

(2019) 09 UK CK 0005
In the Uttarakhand High Court
Case No : Special Appeal No. 826 Of 2019

Wildlife Institute Of India And Others	Vs	APPELLANT
Arun Kumar Dubey		RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0005

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

Bench : Division Bench

Advocate : Rakesh Thapliyal, Sanjay Bhatt, Pankaj Miglani

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. This Special Appeal is preferred by the respondents, in Writ Petition (S/S) No. 3679 of 2017, aggrieved by the order passed by the learned Single Judge dated 09.07.2019. The respondent-writ petitioner herein had filed the said writ petition seeking a writ of certiorari to quash the orders dated 07.07.2015 and 25.10.2017; and a writ of mandamus directing the respondents to promote him to the post of Accountant (O-4 Grade) w.e.f. 12.12.1997, and to grant him promotion to the post of O-5 Grade five years thereafter i.e. since 12.12.2002, and to consider his later promotions strictly in accordance with the orders dated 28.11.2016 and 10.01.2017 passed in Special Appeal No. 338 of 2015.

2. Facts, to the limited extent necessary, are that the appellant-Institute framed Recruitment Rules in the year 1986, in terms of which the post of Hindi Translator was among the posts specified in O-3 Grade. The mode of appointment, to the post of Hindi Translator in O-3 Grade, was by way of promotion from employees in O-2 Grade, who had put in atleast 05 years of service. On the ground that there was no person in O-2 Grade, eligible to be promoted as Hindi Translator in O-3 Grade, the Governing Body of the appellant-Institute passed a Resolution on 21.07.1988 resolving that the post of Hindi

Translator be filled up by way of direct recruitment. Thereafter, a requisition was made by the appellant-Institute to the Staff Selection Commission (an independent body) which issued an advertisement inviting applications for the post of Hindi Translators, conducted a regular process of selection and, on completion of the said process, selected the respondent-writ petitioner and recommended that he be appointed as a Hindi Translator in the appellant-Institute. In terms of the recommendation, made by the Staff Selection Commission, the appellant-Institute appointed the respondent-writ petitioner as a Hindi Translator, with the Grade-Pay of Rs. 4200/-, on 12.12.1989. The respondent-writ petitioner was, thereafter, promoted as an Accountant in O-4 Grade, with a Grade-Pay of Rs. 4600/-, on 22.09.1999. Consequent on the respondent-writ petitioner's promotion as an Accountant in O-4 Grade, one Mrs. Baljeet Kaur was appointed, in the vacant post of Hindi Translator, on 13.10.2000.

3. Writ Petition (S/S) No. 1580 of 2011 was filed questioning the manner of appointment by promotion of respondents 4 to 11 therein, which included Mrs. Baljeet Kaur. While Mrs. Baljeet Kaur was appointed as a Hindi Translator by promotion on 13.10.2000, her promotion, along with others, was subjected to challenge more than a decade thereafter in the year 2011. The respondent-writ petitioner herein was, admittedly, not a party to Writ Petition (S/S) No. 1580 of 2011.

4. In his order, in Writ Petition (S/S) No. 1580 of 2011 dated 26.05.2015, the learned Single Judge came down heavily on the appellant-Institute and observed that, in the year 2007, fresh Recruitment Rules were framed; the last clause appended to those Rules seemed to indicate that, in order to render special favour to the Hindi Translator i.e. Mrs. Baljeet Kaur, she was appointed without issuance of any advertisement just on the basis of a pick and choose policy by the then Director; that apart, certain persons, who did not even possess the minimum qualifications prescribed under the Rules, were appointed under the pleasure of the Director; since all these candidates had completed more than two decades of service, and the Directors, who had played such a felonious role had also retired, it was not feasible to take any stringent action against those delinquents and to issue termination orders to these persons, but at least the petitioner therein should be safeguarded from injustice.

