

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1045 of 2020 (S/S)

Manoj Tyagi & others Petitioners

Versus

State of Uttarakhand & others Respondents

Mr. M.C. Pant and Mr. D.S. Mehta, Advocates for the petitioners.
Ms. Anjali Bhargava and Mr. P.C. Bisht, Addl. C.S.C. with Mr. N.P. Sah,
Standing Counsel for the respondent State.
Mr. N.S. Pundir, Advocate for respondent no. 3.
Mr. Rakesh Thapliyal, Senior Advocate assisted by Mr. Mukesh
Kapruwan, Advocate for respondent no. 4.

Hon'ble Lok Pal Singh, J.

Present writ petition came up for hearing before this Court on 16.09.2020. On said date following order was passed:

“Mr. Arvind Vasistha, Senior Advocate assisted by Mr. D.S. Mehta, Advocate for the petitioners.

Mr. Puran Singh Bisht, Addl. C.S.C. with Mr. Sachin Mohan Mehta, Mr. Virendra Singh Rawat and Mr. Narain Dutt, Brief Holders for the State.

Mr. B.D. Kandpal, Advocate for respondent no. 3.

Mr. Rakesh Thapliyal, Senior Advocate for respondent no. 4.

Heard.

Admit.

Three weeks' time is granted to learned counsel for the respondents to file counter affidavit.

List this matter immediately after three weeks. In case any promotional exercise is carried out by the respondents in the meantime, the petitioner would be at liberty to move urgency application before this Court.”

2. Ashit Jha (respondent no. 4 herein) and others preferred WPSB no. 329 of 2020. The Division Bench of this Court disposed of the said writ petition finally vide judgment and order dated

19.11.2020. The said judgment is reproduced hereunder:

“The petitioners seek for the following reliefs:-

- (i) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 3 Uttarakhand Public Service Commission to proceed with selection for promotion to the post of ARTO on the requisition sent by the Government dated 18.09.2020 (contained as Annexure no. 2 to the writ petition) within a stipulated period by ignoring the observations as made in the letter issued by the commission dated 29.09.2020 (contained as Annexure no. 3 to the writ petition) particularly in para no. 3.
- (ii) issue any other writ, order or direction, which this Hon’ble Court may deem fit and proper in the circumstances of the case.
- (iii) award the cost of the writ petition in favour of the petitioners.

2. Shri B.D. Kandpal, learned counsel appearing for respondent no. 3, submits that the selection process would be completed within a period of two months from today.

3. In view of the submission made, there is nothing further to be decided in this writ petition. Hence, the writ petition is disposed-off.”

3. Before disposing of WPSB no. 329 of 2020, the Division Bench on the same day, i.e., 19.11.2020, has also called for the record of the present WPSS no. 1045 of 2020 and passed the following order thereon:

“Shri M.C. Pant, learned counsel for the petitioners.

Shri K.N. Joshi, learned deputy advocate general for the State/respondent no. 1.

Shri N.S. Pundir, learned counsel for respondent no. 2.

Shri B.D. Kandpal, learned counsel for respondent no. 3.

Shri Rakesh Thapliyal, learned senior counsel appearing for Shri Xitij Kaushik, learned counsel for respondent no. 4.

This writ petition is directed to be listed before the learned Single Judge for necessary orders on 20.11.2020.

It is needless to state that the learned Single Judge will consider all the contentions urged before him, before passing necessary orders.”

4. On an earlier occasion, while hearing WPSB no. 329 of 2020, the Division Bench passed the order dated 03.11.2020 as follows:

“Shri Rakesh Thapliyal, learned senior counsel appearing for Shri Xitij Kaushik learned counsel for the petitioners.

Shri Anil K. Bisht, learned additional chief standing counsel for the State of Uttarakhand.

Shri B.D. Kandpal, learned counsel for the respondent no. 3.

Primarily, learned counsel for respondent no. 3 submits that a communication has been addressed by the Government vide annexure-3 dated 29th September, 2020. As and when the reply is furnished by the State, the necessary will be done.

Learned government advocate appearing for respondents 1 & 2 submits that the letter dated 29th September, 2020 will be replied by the Government within a period of 10 days from today.

His submission is placed on record.

Post on 18.11.2020 along with Writ Petition (S/S) no. 1045 of 2020.”

