
(2025) 08 UK CK 0542

In the Uttarakhand High Court

Case No : Writ Petition No. 1291, 1295 Of 2022 (S/S)

Yogendra Kumar Shah And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 06-08-2025

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 34,34(2)

Citation : (2025) 08 UK CK 0542

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Vinay Kumar, Narain Dutt, Ashish Joshi

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. Since common question of facts and law involved in both these writ petitions, they are heard together and are being decided by this common judgment.
2. Heard learned counsel for the parties and perused the record.
3. The challenge in both these writ petitions is made to the Final Merit List dated 31.05.2022, published by respondent no.3/the Uttarakhand Public Service Commission ("the Commission") on the ground that it violates the provisions of Section 34(2) of the Rights of Persons with Disabilities Act, 2016 ("the Act").
4. Facts necessary to appreciate the controversy briefly stated are as follows: The Commission issued an advertisement on 04.12.2018, inviting online applications from eligible candidates for participating in the Uttarakhand Special Subordinate Education (Lecturer-Group 'C') Service (General and Women's Branch) Exam, 2018, for selection and appointment of Lecturers. The petitioners in WPSS No.1295 of 2022, applied for the post of Lecturer Chemistry, General Branch, whereas the petitioners in WPSS No.1291 of 2020 applied for the post of Lecturer Geography, General Branch. All the petitioners are persons with

disability ("PwD") suffering with Locomotor Disability. They claimed horizontal reservation available for PwD.

5. The petitioners in WPSS No.1291 of 2022 also claimed reservation under Scheduled Caste Category. In WPSS No.1295 of 2022, the petitioner no.2 Vinay Uniyal also claimed vertical reservation under the economically weaker section category.

6. The advertisement made it clear that various posts of Lecturers in Geography and Chemistry, General Branch were identified as suitable for appointment of PwD suffering from different disabilities. After conducting the examination, the result was declared by the Commission. But, for both the positions i.e. Lecturer Geography, General Branch and Lecturer Chemistry, General Branch sufficient number of persons with benchmark disability were not available. Therefore, those vacancies were carried forward for the next recruitment year.

7. It is the case of the petitioners that the Commission issued another advertisement on 12.10.2020 for the posts of Lecturer Geography and Chemistry, General Branch and this advertisement included the vacancies, which were carried forward from the last recruitment pertaining to PwD. The result of succeeding recruitment year was declared on 31.05.2022, but it is the grievance of the petitioners that due to non-availability of suitable persons with benchmark disability, the positions could not be filled with the suitable persons with benchmark disability. The vacancies were second time again carried forward. According to the petitioners, second time the vacancies could not be carried forward in view of the provisions as contained under Section 34(2) of the Act. It is the case of the petitioners that they are also PwD suffering with locomotor disability. They have cleared the screening examination; their marks have also been published by the Commission.

8. It is the case of the petitioners that, pursuant to the advertisement dated 12.10.2020, while preparing the final merit list, if suitable persons with benchmark disability were not available, such vacancies could have been filled by interchange amongst the five categories of disabilities and it is only, when there is no person with disability for the post in that year, the post could have been filled by a person other than a person with disability. But, the vacancies cannot be carried forward second time. The petitioners did make representations; the petitioners have also referred to the Government Orders in this regard pertaining to preparation of Rosters; when no action was taken, the petitioners have come before this Court.

9. The number of vacancies advertised for persons with disabilities in the year 2018, and the vacancies that were carried forward pursuant to subsequent recruitment in the year 2020 of which result was declared on 31.05.2022 is as below:-

10. The above Chart reveals that pursuant to the advertisement dated 04.12.2018, 05 vacancies reserved for PwD in Lecturer Geography were carried

forward by the result dated 11.07.2019. Out of these 05, 04 vacancies were carried forward for the second time, which is clear by the Final Select List dated 31.05.2022.

11. The above chart also reveals that pursuant to the advertisement dated 04.12.2018, 10 vacancies reserved for PwD in Lecturer Chemistry were carried forward by the result dated 05.07.2019. Out of these 10, 09 vacancies reserved for PwD were carried forward for the second time, which is clear by the Final Select List dated 31.05.2022.

12. It is the case of the petitioners that they are immediately below the last selected candidate in the category of Locomotor Disability and could not be selected due to non-availability of the vacancy in the said category of disability and if, the unfilled vacancies are interchanged in terms of Section 34(2) of the Act, the petitioners would have find place in the Final Merit List dated 31.05.2022 (pursuant to the advertisement dated 12.10.2022).

