

Uttarakhand High Court

Shri Asha Ram Ghansela vs State Of Uttarakhand And Others on 10 May, 2021

Reserved

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 285 of 2019

Shri Asha Ram Ghansela

..... Petitioner

Vs.

State of Uttarakhand and others

..... Respondents

Mr. Ashish Joshi, Advocate for the petitioner.

Mrs. Indu Sharma, Brief Holder for the State/respondent nos.1 to 3.

Mr. Pankaj Chaturvedi, Advocate for respondent no.4.

#### JUDGMENT

Hon'ble Ravindra Maithani, J.

Petitioner is aggrieved by the advertisement dated 29.12.2018 published by the respondent no.4 for filling up one post of Assistant Clerk in the Intermediate College, Dhaundkhal, District Pauri Garhwal (for short, "the school"). He seeks that the advertisement be quashed and respondents be directed to consider the petitioner for promotion to the post.

2. It is the case of the petitioner that he was appointed as Class IV employee in the School on 02.08.1997. At that time, it was a High School. Subsequently, it was upgraded up to intermediate and various posts were accordingly sanctioned on 25.03.2006. The strength of the staff then included one Head Clerk and one Assistant Clerk. Initially, the post of Assistant Clerk was filled up by direct recruitment, but subsequently when the post of Head Clerk was created, which was to be filled up by way of promotion from Assistant Clerk, the then Assistant Clerk was promoted as Head Clerk. It is further the case of the petitioner that after promotion of the first Assistant Clerk as Head Clerk, the post of Assistant Clerk fell vacant, which was not filled up on time. One Bhupal Singh Gusai, at that point of time claimed his promotion to the post of Assistant Clerk, but when the department did not consider his case, he filed Writ Petition (s/s) No.253 of 2012 (for short, "the first petition"). The first petition was decided on 08.02.2013. At that time the case of Bhupal Singh Gusai was recommended by respondent no.4 for promotion to the post of Assistant Clerk. Therefore, the Court directed the respondent no.3 to take decision in the matter in accordance with law. Subsequent to it, on 29.05.2013, Bhupal Singh Gusai was promoted as Assistant Clerk. Bhupal Singh Gusai retired in the month of August, 2018. It is the case of the petitioner that instead of promoting him to the post of Assistant Clerk, the respondent no.4 initiated the process to fill up the post by way of direct recruitment, which is against Regulation 39(2)(2) of the Chapter three of the Regulations (for short, "the Regulations") framed under Section 24 of the Uttarakhand School Education Act,

2006 (for short, "the Act"). According to the petitioner, the Regulations require that 50% of the post in the cadre of Assistant Clerk shall be filled up by way of promotion. The petitioner is eligible for it, despite that he is not being promoted. With these allegations, petitioner seeks that the advertisement may be quashed and he may be considered for promotion to the post of Assistant Clerk.

3. Respondent nos.1, 2 and 3 filed their counter affidavit. According to it, there is no provision regarding filling up of single post by way of promotion from amongst the Class IV employees; there are no instructions from the Government to fill up a single post by promotion.

4. Respondent no.4, the Committee of Management, in their counter affidavit has stated that by resolution dated 12.09.2018, it was resolved that the post shall be filled up by way of direct recruitment and accordingly recommendation was made to the respondent no.3, who approved it.

5. Respondent no.5 is the senior most employee in Group IV cadre in the school. It is the case of the petitioner that the respondent no.5 does not want promotion to the post of Assistant Clerk. In his counter affidavit, respondent no.5 has stated that the petitioner is not the senior most employee in the Group IV cadre. He is at Serial No.4 of the seniority list and he does not have any right to be considered, prior to the consideration of the case of the senior employees.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the petitioner would submit that according to the Regulations applicable for promotion to the post of Assistant Clerk, 50% of the post in the cadre of Assistant Clerk are to be filled up by way of promotion from the eligible Group IV employees; petitioner is eligible to the post, therefore, it is argued that the post cannot be filled up by way of direct recruitment. It is also argued that in the past when after promotion of Manmohan Singh, the post of Assistant Clerk fell vacant, it was filled up by way of promotion.

