

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

ORDER

on
IMPLEADMENT APPLICATIONS
in
CLAIM PETITION NO. 67/NB/DB/2022

Priyanka Singh and another vs. State of Uttarakhand & others

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CLAIM PETITION NO. 91/DB/2022

Deepak Purohit vs. State of Uttarakhand & others

DATED: MARCH 06, 2023

Present: Sri S.C.Virmani, Advocate for Petitioner no.1 (*online*)
Sri Amar Murti Shukla, Advocate, for petitioner no.2 (*online*)
Sri Kishore Kumar, A.P.O. for the respondents (*online*)
[in claim petition no. 67/NB/DB/2022]
Sri Amar Murti Shukla, Advocate, for petitioner (*online*)
Sri V.P.Devrani, A.P.O., for the respondents (*online*)
[in claim petition no. 91/NB/DB/2022]
Sri Subhash Upadhyay, Advocate, for the Impleaders (*online*)
[in claim petitions no. 67/NB/DB/2022 & 91/NB/DB/2022]

Impleadment applications have been filed by Ms. Latika Singh and Vijay Deorari for impleading themselves as party respondents in petitions no. 67/NB/DB/2022 and 91/DB/2022.

In the impleadment applications, it has been submitted that *vide* notification no. 1374 dated 10-12-2021, in order to maintain the uniformity in Class II services, the Single Window System was made applicable to Class II branches and proportionate representation of various Branches in promotion on class I post have been done away with by amalgamating /merging together the various Branches and Sections, except Marketing and Statistics. As such, by the Single Window System, the posts of Group "A" and Group 'B' in earlier Section/ Branch such as Development Branch, Plant Protection Branch, Engineering Branch and Chemical & Botanical Branch were merged as Agriculture Development Branch by abolishing the proportionate representation in promotion. After coming into force of amended rules, the tentative seniority list was published and after the disposal of the representations against the tentative seniority list, a final seniority list was published in which the applicants were shown senior to the claimants in the claim petition. The seniority list, as per the amended rules, was issued (after the disposal of

representations against the tentative seniority list) on 25th July, 2022 and there was no challenge to the said final seniority list by the petitioners. In pursuance to the final seniority list issued on 25th July, 2022, the Director of Agriculture had sent the proposal for promotion on the five posts of Deputy Agriculture Officer/ Chief Agriculture Officer on 5th August, 2022 and the DPC was held on 26th August, 2022, but in view of the interim order dated 10-01-2022 passed in writ petitions no. 91 (S/B) 2021 & 93 (S/B) 2021, the promotion order was not issued. In the absence of any challenge to the proposal dated 5th August, 2022 of the Director, Agriculture and the minutes of the meeting of the DPC dated 26th August, 2022, the claim petition filed by the petitioner was not maintainable. The applicants were not impleaded as parties to the writ petition. **However, the applicants are the necessary parties to the claim petition as the grievance raised in the claim petition would affect the promotional avenues of the deponent, as such, the applicants are liable to be impleaded as the party respondents to the claim petition. Applicants have prayed for that the present applications be allowed and the petitioners may be directed to implead the applicants as party respondents to the claim petition.**

Sri S.C.Virman, learned Counsel for the petitioner (Ms. Priyanka Singh) and Sri Amar Murti Shukla, learned Counsel for the petitioner (Vinod Kumar Sharma), as also in claim petition no. 91/DB/2022 (Deepak Purohit) have vehemently opposed the impleadment applications. Written objections have been filed by Sri S.C.Virman, learned Counsel for the petitioner (Priyanka Singh). According to the objections thus filed, the State of Uttarakhand publicized the agriculture Group (Kh) Rule, 1995, wherein the Governor has given sanction under Article 309 of the Constitution, repealing the earlier rules and naming them as "Agriculture Group (Kh) Service Rules, 1995. The State of Uttarakhand on 08-11-2002 has issued adaptation of the Rules of 1995, under the Uttar Pradesh Re- organization Act, 2000 and named it "U. P. *Krishi Samuh (Kh) Pad Seva Niyamawali*". The Uttarakhand Public Service Commission has issued notification for examination 2004 for three posts namely, Agriculture Service Class-2 Section-C Plant Protection, Agriculture Service Class-2 Section-C Chemical Branch and Agriculture Service Class-2 Section-C Statistical Branch. On the different post i.e., Agriculture Service Class-2 Section-C Plant Protection, Agriculture Service Class-2 Section-C Chemical Branch and Agriculture Service Class-2 Section-C Statistical Branch, the advertisement was responded with the terms and conditions mentioned in the newspaper. The Uttarakhand Public Service Commission *vide* order dated 08-11-2008 has declared

