

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI**  
**AND**  
**HON'BLE SHRI JUSTICE ALOK KUMAR VERMA**

**25<sup>TH</sup> July, 2023**

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

Between:

Rakesh Kumar Singh ...Petitioner

and

Hon'ble High Court of Uttarakhand  
Through its Registrar General & others. ...Respondents

With

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

Between:

Pratibha Tiwari ...Petitioner

and

Hon'ble High Court of Uttarakhand  
Through its Registrar General & others. ...Respondents.

Counsel for the Petitioners : Mr. Vipul Sharma.

Counsel for the State : Mr. Pradeep Hairia, Standing Counsel

Counsel for respondent nos. 3, 4,5,6,7,9,10,11,12, 13 & 14 : Mr. Piyush Garg & Mr. D.K. Bankoti, . Advocates.

***Upon hearing the learned Counsel, the Court made the following***

**ORDER:** (Per Shri Manoj Kumar Tiwari, J.)

Learned counsel for petitioners has drawn our attention to the Minutes of the Meeting of Selection & Recruitment Committee, which is enclosed as Annexure-3 to

the counter affidavit. Relevant paragraphs of the said document are extracted below: -

*"On adjudging the suitability of aforesaid candidates, members of the Committee found the candidates mentioned at s. no. 1, 2, 4, 6, 8, 9, 10, 11, 12, 24, 25 & 26 'Not Suitable' for being promoted in the H.J.S. cadre being their performance in the interview was not up to the mark and all the members have awarded low marks to them. These candidates, namely, Sri Abdul Qayyum, Sri Mithilesh Jha, Sri Nandan Singh, Ms. Deepali Sharma, Sri Arvind Nath Tripathi, Sri Rakesh Kumar Singh, Ms. Pratibha Tiwari, Sri Rajoo Kumar Srivastava, Sri Kuldeep Sharma, Ms. Geeta Chauhan, Ms. Meena Deopa and Ms. Rajani Shukla are not being recommended for promotion to the H.J.S. cadre at this stage.*

*Officers mentioned at S. No. 1, 3, 4 & 5, namely, Sri Mithilesh Jha, Sri Rakesh Kumar Singh, Ms. Pratibha Tiwari and Sri Kuldeep Sharma had qualified for Viva-voce after clearing the Limited Competitive Examination, but, on adjudging their performance in Viva-voce on various aspects in addition to their academic knowledge, as enumerated above, we found that their performance in the Viva-voce was not up to the mark and the members of the Selection Committee have unanimously resolved not to recommend their names for being inducted in the H.J.S. cadre, as they were found 'Not Suitable' at this stage. Thus, we do not recommend their names for promotion."*

2. Based on the said document, it is contended that since interview was only one of the component of the selection process, which carried 25% weightage in the selection for limited competitive examination, therefore, the Committee erred in declaring candidates' named in the aforesaid document, unsuitable for appointment to HJS, solely on the basis of their performance in interview.

3. It is further contended that marks of written examination ought not to have been disclosed to the Committee, which was entrusted with the task of assessing performance of candidates in interview, as it may affect objectivity of the interview/viva-voce.

4. It is further contended that petitioners were also eligible for promotion against 50% vacancies under Rule 5(a) read with Rule 6(a) of Uttaranchal Higher Judicial Service Rules, 2004, where interview had weightage of only 30% and 70% weightage was given for ACRs and judgments. It is further contended that there is no minimum cut off marks for viva-voce prescribed in the Rules, therefore, even though performance of a candidate is found to be not satisfactory in viva-voce, then also, his performance in other components of selection process cannot be wiped out because of less marks in viva-voce, and selection has to be based on the overall performance of a candidate in different components of selection process.

5. It is further contended that in the selection in question, against seven available vacancies to be filled through limited competitive examination, only two were selected, likewise, against twelve vacancies, which were available to be filled by promotion, only eleven candidates were selected. Thus, according to him, although, petitioners had applied for appointment to HJS under both sources, as provided under Rule 5(a) and 5(b) of the aforesaid Rules, however, despite availability of vacancies, they were denied promotion, solely based on the remark made by the Committee constituted to assess the performance of candidates, in interview. Thus, it is contended that the decision taken by the Committee not to recommend any of the candidates named in the above extracted paragraphs is beyond the mandate of Selection Committee, as the Committee had to assess the merit of candidates in one of the component of selection process, therefore, the Committee could not have decided the fate of candidates in respect of all other components of the selection process.

6. Mr. Shobhit Saharia, learned counsel appearing for respondent no. 1 submits that the issue raised on behalf of petitioners is not pleaded in the writ petition; therefore, counter affidavit is silent on this aspect of the matter. He, thus, seeks time to get instructions on the aforesaid aspect of the matter.

7. Since the issue raised on behalf of petitioners may have bearing on the outcome of the writ petition, therefore, it would be in the fitness of things to grant opportunity to respondent no. 1 to respond to the issue highlighted on behalf of petitioners, today.

8. We, accordingly, grant three weeks' time to respondent no. 1 to file supplementary counter affidavit.

9. List this case on 22.08.2023

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**MANOJ KUMAR TIWARI, J.**

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**ALOK KUMAR VERMA, J.**

Dated: 25<sup>th</sup> July, 2023

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