

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 115/2008

Dayal Singh S/o Late Sri Vijay Singh, posted as Chaukidar, Krishi
Utpadan Mandi Samiti Rishikesh, District Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Agriculture and Viproan,
Secretariat, Dehradun,
2. Director, Uttarakhand Krishi Utpadan Mandi Parishad, Navin
Mandi Sthal Bareilly Road, Haldwani, District Nainital.
3. Joint Director (Administration), Uttarakhand Krishi Utpadan
Mandi Parishad, Navin Mandi Sthal, Bareilly Road, Haldwani,
District Nainital.

.....Respondents

Present: Sri M.C.Pant & Sri L.K.Maithani, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondent No. 1

Sri D.P.Singh & Sri R.S.Grewal, Counsel
for the respondents No. 2 & 3

JUDGMENT**DATE: AUGUST 26, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The present claim petition has been filed for seeking the following relief:

“(i) To issue suitable order or direction to quash the impugned order dated 7.2.2004 passed by the respondent No. 2 (Annexure No. 8).

(ii) To issue suitable order or direction to the respondent No. 2 to promote the petitioner w.e.f. the date when persons junior to him were promoted and also to grant him all consequential benefits including arrears of salary.

(iii) Issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of the petition in favour of the petitioner.”

2. The relevant facts in brief are that the petitioner was appointed Choukidar vide order dated 8.12.1986 in Krishi Utpadan Mandi Samiti, Rishikesh,, District Dehradun.

3. Admittedly, there is a 15 per cent quota for promotion from the posts of Peon, Chaukidar and Yardman (Group-D) to the post of Clerk-cum-Typist (Group-C).

4. Respondent No.3 promoted 10 Group- D employees to the post of Clerk-cum-Typist vide order dated 19.6.2003 (Annexure: 3).

5. The grievance of the petitioner is that he was not promoted in spite of his being senior to 4 employees who were promoted by above order dated 19.6.2003.

6. The petitioner submitted a representation dated 25.7.2003 (Annexure: 4) to the Director, Uttarakhand Krishi Utpadan Mandi Parishad against the promotion order dated 19.6.2003 (Annexure: 3) objecting promotion to the employees junior to him and requested his promotion as he was senior. The representation remained undisposed of.

7. The petitioner, thereafter, filed a writ petition No. 1257(S/S) of 2003 before the Hon'ble High Court at Nainital which was disposed of by the Hon'ble High Court vide order dated 20.10.2003 (Annexure: 5) with a direction to the Director, Uttarakhand Krishi Utpadan Mandi Parishad to decide the representation of the petitioner within two months.

8. The petitioner again submitted a representation dated 20.11.2003 alongwith the copy of the order of the Hon'ble High Court at Nainital (Annexure: 6).

9. The Respondent No. 3 rejected the representation of the petitioner on 07.02.2004 (Annexure: 8). Thereafter, the petitioner challenged this order in the Hon'ble High Court at Nainital (writ petition No. 336 (S/S) of 2004) and vide order dated 16.9.2008, the Hon'ble High Court relegated the matter to avail the alternative remedy before the State Public Services Tribunal (Annexure: 9). Hence the petition.

10. Admittedly, the minimum qualification for promotion from the post of Chaukidar to the post of Clerk-cum-Typist is 'High School'. While rejecting the representation of the petitioner,

Respondent No. 3 held that the petitioner does not possess requisite qualification of 'High School'.

11. The petitioner in his claim petition has contended that he possesses 'Prathma' and 'Madhyama' certificate of Hindi Sahitya Sammelan, Allahabad and 'Prathma' and 'Madhyama' certificates are equivalent to 'High School' and 'Intermediate' examinations. Respondent No.3 in his order dated 07.02.2004 (Annexure: 8) has held that 'Prathma and 'Madhyama' certificates are not equivalent to 'High School' and 'Intermediate' examination.

12. The petitioner in his claim petition has also stated that the Ministry of Human Resource Development, Government of India vide Notification dated 26.7.2001 has recognized 'Prathma' equivalent to 'Matriculation' for the purpose of employment (Annexure: 7). The said notification is reproduced hereunder:

*“Government of India
Ministry of Human Resource Development (Department
of Secondary & Higher Education)
New Delhi, the 26th July, 2001*

NOTIFICATION.

No. F.24-1/2001-TC. On the recommendation of the High Level Committee for recognition of Educational Qualifications, the Government of India have decided to recognize the Prathma Examination being conducted by Hindi Sahitya Sammelan, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is a pass in matriculation. The recognition is provisional for a period of 3 years after which the committee will review the recognition granted.

