

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

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INTERIM RELIEF APPLICATION

ORDERS

[In Claim Petition No. 45/DB/2019]

Vijay Pal Singh & others **vs.** State of Uttarakhand and others.

Present: Sri L.K.Maithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondents No. 1 & 2.
Sri Ashok Singh, Advocate, for Respondents No. 61 & 62.
Sri Sandeep Kothari, Advocate, for Respondent No. 24

DATED: OCTOBER 28, 2020

Justice U.C.Dhyani(Oral)

Petitioners filed a writ petition no. 442/SB/ 2016 before Hon'ble High Court of Uttarakhand at Nainital, which was dismissed by the Said Court *vide* judgment dated 12.03.2019 on the ground of alternative remedy with the direction to the petitioners to approach the Tribunal.

2. Petitioners have, therefore, filed present claim petition with following prayers:

“(i)To declare that the promotion order dated 07.06.2012 of the private respondents no. 4 to 6 and promotion order dated 30.01.2013 of private respondents no. 7 to 68 on the post of Assistant Engineer (Civil) was/ is made in violation of Rule 17 r/w Rule 18(2) of Uttaranchal Engineers (Department of Irrigation) (Group B)Service Rules, 2003, hence the promotion order dated 07.06.2012 and 30.01.2013 of private respondents no. 4 to 68 is not proper, regular

and substantive, hence cannot place above to the petitioners in the seniority list.

(ii) To quash the seniority list dated 17.12.2015 from Sl. No. 414-478 up to the extent where it relates to the placing of private respondents no. 4 to 68 in the seniority list.

(iii) To issue an order or direction to the respondent no.1 to issue a fresh seniority list by making the combined list of petitioners and the private respondents no. 4 to 6 as per Rule 17 of Uttaranchal Engineers (Department of Irrigation) (Group B) Service Rules, 2003 (as amended till date) r/w Uttaranchal Government Servant Seniority rules, 2002, with all consequential benefits.

(iv) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioners.

(v) To award the cost of petition.”

3. Interim relief has been sought for directing official respondents, not to make further promotion of private respondents till the disposal of present claim petition.

4. The main grounds taken by the petitioners in the claim petition are as follows:

Recruitment year of the petitioners, as per rules is 2010-11 and recruitment year of private respondents no. 4 to 6 and 7 to 68 is 2011-12 and 2012-13, which is clearly of the subsequent recruitment year. According to the petitioners, if any regular appointment through promotion [of the private respondents no. 4 to 68], was to be made, then that should not have been made until direct recruitment process of the petitioners was completed. But the respondent no. 1, *i.e.*, the appointing authority, in total violation of the Service Rules, 2003, made substantive appointment through promotion of respondents no. 4 to 6 and 7 to 68. Thereafter, without preparing year of recruitment-wise combined list of the petitioners and private respondents no. 4 to 6, as per Rule 17 of the Service Rules, issued the final seniority list dated 17.12.2015, thereby placing the persons of both the subsequent year selection, *i.e.*, respondents

no. 4 to 6 and 7 to 68 in the list without assigning seniority to the petitioners as yet.

A reference of G.O. dated 26.03.2003 and guidelines for making recruitments on the posts has also been given. Referring to the G.O., it has been pleaded that, where appointments are to be made on the cadre post through direct recruitment for a particular recruitment year, then the same should be calculated and be sent to the Commission two years in advance (of the concerned recruitment year).

According to the petitioners, G.O. dated 23.06.2003 and Service Rules governing the field, clearly stipulate that if in any year of recruitment, appointments are to be made both by direct recruitment and promotion, then regular appointments shall not be made unless selections are made from both the sources, *i.e.*, direct recruitment and promotion, but the respondents, in total contravention of G.O. dated 23.06.2003, sent requisition of vacancies for selection year 2010-11 on 02.08.2011 to the Uttarakhand Public Service Commission. [*Uttarakhand Public Service Commission has not been issued notice as yet. The Tribunal is of the view that issuance of notice to the Commission for the purpose of deciding the interim relief prayer is not required.*]