5. Respondent no. 3 sent a requisition for promotion on the vacant posts of ARTO. The Secretary, Uttarakhand Public Service Commission wrote a letter dated 29.09.2020 to the Secretary, Transport Department, Govt. of Uttarakhand, for making good certain defects. One of the defect was that the character rolls of those employees whose names were included in the merit list are essential in regard to ACRs of ten years prior to the selection year.

6. Though the Division Bench has directed the respondent no. 3 to complete the selection process within two months from the date of the order, i.e. 19.11.2020, surprisingly the respondent no. 3 after the order passed by the Division Bench on 19.11.2020 wrote a letter dated 23.11.2020 to the Secretary, Transport Department, Govt. of Uttarakhand stating therein that the State has not furnished a certificate to the effect that except Writ Petition no. 1045 /SS/2020, Manoj Tyagi & another Vs State of Uttarakhand and others, no other writ petition has been filed in the High Court / Supreme Court / Public Service Tribunal and as to whether any interim order has been granted in such proceedings. The letter further says that it is expected from the State Government to furnish a certificate to this effect that except Writ Petition no. 1045 (S/S) of 2020 which pertains to promotional matter, no any writ petition has been filed / or is pending in the High Court / Supreme Court / Public Service Tribunal and that no interim order is granted by any of the court.

7. It is apt to note here that Uttarakhand Public Service Commission is well represented through its counsel, as such, the Commission cannot take recourse to such a flimsy ground and plead ignorance of the fact whether some other *lis* is pending before any competent forum and as to whether any interim order has been granted or not in such proceedings.

8. In the counter affidavit filed by respondent no. 3, which is accompanied by an

affidavit of Mr. Karmendra Singh, Secretary, Uttarakhand Public Service Commission, Haridwar, in paragraph no. 14 it has been stated as under:

“14. That the contents of paragraph no. 3(s) of the writ petition relates to Government/concerned department. However, it is hereby submitted that vide letter no. 805 dated 28.11.2013, the Secretary of the Commission has requested the Secretary, Transport Department, Government of Uttarakhand to fix separate quota for the post of Transport Tax Officer (I) and Regional Inspector (Technical) as the next promotional post for both these posts are Assistant Regional Transport Officer. In this respect true and photocopy of the letter no. 805 dated 28.11.2013 issued by Secretary, Commission is being filed herewith and marked as Annexure no. CA-1 to this affidavit.

9. Paragraph 26 of the said counter affidavit reads as under:

“26. That in reply to the contents of paragraph no. 11 of the writ petition it is hereby submitted that the Public Service Commission being the selecting body vide its letter no. 136 dated 29.09.2020 has requested the Secretary, Transport Department, Government of Uttarakhand to clarify the issue raised by the Commission in Point no. 2 of the letter, so that the Regional Inspector (Technical) officers can be promoted to the post of Assistant Regional Transport Officer. In this respect true and photocopy of the letter no. 186 dated 29.09.2020 issued by the Secretary, Commission to the Secretary, Transport is being filed herewith and marked as Annexure no. CA-2 to this affidavit.

10. In the opinion of this Court, this is nothing but a dilatory tactics on the part of the Commission to keep the selection process on hold by writing letters one after another to the State Government and the Commission is not inclined to complete the selection process for promotion on the posts of ARTO.

11. In such view of the matter, the Secretary, Uttarakhand Public Service Commission shall remain present before this Court tomorrow, i.e. 07.01.2021 through video conferencing, and produce the business rules of the Uttarakhand Public Service Commission, which authorizes the Commission to make such request that the State Government should fix separate quota for the post of Transport Tax Officer (I) and Regional Inspector (Technical) as the next promotional post for both these posts are Assistant Regional Transport Officer. He shall also explain why he has disobeyed the order passed by the Division Bench of this Court and tried to sit over the decision of this Court as an appellate authority. In case, the reply is not found convincing, this Court will not hesitate to move the State Government as to why some other appropriate officer be not appointed in his place.

12. Copy of supplementary counter affidavit filed by respondent no. 4 be supplied to learned counsel for respondent no. 3 today itself.

13. Let copy of the Order be supplied to learned counsel for respondent no. 3, free of cost, today itself.

(Lok Pal Singh, J.)

Dt. January 06, 2021.

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