5. While quashing the clause prescribed in the 2007 Rules, which provided that "the present incumbent on the post of Hindi Translator will remain in the feeder channel for promotion to the post of Section Officer; and, in future, the isolated post of Hindi Translator will get promotional avenues as per Government of India guidelines", the learned Single Judge directed the Director of the appellant-Institute to take appropriate steps to revert back those respondents who were given illegal promotion de hors the Rules. The learned Single Judge observed that, if the order was not complied with, he would contemplate lodging an FIR against the delinquent officials, and the office superintendent who had conspired with the Director; and he may further consider lodging an FIR against the

Director as well as the office superintendent, besides entrusting the matter to the CBI for holding an inquiry into the matter.

6. It is only in the fresh Recruitment Rules, made in the year 2007, that the post of Hindi Translator was treated as an isolated post. The learned Single Judge, in his order in Writ Petition (S/S) No. 1580 of 2011 dated 26.05.2015, had only directed that appropriate steps be taken to revert back those respondents who were given illegal promotion de hors the Rules. Though the respondent-writ petitioner herein was not among the respondents, in Writ Petition (S/S) No. 1580 of 2011, the appellant-Institute, by its proceedings dated 07.07.2015, reverted the respondent-writ petitioner, from the post of Accountant to that of Hindi Translator, on the premise that the post of Hindi Translator was an isolated post, and was not part of the feeder category for promotion as an Accountant. While Mrs. Baljeet Kaur, along with others, (who were respondents 4 to 11 in Writ Petition (S/S) No. 1580 of 2011), preferred Special Appeal No.348 of 2015 against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1580 of 2011 dated 26.05.2015, the respondent-writ petitioner herein sought Leave to Appeal in Special Appeal No. 338 of 2015 filed by him.

7. Both Special Appeal Nos. 348 and 338 of 2015 were disposed of by a Division Bench of this Court by its common order dated 28.11.2016. After examining the matter in great detail, the Division Bench observed that the reasons given by the learned Single Judge, in holding that the seventh respondent (i.e. Mrs. Baljeet Kaur) was favoured in being promoted as a Hindi Translator, was justified; and she was promoted without holding any examination. The Division Bench, after taking note of the submission, urged on behalf of the appellant-Institute herein, that, in the year 1988, the Governing Body of the appellant-Institute had decided to fill up the post of Hindi Translator by direct recruitment, observed that the respondent-writ petitioner herein (appellant in Special Appeal No. 338 of 2015) was appointed as a Hindi Translator by way of direct recruitment in the year 1989; and it was thereafter, in the year 2000, that the third appellant in Special Appeal No. 348 of 2015 (Mrs. Baljeet Kaur) was promoted as a Hindi translator.

8. While expressing its disinclination to interfere with the order passed by the learned Single Judge, in quashing that portion of the order impugned in the Writ Petition which provided that the present incumbent in the post of Hindi Translator would remain in the feeder channel for promotion to the post of Section Officer, the Division Bench observed that, once it is held that promotions given to the appellants therein was bad for violation of the decision of the Governing Body which were binding, the proper thing to do was to direct that the promotional exercise be held strictly in accordance with the Rules, as in force, from time to time; the 1986 Rules would continue to hold the field till they were modified or superseded; they had been superseded with effect from 01.08.2007; till they were superseded, the promotional exercise must be conducted in terms of the said Rules; for promotion from O-2 Grade to O-3 Grade, the candidates should satisfy the requirement of having been successful in the departmental

examination; all candidates, who were eligible and who were in service, must undergo the examination, and their eligibility for promotion must be determined on the said basis; and the direction to give notional promotion to the writ petitioner therein, without reference to the requirement of the Rules, could not be sustained. The Division Bench directed that, in place of the directions issued by the learned Single Judge to give notional promotion to the writ petitioner therein, the Institute should carry out the promotional exercise to the posts in terms of the decision of the Governing Body of the Institute, beginning with the Governing Body's decision in the year 1986 and culminating in the Rules of 2007 which came into effect on 01.08.2007; and this was besides the decision taken by the Governing Body in the year 1988 which was in modification of the 1986 Rules.