5. It is the submission of Ld. Counsel for the petitioners that the direct recruitment process, substantially, commenced in the same recruitment year, according to the vacancies calculated. Although the examination and selection process could not be completed within that recruitment year itself, but the seniority of such direct recruits should be assigned interspersing the promotees of the same recruitment year.
6. Objections to the interim relief prayer have been filed on behalf of the private respondents, as well as Respondent State. Whereas Sri V.P. Devrani, Ld. A.P.O., is representing the State; Sri Ashok Singh, Advocate is representing respondents no. 61 and 62 and respondent no. 24 is being represented by Sri Sandeep Kothari, Advocate.
7. It is the submission of Ld. A.P.O. that the petitioners were appointed against the vacancies of selection year 2012-13 in selection year 2013-14

on 26.02.2014 on the post of Assistant Engineer (Civil), through Public Service Commission. The respondents were promoted to the post of Assistant Engineer on 07.06.2012 and 30.01.2013 under the departmental promotion quota, as provided in the Uttaranchal Engineers (Department of Irrigation) (Group B) Service Rules, 2003. Hence, the private respondents are senior to the petitioners in view of the substantive dates of their appointment/ promotion orders. Promotion exercise for the post of Executive Engineer is being conducted and, therefore, the interim relief application, filed by the petitioners, is liable to be dismissed.

8. It is the submission of Sri Sandeep Kothari, Ld. Counsel for respondent no. 24 that the petitioners and the answering respondent (respondent no. 24) were not appointed in one recruitment year and, therefore, there is no question of any combined select list, as provided in Rule 17. Sri Kothari also submitted that the only purpose of filing such claim petition is to delay the promotion of the answering respondent, more particularly, when the petitioners, even as on the date, are not qualified in the length of service, to be considered for promotion. Petitioners are litigating on frivolous grounds according to Sri Kothari. Recruitment year starts from the first day of July and recruitment year 2010-11 reflects the year from 1st July, 2010 to 30th June, 2011. In the present case, even the requisition was sent on 02.08.2011. It is a case where even the requisition was not sent in the year 2010-11. An entry made in a particular proforma is the sole basis of petitioners' case.
9. Sri Ashok Singh, Ld. Counsel for respondents no. 61 and 62 submitted that the petitioners are nowhere relying upon the Seniority Rules, but are relying on the Recruitment Rules, which have no relevance in the matter of seniority. Petitioners have no *prima facie* case, balance of convenience is in favour of the respondents and no irreparable loss will be caused to the petitioners if promotional exercise continues and promotion is given to the private respondents as per Rules.
10. Ld. Counsel for respondents no. 61 & 62 also submitted that the promotion order of respondents. No. 4 to 6 is dated 07.06.2012 and of respondents no. 7 to 68 is dated 30.01.2013. Appointment order of

petitioners is dated 26.02.2014. Petitioners were not even born in the organization when the promotion orders of the respondents were issued in the years 2012 and 2013. Petitioners have no right to challenge the same.

11. ***Prima facie*, it would appear that the petitioners were appointed on 26.02.2014 as Assistant Engineer (Civil). The appointment was made through Public Service Commission. The respondents were promoted as Assistant Engineers on 07.06.2012 and 30.01.2013 under the departmental promotion quota, as per the Uttarakhand Engineers (Department of Irrigation)(Group B) Service Rules, 2003. *Prima facie*, it would also appear that the private respondents are senior to the petitioners in view of the dates of their substantive appointment/ promotion orders. Issues, as raised, in present claim petition are with regard to the seniority of the petitioners *qua* the respondents. *Prima facie*, petitioners and respondents belong to different years of recruitment. We are unable to hold, at this stage, that the petitioners are senior to the private respondents.**
12. Stay of promotion will take away the rights of those who are eligible for the same, as per Rules. If, subsequently, the claim petition is dismissed, this Tribunal may not be in a position to give direction to promote the respondents with retrospective effect. The injury caused to the respondents by grant of stay, cannot be undone by the Tribunal subsequently. On the other hand, if the claim petition is finally allowed, the petitioners can always be given seniority and notional promotion, with pecuniary benefits, from the date their juniors were promoted. Balance of convenience is in favour of the private respondents.
13. **Whereas the writ petition was filed before Hon'ble High Court of Uttarakhand at Nainital in the year 2016, the same was dismissed on the ground of alternative remedy on 12.03.2019, the claim petition was filed on 12.04.2019, an attempt is being made to unsettle three events which occurred on 07.06.2012, 30.01.2013 (promotion order of respondents) and seniority list dated 17.12.2015 through interim relief prayer, which, in the given facts of the case, cannot be accepted.**
14. This Tribunal is, therefore, not impressed to accept the interim relief prayer of the petitioners to stay promotional exercise till the disposal of

present claim petition. Objections raised on behalf of respondents on interim relief prayer are accepted at this stage.

15. Promotional exercise, if any, undertaken by the official respondents, shall be subject to final decision of present claim petition.
16. List on 24.12.2020 for final hearing.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 28, 2020
DEHRADUN

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