
(2019) 08 UK CK 0173

In the Uttarakhand High Court

Case No : Special Appeal No. 721, 722 Of 2019

Uttarakhand Subordinate Service Selection Commission &
Others

APPELLANT

Vs

Rakesh Singh Paroria And Others

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Uttarakhand Subordinate Educational (Trained Graduate Grade) Service Rules, 2014 —
Rule 6, 14, 15(1), 15(6)(1)

Citation : (2019) 08 UK CK 0173

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

Bench : Division Bench

Advocate : Pankaj Purohit, Vinay Kumar, Vikas Pande

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Pankaj Purohit, learned Standing Counsel for the appellants and Mr. Vinay Kumar, learned counsel for the respondents-writ petitioners and, with their consent, the Special Appeals are disposed of at the stage of admission.

2. These two Special Appeals are preferred against the common order passed by the learned Single Judge in Writ Petition (S/S) No. 2389 of 2018 and batch dated 23.04.2019. The respondents-writ petitioners invoked the jurisdiction of this Court filing the said Writ Petitions seeking a writ of certiorari to quash the Office Memorandum dated 19.11.2018 whereby their representation was rejected; a writ of mandamus directing the respondent-Selecting Body to include the name of the respondents-writ petitioners in the provisional merit list dated 19.07.2018 for the post of Assistant Teacher, L.T. Grade (60%) in the General category, pursuant to the advertisement dated 03.01.2017 issued by the appellants, according to their merit; and a writ of mandamus directing the respondent-Selecting Body to recommend the name of the respondents-writ petitioners for appointment to the post of Assistant Teacher, L.T. Grade (60%) in the general

category pursuant to the advertisement dated 03.01.2017 issued by the appellants.

3. Facts, to the limited extent necessary, are that the appellant-Uttarakhand Subordinate Service Selection Commission (for short the "Commission") issued an advertisement on 03.01.2017 inviting applications for appointment to various Group 'C' posts, under the State Government, including the posts of Assistant Teacher, L.T. Grade in different subjects. Applications were invited for 1214 vacancies in the posts of Assistant Teacher, L.T. Grade (60% direct quota and 10% departmental quota). Of the 1214 advertised vacancies, 128 vacancies (86 in Garhwal Region and 42 in Kumaun Region) were earmarked for the post of Assistant Teacher, L.T. Grade under 60% direct recruitment quota in the General Branch. The respondents-writ petitioners submitted their applications, pursuant to the advertisement, exercising their option for Kumaun Region. The respondents-writ petitioners claim that, since the advertisement does not specifically require them to indicate the order of preference, and as they were unaware that they had to exercise options for both the regions, they had exercised their option only for Kumaun Region. While the respondents-writ petitioners were not found high in the order of merit to be selected and appointed as an Assistant Teacher, L.T. Grade in Kumaun Region, candidates, who secured marks lower than the respondents-writ petitioners, were selected and appointed as Assistant Teacher, L.T. Grade in Garhwal Region.

4. On the ground that the respondents-writ petitioners had not exercised their preference to Garhwal Region, and had restricted their choice only to Kumaun Region, they were not considered for appointment to the posts of Assistant Teachers, L.T. Grade in Garhwal Region. Aggrieved thereby, they invoked the jurisdiction of this Court.

5. In the order under appeal, the learned Single Judge observed that selection for public employment must be made strictly on the basis of merit; the purpose of holding selection, for public appointment, is to ensure that only the most meritorious candidate was appointed; the petitioner was more meritorious than the other candidates who had been selected and appointed as Assistant Teachers, L.T. Grade in Garhwal Region; the State of Uttarakhand is divided into two regions, namely, Kumaun and Garhwal; the petitioner gave his option for Kumaun Region which, in the absence of any condition in the advertisement, could not be construed as his disinclination to accept appointment in the Garhwal Region; the respondents were, therefore, not justified in treating the petitioner's option as his refusal to serve in Garhwal Region; while it was open to the respondents to impose appropriate conditions in the advertisement, in terms of Rule 15(1) of the Service Rules, to deal with an such eventuality, they did not impose any such condition which required a candidate to opt for both regions to be eligible for appointment in the two regions; and, in the absence of any such condition in the advertisement, the act of the Selecting Body, in not calling the petitioner for document verification and in not recommending their names for

appointment, could not but be held to be arbitrary and illegal.

6. The learned Single Judge further observed that the benefit of any ambiguity in the advertisement should go to the candidate; since there was nothing to indicate in the advertisement that a candidate, who did not give option for both the regions, should be considered for appointment only in the region opted by him; the petitioner's option for Kumaun Region could not be construed as his refusal to serve in the other region; it can only mean that his first preference was for Kumaun Region; a co-ordinate Bench of this Court, in its order in WPSS No. 2396 of 2018 dated 22.10.2018, had directed that four posts of Assistant Teachers, L.T. Grade should not be filled up; and no selected person would be disturbed in case the present writ petitions were to be allowed. The Writ Petitions were allowed, and the Selecting Body was directed to verify the documents of the petitioners and to recommend their names for appointment in either of the two regions, if found eligible, as per their merit.

