

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (S/B) No. 105 of 2018**

Rakesh Kumar Singh

.....Petitioner

Versus

Hon'ble High Court of Uttarakhand & others

.....Respondents

**Present:-** Mr. Vipul Sharma and Mr. Aditya Singh, Advocates, for the petitioner.  
Mr. Paresh Tripathi, Advocate for respondent no.1.  
Mr. Yogesh Pandey, Additional CSC for the State/respondent no.2.

With

**Writ Petition (S/B) No. 137 of 2018**

Pratibha Tiwari

.....Petitioner

Versus

Hon'ble High Court of Uttarakhand & others

.....Respondents

**Present:-** Mr. Vipul Sharma, Advocate with Mr. Aditya Singh, Advocate for the petitioner.  
Mr. Paresh Tripathi, Advocate for respondent no.1.  
Mr. Yogesh Pandey, Additional CSC for the State/respondent no.2.

**Hon'ble Sudhanshu Dhulia, J.**  
**Hon'ble Manoj Kumar Tiwari, J.**

**By Court:-**

Learned Counsel for the High Court Sri Paresh Tripathi has produced the result of the examination in a sealed cover. The same was opened and perused by this Court and put back in a sealed cover and kept with the record.

2. Presently, in the above two writ petitions being WPSB No. 105 of 2018 and WPSB No.137 of 2018, promotions to the post of Higher Judicial Service is under challenge at the hands of two Judicial Officers of the State.

3. Admittedly, under Uttaranchal Higher Judicial Service Rules, 2004 (from hereinafter referred to as the 'Rules of 2004'), there are two channels of promotion to Higher Judicial Service for serving Civil Judges (Senior Division) in the State. Firstly, under Rule 5(a) of the Rules of 2004, which is primarily a promotional exercise though based on merit-cum-seniority, where a candidate is evaluated on the scale of 100 marks and out of 100 marks, 30 marks are for viva voce. Another channel is given under Rule 5(b) of the Rules of 2004 which is a Limited Competitive Examination from amongst the Civil Judges (Senior Division), who have completed not less than five years of service. Under the second channel of promotion, a Judicial Officer has to qualify a written examination of 150 marks and thereafter he or she has to face viva voce of 50 marks i.e. the test is of total 200 marks.

4. Both the petitioners participated in both the exercises i.e. in the promotional exercise as well as in the limited competitive examination. Their case is that since there are two different channels of promotion and the viva voce in the two channels comprises of different marks, there should have been two separate interviews. To this effect, a contention has been made by the petitioner in paragraph 29 of the writ petition being WPSB No. 137 of 2018 which reads as under:-

“29. That the content of the result dated 12.01.2018 shows that it is declared only on the basis of viva-voce which is clearly against

the Rules as this result is declared without considering the written marks of petitioner. Without conducting an independent interview for Limited Examination, the petitioner (who qualified in written Limited Competitive Exam), was found not qualified finally for Limited Examination seats.”

5. The reply of the High Court to above contention is made in paragraph 1 of its counter affidavit which is as follows:-

“1. The contents of paragraph no. 1 of the writ petition are admitted to the extent which are matter of record, rest are wrong and denied. It is wrong to contend on behalf of the petitioner that she was not considered for two separate class of examination i.e. Limited Competitive Examination and Promotion Quota. During interview the writ petitioner was examined on account of the Limited Competitive Examination as well as she was also considered for promotion quota and, accordingly, on both these accounts separate marks were given by the Committee Members individually i.e. for Limited Competition Viva-voce and Suitability Test Viva-voce and after assessing the petitioner in Viva-voce the Committee did not find her suitable for promotion on either head or source i.e. Limited Competition Examination or Promotion Quota. Thus, the petitioner along with other candidates were examined as per the yardsticks provided by the Uttarakhand H.J.S. Rules, 2004 as amended in 2016. There is no violation of Article 14 & 16 of the Constitution as alleged by the petitioner in her petition. She was treated equally and equal opportunity was given to her along with other candidates who appeared for promotion exercise.”

6. In the reply, though the High Court has clearly stated that the petitioners were evaluated for both the examinations, i.e. limited competitive examination and promotion quota, but there is no clarification whether two separate interviews were held for the aforesaid two different channels of promotion.

7. Let the Registrar General of this Court file a clear and unambiguous reply to the averment made in paragraph no. 29 of the writ petition, for which two weeks' time is granted.

8. List these cases on 28.09.2018.

9. Urgency applications (IA Nos.5432 of 2018 and 5425 of 2018) stand disposed.

**(Manoj Kumar Tiwari, J.) (Sudhanshu Dhulia, J.)**

14.09.2018

Ankit/