13. The State as well as the Commission, both have filed their counter affidavits. In its counter affidavit, the State has referred to the provisions of Section 34(2) of the Act and in para 3 noted that if in the succeeding recruitment year also suitable person with benchmark disability is not available, then these vacancies can be filled by interchange among the five categories and only when there is no PwD available for the post in that year, the employer can fill up the vacancy by appointment of a person, other than a PwD. The State has stated that the selection was done by the Commission and the Commission has carried forward the same post belonging to the disability category.

14. The Commission in its separate counter affidavit has stated that the advertisement dated 12.10.2020 was published strictly as per requisition sent by the State Government. It is further the case of the Commission that the posts marked for disabled persons have been carried forward for the future selection and it cannot be said that any right of the disabled persons/the petitioners have been curtailed by the Commission.

15. Learned counsel for the petitioners submits that in the first recruitment, which was initiated by the advertisement dated 04.12.2018, issued by the Commission, the vacancies could not be filled due to non-availability of a suitable person with bench mark disability. Therefore, those posts were carried forward and included in the subsequent advertisement dated 12.10.2020. But, it is argued that the vacancies, which were carried forward pursuant to the advertisement dated 04.12.2018 and included in the advertisement of the Commission dated 12.10.2020 cannot be carried forward for the third recruitment year. It would be the violation of the provisions of Section 34(2) of the Act, which it is argued mandates, that if in the succeeding recruitment year suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and even if it is not possible to fill those vacancies, according to it, such post may be filled up by appointing a person

other than a person with disability. It is argued that the Commission ought not to have carried forward those post. Therefore, it is argued that the final select list dated 31.05.2022 to that extent deserves to be modified and the respondent Commission may be directed to proceed to declare result in accordance with the provisions, as contained under Section 34(2) of the Act.

16. In the instant case, interestingly the proposition of law, as argued on behalf of the petitioners, has not been objected to either by the learned State Counsel or by the learned counsel for the Commission. Both have agreed to the proposition of law, as provided under Section 34(2) of the Act.

17. Learned counsel for the Commission submits that the Commission issued subsequent advertisement dated 12.10.2020 and as per requisition, the selection has been made. It is argued that the State Government has not directed the Commission to interchange the vacancies among the five categories of persons with bench marked disability.

18. Learned State Counsel would submit that the recruitment was conducted by the Commission, therefore, it was incumbent to the Commission to follow the provisions of law, as given under Section 34(2) of the Act.

19. Before proceeding further, it would be apt to note, as to what is the provision with regard to reservation for persons with bench marked disability. Section 34 of the Act makes provisions in this regard. It reads as follows:-

"34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by

notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

20. A bare reading of the above provision makes it clear that the posts reserved for bench marked disability have to be filled in accordance to this provision. In the instant case, sub section (2) to Section 34 of the Act is relevant. A bare reading of it makes out the following propositions:-

(i) Vacancies reserved for persons with bench marked disability are to be filled accordingly.

(ii) If in any recruitment year vacancies cannot be filled due to non-availability of suitable persons with benchmark disability or for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year (in the instant case, pursuant to the advertisement dated 04.12.2018 for appointment to the post of Lecturer, result was declared and the vacancies, which could not be filled due to non-availabilities of suitable persons with benchmark disability were carried forward).

(iii) In the succeeding recruitment year, if again suitable persons with benchmark disability is not available, such vacancies may first be filled by interchange among the five categories and if, there is no person with disability available for the post in that year, the employer shall fill up the vacancies by appointment of a person other than a person with disability.

21. In the instant case, pursuant to the advertisement dated 04.12.2018, the result was declared and many vacancies reserved for persons with benchmark disability were carried forward for the next recruitment year. For the next recruitment, advertisement was issued on 12.10.2020. But, when its result was declared on 31.05.2022, the vacancies carried forward from the previous recruitment year were again forwarded second time. It is impermissible in view

of Section 34(2) of the Act. Therefore, while allowing the writ petition, the Commission may be directed to prepare Final Merit List pursuant to the advertisement dated 12.10.2020 for the post of Lecturer Geography and Chemistry, General Branch, in accordance with the provision of Section 34(2) of the Act.

22. Both, the petitions are allowed. The positions reserved for the persons with benchmark disability for Lecturer Geography and Chemistry, General Branch has been kept vacant by the interim order of this Court. Therefore, the Commission is directed to prepare a Final Merit List for Lecturer Geography and Chemistry, General Branch, pursuant to the advertisement dated 12.10.2020, in accordance with the provision of Section 34(2) of the Act.