*(V.S. Pandey)
Joint Secretary (T) &
Member Secretary,
High Level Committee
for Educational Qualifications.”*

13. Respondent No. 3 while rejecting representation of the petitioner has also stated that as per the letter of the Additional Director of Education, Government of Uttarakhand dated 24.10.2002 (Annexure: R-2 to the written Statement), 'Prathma' and 'Madhyama' examinations of Hindi Sahitya Sammelan, Allahabad are not equivalent to the 'High School' and 'Intermediate' examinations. The said letter is reproduced below:

“प्रेषक,

अपर शिक्षा निदेशक,
शिविर कार्यालय, देहरादून।

सेवा में,

जिला विद्यालय निरीक्षक,
उत्तरांचल।

पत्रांक/शिविर/14243-60/2002-03 दिनांक 24-10-2002

विषय:- हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा संचालित परीक्षाओं की मान्यता के सम्बन्ध में।

महोदय,

उक्त विषय के क्रम में सूच्य है कि हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा संचालित प्रथमा, मध्यमा एवं अन्य उच्चतर परीक्षायें माध्यमिक शिक्षा परिषद द्वारा संचालित हाईस्कूल एवं इण्टरमीडिएट परीक्षा के समतुल्य मान्य है अथवा नहीं इस सम्बन्ध में जनसाधारण द्वारा समय-समय पर निदेशालय से जिज्ञासा की जा रही है।

जनसाधारण की जिज्ञासा के संदर्भ में अवगत कराना है कि इण्टरमीडिएट शिक्षा अधिनियम 1921 के अध्याय-12 विनियम 17(4) क में वर्णित समकक्षता सूची में उक्त संस्था द्वारा आयोजित परीक्षायें सम्मिलित नहीं है अतः स्पष्ट है कि हिन्दी साहित्य सम्मेलन उत्तर प्रदेश इलाहाबाद द्वारा संचालित परीक्षायें प्रथमा, मध्यमा एवं अन्य कोई भी उच्चतर परीक्षा उत्तरांचल विद्यालयी शिक्षा एवं परीक्षा परिषद में हाईस्कूल/इण्टरमीडिएट के समकक्ष मान्य नहीं है। इसी जिज्ञासा के परिपेक्ष में सचिव माध्यमिक शिक्षा परिषद, उत्तर प्रदेश इलाहाबाद से भी जानकारी चाही गई जिसके क्रम में सचिव माध्यमिक शिक्षा परिषद उत्तर प्रदेश इलाहाबाद ने अपने अर्द्धशासकीय पत्रांक 210 दिनांक 30-7-2002 जो जिला विद्यालय निरीक्षक उत्तर प्रदेश को सम्बोधित की गई है की प्रति उपलब्ध कराते हुए स्थिति को स्पष्ट किया है कि हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा संचालित प्रथमा, मध्यमा एवं अन्य उच्चतर परीक्षायें हाईस्कूल एवं

इण्टरमीडिएट स्तर के समतुल्य/समकक्ष माध्यमिक शिक्षा परिषद को न तो पूर्व में मान्य थी और नही ही वर्तमान में मान्य है।

अतः हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा संचालित प्रथमा, मध्यमा एवं अन्य उच्चतर माध्यमिक परीक्षा उत्तीर्ण अभ्यर्थियों को उत्तरांचल के कक्षा- 09 को छोड़कर कक्षा 10 अथवा कक्षा 11 में कदापि प्रवेश न दिया जाय। यदि इस प्रकार के अनियमित प्रवेश पूर्व में कर लिए गये हों तो उन्हें तत्काल निरस्त कर दिया जाय ऐसा न करने पर सम्पूर्ण उत्तरदायित्व सम्बन्धित छात्र/छात्रा का एवं प्रवेश देने वाले प्रधानाचार्य/प्रधानाचार्या एवं सम्बन्धित संस्थाध्यक्ष का होगा। कृपया निर्देशों का कड़ाई से पालन किया जाना सुनिश्चित करें तथा अपने अधीनस्थ समस्त प्रधानाचार्यों को अवगत कराने का कष्ट करें।

भवदीय,

(श्रीमती पुष्पा मानस)
अपर शिक्षा निदेशक, उत्तरांचल
शिविर कार्यालय, देहरादून।”

14. The contention of the petitioner in claim petition is that above letter dated 24.10.2002 of the Education Directorate is of no relevance as the said letter deals with the issue of admission in class X and XI and it does not deal with the issue of employment.

15. The petitioner in his claim petition has cited the cases of 3 employees of Mandi Parishad who were given the appointment/promotion on the basis of Prathma/Madhyama/Sahitya Ratna examinations of Hindi Sahitya Sammelan, Allahabad. These cases are as under:

- (i) Shri Pan Singh was promoted from the post of Peon to Clerk on 01.05.1991 although he possessed only ‘Madhyama’ qualification from Hindi Sahitya Sammelan, Allahabad.
- (ii) Shri Keshav Dutt Joshi, who possessed ‘Sahitya Ratna’ qualification from Hindi Sahitya Sammelan, Allahabad which is equivalent to Bachelor’s Degree of a University

was appointed as Clerk in Mandi Parishad by direct recruitment on 07.01.2002.

- (iii) Shri Anand Ballabh Tiwari was promoted from the post of 'Mandi Sahayak' to 'Mandi Inspector' on 21.3.2002, though he possessed 'Madhyama' qualification from Hindi Sahitya Sammelan, Allahabad and not the 'Intermediate' qualification from U.P. Board.

