

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

CLAIM PETITION NO. 23/NB/DB/2018

Shankar Kohli & othersPetitioners

Vs.

State of Uttarakhand & othersRespondents

(Through audio conferencing)

Present: Sri S.S.Yaday, Advocate for the petitioners
Sri Kishore Kumar, Ld. A.P.O. for the respondents No. 1 & 2
Sri V.P.Devrani, Ld. A.P.O. for the respondents No. 1 & 2 (in person)
Sri Devesh Bishnoi, Advocate for the respondents No. 3, 4 & 5
Sri D.S.Mehta, Advocate for the respondent No. 6
Sri Dinesh Gahtori, Advocate for the respondents No.7,9,12,15,27,29,
31,33,48,50,51,54,55,58,59,62,64,65 & 67

And

CLAIM PETITION NO. 10/NB/DB/2019

Jagdish Chandra Tiwari & othersPetitioners

Vs.

State of Uttarakhand & othersRespondents

(Through audio conferencing)

Present: Sri Dinesh Gahtori, Advocate for the petitioners
Sri Kishore Kumar, Ld. A.P.O. for the respondents No. 1 & 2
Sri V.P.Devrani, Ld. A.P.O. for the respondents No. 1 & 2 (in person)
Sri Devesh Bishnoi, Advocate for the respondents No. 3, 4,5, 27 & 28
Sri D.S.Mehta, Advocate for the respondent No. 6.

Dated: 24TH JUNE, 2020

In the both the claim petitions No. 23/NB/DB/2018 and 10/NB/DB/2019, the issue involved is the same, hence, they are being taken jointly. In the both the petitions, urgency and stay applications have been moved by the parties.

2. In both the claim petitions, petitioners have challenged the final seniority list dated 04.09.2018, issued by the respondent No. 2, with the prayer to stay the effect and operation of the same and to prepare fresh seniority list after taking into account of the objections and existing rules and regulations and, to allow the seniority of the petitioners above the direct recruit officers of Assistant Development Officer cadre of 2013 batch.

3. In the petitions, interim relief applications have been filed, with the prayer to stay the proceedings of promotional exercise on the basis of final seniority list dated 04.09.2018 during the pendency of the present claim petition or till

preparation of new seniority list. After notice to other parties, objections were filed in the petition.

4. Pending hearing of the matter, an urgency application was filed by the respondents for early hearing and to decide the petition, as due to pendency of the petition, the promotional exercise is being held up. Learned counsel for the petitioners also filed an application for early hearing of the matter.

5. In view of the prayer of the parties for early hearing, the matter was fixed for final hearing as per the request of the parties.

6. But, for various reasons and also due to the prayer for adjournment of the parties, the hearing of the matter could not be completed. The court also fixed the matter for hearing in the Month of August, 2019 with the order that no further adjournment will be granted to either side, but in view of the other connected claim petition, a further request was made to adjourn the same. The matter remains pending, as the parties were taking time again and again and were not submitting their replies on time. An order was also passed on 17.09.2019 for final hearing on day-to-day basis with the order that no adjournment will be granted to either side but, both the parties sought further adjournment. The matter was again adjourned for 4-5 dates, either for non-appearance of the parties or on their adjournment request.

7. The matter was finally fixed for hearing for 21.04.2020 along with connected petition, but due to lockdown on account of Covid-19 pandemic, the matter could not be heard. In the meantime, the petitioners have approached the Hon'ble High Court by filing a WPSS No. 530 of 2020 seeking an stay against the promotional exercise to be taken by the State respondents, wherein, the Single Bench of the Hon'ble High Court vide its decision dated 09.06.2020 directed the petitioners to approach the Tribunal by filing an appropriate application and for a period of four weeks, status quo, was ordered to be maintained.