the result on aforesaid different posts. After declaration of result in Agriculture Service Group Class-2 Section-C Plant Protection, the deponent was granted appointment letter. The application letter of the deponent was issued on 17-11-2009 and she was appointed on the aforesaid post. The applicants Smt. Latika Singh and Shri Vijay Deorari never appeared in the said test, were never selected in the said test and they do not possess any appointment letter in Agriculture Service Group Class-2 Section-C Plant Protection. The State Government through Director of Agriculture issued a notification dated 21-11-2020 under Agriculture Rules, 1992 for filling the post of Deputy Director Agriculture/ Chief Agriculture Officer. It was also clarified that the deponent is a *bona-fide* permanent employee in Agriculture Service Group Class-2 Section-C Plant Protection and sent a proposal to the state government for promotion.

It has further been stated that the Joint Secretary, Agriculture *vide* his order dated 29-12-2020 has notified the date of DPC as 19-01-2021 at 11:00 AM and has confirmed the rules applicable at that time. The State government has adjourned the said meeting dated 19-01-2021, till further orders. The state government *vide* order dated 19-01-2021 has notified the date of DPC on 02-02-2021 at 10:00 AM and then refixed to 09:30 AM. The state government *vide* order dated 30-01-2021 has adjourned the meeting of 02-02-2021 till further orders. The petitioners Smt. Priyanka Singh along with one Sri Vinod Kumar Sharma has filed a writ petition No. 60 of 2021 (S/B) (under Article 226 of the Constitution of India), Priyanka Singh & another versus State of Uttarakhand & others, and Mr. Deepak Purohit also filed a writ petition on the same issue numbered as Writ Petition 93 of 2021 (S/B) Deepak Purohit versus State of Uttarakhand & others. In writ petition No. 93 of 2021, Hon'ble High Court of Uttarakhand on 10-01-2022 has directed to continue the process of promotion but no decision shall be taken by the opposite party without express and prior leave of the Court. During the process of DPC, the State Government has brought Rules dated 10-12-2021, stating therein that there is a single window system which has been made applicable *w.e.f.* 28-05-2010, in the name of re-organization, whereby the branch of plant protection has been abolished and merged into the branch of the Chemical Branch, whereby the right accrued to the petitioner Smt. Priyanka Singh has been abolished. The new Rules dated 10-12-2021 have been enclosed as Annexure-15 to the affidavit, and named as Uttarakhand *Krishi Samuh (Kh) Seva (Sanshodhan) (Niyamalwali 2021)*. Even thereafter there has been publication of UPSC-2021 and exam has been conducted for the agriculture department posts branch-wise *i.e.* point no. 17 Agriculture Service Class 2

Development Branch, point no. 18 Agriculture Service Class 2 Statistical Branch, point no. 19 agriculture service class 2 Engineering branch and point no 20, agriculture service class 2 Chemical Branch. Thereafter, on 28-05-2022 the result of PCS is also branch wise as point no. 20, 21, 23. The State Government *vide* order dated 28-04-2022 has clarified that earlier DPC fixed under the original rules should be carried out and promotion should be made. The Hon'ble High Court of Uttarakhand on 01-08-2022, in Writ Petition (S/B) no. 60 of 2021, was pleased to relegate the matter to this Tribunal, to take up the matter for hearing on an early date, since the matter relates to promotions. There was vacancy at the time of change in the rules, and DPC was in process, hence no post could have been abolished and accrued rights of the deponent could not have been taken away retrospectively. The rules have not been approved by the State legislature. The petitioners have gone through the affidavit of Mrs. Latika Singh dated 21-01-2023, which has been referred to as the said affidavit of the third party.