16. The petitioner has also contended in his claim petition that the representation submitted to Respondent No. 3 has been cursorily rejected by completely misreading and misinterpreting the judgment of the Hon'ble Supreme Court (Civil Appeal No. 4119 of 2002, State of Rajasthan Vs. Lata Arun-AIR 2002, S.C., 2642). It has been pleaded by the petitioner 'that in the said judgment, Apex Court nowhere provided that the Certificates/Degree granted by Hindi Sahitya Sammelan are recognized. Recognition to a Certificate/Degree is to be granted by the employer or the educational institutions where the Certificate/Degree holders are seeking employment/admission' (Para 4.17 of the Claim Petition).

17. Respondents No.2 and 3 in their joint written statement have opposed the claim petition. The contention in the written statement is that 'Prathma' and 'Madhyama' are not recognized as equivalent to 'High School' and 'Intermediate' by the State of Uttar Pradesh or by the State of Uttarakhand.

18. As Annexure (R-1) to the written statement, a letter of the Director, Training and Employment, Government of Uttar Pradesh, Lucknow dated 27.09.1999 has been filed by the respondents showing that 'Prathma' and 'Madhyama' are not equivalent to 'High School' and 'Intermediate'. The said letter reads as under:

“प्रेषक,

निदेशक,
प्रशिक्षण एवं सेवायोजन,
उ0प्र0, लखनऊ।

सेवा में,

1. समस्त क्षेत्रीय रोजगार विकास अधिकारी, उ0प्र0।
- 2- समस्त क्षेत्रीय/जिला/नगर सेवायोजन अधिकारी, उ0प्र0।
3. समस्त उप प्रमुख, विश्वविद्यालय सेवायोजन सूचना एवं मंत्रण केन्द्र, उ0प्र0।

पत्रांक: 2561/आई-2/0102/नीति(निर्देश)/95-खण्ड-3 लखनऊ

दिनांक: 27 सितम्बर, 1999

विषय:- हिन्दी साहित्य सम्मेलन, इलाहाबाद द्वारा संचालित परीक्षाओं की मान्यता के सम्बन्ध में।

महोदय,

उपरोक्त विषयक कृपया निदेशालय पत्रांक 448/ आठ/ ई-दो /0102/ नीति (निर्देश) / 95- खण्ड-III, दिनांक: 20.02.99 का संदर्भ ग्रहण करें, जिसके द्वारा निदेशालय पृष्ठांकन संख्या: 8625/आठ/ई-दो/9102/ नीति(निर्देश)/95-खण्ड-III, दिनांक: 9 अक्टूबर, 1998 के कियान्वयन इस परिप्रेक्ष्य में रोका गया तथा सूचित किया गया था कि कथित शासन पत्रांक: 342/शिक्षा/98, दिनांक: 22 अगस्त, 1998 फर्जी बताया गया था। अतएव जाँच करायी जा रही है।

उ0प्र0 शासन के शिक्षा (7) अनुभाग के पत्र संख्या: 1059/ 15-7-1(87)/1998, दिनांक: 31.03.99 के द्वारा शासन का पत्र संख्या: 342/शिक्षा/98, दिनांक : 22 अगस्त, 1998 जिसे निदेशालय द्वारा पत्र संख्या: 8625/आठ/ई-2/0102/नीति(निर्देश)/95-खण्ड- III, दिनांक: 9 अक्टूबर, 98 द्वारा पृष्ठांकित किया गया था, फर्जी घोषित किया गया है।

अतएव निदेशालय पृष्ठांकन पत्रांक: 8625/आठ-ई-दो/ नीति(निर्देश)/95-खण्ड- III, दिनांक: 9 अक्टूबर, 1998 निरस्त माना जाय तथा शासन के शिक्षा अनुभाग (7) अनुभाग के पत्र संख्या: 1059/ 15-7-1(87)/ 1999 दिनांक: 31 मार्च, 99 में संदर्भित शासनादेश संख्या: जी0आई/89/15-7-1(121)/1980, दिनांक: 5.12.89 के अनुसार कार्यवाही की जाय जिससे स्पष्ट किया जा चुका है कि हिन्दी साहित्य सम्मेलन, इलाहाबाद द्वारा संचालित प्रथमा एवं मध्यमा परीक्षा

हाईस्कूल/इण्टरीमीडियेट परीक्षा के समकक्ष नहीं है। कृपया तदनुसार कार्यवाही सुनिश्चित करें।

कृपया पत्र की पावती स्वीकार करें।

भवदीय

(टी०पी०वर्मा)
उपनिदेशक (सेवा)
कृते निदेशक।”

19. It has further been stated in the written statement that the grant of recognition is the sole domain of the State Government through the Department of Education and the Government of Uttarakhand has not recognized ‘Prathma’ and ‘Madhyama’ equivalent to ‘High School’ and ‘Intermediate’. Respondents have filed the Annexure (R-2) which is a letter of the Additional Director, Education, Government of Uttarakhand to all the District Inspector of Schools (DIOS) of Uttarakhand communicating the same. This letter has already been reproduced in paragraph no. 13 of this order.

