

Order on Interim Relief Application

IN

Claim Petition No. 59/DB/2023

Uttarakhand Takniki Karmachari Sangh and others

Vs.

State of Uttarakhand and others.

Dated: 04.05.2023

Present: S/Sri Sandeep Tiwari, Piyush Tiwari and Uttam Singh,
Advocates for the petitioners,
Sri Shashank Pandey, Advocate for
respondents no. 6, 8, 9, 14, 16, 18 and 19
Sri V.P. Devrani, A.P.O. for official respondents no. 1 to 4

Objections against the interim relief sought by the petitioner have been filed by learned A.P.O. on behalf of official respondents no. 1 to 4 and by Sri Shashank Pandey, Advocate, on behalf of respondents no. 6, 8, 9, 14, 16, 18 and 19.

2. The case of the petitioners, in brief, is that vide impugned order dated 07.01.2022 issued by respondent no. 1, a beautification sub-branch has been created from the Horticulture Development Branch for beautification under the beautification plan of Raj Bhawan at Dehradun and Nainital, Chief Minister's residence, Horticulture Minister's residence, Hon'ble High Court, Secretariat compound, Assembly (Dehradun/ Bharadisain) and Chief Secretary's residence, for which 66 posts of various levels have been separated from the Horticulture Development Branch. The requirement of entry into this sub-branch is minimum 4 years work experience at these very special places.

2.1 In furtherance to this order dated 07.01.2022, respondent no. 2 issued an office memorandum dated 01.02.2022. The petitioner association submitted their grievance to respondent no. 2 with copy to respondent no. 1,

raising the objection that it is wrong to create new beautification sub-branch on the basis of work experience in special places and thereafter fixing separate seniority of the personnel of the sub-branch, which is clearly against the right of equality and promotion to the seniors in the cadre should be given in the first instance. Respondent department issued a tentative seniority list on 07.06.2022 of employees working in the beautification sub-branch. In this list most of the employees were those who are in the middle level or of lower seniority than their counterparts in Horticulture Development Branch. It has put a deep impact on the promotional avenues of their seniors as the promotional avenues are much faster in the beautification sub-branch and these juniors get this opportunity only by virtue of their posting at these special places which is not in the hand of employees. Thus, to maintain separate seniority for beautification sub-branch is illegal and arbitrary.

2.2 Employees association of the petitioners again made a representation dated 11.06.2022 in which they clearly stated that due to creation of the new sub-branch beautification, the seniority of the employees/ officers of the department was adversely affected, so the separate list of seniority issued by the respondent department for the beautification sub-branch may be cancelled.

2.3 However, official respondents have issued final seniority list dated 11.10.2022 wherein undue advantage is given to the personnel posted in beautification sub-branch and they have been given seniority over the member of petitioners organization serving in Horticulture Development Branch. Official respondents are making all efforts to convene the DPC in the beautification sub-branch at the earliest, thus, depriving members of petitioner association of higher seniority. Hence, the present claim petition has been filed and interim relief has been sought for

issue of order or direction staying the effect and operation of impugned order dated 07.01.2022, impugned order dated 01.02.2022 and impugned seniority list dated 11.10.2022, passed by respondent no. 3.

3. Objections have been filed by learned A.P.O. on behalf of official respondents 1 to 4 mainly stating the following:

(i) By virtue of G.O. No. 583/forest/ Rural Department of Horticulture/382/2002 dated 19.07.2003 after due consideration a policy decision was taken for beautification and maintenance of the very important/ special/ VVIP places like Secretariat, Raj Bhawan, Legislative Assembly, Hon'ble Chief Minister's House along with the posts of Horticulture Expert category-2 and the post of Senior Horticulture Inspector, Asst. Development Officer, Supervisor and Gardner. Thereafter, on reorganization of Horticulture Department, post creation G.O. dated 03.11.2016 was issued in which also for beautification and maintenance for legislative assembly, Raj Bhawan at Dehradun and Nainital and Hon'ble High Court, the posts have been created accordingly.

