

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. 331 OF 2023

26TH SEPTEMBER, 2023

National Education Society for Tribal Students & another
.....Appellants.

Versus

Chandra Mohan Sharma & others
....Respondents.

With

SPECIAL APPEAL NO. 334 OF 2023

National Education Society for Tribal Students & another
.....Appellants.

Versus

Sachin Chamoli & others
....Respondents.

Counsel for the Appellants : Mr. Arvind Vashisth, learned Senior Counsel assisted by Mr. Ketan Joshi, learned counsel.

Counsel for the Respondent Nos.1 to 4 : Mr. C.D. Bahuguna, learned Senior Counsel.

Counsel for the Respondent Nos.5 & 7 : Mr. C.S. Rawat, learned counsel.

Counsel for the Respondent No.6 : Mr. Sunil Khera, learned Deputy Advocate General.

The Court made the following:

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

The present special appeals are directed against the order dated 12.09.2023, passed by the learned Single Judge in Writ Petition (S/S) Nos.1414 of 2023 and 1427 of 2023, preferred by the respondent nos.1 to 4.

2. By the impugned order, the earlier order passed on 17.08.2023 in the said proceedings has been directed to continue till 17.10.2023, which is the next date fixed in the writ petition. On 17.08.2023, the learned Single Judge had directed that till the next date of listing, i.e. 17.10.2023, the selection process pursuant to the online advertisement, Annexure- 18 to the writ petition be stayed.

3. The appellant- National Education Society for Tribal Students (*for short "NESTS"*) had initiated the recruitment process for filling of online application form for EMRS Staff Selection Exam (ESSE)- 2023. The writ petitioners- respondent nos.1 to 4 are serving as contractual employees at Eklavya Model Residential School, Kalsi, District Dehradun. They challenged the advertisement issued by the appellant herein on the ground that the appellant was not the authority to make the recruitment, and it was only the State Level Society, which was authorized to make recruitment in terms of Clauses 9.3(e) and (f) of the new guidelines issued in 2020 in relation to the Eklavya Model Residential School, which was entitled to make the recruitment.

4. The appellants filed their counter-affidavits, along with an application to seek vacation of the stay granted by this Court against the recruitment process. The stand taken by the appellants in their counter-affidavit, *inter alia*, is that the recruitment process in question, is not being made in

respect of posts held by the respondents- writ petitioners. In Paragraph No.14 of the counter-affidavit, the stand taken by the appellants is as follows:-

"14. That the contents of para 25 of the writ petition to make the matter abundantly clear it is submitted that presently NESTS would not post any teacher against the posts occupied by these 28 contractual teachers in Uttarakhand. As of now, NESTS has not published the posts held by contractual teachers as they are engaged by state. The contract of teaches is with state society. NESTS has nothing to do with their continuation or discontinuation. However, our recruitment is being conducted in such a way as not to disturb the current contractual teachers".

5. Learned Senior Counsel for the appellant has pointed out that the learned Single Judge has stayed the entire selection process, which is a Pan India exercise, even though the rights of the writ petitioners stand duly protected.

6. Mr. Bahuguna, learned Senior Counsel, who appears for respondent nos.1 to 4- writ petitioners, on advance notice, has expressed the apprehension that if the NESTS is allowed to proceed with the selection process, in future, by undertaking the fresh selection, they may also undertake the recruitment in respect of posts held by the writ petitioners- respondent nos.1 to 4 on contractual basis.

7. Firstly, so far as the recruitment process in question is concerned, the stand of the appellant in Paragraph No.14 of the counter-affidavit is very clear, which is to the effect that the recruitment process is not against the posts

held by the writ petitioners- respondent nos.1 to 4 on contractual basis, meaning thereby, the said recruitment, even if made, would not be the reason to dislodge the writ petitioners- respondent nos.1 to 4. So far as the undertaking of any further recruitment process by the NESTS is concerned, which may involve the posts occupied by the writ petitioners- respondent nos.1 to 4, if and when that happens, it shall be open to the writ petitioners to raise their challenge, and it shall be for the Court to consider the respective pleas and pass appropriate orders. The alternative prayer sought by the writ petitioners in their application moved along with the writ petitioner is that their contractual employment should not be affected by the recruitment process undertaken by the NESTS.

8. In our view, in that light, there was no reason to continue the interim relief granted to the writ petitioners in respect of the entire selection process.

9. We, therefore, vacate the interim order dated 17.08.2023, and the order dated 17.10.2023, passed by the learned Single Judge, while making it clear that the NESTS shall remain bound by their stand, as noted hereinabove, in Paragraph No.14 of their counter-affidavit.

10. It goes without saying that the recruitment process may go on, but the same shall be subject to the final decision in the writ petition.

11. The special appeals are disposed of in the aforesaid terms.

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

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 26th September, 2023

NISHANT