20. It has also been contended in the written statement that only because the Ministry of Human Resources, Government of India (vide notification dated 26.10.2001- Annexure: 7 reproduced in paragraph 12 of this order) has recognized the ‘Prathma’ examination conducted by the Hindi Sahitya Sammelan, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is ‘matriculation’, it cannot be presumed that ‘Prathma’ has been recognized by the State of Uttarakhand.

21. Respondents have admitted in the written statement that in Mandi Parishad some employees were appointed/promoted in past treating ‘Prathma’ and ‘Madhyama’ equivalent to ‘High School’ and ‘Intermediate’ in ignorance and under ‘bonafide’ mistake. But the petitioner cannot get a right to take benefit of this mistake. It has

been contended that only because some employees were wrongly appointed or promoted in the past does not confer any right upon the petitioner for promotion. It has further been contended that 'equality' is a positive concept. It cannot be invoked to perpetuate an illegality.

22. It has also been admitted in the written statement that 4 employees junior to the petitioner were promoted but the petitioner was not promoted because he did not possess the requisite qualification of 'High School'. He had 'Prathma' (and 'Madhyama' and 'Sahitya Ratna') qualification of Hindi Sahitya Sammelan, Allahabad which is not recognized by the State of Uttarakhand as equivalent to the 'High School' and, therefore, he was not eligible for promotion.

23. Respondents have also admitted in the written statement that when the process for promotion from Group D employees to the post of Clerk-cum-Typist (Group 'C' post) was started, the petitioner was also allowed to participate in the written examination but on a complaint of some employees in view of the judgment of the Apex Court AIR, 2002 SC 2842, the Education Department, Government of Uttarakhand was approached to clarify the equivalence of 'Prathma' and 'Madhyama' and when it revealed that the said examinations are not equivalent to "High School" and 'Intermediate' (Annexure: R-2 to the written statement reproduced in paragraph 13 of this order), the promotion of the petitioner was denied as he did not possess the necessary qualification of 'High School' prescribed for promotion to the post of Clerk-cum-Typist.

24. A rejoinder affidavit has been filed on behalf of the petitioner, in which the averments made in the claim petition are reiterated. A document of Hindi Sahitya Sammelan, Allahabad has also been annexed with the rejoinder affidavit to show that the

Sahitya Ratna qualification is equivalent to Bachelor's degree of a recognized University.

25. Following documents have been filed on behalf of the petitioner separately:-

- (i) Marks Sheet of 'Prathma' examination, 1991 (Annexure: 10),
- (ii) Marks Sheet of 'Madhyama' examination, 1992 (Annexure: 11),
- (iii) Marks Sheet of 'Sahitya Ratna' (Three Years Course) examination, 1993, 1994 and 1995 (Annexure: 12).

While filing the documents, it has been contended by the petitioner that on the basis of 'Sahitya Ratna' degree of Hindi Sahitya Sammelan, Allahabad, the petitioner passed the M.A. (Sociology) examination from Hemwati Nandan Bahuguna Garhwal University in 2007. The marks-sheet of the same is shown as Annexure: 13.

26. Respondents have filed the following letter with the Additional Counter Affidavit as Annexure: 1 to the Additional Counter Affidavit:

“प्रेषक,

एल0एम0पन्त,
अपर सचिव,
उत्तरांचल शासन।

सेवा में,

जिला मजिस्ट्रेट,
टिहरी गढ़वाल

वित्त अनुभाग-6

देहरादून: दिनांक: 25 अक्टूबर, 2006

विषय:- हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा संचालित परीक्षाओं की मान्यता।

महोदय,

मा0 उच्च न्यायालय उत्तरांचल, नैनीताल में संस्थित रिट याचिका संख्या-1128(एस0एस0)/2006, दिनेश प्रसाद थपलियाल बनाम राज्य एवं अन्य के सम्बन्ध में मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 21.08.2006(प्रति संलग्न) के अनुपालन में मुझे यह कहने का निदेश हुआ है कि शासन के पत्र संख्या 410/XXVII(4)/2004 दिनांक 29.11.2004 द्वारा तत्कालीन जिलाधिकारी, टिहरी का पत्र दिनांक 21-07-2004 के सन्दर्भ में यथा समय ही अवगत कराया जा चुका है कि उत्तरांचल इन्टरमीडिएट शिक्षा अधिनियम 1921 के अध्याय-12 विनियम-17(4)-क में वर्णित समकक्षता सूची में उक्त संस्था द्वारा आयोजित परीक्षाएं सम्मिलित नहीं की गयी हैं।