8. Against the order passed by the Single Bench, a Special Appeal No. 98 of 2020 was filed by other party before the Hon'ble High Court wherein, vide order dated 17.06.2020, Special Appeal was decided with the direction to this Tribunal to hear and decide the interlocutory application within 10 days, with the direction to the parties to cooperate and not to seek any adjournment of hearing in the matter.

9. On the basis of the order passed by the Hon'ble High Court, the matter was listed for hearing before the Division Bench through Video/Audio

conferencing and the parties were heard on the interim relief application filed by the petitioners and also on the urgency application filed by the parties.

10. We have heard both the sides and gone through the record, the urgency and interim relief applications filed by the parties.

11. Petitioners and private respondents are serving as Assistant Development Officers in the Horticulture Department. The cadre comprises of promotees as well as direct recruitees. According to the contention of the petition, the petitioners were promoted in reservation quota in the year 1999-2000. The candidates of general quota were also promoted in 2012, who regained their seniority while, the direct recruitees (private respondents) were entered in service in 2012-13.

12. A tentative seniority list was prepared by the department in accordance with the rules. After inviting objections, the final seniority list dated 04.09.2018 was issued, which has been challenged by the petitioners on the ground that the petitioners entered into the service much before the private respondents hence, they are enblock senior to them whereas, the seniority list has been prepared, including the direct recrutes and the promotees, in their Rota-quota manner, hence, petitioners have challenged the same on various grounds.

13. An interim relief application was also filed by the petitioners with the request that State respondents are going to start promotional exercise on the basis of the final seniority list dated 04.09.2018, passed by the respondent No. 2, which is under challenge hence, it is necessary that during pendency of hearing of the claim petition, promotional exercise, on the basis of such seniority list, should be stayed.

14. The other private respondents as well as State have opposed this interim prayer on the ground that firstly, the petitioners have not challenged the fact of regaining seniority by the General candidates, promoted in the year 2012 and as per rules maintaining the Rota-quota, the seniority list was rightly settled. On the basis of the final seniority list, promotional exercise is to be done and in the department of Horticulture, various promotional posts are lying vacant. It has been argued that even in lockdown situation, State are doing various development activities in the agriculture sector and on account of vacant posts of senior level, the relief to the farmers is being suffered. It has been argued by the respondents as well as learned A.P.O. on behalf of the State that, the promotional exercise should not be stayed and should be allowed to go on, subject to the final decision

of the claim petition. It has also been argued that by the stay of the promotional exercise, not only the respondents will suffer, but the petitioners will also suffer, as none of them will be able to get the promotion. Although not on record, it was also argued that as many as number of promotional posts are lying vacant, upon which all the petitioners and respondents can get promotion hence, it is not in the interest of justice that promotional exercise should be stayed.

15. After hearing both the sides on urgency application and the interim relief sought by the petitioners, we are of the view that the seniority list dated 04.09.2018, which has been challenged by this petition, will require detailed hearing on the matter vis-à-vis the rules, as this list was finalized by the State after hearing the petitioners. Hence, it will be in the interest of justice that the promotional exercise may be allowed to go on, but such promotion, seniority consequent upon such promotion, and other matters, should be kept subject to the final decision of this claim petition.

16. Hence, in view of that, the interim relief prayer made by the petitioners cannot be allowed and there is no need to pass any stay order against the promotional exercise undertaken, if any, by the government in the meantime.

ORDER

The interim relief applications of the petitioners are dismissed and decided accordingly. However, it is made clear that effect of any such promotional exercise, if any, done by the State respondents, will be subject to the final decision of this Court to be passed in this claim petition.

Both the matters be listed on 27.07.2020 for final hearing on the merit of the petition. All the parties are directed to complete their pleadings and reply on record and be prepared for final hearing on that date, without any delay.

The urgency applications of the petitioners as well as respondents in both the petitions are also disposed of accordingly.

Let copy of this order be kept on the file of Claim Petition No. 10/NB/DB/2019.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: 24TH JUNE, 2020
DEHRADUN.
KNP