The single window system and amended rules do not apply retrospectively, the final list prepared for DPC to be held on 19-01-2021, was correct and DPC was being adjourned arbitrarily and there was a post for which the Director Agriculture has written a letter to the State Government for promotion of the deponent. The arbitrariness of the State Government is politically motivated. The third party did not appear in the list sent by Director Agriculture to the State Government for promotions of the candidates. The matter was again pending before the Hon'ble High Court of Uttarakhand and no amendment could have been allowed. Present applications have no merits and are liable to be rejected with costs. The rules framed, advertisement made, examination held, appointment given, services done under Agriculture Service Group Class-2 Section-C Plant Protection, were correctly done. The third party does not fall in the said category and the category of the deponent cannot be abolished or amalgamated. The Minister of the State Government has already clarified the situation about the deponent.

The judgment rendered in Civil Appeal No. 9746 of 2011, dated May 2022. State of Himachal Pradesh versus Raj Kumar and others relates to Himachal Pradesh recruitment and promotion rules 1966, dated 01-03-1966 to govern the post of labour officer. There were 5 posts of labour officers and they were to be filled by promotion from, I- factory inspectors, II- labour inspectors, III- superintendents, being the feeder category. Labour and Employment Department addressed a letter to the Labour Commissioner intimating sanction of creation of additional posts in the department which *inter alia* included 7 more posts of labour officer. As a

consequence of the said decision the total number of labour officers increased from 5 to 12. The respondent No. 13 in this case approached the administrative tribunal for filling the 25% of posts from labour officers by direct recruitment. In this judgment new posts were created and new rules were formed. In Para 29.2 of the judgment distinction has been pointed out. Para 34.1 of the judgment stated that right to be considered is the accrued right. The said judgment does not apply to the facts of the case. In the present case, there is an order of the Minister clarifying the situation that present DPC should be conducted as per the old Rules.

The petitions were transferred by the Hon'ble High Court of Uttarakhand to this Tribunal. The petitioners in both the petitions have sought the following reliefs:

"a) issue a writ, order or direction in the nature of mandamus directing and holding that suspending the promotional exercise for the post of Deputy Director / Chief Agriculture Officer after initiation thereof in the name of amending the service rules in vogue so as to benefit the selected few is bad in law.

b) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to revive the suspended promotional exercise for the post of Deputy Director / Chief Agriculture Officer and forthwith convene the DPC meeting to consider the petitioners for promotion in accordance with the service rules presently in force."

The petitions were disposed of *vide* order dated 31.08.2022, but review applications were filed on the ground that the decision rendered by Hon'ble Apex Court in Y.V.Rangaiah and others vs. J. Sreenivasa Rao and others, AIR 1983 SC 852 stands overruled and, therefore, petitions should be heard afresh. Review applications were allowed by the Tribunal *vide* order dated 13.01.2023 and the petitions were restored to their original numbers. The Tribunal passed the order on 13.01.2023, which, *inter alia*, reads as under:

"....."

7. Rule 17 of the U.P. Public Services Tribunal (Procedure) Rules, 1992, reads as under:

"17. Review Petition- (1) No petition for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

(2) A review petition shall ordinarily be heard by the same bench which has passed the order, unless, for reasons recorded in writing, the Chairman directs that it be heard by any other Bench.

(3) Where a petition for review of any judgement or order has been disposed of, no further petition for further review shall lie."

Whereas Sri S.C. Virmani, Advocate, submitted that the review application should have been filed within 30 days, Sri V.P. Devrani and Sri Kishore Kumar learned A.P.O.s, submitted that Section 5 of the Limitation Act, 1963 applies to the applications and therefore, the delay in filing the same should be condoned.

