office or a University.

14. On the petitioner having invoked the jurisdiction of this Court, the learned Single Judge, in the order under appeal in WPSS Nos. 1170 and 1791 of 2012 dated 4.12.2014, observed that the petitioner was, admittedly, appointed as a Driver in the Treasury Department; initially, he was performing his duties as a Driver, but was later on appointed to discharge the duties of a Clerk, considering his medical condition; from 2001, he has been performing clerical duties; the advertisement, issued by the Public Service Commission dated 17.9.2010 inviting applications from eligible candidates, stipulated the following qualifications for being considered for appointment to the post of Assistant Registrar i.e. (a) candidates must be a graduate with knowledge of Hindi and English; and (b) he must have working experience of seven years in the field of Accountancy in a Government Office or a University; and the petitioner was selected but was not appointed.

15. The learned Single Judge, therefore, observed that, while a complaint was moved against him by Sri Ajay Singh Chauhan, the petitioner had contended that Sri Ajay Singh Chauhan had failed to qualify in the test for selection to the post of Assistant Registrar and had, in turn, questioned the petitioner's experience by

the Accounts and Pension Directorate; the Enquiry Officer, in his report dated 8.11.2012, had recorded a finding that the petitioner was issued an experience certificate by the Accounts and Pension Directorate, to the effect that he had been performing duties as an Office Assistant, and his name was mentioned in the office document as an Office Assistant; the Finance Department, by its order dated 13.10.2006, had certified that the petitioner had been working as a Junior Assistant i.e. Data Entry Operator which is a cadre post; the advertisement, issued by the Public Service Commission, only required knowledge in writing letters in Hindi and English, and working experience of seven years in the clerical cadre; the requirement was not that one should have worked in a clerical post for seven years; the Enquiry Officer had held that the petitioner was eligible to be appointed to the post of Assistant Registrar, and he had all the qualifications and experience required for the said post; and this report dated 8.11.2012 does not appear to have been considered by the Additional Secretary, who had recommended that action be taken against the petitioner based on the earlier report.

16. The learned Single Judge further held that the petitioner was eligible to be considered for appointment to the post of Assistant Registrar as per the requirements stipulated in the advertisement; it was nobody's case that the petitioner had submitted forged or fabricated documents before the authorities concerned; the experience certificate was given to him by the designated officer as required in law; the requirement was not that one should have experience of seven years in a clerical post; the advertisement only required that a candidate should have experience of seven years in the field of Accountancy, and he must be a graduate with knowledge of Hindi and English; it was not in dispute that the petitioner was a graduate; it was also admitted that the petitioner had met with an accident, and had been performing clerical duties ever since 2001; the petitioner's name being deleted from the seniority list was not in issue in the two Writ Petitions pending before the Court; what was relevant was that the Commission itself had rejected the complaint made by Sri Ajay Singh Chauhan treating it as frivolous; the first enquiry report of the Deputy Director dated 12.12.2011, based on which the impugned order was passed, was inconclusive for the reason that reference was made therein to Writ Petition (S/S) No. 1896 of 2005, which was then still pending before this Court; and, consequently, the Enquiry Officer had refrained from giving any conclusive finding on the eligibility of the petitioner; in the second enquiry report dated 8.11.2012, the Enquiry Officer had given a conclusive finding that the petitioner had the requisite experience of clerical work including writing letters in Hindi and English and the certificates and documents, which he had submitted, were valid certificates; however, even before receipt of this report, the Additional Secretary had already expressed his mind by writing the letter dated 30.7.2012, to the Commission, that the petitioner did not have the requisite experience; this letter was based on the first report of the Enquiry Officer which, in any case, was inconclusive; the impugned order clearly showed that the Commission had relied on the letter of

the Additional Secretary in concluding that the petitioner did not have the prescribed qualifications and had, therefore, cancelled his candidature; the main enquiry report was not examined either by the State Government or by the Public Service Commission while passing the impugned order; the only conclusion which could, therefore, be drawn was that the petitioner was selected by the Public Service Commission to the post of Assistant Registrar; and, after being duly selected, his candidature was cancelled without taking cognizance of the enquiry report dated 8.11.2012, which had recorded a conclusive finding that the petitioner was eligible and had all the qualifications to be appointed to the post of Assistant Registrar, and his certificates were in order. The Writ Petition was allowed. The impugned order dated 8.11.2012 was quashed, and the respondents were directed to forthwith give appointment to the petitioner in the post of Assistant Registrar.

17. Before us, both Sri Pradeep Joshi, learned Standing Counsel for the State Government, and Sri Ashish Joshi, learned Standing Counsel for the Public Service Commission, would contend that, since the petitioner's appointment in the clerical cadre on 4.8.2001 was not in the regular post of Clerk, but was in an ex-cadre post, it must be treated that he continued to remain a Driver, more so as he was continued to be paid the salary of a Driver; since he was not appointed to the regular post of a clerk, he cannot be said to have the minimum stipulated experience of seven years as a clerk; even if the learned Single Judge was satisfied that the impugned order passed by the Commission was in ignorance of the second enquiry report dated 8.11.2012, the only order that could have passed was to direct the third respondent to reconsider the matter, and not to issue a mandamus to appoint the petitioner as an Assistant Registrar on a regular basis; the order under appeal necessitates being set aside; and the appellants must be given liberty to examine the matter afresh, and in accordance with law.