9. The Division Bench noted the submission, urged on behalf of the appellant-Institute, that the respondent-writ petitioner herein, who was directly recruited as a Hindi Translator, was wrongly given promotion as an Accountant in O-4 Grade; he stood reverted, and was holding the post of Hindi Translator; and there was only one post of Hindi Translator. While the Division Bench had no doubt directed that the process of filling up the vacancies be undertaken strictly as per the decisions taken in the years 1986, 1988 and 2007, it did not examine the validity of the respondent-writ petitioner's reversion from the post of Accountant in O-4 Grade, to that of a Hindi Translator, in O-3 Grade; and, on the other hand, had opined that the 1986 Rules would govern in the light of the decision taken by the Governing Body in the years 1986, 1988 and 2007 till the 2007 Rules were made.

10. The respondent-writ petitioner thereafter filed Review Application No. 884 of 2016, in Special Appeal No. 338 of 2015, seeking review of one sentence, in the earlier judgment, that "in fact it was brought to their notice that the appellant in Special Appeal No. 338 of 2015, who was directly recruited as a Hindi Translator, was wrongly given promotion as an Accountant in O-4 Grade". While taking note of the submission, urged on behalf of the respondent-writ petitioner herein, that his promotion was as per law, the Division Bench made it clear that they had only recorded the submission of the appellant-Institute regarding the reversion; the reversion was made during the pendency of the appeal; and, after noticing this, they had directed filling up the vacancies as per the decisions taken in the years 1986, 1988 and 2007, with which direction there was no complaint. Finding no merit in the review petition, the Division Bench dismissed the same.

11. Thereafter the respondent-writ petitioner invoked the jurisdiction of this Court by filing Writ Petition (S/S) No. 3679 of 2017, and it is the order dated 09.07.2019, passed therein, which is now under appeal before us. In the order under appeal, the learned Single Judge, after taking note of Agenda item No. 6.2 placed before the Governing Body on 21.07.1988, observed that the Governing Body had taken a conscious decision, under Regulation 12(xvii)(b) of the Regulations, to fill up the post by direct recruitment; on his direct recruitment as

a Hindi Translator, the respondent-writ petitioner would fall within the feeding cadre for promotion to the post of O-4 Level, i.e. Accountant, in which he was promoted on 22.09.1999; in view of the order of the Division Bench in Special Appeal Nos. 348 and 338 of 2015 dated 28.11.2016, any decision, which flowed as a consequence of the decision of the Governing Body of 1988, was protected by the said judgment; and the respondent-writ petitioner's claim, which flowed from the promotion granted to him to the post of Accountant on 22.09.1999, could not be disturbed, nor could he be reverted as a consequence of the impugned order which was challenged in the Writ Petition.

12. While holding that the impugned order dated 07.07.2015, reverting the respondent-writ petitioner after 16 years of his promotion on 22.09.1999, suffered from non-application of mind, the learned Single Judge set aside the said order on the ground that it flouted the order of the Division Bench referred to hereinabove. After quashing the orders dated 07.07.2016 and 25.10.2017, the learned Single Judge directed the appellant-Institute to consider the respondent-writ petitioner to have been promoted regularly in the post of Accountant w.e.f. 22.09.1999, and to remit him all benefits, which were flowing as a consequence of the promotion granted to him on 22.09.1999. Aggrieved thereby, the present Special Appeal.

13. Mr. Rakesh Thapliyal, learned Assistant Solicitor General appearing on behalf of the appellant-Institute, would draw our attention to the order impugned in the Writ Petition dated 07.07.2015 to submit that the post of Hindi Translator, to which the respondent-writ petitioner was appointed on 12.12.1989 by direct recruitment, was an isolated post; there was no channel of promotion from the post of Hindi Translator to that of an Accountant; promotion of the respondent-writ petitioner, to the post of Accountant, was contrary to the Rules; the order passed by the learned Single Judge, in Writ Petition (S/S) No. 1580 of 2011 dated 26.05.2015, was affirmed by the Division Bench of this Court in Special Appeal Nos.338 and 348 of 2015 dated 28.11.2016; in the light of the directions issued by the learned Single Judge, in Writ Petition (S/S) No. 1580 of 2011 dated 26.05.2015, all irregular and illegal promotions were required to be cancelled and persons, who were so promoted, were required to be reverted; the respondent-writ petitioner's promotion was contrary to the Rules; he was not even promoted as an Accountant through a regular process of selection; the learned Single Judge has, in the order under appeal, erred in upholding his promotion (illegally given) as an Accountant on 22.09.1999, and in directing that he be given all consequential benefits; promotion from the post of Accountant, even in terms of the 1986 Rules, is only through a competitive examination, and evaluation of the record by the Departmental Promotion Committee; there is no automatic promotion to the post of Accountant; and the order under appeal, therefore, necessitates being set aside.