8. Sri S.C. Virmani, Advocate, further submitted that the State Govt. and the ordinary litigants have to be treated on equal footing. According to him, no preferential treatment should be given to the State Govt. and therefore, application for condoning delay in filing the application should be dismissed.

9. Section 5 of the Indian Limitation Act, 1963, envisages that the delay in filing the application should be condoned, if sufficient cause is shown. Law also envisages that when substantial justice and technical justice are pitted against each other, the Courts should adopt pragmatic approach of providing substantial justice. Even if review application of the State is allowed, which is likely to be allowed, it is not the end of the road for the petitioners of the petitions no. 67/NB/DB/2022 and 91/DB/2022, for both the parties shall again be heard, on merits. No one is a loser if the review application is allowed. The delay in filing the review application is, therefore, condoned.

10. In para 22 of the decision rendered by Hon'ble Apex Court in *S. Madhusudhan Reddy vs. Narayana Reddy and others*, 2022 SCC Online 1034, which has been placed before us by Sri Subhash Upadhyay, Advocate, it has been observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently, an order or decision or judgement cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/ Tribunal on a point of fact of law.

11. To put it straight, the Tribunal's order dated 31.08.2022 was solely based on the decision rendered by Hon'ble Apex Court in *Y.V. Rangaiah (supra)*, which was followed by the Courts in catena of decisions, which fact has been mentioned by Hon'ble Apex Court in *State of Himachal Pradesh vs. Raj Kumar and others (supra)* and since *Y.V. Rangaiah's* decision (*supra*) had expressly been overruled in *State of Himachal Pradesh vs. Raj Kumar and others (supra)*, even before our rendering the judgement-under-review, it is definitely an error apparent on the face of record and therefore Tribunal's order dated 31.08.2022 needs to be reviewed.

12. Review Applications No. Rev-01/DB/2023, Rev04/NB/DB/2022 and Rev-02/NB/DB/2022 are allowed. The judgement-order under review is set aside. Petitions no. 67/NB/DB/2022 and 91/DB/2022 are restored to their original number and shall be heard on merits on 28.02.2023.

.....”

Necessary parties are those parties whose presence is essential and in whose absence no effective decree (order) can be passed. They are parties 'who ought to have been joined'. Necessary parties are those whose presence is necessary for proper adjudication of a *lis*. Though no petition is defeated for misjoinder and non-joinder of parties, there can be no doubt that if the parties who are not joined are not only proper but also necessary parties, the infirmity of the petition is bound to be fatal. Proper parties are those parties, whose presence is a matter of convenience to enable the Court to adjudicate more effectively and completely. If in a petition, a necessary party is not added, the petition shall be dismissed not for the reasons of non-joinder and mis-joinder of the parties, but because no effective order can be passed and no relief can be granted to the parties on record.

The Hon'ble Apex Court has held, in a catena of decisions, that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence, an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. [AIR 1995 SC 724: (1995)2 SCC 326: (1993)1 SCC 608: (1994)1 SCC 367: AIR 1980 SC 1118: AIR 1963 SC 786]. Fair procedure and just treatment is the core of our jurisprudence. The principles of natural justice, as a part of procedural law, have been applied and extended to judicial proceedings and quasi-judicial proceedings to ensure that no one is adversely affected without reasonable opportunity and fair hearing. No order should be passed without hearing a person, if it entails civil consequences. Applicants namely, Ms. Latika Singh and Sri Vijay Deorari are necessary and proper parties, therefore, the applications filed by them for being impleaded as party respondents are allowed and it is directed that the applicants be also impleaded as party respondents in the petitions filed by Ms. Priyanka Singh (and another) and Sri Deepak Purohit. Registry, at Dehradun, is directed to implead Ms. Latika Singh and Sri Vijay Deorari as party respondents in the petitions no. 67/NB/DB/2022 & 91/DB/2022. Thereafter, the newly impleaded respondents are given opportunity to file C.A./W.S. on or before 06.04.2023.

List on 24.04.2023 for final hearing. Parties shall exchange their pleadings in the *interregnum*.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATED: MARCH 06, 2023
DEHRADUN
KNP