

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 239 OF 2023

25TH JULY, 2023

BETWEEN:

Uttarakhand Subordinate Service Selection Commission

.....Appellant.

And

State of Uttarakhand & others

....Respondents.

Counsel for the Appellant : Mr. C.K. Sharma, learned counsel.

Counsel for the State : Ms. Mamta Bisht, learned Deputy Advocate General.

Counsel for the Respondent No.4 : Mr. Ajit Warriar and Mr. Kurban Ali, learned counsels.

Counsel for the Respondent No.5 : Mr. Vinay Kumar, learned counsel.

The Court made the following:

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

We have heard learned counsels for the parties, and perused the impugned order.

2. The impugned order has been passed in the writ petition preferred by respondent nos.5 and 6, being Writ Petition (S/S) No.702 of 2023. The said respondents/ writ petitioners had challenged the cancellation of the entire examination process, initiated by the Uttarakhand Subordinate Service Selection Commission (*for short "the*

Commission”) for recruitment to the post of Foresters. The entire recruitment process was cancelled by the appellant-Commission on the ground that there were large scale irregularities found in the said recruitment process. The examination process was an online examination; undertaken by about 53,000 candidates. The cancellation was founded upon the report of the National Stock Exchange for Information and Technology (*for short 'the NSEIT'*).

3. The learned Single Judge, *prima facie*, found merit in the case of the respondents/ writ petitioners, and consequently, stayed the conclusion of the fresh examination process under the same recruitment process.

4. We are of the considered view that, even if, the learned Single Judge, *prima facie*, found merit in the case of the petitioners, staying the conclusion of the fresh examination process was not called for, and the rights of the petitioners could have been protected by directing that the conclusion of the fresh examination process would be subject to the outcome of the writ petition, and the participation of the writ petitioners in the fresh examination process would be without prejudice to their rights and contentions.

5. In the present writ petition, there were only two writ petitioners. Mr. Kumar submits that there were other similar petitions filed. However, even if all such petitions are

put together, they add upto only about, may be 15-20 individuals. The number of posts advertised were 316, and thousands of candidates are looking to get selected in the process.

6. That being the position, merely because a handful of persons approached the Court, in our view, was not the sufficient reason to stay conclusion of the fresh examination process.

7. We, therefore, vacate the stay granted by the learned Single Judge by the impugned order dated 22.06.2023, and permit the appellant to conclude the selection process, in pursuance of the second examination, which has been held. The same shall, however, be subject to the final decision in the writ petition, and the participation of the writ petitioners, or any of the other candidates, who may have challenged the cancellation of the earlier examination, would be without prejudice to their rights and contentions.

8. We are informed that the writ petition is now listed before the learned Single Judge on 27.07.2023. We request the learned Single Judge to endeavour to take up the writ petition for hearing on the next date.

9. The special appeal stands disposed of in the aforesaid terms.

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

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 25th July, 2023

NISHANT