(ii) There is no provision to stay the policy decision taken by the State Govt. on the approval of State Cabinet for creation of separate branch (Beautification Branch) under the Uttar Pradesh Public Services (Tribunal) Act, 1976 (as applicable to the State of Uttarakhand). Hence the interim relief (stay) application is liable to be rejected inter-alia on this ground.

(iii) At the same time the Petitioners Union and others cannot blow hot and cold because on one hand the members of union in the name of Heera Singh and others have preferred a writ petition no 1060/SS/2022 Heera Singh and other vs. State and others before the Hon'ble High Court

on the relief that they are working in District important/special places i.e. D.M. office and others, therefore their names should be included in the Beautification Branch under which 66 posts were separated from the Development Branch of Horticulture Department and on the other hand the petitioners have challenged the G.O dated 07.01.2022 and its consequential order dated 01.02.2022 and seniority list dated 11.10.2022. The writ petition No.1060/SS/2022 is still pending for adjudication before the Hon'ble High Court at Nainital.

(iv) Objections filed by learned A.P.O. also state that proceedings for amendment in Service Rules is underway.

4. Objections to the interim relief application, filed on behalf of respondents no. 6, 8, 9, 14, 16, 18 and 19, are mainly as below:

(a) The petitioners do not have locus standi to file the present petition as they are not personally aggrieved by the order and are just busy bodies. The matter being contested is a policy matter and no interim relief can be granted in policy matter. Even the Hon'ble High Court did not give any relief to the petitioner.

(b) The petitioners have failed to establish that they will suffer irreparable harm if the interim relief is not granted. The impugned orders do not cause any immediate harm to the petitioners and there is no urgency to grant interim relief. Granting interim relief would be against public interest. The orders sought to be stayed and the final seniority list are necessary for the smooth functioning of the department. Granting interim relief would cause prejudice to public interest. The balance of convenience is not in favor of the petitioners. Granting interim relief would disrupt the functioning of the department and would cause inconvenience to the public. On the other hand, denying interim relief would not cause any harm to the petitioners.

5. After hearing learned Counsel for the parties at length, the Tribunal observes the following:

(i) The options have been called from all the employees of the branch for the inclusion in the beautification sub-branch. However, the condition of having worked for at least 4 years in those very special places restricts all others who were not posted in these places for 4 years for inclusion in the beautification sub-branch. Learned Counsel for the respondents could not show whether options to work at these special places were ever taken from the employees in the past.

(ii) Beautification sub-branch is intended to be part of the Horticulture Development Branch and is not a separate branch or cadre. The purpose of issuing separate seniority lists for the beautification sub-branch is to make separate promotions in the sub-branch and as the personnel in the beautification sub-branch will get faster promotion and seniors in the main branch would lag behind, it is violative of the principles of equality enshrined in the Constitution of India.

(iii) The G.O. dated 07.01.2022 also states that the highest post in the beautification sub-branch is of Deputy Director. Therefore, in future if promotion to the post higher than the Deputy Director is possible then the officers shall be eligible for promotion on the basis of the Rules prevalent at that time. This implies that the Deputy Director of the beautification sub-branch can be posted as Joint Director in the main Horticulture Development Branch.

(iv) Promotions of juniors in the beautification sub-branch while their erstwhile seniors in the main Horticulture Development Branch are not considered for promotion will be very unfair and totally against the principles of natural justice.

(v) A sub-branch is deemed to be a part of the main branch created for a special purpose and there should be

common seniority lists for the entire branch including sub-branch on the basis of which promotions should be made.

(vi) At the stage of interim relief, this Tribunal has to see the balance of convenience. If promotions are made from the separate seniority lists of beautification sub-branch, prima facie, it will be great injustice to their counterparts of the main branch.

In view of the above, this Tribunal orders that no promotions may be made from the seniority lists prepared separately for the beautification sub-branch till the final disposal of this claim petition. Respondent department shall be free to make promotions on the basis of combined seniority lists of the entire Horticulture Development Branch including the beautification sub-branch, according to law.

Counter affidavits may be filed within four weeks.
List on 07.06.2023 for further orders.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
RS

(JUSTICE U.C.DHYANI)
CHAIRMAN