7. Mr. Pankaj Purohit, learned counsel for the appellant-Commission, would submit that, while the advertisement does not specifically require candidates to indicate their preference, Rule 15(6)(1) of the Uttarakhand Subordinate Educational (Trained Graduate Grade) Service Rules, 2014 (for short the "Rules") requires candidates to exercise their option; having failed to exercise their option for Garhwal Region, and having confined their option only to Kumaun Region, the respondents-writ petitioners cannot now claim ignorance of the Rules, and contend that they cannot be deprived of being appointed to posts available in the Garhwal Region; the very object of Rule 15(6)(1) of the Rules would be defeated if candidates, such as the respondents-writ petitioners, were permitted to be appointed in the Garhwal Region, despite not having exercised their option for posts in the said Region; and several other candidates had exercised their options for both the regions, which would show that candidates were aware of the requirement of exercising their options for both the regions, if they desired to be appointed in either of the two regions. Rule 15(6)(1) of the Rules reads thus:

"15(6)(1) - The scrutiny of the application-forms shall be conducted by the additional director secondary of region concerned or by the examining body nominated by the State Government and a select list shall be prepared of the candidates subject-wise on the basis of the marks secured in the written examination held as prescribed in the schedule in the order of merit and in accordance with the provision of Rule - 6 of the Rules. The examining body shall make available such select list to additional director of secondary education of the region concerned. The names in the list shall be greater than the number of vacancies (not more than 25%). The concern examining body shall allot woman cadre (in case of woman candidates) and general cadre (in case of woman and man candidates) of the regional cadre mentioned in the application -form by the candidate, but despite getting place in the merit list by a candidate if there is no vacancy in a particular subject in the region/branch (general, women), of his first preference, the examining body shall allot him the region/ branch of a particular

subject of his second preference made by him."

8. It is, no doubt, true that Rule 15(6)(1) of the Rules requires the examining body to allot candidates in the place of their preference, and in case a candidate is not eligible to be appointed to the post of his first preference on the basis of his merit, then he has to be considered for appointment to the posts in the region for which he had exercised his second preference. In terms of Rule 15(6)(1) of the Rules, the respondents-writ petitioners were required to exercise their preference and, consequently, they ought to have indicated Garhwal Region as their second preference, besides Kumaun Region as their first preference.

9. While the respondents-writ petitioners have, no doubt, been amiss in not exercising their preference in terms of Rule 15(6)(1) of the Rules, the appellant-Commission has also violated the requirement of Rule 15(1) of the Rules, which reads thus:

"15(1) The additional director (secondary) of the region concerned shall prepare a statement of subject - wise vacancies, determined under Rule 14 to be filled up by direct recruitment of girl's colleges (women branch) and co-ed colleges (general) branch. Thereafter subject - wise vacancies shall be advertised in minimum 2 daily newspapers having wide circulation in the State by an examining body nominated by the State government or by the regional additional director (secondary) concerned and shall invite applications in the prescribed form for direct recruitment as specified in the advertisement. In such advertisement along with other information, pay scale of the post, educational qualification for appointment, maximum age and such other information which are considered necessary shall be mentioned."

10. In terms of Rule 15(1) of the Rules, this information, about the requirement of indicating their preference, must be specified in the advertisement. The advertisement is, admittedly, silent about the need for the candidates to exercise their preference and, consequently, failure on the part of the appellant-Commission, to specifically so provide in the advertisement, is in violation of Rule 15(1) of the Rules.

11. While it does appear that a few other candidates, who had applied pursuant to the very same advertisement, had indicated their preference and the respondents-writ petitioners had not, the respondents-writ petitioners' failure to indicate their preference is, according to them, only because the advertisement makes no reference to any such requirement.

12. In the facts and circumstances of the present case, when the appellant-Commission is also to blame for not specifically stipulating in the advertisement, in accordance with Rule 15(1) of the Rules, the need for candidates to indicate their preference to be appointed to posts in the Garhwal Region also, we see no reason to interfere with the order under appeal, more so as we are in agreement with the view expressed by the learned Single Judge that any ambiguity in the advertisement should go in favour of the candidates. Since appointment to public

posts must be in the order of merit, and candidates lower in merit than the respondents-writ petitioners have been appointed as Assistant Teacher, L.T. Grade in Garhwal Region, the respondents-writ petitioners, who are more meritorious than them, cannot be denied appointment to posts on the basis of an ambiguous advertisement which makes no reference either to Rule 15(6)(1) of the Rules or to the requirement of indicating preferences in the application form.

13. In this context, we must bear in mind that the scope of interference in an intra-Court appeal is extremely limited, and save cases where the order under appeal suffers from a patent illegality, no interference is called for. As we find no such infirmity in the order under appeal, we see no reason to interfere therewith.

14. Mr. Pankaj Purohit, learned Standing Counsel for the appellant-Commission, would then contend that the selection process has already been completed, and all candidates have been appointed.

15. The learned Single Judge has, in the order under appeal, noted that this Court had, in its order in WPSS No. 2396 of 2018 dated 22.10.2018, directed that four posts of Assistant Teachers, L.T. Grade should be kept vacant. Suffice it to observe that, in case there are vacant posts remaining unfilled in Garhwal Region, and if there are no candidates more meritorious than the respondents-writ petitioners who have not been selected and appointed in the Garhwal Region, the respondents-writ petitioners' claim shall be considered in terms of the order under appeal.

16. The Special Appeal is, accordingly, disposed of. No costs.