उक्त के कम में शिक्षा विभाग द्वारा निर्गत अधिसूचना संख्या 685/माध्यमिक/2002 दिनांक 12.07.2002 द्वारा इन्टरमीडिएट शिक्षा अधिनियम, 1921 को उत्तरांचल राज्य में अंगीकृत किया गया है। इस प्रकार हिन्दी साहित्य सम्मेलन इलाहाबाद द्वारा आयोजित परीक्षाएं प्रथमा, मध्यमा, एवं अन्य उच्चतर परीक्षाएं उत्तरांचल राज्य में हाईस्कूल/इन्टरमीडिएट के समकक्ष न तो पहले मान्य थी, और न अब मान्य है। कृपया तदनुसार इस सम्बन्ध में आवश्यक एवं अपेक्षित कार्यवाही सुनिश्चित कर शासन को अवगत कराने का कष्ट करें।

संलग्नक: उक्तानुसार।

भवदीय

(एल0एम0 पन्त)
अपर सचिव”

27. We have heard learned A.P.O. for the Respondents. Learned counsel for the petitioner was granted opportunity and adjournment many times for hearing. He did not put forward oral submission. Lastly an opportunity in the interest of justice for filing written submissions was also granted. The same were also not filed. We have gone through all the records carefully.

28. The moot question before us is to examine whether ‘Prathma’ and ‘Madhyama’ qualifications’ of Hindi Sahiya Sammelan, Allahabad are equivalent to ‘High School’ and

‘Intermediate’ or not. This is also to be examined whether the petitioner is entitled for promotion or not when the Respondents have earlier appointed/promoted others recognizing ‘Prathma’ and ‘Madhyama’ as equivalent to ‘High School’ and ‘Intermediate’.

29. The Hon’ble High Court at Allahabad and the Hon’ble High Court at Nainital have considered this question in many cases and consistently held that ‘Prathma’ and ‘Madhyama’ examinations of Hindi Sahitya Sammelan, Allahabad are not equivalent to the ‘High School’ and ‘Intermediate’ examinations.

30. Hon’ble High Court of Uttarakhand in *Writ Petition No. 6928 of 2001 (S/S), Shri Heera Singh Bhandari Vs. District Inspector of Schools, Nainital and another decided on 11.9.2007--2007(2), U.D. 691-* has held as under:

“7. Chapter XIV of Regulations under U.P. Intermediate Education Act, provides which of the examinations can be said to be equivalent to the High School examination for the purposes of entitling a person to appear in Intermediate Examination. Regulation 2 of said Chapter recognizes some 70 certificates issued by various Boards and Universities and examination bodies, but there is no mention of Hindi Sahitya Sammelan in said Rule, as such this Court has no hesitation in holding that the certificates of Prathama and Madhyama (Visharad), issued by the Hindi Sahitya Sammelan, Prayag, are not recognized in the State of Uttar Pradesh and State of Uttarakhand as equivalent to High School examination or Intermediate examination.

8. A Division Bench of this Court in *Shailendra Singh and Ors. v. State of Uttaranchal and Ors.* 2007 (1) UD 155, has held that the degrees of 'Shiksha Visharad' issued by Hindi Sahitya Sammelan, Allahabad, are not recognized certificates equivalent to B. Ed. Examination. In *Babu Ram and Anr. v. Deputy Cane Commissioner, Moradabad and Ors.* 2000 (1) AWC 862, learned Single Judge of Allahabad High Court has held that certificate of Prathama issued by Hindi Sahitya Sammelan, Allahabad, is not equivalent to the certificate of High School. In said case, the Court upheld the reversion of Petitioner from the post of Seasonal Clerk to the post of Parchi Vitrak (Slip Distributor), on detection that promotion was made treating certificate of Prathama equivalent to that of High School. A Division Bench of the same Court in *Udai Veer Singh Yadav and Ors. v. Union of India and Ors.* 2003 (50) ALR 575, again held in another case that on the basis of certificate issued by Hindi Sahitya Sammelan, Allahabad, a person has no right to practice as medical practitioner, after the certificates of Hindi Sahitya Sammelan, Allahabad were de-recognized in the year 1967. On the basis of aforementioned cases read with the case of *State of Rajasthan v. Arun Lata AIR 2002 SC 2642*, this Court has no hesitation in holding that certificates of Prathama and Madhyama issued by Hindi Sahitya Sammelan, Allahabad, are not equivalent to High School or Intermediate (XII standard) of U.P. Board.”

31. Hon'ble High Court of Allahabad in *Special Appeal No. 1731 of 2010, Urmila Devi Vs. State of U.P. and another—*

Hon'ble Sunil Ambani, J and Hon'ble Pankaj Mittal, J, 2012(1) ADJ 346 decided on 11.11.2011, has held as under:

“12. The question whether the Madhyama examination conducted by the Hindi Sahitya Sammelan Prayag, Allahabad is equivalent to Intermediate Examination conducted by the U.P. Secondary Education Board, Allahabad is no longer res integra. This Court has time and again considered this question and consistently returned the findings that the Madhyama (Visharad) examination of Hindi Sahitya Sammelan, Allahabad is not equivalent to the Intermediate Examination conducted by the U.P. Secondary Education Board, Allahabad. The judgments of this Court considering the question are as follows:

(1) In Sarojani Pandey (Smt.) v. State of U.P. & Ors., (2003) 2 UPLBEC 1129 learned Single Judge of this Court relied upon Government Order dated 28th October, 1998, wherein it was clearly stated that examinations of Prathama and Madhyama conducted by the Hindi Sahitya Sammelan, Allahabad are not equivalent to the High School and Intermediate examination conducted by the Board of High School and Intermediate Education U.P. Allahabad. The Court found that this is the latest order will prevail over the Government Order dated 22nd August, 1998 issued by the Joint Secretary U.P. Government addressed to Director of Education, Allahabad as well as order dated 26th July, 2001, of the Government of India.