8. On the other hand, the learned counsel for the State would submit that in the school there is only one post of Assistant Clerk and there are no instructions to fill up the single post by way of promotion. It is argued that last time the post was filled up by way of promotion, therefore, now it is proposed to be filled up by way of direct recruitment.

9. On behalf of respondent no.4 it is argued that 50% of the cadre posts are to be filled up by way of promotion, but there is only one post of Assistant Clerk in the school. Last time the post was filled up by way of promotion, therefore, this time it is proposed to be filled up by way of direct recruitment.

10. The issue revolves around in a very small area. It is with regard to the interpretation of the Regulations, which provide for promotion to the post of Assistant Clerk. The Regulations have been made under Section 24 of the Act and Chapter three of the Regulations provides for condition of services. Sub-Regulation (2) of Regulation 2 of the Chapter three, inter alia, provides that 50% of the total sanctioned posts in the clerical cadre shall be filled up by way of promotion of working Group

IV employees, who are eligible and who had worked continuously for five years on a substantial post and whose service record is good. It also provides that the promotion shall be on the basis of merit subject to rejection of unfit. The comment appended to Sub-Regulation (2) of Regulation 2 of Chapter three provides that, "while computing 50% posts, less than half shall not be considered and half or more than half shall be considered as one."

11. It is the principle of interpretation of the statute that each part of the statute, rules or regulations should be given meaning so as to make them workable. It should be a harmonious construction to give meaning to both, the main Regulation and the comment appended to it. This Court proceeds to do so.

12. Initially when the school was established, it was a High School and one post of Assistant Clerk was created then. On that post, admittedly the appointment was made on the basis of direct recruitment. But, when the school was upgraded to Intermediate School, one more post of Head Clerk was created, which was to be filled up by way of promotion. The then Assistant Clerk was accordingly promoted to the post of Head Clerk and the post of Assistant Clerk fell vacant. By an order passed by this Court, in the first writ petition, the case of then senior most Group IV employee was considered and he was given promotion to the post of Assistant Clerk, but after his retirement now the respondent nos.1 to 4 proposed to fill up the post by way of direct recruitment.

13. What is being argued is that since last time the post was filled up by way of promotion, this time the respondent no.4 resolved to fill up the post by way of direct recruitment and it was accordingly approved by the respondent no.3. But, can it be done? The answer is in negative, for the simple reason that the Regulations do not provide that in case of single post, if once the post had been filled up by way of promotion, on the second time it may be filled up by way of direct recruitment and so on. Regulation 2 of Chapter three of the Regulations is clear on this point. It provides that 50% of the sanctioned posts of the clerical cadre shall be filled up by way of promotion from amongst eligible Group IV employees. It does not stop here. The comment appended to Sub-Regulation (2) of Regulation 2 makes it further clear that while computing 50%, less than half shall be ignored, but half or more than half shall be counted as one.

14. In the instant case there is only one post. According to Sub-Regulation (2) of Regulation 2, 50% of the post is to be filled up by way of promotion. 50% of "one" is "half". According to the comment appended to Sub-Regulation (2) of Regulation 2, "half" will be counted as "one". Therefore, this "half" shall be construed as "one post" and it has to be filled up by way of promotion. Accordingly this Court is of the view that the single post of Assistant Clerk in the school has to be filled up by way of promotion in view of Sub-Regulation (2) of Regulation 2 of the Regulations. Respondent nos.1 to 4 did not construe the Regulations properly. Accordingly, the advertisement deserves to be quashed.

15. The next question is whether merely because the advertisement for direct recruitment is to be quashed, can the petitioner be promoted to the post of Assistant Clerk?

16. Admittedly, there are other employees senior to the petitioner in the cadre, from which the post of Assistant Clerk is to be filled up by way of promotion. Therefore, this Court may while quashing

the advertisement direct the respondent nos.1 to 4 to undertake the process to fill up the post of Assistant Clerk in the school by way of promotion from the eligible Group IV employees. Accordingly, the writ petition deserves to be allowed.

17. The writ petition is allowed. The impugned advertisement dated 29.12.2018 and the actions taken pursuant thereto are quashed. The respondent nos.1 to 4 are directed to undertake the process to fill up the post of Assistant Clerk in the School by way of promotion from amongst the eligible Group IV employees.

(Ravindra Maithani, J.) 10.05.2021 Avneet