
(2018) 12 UK CK 0095

In the Uttarakhand High Court

Case No : Special Appeal No. 932 Of 2018, Delay Condonation Application No. 17538 Of 2018

**Uttarakhand Subordinate Service Selection Commission
@APPELLANT@Hash Prashant Kumar And Others**

Date of Decision : 05-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 16, 16(2), 16(3)

Citation : (2018) 12 UK CK 0095

Hon'ble Judges : Ramesh Ranganathan, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : Pankaj Purohit, Vinay Kumar, C.S. Rawat

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. The application to condone the delay of 74 days in preferring this appeal is not opposed by the learned counsel for the respondent-writ petitioner.

The delay is, therefore, condoned. Delay Condonation Application is allowed.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 2404 of 2016 dated 20.07.2018.

3. The Uttarakhand Subordinate Service Selection Commission (for short 'Commission') issued an advertisement inviting applications from

eligible candidates to fill up 45 posts of X-ray Technicians in the department of Medical Health and Family Welfare, State of Uttarakhand. The

respondent-writ petitioner claims that he attempted to submit his application online on 15.04.2016, but his application was not accepted on the ground

that he was not registered with any employment exchange within the State of Uttarakhand. The respondent-writ petitioner then invoked the jurisdiction

of this Court by filing Writ Petition (S/S) No. 2404 of 2016 on 22.12.2016.

However no interim orders were passed in the said writ petition and, consequently, a written examination was held on 28.05.2017; the results of the said written examination were declared on 23.10.2017; verification of the documents took place on 02.11.2017; and the Commission forwarded its recommendations to the State Government on 13.11.2017.

4. Writ Petition (S/S) No. 2404 of 2016 was allowed by the learned Single Judge by order dated 20.07.2018. In the said order, the learned Single

Judge, relied on the judgment of the Supreme Court in Union of India and others Vs. Pritilata Nanda (2010) 11 SCC 674, which, in turn, relied on its

earlier judgments in Union of India Vs. N. Hargopal and others and Excise Superintendent, Malkapatnam, Krishna District, A.P. Vs. K.B.N.

Visweshwara Rao and others, and held that the authorities had committed a grave illegality by denying appointment to the respondent therein only on

the ground that she did not get her name sponsored by an employment exchange.

5. The present case is not even one where the employment exchanges were called upon to sponsor names of eligible candidates. The only

requirement, stipulated in the notification, was that candidates, who apply, should have been registered with any of the employment exchange in any

district within the State of Uttarakhand.

6. Both Sri Pankaj Purohit, learned Deputy Advocate General appearing on behalf of the Commission and Sri C.S. Rawat, learned Additional Chief

Standing Counsel appearing on behalf of the State of Uttarakhand, would submit that such a condition has been imposed in terms of the Government

Order dated 10.02.2014, and with a view to give preference to local candidates in Class III posts. It is debatable whether such a condition, which

gives preference to persons on the basis of their residence, could have been imposed by an executive order, as even plenary State Legislation,

prescribing such a condition, would violate Article 16(2) of the Constitution of India.

7. Article 16(2) of the Constitution stipulates that no citizen shall, among others, on grounds only of residence, be ineligible for, or be discriminated

against, in respect of any employment or office under the State. While the State Government, in prescribing such a condition, may have intended to

protect or give preferential treatment to persons from the backward districts of

the State, it is not open to them to prescribe residence, as a criteria for appointment, as it would thereby violate Article 16 (2) of the Constitution of India. The only course available to the State Government is to request the Government of India to introduce a Bill in Parliament, for Article 16(3) of the Constitution of India stipulates that nothing in Article 16 shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority, within a State, any requirement as to residence within that State prior to such employment or appointment.

8. In *Pradeep Jain v. Union of India* reported in (1984) 3 SCC 654, the Supreme Court emphasized that India is one nation, there is only one

citizenship i.e. citizenship of India and every Indian has a right to reside and settle in any part of India, irrespective of the place he is born or the

language he speaks or the religion which he professes. To quote:-

“Thus, the entire country is taken as one nation with one citizenship and every effort of the Constitution makers

is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one

citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part

of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom

of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with

other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil

language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language

be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or

Karnataka, as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and

integrity of the country by treating it as if it were a mere conglomeration of independent states” (emphasis supplied).

9. In *Kailash Chand Sharma v. State of Rajasthan* reported in (2002) 6 SCC 562,

the Supreme Court observed:

Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic

backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of

that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument

which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Art. 16(3). An

argument of this nature flies in the face of the peremptory language of Article 16 (2) and runs counter to our constitutional ethos founded on

unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We

would like to reiterate that residence by itself be it be within a State, region, district or lesser area within a district cannot be a ground to accord

preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts with a view to

offer employment to the residents of that District on a preferential basis? (emphasis supplied)

10. In *Telangana Judges Association and another vs. Union of India and others* (WP(C) No. 85 of 2015 dated 03.10.2018) the Supreme Court held:-

the nativity for public employment runs counter to the fundamental right guaranteed under Article 16 (2) except when it is provided by a

parliamentary Law as per exception carved out in Article 16(3) of the Constitution of India? (emphasis supplied)

11. Admittedly, no such law has been made by Parliament, with respect to the State of Uttarakhand, under Article 16(3) of the Constitution of India.

In the absence of any such law, prescription of residence in the State as a condition for appointment is ULTRA VIRES Article 16(2) of the

Constitution of India, and is illegal and invalid.

12. In any event prescription of compulsory registration with the employment exchange, or the name of the candidate to be sponsored by the

employment exchange, for being considered for appointment to public posts has been held by the Supreme Court, in the judgments referred to

hereinabove, to be illegal.

13. We are, therefore, of the view that the learned Single Judge was justified in holding that imposition of such a condition was illegal. To the extent

the learned Single Judge had so declared, in the order under appeal, we see no reason to interfere. The fact, however, remains that, by the time the

learned Single Judge allowed the writ petition on 20.07.2018, the entire process of selection was completed; and the Commission had also sent its

recommendations more than 8 months prior thereto on 13.11.2017 itself. In such circumstances, the question of the respondent-writ petitioner's

candidature now being considered, for appointment to the post of X-ray Technician, separately would not arise. The order under appeal, to the limited

extent that the Commission was directed to accept the application of the respondent-writ petitioner and consider him for appointment to the post of X-

ray Technician, within a period of ten weeks from the date of the order, is set aside. In all other aspects, the order under appeal is affirmed.

14. The appeal is, accordingly, disposed of.