18. On the other hand Sri Ravindra Singh Garia, learned Counsel appearing for the respondent-writ petitioner, would submit that, while appointing the petitioner in an ex-cadre post on 4.8.2001, the order of appointment made it clear that the regular vacancy would not be filled up; the condition, stipulated in the advertisement, was not that the applicant should be working in a regular post in the clerical cadre, but only that he should have experience of seven years in the field of Accountancy; as it is not in dispute that the petitioner was appointed as a Clerk, albeit in an ex-cadre post, on 4.8.2001, and he had put in more than nine years of service by the date the advertisement was issued on 17.9.2010, he had more than the required experience, of having worked in the field of Accountancy for more than seven years, as stipulated in the advertisement; the petitioner's candidature was initially approved by the Public Service Commission, and he was recommended, for appointment as an Assistant Registrar, to the State Government; the Governor (Chancellor of University) had twice rejected the frivolous complaint made against the petitioner by Sri Ajay Singh Chauhan; on the third occasion the Commission, on the basis of the letter addressed to them

by the Additional Secretary, had cancelled the petitioner's candidature; and the learned Single Judge was, therefore, justified in issuing a mandamus to the State Government to appoint the petitioner as an Assistant Registrar.

19. In so far as the finding recorded by the learned Single Judge regarding the petitioner's experience, it is not in dispute that the petitioner was appointed on 4.8.2001 as a Clerk in an ex-cadre post, since he was found medically unfit to discharge the duties of a Driver in the Treasury Department of the State of Uttarakhand. It is also not in dispute that, ever since 4.8.2001, the petitioner continued to discharge the duties of a Clerk, and he never discharged the duties of a Driver thereafter. The experience criteria, stipulated in the advertisement, was only that the petitioner should have experience of seven years in the field of Accountancy. The requirement was not that the petitioner should have worked in the regular post of a Clerk for more than seven years. The learned Single Judge has, in our view, rightly held that the petitioner, who was working as a Clerk ever since 4.8.2001, had experience of more than seven years in the field of Accountancy, besides having working knowledge of correspondence in Hindi and English languages; and he fulfilled the qualification criteria stipulated in the advertisement issued by the Public Service Commission.

20. The scope of interference in an intra-Court appeal is extremely limited. Both the Division Bench and the learned Single Judge exercise jurisdiction only under Article 226 of the Constitution of India. The learned Single Judge is not a Court subordinate. Unlike an Appellate Court, which can reappraise findings of fact, a Division Bench, in an intra-Court appeal, ordinarily refrains from doing so. It is only if the order under appeal suffers from a patent illegality, would interference be justified. We find no such infirmity in the order under appeal. The findings recorded in the order under appeal, in so far as it relates to the petitioner having fulfilled the experience criteria as stipulated in the advertisement issued by the Public Service Commission, are upheld

21. While this Court would, ordinarily, not issue a mandamus to the authorities to appoint the person invoking its jurisdiction, and would confine grant of relief by directing the respondents to consider the petitioner's case in accordance with law, the facts of the present case, in our view, justified such an order being passed by the learned Single Judge. Though the petitioner fulfilled the experience criteria stipulated in the advertisement issued by the Public Service Commission and his candidature, along with another candidates belonging to the Other Backward Classes, was recommended by the Public Service Commission to the State Government as early as on 25.5.2011, it is only the other candidate, selected along with the petitioner, who was appointed pursuant thereto. On the other hand, the petitioner was forced to run from pillar to post till eventually he was granted relief by the order under appeal dated 4.12.2014.

22. As noted hereinabove the petitioner, pursuant to the order under appeal, was appointed as an Assistant Registrar on 22.5.2015; his services as an Assistant Registrar was confirmed on 16.8.2017; and he was promoted thereafter as a

Deputy Registrar. No useful purpose would now be served in directing the appellants to reconsider the petitioner's claim for being appointed as an Assistant Registrar in the respondent-University, more so, since the learned Single Judge, in our view rightly so, has held that the petitioner had fulfilled the prescribed qualifications. While making it clear that this Court would, ordinarily, not issue a mandamus to the respondents to appoint the person invoking its jurisdiction, and would ordinarily direct them to reconsider the matter, we are satisfied that the present case does not necessitate any such direction being issued, more so in an intra-Court appeal. Consequently, all the three appeals (SPA Nos. 361/2016, 201/2015 & 266/2016) are dismissed.

23. Sri Ravindra Singh Garia, learned Counsel appearing for the respondent-writ petitioner, would submit that, since the petitioner has now joined duty in the Kumaun University, Nainital where he is now working as a Deputy Registrar, Special Appeal No. 89 of 2013, preferred against the order of learned Single Judge in Writ Petition (S/S) No. 1896 of 2005 dated 8.11.2012, has become infructuous. Sri Pradeep Joshi, learned Standing Counsel appearing for the State Government, would agree that the cause in Special Appeal No. 89 of 2013 does not survive. Consequently, all the four appeals are dismissed. However, in the circumstances, without costs.