

(2012) 01 AHC CK 0451
In the Allahabad High Court
Case No : Special Appeal No. 272 of 2011

Virendra Singh

APPELLANT

Vs

State of Uttarakhand through its Secretary, Secretary, School
Education, Uttarakhand, Dehradun

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 01 AHC CK 0451

Hon'ble Judges : Barin Ghosh, CJ and U.C.Dhyani, J

Final Decision : Dismissed

Judgement

Barin Ghosh, C. J. (Oral)

An advertisement was published inviting applications for being appointed, amongst others, as Lecturer (Hindi) in Government Intermediate Colleges. It was indicated that 27 posts of Lecturer (Hindi) are available, which are reserved for Scheduled Caste candidates. The last date of responding to the said advertisement was 30th October, 2003. Appellant responded to the said advertisement and while responding, held out that he belongs to Scheduled Caste community. The advertisement did not indicate the mode of selection of the respondees for the posts advertised. The advertisement also did not indicate the mode of communication of the result of selection. At the relevant time, when the advertisement was published and selection pursuant to the advertisement was completed, the rules, known as the Uttar Pradesh Special Subordinate Educational (Lecturer's Cadre) Service Rules, 1992, governed the subject matter of the said advertisement. The said Rules indicated selection through interview, but did not indicate the mode of communication of the result of the interview. However, the respondees to the said advertisement including the appellant were asked to appear at a written examination followed by interview. While the common written examination was held on 26th September, 2004, interview of the appellant was held on 21st April, 2006. Thereafter, on 20th November, 2006,

an appointment order was issued and thereby the appellant was appointed as Lecturer (Hindi) in Government Inter College, Sher, Nainital. At the time when the appellant had responded to the said advertisement, he was already working as an Assistant Teacher, L.T. Grade, Government Inter College, Sultanpur. After receipt of the appointment order, appellant made a representation on 30th November, 2006 holding out that there is no Government Inter College, Sher, Nainital and, accordingly, his appointment order is required to be rectified. In the representation, he held out that he has already served as an Assistant Teacher, L.T. Grade in a remote area and, accordingly, he may be posted as Lecturer (Hindi) in a Government Intermediate College situate either at Barhani or Banskhedha. As Sultanpur is situate in the District Udham Singh Nagar, so Barhani or Banskhedha are situate in the District Udham Singh Nagar. This representation was followed by yet another representation dated 2nd December, 2006. Subsequent thereto, wife of the appellant made a representation to the Education Minister of the State, which was received by the Hon'ble Minister on 21st November, 2007 and was thereupon forwarded to the Director of Education for looking into the same. Accordingly, Director, Education looked into the representation and held out that at his level it is not possible to post the appellant either at Barhani or at Banskhedha, which posting can be made only by higher authorities.

The wife of the appellant then made a representation to the Director of School Education on 28 July, 2010, where after the writ petition was filed by making an innocuous prayer of correction of his appointment letter. th

2. With the writ petition, although the representation of the wife of the appellant dated 28th July, 2010 was annexed, but the representation of the wife of the appellant made to the Education Minister was not annexed. In the counter affidavit, while the State brought on record the representation of the wife of the appellant made to the Education Minister, it also brought on record the order dated 30th March, 2007, whereby the name of the college mentioned in the appointment letter of the appellant was altered from Government Inter College, Sher, Nainital to Government Inter College, Sher, Almora. In addition thereto, respondents brought on record with their counter affidavit the letter of the Member of Parliament to whom a representation was made by the wife of the appellant as was held out by her in her representation dated 28th July, 2010.

3. At the hearing, on the directions of the Court, despatch register has been produced, which suggests despatch of letters bearing serial Nos. 7266065 which serial number finds place in the letter dated 30th March, 2007 referred to above. While, from the register as produced and, particularly, having regard to the position of the entry pertaining to serial Nos. 7266065, it can not be contended that the said entry was inserted later, however, the appellant has obtained information in response to exercise of right to information that there is no document suggesting despatch of the letter dated 30th March, 2007. In this state of affair, this Court has been called upon to decide whether the order dated

30th March, 2007 was issued and received by the appellant prior to filing of the writ petition. In this connection, the Court is required to take note of the statements made by the wife of the appellant in her representation made to the Education Minister and her representation dated 28th July, 2010. In both these representations made subsequent to 30th March, 2007, the wife of the appellant clearly held out that the appellant has been appointed as Lecturer (Hindi) in Government Inter College, Sher, Almora. While no attempt was made in the petition to explain how the wife of the appellant came to learn that the appellant has been posted as Lecturer (Hindi) at Government Inter College, Sher, Almora, despite the matter having been highlighted in the counter affidavit in reference to the representation of the wife of the appellant made to the Education Minister and the letter of the Member of Parliament, to whom the wife of the appellant made a representation, as was highlighted by her in her representation dated 28th July, 2007, in the rejoinder, the appellant did not indicate how the wife of the appellant came to learn that the appellant has been posted at Government Inter College, Sher, Almora. In this background, while exercising jurisdiction under Article 226 of the Constitution of India, it would not be appropriate on the part of this Court to hold that before making the said representations, one of which was received on 21st November, 2007 and the other on 28th July, 2010, appellant was not aware of correction of the place of his posting, and that, he was required to report at Government Inter College, Sher, Almora.

4. That being the situation, question of effecting necessary correction to the appointment letter, as was prayed for in the writ petition, did never arise, inasmuch as the said correction was made as far back as on 30th March, 2007. When the counter affidavit was filed by the respondents, appellant came to learn that it is the case of the respondents that his place of posting has already been altered and he is required to report at Government Inter College, Sher, Almora but, surprisingly, the appellant until date did not make any effort to report for duty at Government Inter College, Sher, Almora. The said conduct on the part of the appellant clearly demonstrates that he did not want to report for duty at Government Inter College, Sher, Almora, where he was asked to report for duty but he wanted to remain at some place within the District of Udham Singh Nagar and the very object and purpose of the writ petition was to obtain a direction in that regard. We are afraid; we can not issue any such direction, inasmuch as the right to make the first posting after selection vests exclusively in the employer and an employee has no say in the matter of choice of such posting as expressed by the employer.

5. For the reasons as above, the writ petition has been dismissed by the judgment and order under appeal. We have not been persuaded to take a different view.

6. The appeal is dismissed.