14. On the other hand Mr. Pankaj Miglani, learned counsel appearing on behalf of the respondent-writ petitioner, would submit that the Division Bench had directed

the appellant-Institute to comply with the decision of the Governing Body, including the Resolution passed by it in the year 1998; the respondent-writ petitioner's appointment, as a Hindi Translator, was in terms of the decision of the Governing Body dated 17.11.1988; under the 1986 Rules, the post of Hindi Translator is in O-3 Grade; the said Rules provide for promotion to the post of Accountant from Officers in O-3 Grade, which also includes the post of Hindi Translator; the concept, of the post of Hindi Translator being an isolated post, was prescribed for the first time in the 2007 Rules nearly eight years after the respondent-writ petitioner was promoted from the post of Hindi Translator to the post of Accountant on 22.09.1999; there is no whisper in the counter affidavit, filed by the appellants herein before the learned Single Judge, that the respondent-writ petitioner was promoted as an Accountant without following the conditions stipulated in the 1986 Rules; the respondent-writ petitioner was held ineligible for promotion, as an Accountant mainly on the ground that the post of Hindi Translator was an isolated post; in the absence of any such plea in the counter affidavit, the contention that the respondent-writ petitioner was not promoted as an Accountant, through a regular process of selection, does not merit acceptance; the appellants were wholly unjustified in interfering with the respondent-writ petitioner's promotion as an Accountant on 23.09.1999, more than fifteen years thereafter vide proceedings dated 07.07.2015; the order of the learned Single Judge, directing that the respondent-writ petitioner be considered for promotion to higher posts, treating him as having been regularly promoted as an Accountant on 22.09.1999, cannot be construed as the appellant-Institute having been directed to automatically promote the respondent-writ petitioner; his claim for further promotion can be made only in accordance with the relevant Rules; and, since the respondent-writ petitioner was eligible for promotion to the post of Finance Officer with effect from 23.09.2004 (i.e. on completion of five years of service as an Accountant), he should be promoted to higher posts in terms of the 1986 Rules which were then in force, as the fresh Recruitment Rules were first made in the year 2007.

15. It is no doubt true that the 1986 Rules prescribe appointment to the post of O-3 Grade (which includes the post of Hindi Translator), 100% by way of promotion from O-2 Grade, from such officers who have put in at least five years of service in that grade, through a competitive examination and record evaluation by the Departmental Promotion Committee. The Governing Body of the appellant-Institute, in its meeting held on 21.07.1988, examined Agenda No. 6.2 which related to qualifications for the post of Hindi Translator. After taking note of the fact that the existing Recruitment Rules required the post of Hindi Translator to be filled up 100% by way of promotion from the post of UDC, the Governing Body noted that, at present, there was no one in the feeder grade who could be considered for promotion against the said post; and it was necessary, therefore, to fill up the said post by way of direct recruitment. It is, in such circumstances, that it was resolved to approve the qualifications for the post of Hindi Translator.

16. It is only because the Governing Body of the appellant-Institute had, in its meeting held on 21.07.1988, resolved to fill up the post of Hindi Translator by way of direct recruitment, was a requisition made to the Staff Selection Commission which, after issuing an advertisement, inviting applications from all eligible candidates, and after conducting a regular process of selection, had selected the respondent-writ petitioner and had recommended his candidature for appointment to the post of Hindi Translator.