(2) In Kunwar Herash Saran Saxena v. State of U.P. & Anr., Writ Petition No. 8579 of 1992 decided on 6.12.2005 learned Single Judge of this Court observed in paras 3 and 6 as follows:-

3. *The controversy in the facts and circumstances of the present case is confined to the issue as to whether the certificate of Madhyma Visharad obtained by the petitioner from Hindi Sahitya Sammelan satisfies the minimum academic qualifications prescribed for appointment on the post of Junior Clerk. As provided for under the Adhinasth Karyalaya Lipik Vargiya Karmcharivarg (Seedhi Bharti) Niyamavali, 1985 or not. Hindi Sahitya Sammelan has been established under the Hindi Sahitya Sammelan Act, 1962 and Section 22 of the University Grants Commission recognises a right in the said Hindi Sahitya Sammelan to award degrees. As a matter of fact University Grants Commission has notified certain degrees awarded by Hindi Sahitya Sammelan vide notification dated 21.8.2003. However, on record there are various government orders issued by the Central Government recognising the certificate for the purposes of appointment in government service, reference (Notification dated 26.7.2001 Annexure-3 to Rejoinder Affidavit and Notification dated 16.9.1990 Annexure-5 to Rejoinder Affidavit). However, it may be noticed that Government of India had appended a note which reads as follows : The recognition recorded above is not to be treated equivalent to the full fledged certificate/degree for which it has been equated (Annexure-6 to the Writ Petition).*

6. *The petitioner has not been able to bring on record any document for establishing that the certificate possessed by the petitioner from the Hindi Sahitya Sammelan was ever recognised as equivalent to intermediate examination by the Governor of the State. All the documents brought on record by the petitioner issued by the Central Government or any of the authority are of no consequence for determination of the issue concerned.*

(3) In *Pradeep Kumar son of Mukandi Lal v. State of U.P. & Ors.* this Court once again decided the issue on 23.1.2008 and held as follows:

8. *Learned Counsel for the respondents has placed reliance on judgment of this Court reported in (2004) 2 UPLBEC 1716; Shailendra Kumar Singh v. State of U.P. and Ors. The question which was considered in the above case, was as to whether degree of Shiksha Visharad given by Hindi Sahitya Sammelan is equivalent to be treated as B.Ed, degree. This Court after considering the provisions of the National Council for Teachers Education Act, 1993 came to the conclusion that degree of Shiksha Visharad from Hindi Sahitya Sammelan being not recognised by National Council for Teacher Education, cannot be held to be equivalent to B.Ed.*

9. *The petitioner has not brought any material on record to establish that degree of Madhyama (Visharad) of Hindi Sahitya*

Sammelan has been treated to be equivalent to Intermediate by the State of U.P. It is not disputed that for sending a candidate for B.T.C. Correspondence Course training minimum eligibility is Intermediate. Learned Counsel for the petitioner at the time of hearing produced a booklet issued by Hindi Sahitya Sammelan, Allahabad containing various letters issued by the State of UP., Government of India and several institutions regarding degrees issued by Hindi Sahitya Sammelan. Reliance has been placed by Counsel for the petitioner on a press note dated 18th February, 1970 issued by the Government of India along with which a list of organisations conducting different examinations have been issued.

10. A perusal of the above press note relied by Counsel for the petitioner, itself indicates that examination from Hindi organisations is recognised for standard of Hindi prescribed in the equivalent examination. The last paragraph of the press note issued by the Government of India, as quoted above, clearly clarifies that the recognition of this examination is in regard to standard of Hindi prescribed in the equivalent Hindi examination and it is not to be treated as equivalent to full fledged certificate of degree of examination. A copy of the Government order issued by the State of UP. dated 5th December, 1989 has also been relied by Counsel for the petitioner, which was issued in reference to letter dated 12th August, 1988

of the Government of India regarding examinations conducted by Hindi organisations. The Government order dated 5th December, 1989 clearly clarifies that degree of Madhyama (Visharad) issued by Hindi Sahitya Sammelan is equivalent only for standard of Hindi up to that examination and not equivalent to degree or certificate. In this context it is also relevant to refer to provisions of Regulations framed under the UP. Intermediate Education Act, 1921. For the Intermediate examination, which is conducted by Madhyamik Shiksha Parishad, UP. several degrees from different organisation and Universities throughout the country have been mentioned in Chapter-XIV of the regulations and none of the degrees or certificate issued by Hindi Sahitya Sammelan, Prayag has been treated to be equivalent to High School so as to make such candidates eligible to take admission in the Intermediate examination whereas the Purva Madhyamik Examination of Sampurnanand Viswavidyalaya, Varanasi and the examination of Visharad from Kashi Vidya Peeth, Varanasi have been mentioned as equivalent to High School. The B.T.C. Correspondence Course training is imparted to untrained teachers so as to make them eligible for entitlement of trained grades of teachers. The qualification of Intermediate required is for purposes of appointment and the petitioner was required to fulfil the Intermediate qualification for purposes of

