

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (S/B) NO. 270 OF 2010

13TH JULY, 2023

BETWEEN:

Jitendra Chaudhary Petitioner.

And

State of Uttarakhand & others Respondents.

Counsel for the Petitioner	:	Mr. Jitendra Chaudhary, petitioner-in-person.
Counsel for the State	:	Mr. S.S. Chauhan, learned Deputy Advocate General.
Counsel for the Respondent No.2	:	Mr. D.S. Patni, learned Senior Counsel assisted by Mr. Nandan Arya, learned counsel.
Counsel for the Respondent No.6	:	Mr. Shashank Saun, proxy counsel for Mr. S.K. Chaudhary, learned counsel.
Counsel for the Respondent No.7	:	Mr. Ajay Veer Pundir, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The petitioner has preferred the present writ petition to seek the following reliefs:-

*"(I) Issue a writ, order or direction in the nature of certiorari, to call for the record and pleased to quash the impugned letter no.889/30-1-201026(1)/2004 dated 30-7-2010 (**Annexure-2**) passed by respondent no.1 in favour of respondent no.6 and 7 alongwith the final result of Uttarakhand Higher Judicial Services Examination- 2009 in relation to O.B.C. reserve category (**Annexure-5 & 6**) pertaining to the respondent no.6 and 7 respectively.*

(II) Issue a writ, order or direction in the nature of mandamus, commanding and directing the respondent no.2 to conduct fresh viva-voce (Interview) of all OBC candidates

who have secured more than 40% cut off marks including the petitioner.

(III) Issue a writ, order or direction in the nature of mandamus, commanding and directing the respondent no.2 to delete the name of respondent no.6 and 7 from the list of main examination issued on 9-12-2009.

(IV) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case".

2. The case of the petitioner is that in the year 2009, respondent no.2, i.e. High Court of Uttarakhand, issued an advertisement inviting application to fill-up the posts of Additional District & Session Judges from amongst the practicing advocates. There were 12 vacant posts advertised by respondent no.2, of which, two were reserved for the Other Backward Class (OBC) category candidates.

3. The case of the petitioner is that he too applied, being a practicing advocate, and since he belong to the OBC category, he sought reservation under that category. The results of the written examinations were declared and the petitioner's name was shown at Sl. No.93, having secured 126 marks in total, in the three papers of written examination. Respondent no.2 called 13 candidates for viva voce on 19.12.2009. However, the name of the petitioner did not appear in the said list. Interviews were held, and thereafter, total marks allocated to 128 candidates after interviews were declared.

4. It is the case of the petitioner that respondent nos.6 and 7, who were selected against two of the vacancies reserved for OBC category, were both ineligible for being appointed, and in that basis, the petitioner not only assails their appointments, but also seeks the relief that other OBC category candidates, who had secured more than 40% marks, including the petitioner, should be called for interview to fill up two vacancies reserved for the OBC category candidates.

5. So far as respondent no.6 is concerned, the submission of the petitioner is that, though he was eligible at the time when the advertisement was issued, he incurred disqualification and became ineligible upon his appointment as an Additional District & Sessions Judge in the State of Madhya Pradesh in October, 2009. However, respondent no.6 resigned from that post after declaration of results by respondent no.2, and thereafter, he joined the post of Additional District & Sessions Judge in the State of Uttarakhand. The petitioner has placed reliance on clause 5(vi) of the Notification dated 17.06.2009, which states that '*any person who is already in the service of Union or of the State shall not be eligible for recruitment in Uttarakhand Higher Judicial Service*'.

6. The petitioner has placed reliance on the judgment of the Supreme Court in the case of ***Dheeraj Mor vs.***

Hon'ble High Court of Delhi, Civil Appeal No.1698 of 2020, in support of his aforesaid submission.

7. So far as respondent no.7 is concerned, the challenge to his appointment is premised on the submission that on the date of the advertisement, respondent no.7 had shown his total experience of practice, as an advocate, as 07 years 02 months. The minimum experience prescribed in Clause 4(ii), states that '*applicants for recruitment to the service must be advocates of not less than seven years standing as on the first day of January. 2009*'.

8. The submission of the petitioner is that respondent no.7 pursued the two year full time LLM Course from Meerut, and therefore, he could not have been in legal practice, as claimed by him at Roorkee. Moreover, he showed himself to be in service at respondent no.8- College. The petitioner submits that after he had made averments regarding the employment of respondent no.7 with respondent no.8, the records have been manipulated by them.

9. We have considered the submission of the petitioner, who appears in-person.

10. The petitioner is a practicing advocate of this Court. He preferred the writ petition in the year 2010. This petition has remained pending for 13 years. During this period, respondent nos.6 and 7 have continue to render service as

Additional District & Session Judges in the judiciary of the State.

11. Keeping in view the aforesaid position, at this late stage, we are not inclined to entertain this petition to grant any of the reliefs sought by the petitioner in exercise of our discretionary jurisdiction under Article 226 of the Constitution of India. Merely because the petitioner may make out a case, is no reason for us to interfere, if we find that disturbing the *status quo* adversely impact the rights of several persons, and the petitioner would not gain any substantial relief, in any case.

12. Pertinently, even if the appointment of respondent nos.6 and 7 is to be recalled, or set-aside, it is not that the petitioner would become entitled to be automatically appointed to one of the two posts of Additional District & Session Judge in the OBC category. Admittedly, the petitioner ranked much lower in the merit list prepared for the OBC category candidates. There were others who ranked higher and they too were not appointed due to their lower merit, compared to the merit of respondent nos.6 and 7. The vacancies relate to the year 2009, and obviously, after passage of 14 years, no mandamus can be issued, that the respondents should appoint another qualified OBC category candidate, who had applied in response to the advertisement in question.

13. For the aforesaid reason, we are not inclined to entertain this petition, and disturb the appointments of respondent nos.6 and 7. The same is accordingly dismissed.

14. We, however, leave it open to the petitioner to pursue such other remedy, as may be available to him in law, to claim his reliefs against the official respondents.

15. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 13th July, 2023

NISHANT