17. It is pursuant to his regular selection, by the Staff Selection Commission, was the respondent-writ petitioner appointed to the post of Hindi Translator on 12.12.1989. Both when the respondent-writ petitioner was appointed as a Hindi Translator, and when he was later promoted as an Accountant on 22.09.1999, it was the 1986 Rules which held the field. In terms thereof, the post of Accountant was in O-4 Grade, and the mode of appointment to the said post of Accountant was 100% by way of promotion, of those who had put in eight years of service in O-3 Grade, through a competitive examination, and evaluation of the record by the Departmental Promotion Committee. By the time the respondent-writ petitioner was considered, for promotion as an Accountant, he had already put in more than 9 years of service, and had thereby fulfilled the requirement of the 1986 Rules of having put in more than eight years of service in O-3 Grade.

18. All that the 1986 Rules stipulate is that appointment to the post of Accountant shall be made 100% by way of promotion from O-3 Grade, which Grade, as noted hereinabove, includes the post of Hindi Translator. While the posts of Store-Keeper and Hostel Superintendent also formed part of O-3 Grade, the 1986 Rules made no distinction between different posts in O-3 Grade (which included the post of Hindi Translator), and provided for promotion to the post of Accountant 100% by promotion from O-3 Grade. There is no reference in the 1986 Rules that the post of Hindi Translator is an isolated post.

19. The order, impugned in the Writ Petition dated 07.07.2015, shows that the basis, on which the office order dated 07.07.2015 was passed, was primarily that the post of Hindi Translator was an isolated post, and the Rules did not permit lateral movement, of the Hindi Translator, to the ministerial cadre. This stipulation, as is evident from the order passed in Special Appeal Nos. 348 and 338 of 2015 dated 28.11.2016, is in terms of the 2007 Rules, which provided that the post of Hindi Translator be filled up by direct recruitment, and that the incumbent, in the post of Hindi Translator would remain in the feeder channel for promotion to the post of Section Officer; and, in future, the isolated post of Hindi Translator would get promotional avenues as per the Government of India guidelines.

20. As noted hereinabove, the respondent-writ petitioner was promoted as an Accountant on 22.09.1999 several years before the 2007 Rules came into force. It is for the first time in the 2007 Rules that the post of Hindi Translator was held to be an isolated post. Prior thereto, the post of Hindi Translator formed part of O-3 Grade, and promotion to the post of Accountant in O-4 Grade was to be

made from among all eligible officers in O-3 Grade 100% by way of promotion. The 2007 Rules cannot be applied retrospectively to annul the promotion of the respondent-writ petitioner as an Accountant, eight years prior thereto, on 22.09.1999.

21. Further the order of the Division Bench, in Special Appeal Nos.348 and 338 of 2015 dated 28.11.2016, has attained finality (the appellants having chosen not to prefer any appeal there-against), and the said order would bind the appellants herein. As noted by the Division Bench, in the said order, the appellants were required to fill up the vacancies strictly as per the decision taken in the years 1986, 1988 and 2007, which included the decision dated 17.11.1988 of the Governing Body of the appellant-Institute to fill up the post of Hindi Translator by direct recruitment. Consequent on the appointment of the respondent-writ petitioner as a Hindi Translator on 12.12.1989, he formed part of the cadre of officers in O-3 Grade, and was eligible to be promoted as an Accountant in O-4 Grade on completing 8 years of service in O-3 Grade. He could not have been denied promotion on the basis of a Rule made in the year 2007, eight years after he was promoted as an Accountant, nor could he have been reverted, from the post of Accountant to the post of Hindi Translator on 07.07.2015, fifteen years after his promotion on 23.09.1999. The learned Single Judge was, in our view, justified in setting aside the order impugned in the Writ Petition dated 07.07.2015 whereby the respondent-writ petitioner was reverted from the post of Accountant to the post of Hindi Translator.

22. The order under Appeal passed by learned Single Judge, directing the appellant-Institute to give the respondent-writ petitioner the benefits flowing as a consequence of his promotion granted on 22.09.1999, cannot be construed as obligating the appellant-Institute to promote the petitioner automatically to the next higher posts, without adhering to the Rules in force. Suffice it, in such circumstances, to make it clear that the respondent-writ petitioner shall be considered for promotion to higher posts, if he is otherwise eligible to be promoted to such higher posts, strictly in accordance with the conditions stipulated in the Rules in force.

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