appointment or imparting B.T.C. Correspondence Course training for becoming entitled to trained grade of Assistant Teacher. Thus the qualification required for appointment of Assistant Teacher is full fledged certificate of Intermediate and the degree of Madhyama (Visharad) issued by Hindi Sahitya Sammelan cannot be treated to be equivalent to Intermediate examination.

11. The petitioner, thus, has failed to substantiate that degree of Madhyama (Visharad) granted by Hindi Sahitya Sammelan to the petitioner in the year 1990 is equivalent to Intermediate Examination. One more fact which is relevant to be noticed, is that petitioner himself appeared in the Intermediate examination conducted by U.P. Madhyamik Shiksha Parishad and has passed the same in the year 1997. Had his degree of Madhyama (Visharad) from Hindi Sahitya Sammelan equivalent to Intermediate, there was no occasion for the petitioner to pass Intermediate examination of U.P. Madhyamik Shiksha Parishad in the year 1997.

In the aforesaid case learned Single Judge after going through all the relevant Government Orders clearly held that the Madhyama (Visharad) examination is equivalent only for standard of Hindi up to that examination and is not equivalent to any degree or certificate.

(4) *In Manish Kumar v. State of U.P. & Ors., Writ Petition No. 45866 of 2007 learned Single Judge of this Court by his judgment dated 29.9.2010 considered all the Government Orders and the judgments in this regard and reiterated that the Prathama certificate issued by the Hindi Sahitya Sammelan is not equivalent to High School certificate issued by the Madhyamik Shiksha Parishad, Allahabad. He quoted the letter of the Secretary of the Madhyamik Shiksha Parishad reporting that the Prathama, Madhyama or any other examination conducted by Hindi Sahitya Sammelan was not equivalent to High School/ Intermediate examination at any time in the past or in the present. The Government Orders produced to support the equivalence were found to be false. In the past the examination conducted by the Hindi Sahitya Sammelan were taken to be equivalent to Class-VIII for appearing in the High School examination of the U.P. Secondary Education Board, but now since it is compulsory for all the students appearing in the High School examination either from any institution or on private basis, to pass Class IX examination, the equivalence of the examinations conducted by the Hindi Sahitya Sammelan are not recognised. Learned Single Judge observed that Chapter XIV of the Regulation framed under the U.P. Intermediate Education Act, 1921 mentions as many as 71 certificates recognised by the U.P. Madhyamik Shiksha Parishad as equivalent to the High School examination for the purposes of appearing in the Intermediate Examination. There is no mention of the Prathama certificate issued by the Hindi Sahitya Sammelan in this list. Para 981 of Chapter 136 of*

Manual of Government Orders (Revised Edition 1981) also does not mention the equivalence given to Prathma or Madhyama examination to the High School and Intermediate examination conducted by the Secondary Education Board U.P. Learned Single Judge distinguished the judgment in Som Pal Singh v. Regional Joint Director of Education (referred as above) on the ground that it was based upon concession given by learned Standing Counsel, did not dispute the factum of Government Order dated 22.8.1998. The Government Order was thereafter superseded by another Government Order dated 28.10.1998. The factum of supercession has been mentioned in Sarojani Pandey (Supra); Shailendra Kumar Singh v. State of U.P. & Ors. (2004) 2 UPLBEC 1716. Learned Single Judge also noticed that in State of Rajasthan & Ors. v. Lata Arun AIR 2002 SC 2642 it was noticed by the Supreme Court that the educational certificates of Madhyama issued by Hindi Sahitya Sammelan has been deleted from the recognised qualification vide notification dated 28.6.1985.

.....

15. *There is another aspect to the matter namely that if the qualification conducted by private societies, in respect of language are treated as equivalent to the statutory boards, the candidates passing the examination from the statutory board will be seriously discriminated in appointments in Government Service, which is regulated by the statutory rules. The Court cannot permit the equivalence to be considered so casually. In Rajasthan Pradesh V.S. Sardarshahar & Anr. (Supra) the Supreme Court considered the legal*

status of Hindi Sahitya Sammelan and found that it is neither university/ deemed university nor an educational board. It is society registered under the Societies Registration Act and is not an educational institution imparting education in any subject. There is no school/ college imparting education in any subject affiliated to it. It also does not have any recognition from any statutory authority, even in respect of medical qualifications after 1967.

16. In the aforesaid circumstances, we fully agree with the reasoning given by the learned Single Judge in the judgment cited as above and reiterate that the Prathama and Madhyama (Visharad) examination conducted by the Hindi Sahitya Sammelan are not equivalent to the High School and Intermediate Examination conducted by the Board of High School and Intermediate Education U.P. The petitioner's qualification of Madhyama (Vishrad) is thus not equivalent to Intermediate Examination, and thus the petitioner was not qualified and eligible to be appointed as a clerk.”

32. Hon’ble High Court of Uttarakhand in Special Appeal No. 247 of 2008, Director, Krishi Utpadan Mandi Samiti, Uttarakhand Vs. Lal Chand Decided by Hon’ble J.S. Khehar, C.J.(As His Lordship then was) and Hon’ble Sudhanshu Dhulia, J, on 9.3.2010 (2011(2)UC1144) has held as under:

“Through the instant Special Appeal, the Director, Krishi Utpadan Mandi Samiti, Uttarakhand, Dehradun has impugned the order passed by the learned Single Judge dated 25.7.2008, disposing of the Writ Petition (SS) No. 1959 of 2003.

It is the vehement contention of the learned counsel for the appellant that "Prathama" and "Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad are not equivalent to the High School / Intermediate of U.P. Education Board. It is further asserted that the certificates awarded by Hindi Sahitya Sammelan, Allahabad have not been recognized by the State of Uttar Pradesh (and by the successor State of Uttarakhand,) and as such, respondent no. 1 - Lal Chand cannot be treated as eligible for promotion to the post of Clerk/Stenographer. It is submitted that the mistake earlier committed by the appellant in allowing promotion to Ranjit Singh cannot be a basis for claiming promotion. In this behalf, it is submitted that a plea of discrimination can emerge from an order rightfully passed, and not, from an order wrongfully/mistakenly passed. Since respondent no. 3 Ranjit Singh was not promoted rightfully, on account of his ineligibility, the same cannot be a basis for claiming promotion by respondent no. 1 Lal Chand herein. We have considered the solitary contention of the learned counsel for the appellant. We are satisfied that the instant Special Appeal deserves to be allowed for the very reasons depicted by the learned counsel for the appellant in his sole submission, namely, that the claim of respondent no. 1 herein Lal Chand could not have been considered on the basis of the order of promotion Ranjit Singh dated 29.4.1991, as Ranjit Singh was not validly promoted to the post of Clerk/Stenographer, as he did not fulfil the prescribed qualifications of the High School/Intermediate of U.P. Education Board. The qualification possessed by Ranjit Singh namely "Prathama" and "Madhyama" examinations from Hindi Sahitya Sammelan, Allahabad having not been recognized by the State of Uttar Pradesh or successor State

of Uttarakhand, the same could not have been taken into consideration to bestow eligibility on Ranjit Singh.”

33. Hon’ble High Court of Uttarakhand **in Special Appeal No. 247 of 2008 (supra)** has held that merely because a similarly situated person has been illegally granted any relief or benefit will not be a ground to direct similar relief to the petitioner in the case in hand. It would be appropriate to reproduce the following part of the judgment in the Special Appeal No. 247 of 2008:-

*“.....In so far as the instant issue is concerned, interference may be made to the decision in **Directorate of Film Festivals and others Vs. Gaurav Ashwin Jain and others (2007) 4 SCC 737**, wherein it was held as under:-*

“22. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the Court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative quality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in Chandigarh Admn. V. Jagjit Singh thus; (SCC pp. 750-51, para 8)

“Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pas another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found

that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion such a course-barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles.”

23. In **Gurusharan singh v. New Delhi Municipal Committee** this Court observed (SCC p. 465, para 9):

“There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State.....so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to

others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

For the reasons recorded hereinabove, the instant Special Appeal is allowed. The impugned order dated 25.7.2008 passed by the learned Single Judge disposing of Writ Petition (SS) No. 1959 of 2003 is hereby set aside.”

34. Examining the case in hand on the basis of the legal position stated in paragraphs 30 to 31 above, we reach the conclusion that the ‘Prathma’ and ‘Madhyama’ qualifications of Hindi Sahitya Sammelan, Allahabad have not been recognized equivalent to ‘High School’ and ‘Intermediate’ examinations by the State of Uttarakhand or the State of Uttar Pradesh and, therefore, the petitioner does not possess the essential qualification of ‘High School’ for promotion from the post of Chaukidar to Clerk-cum-Typist. Hence, he was not eligible for promotion.

35. We also reach the conclusion on the basis of the legal position stated in paragraphs 32 and 33 above that the petitioner can

also not claim promotion on the basis of appointments/promotions made by Mandi Parishad in the past on the basis of 'Prathma' and "Madhyama" examinations of Hindi Sahitya Sammelan, Allahabad recognizing these qualifications equivalent to 'High School' and 'Intermediate'.

36. The petitioner has not been able to establish any right for himself and, therefore, he is not entitled for any relief. Merely because other similarly situated persons have been illegally granted any benefit, the same cannot be a ground to allow a similar relief to the petitioner.

37. In view of above, we find the claim petition devoid of any merit and the same is liable to be dismissed.

ORDER

The petition is hereby dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: AUGUST 26, 2015
DEHRADUN

KNP