

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

04th JANUARY, 2024

WRIT PETITION (S/B) No. 108 OF 2017

Anil Kumar and others.

...Petitioners

Versus

State of Uttarakhand and others.

...Respondents

Counsel for petitioners. : Mr. Harsh Vardhan Dhanik and Mr.
Kaushal Pandey, learned counsel.

Counsel for State of Uttarakhand/ : Mr. K.N. Joshi, learned Deputy
respondent nos. 1 and 2. Advocate General.

Counsel for respondent no. 3. : Mr. Pankaj Miglani, learned counsel.

Counsel for respondent nos. 4 to 8. : Mr. Sandeep Tiwari, learned counsel.

JUDGMENT : (per Sri Manoj Kumar Tiwari, A.C.J.)

Uttarakhand Public Service Commission issued an advertisement on 02.08.2016 inviting applications against 97 vacancies on direct recruitment quota post of Veterinary Officer in Animal Husbandry Department. Petitioners possessed Bachelor of Veterinary Science and Animal Husbandry (for short 'B.V.Sc & A.H') Degree, which is sufficient for appointment as Veterinary Officer as such they responded to the advertisement. They participated in the selection, however, their names did not figure in the list of successful candidates.

2. In this writ petition, petitioners have challenged selection of respondent nos. 4 to 8 who are serving on

Group-C post of Livestock Extension Officer in same department, on the ground that as in-service candidate, they could not have been selected for appointment against vacancies which are earmarked for direct recruitment, as separate 5 percent promotion quota is available to in-service candidates. The reliefs sought in the writ petition are as follows:-

(i) Issue a writ, order or direction in the nature of certiorari calling for the record and to quash the impugned Select List dated 14th February 2017 issued by the Uttarakhand Public Service Commission for the post of Veterinary Officer Grade (2) to the extent it includes the name of the private respondents.

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the Examining Body to include the name of the petitioners in the Select List dated 14th February 2017 issued by the Uttarakhand Public Service Commission for the post of Veterinary Officer Grade (2) and recommend the name of the petitioner for appointment on the said posts.

3. It is not in dispute that respondent nos. 4 to 8 were serving against Group 'C' post of Livestock Extension Officer in Animal Husbandry Department, when they applied pursuant to aforesaid advertisement. It is also not in dispute that at the time of their appointment as Livestock Extension Officer, they were not holding B.V.Sc. & A.H. Degree. Respondent nos. 4 to 8 acquired B.V.Sc. & A.H. Degree as departmentally sponsored candidates from G.B. Pant University while serving as Livestock Extension Officer and they were admitted to the said course against seats reserved for departmental candidates. It is also not in dispute that respondent nos. 4 to 8 received full salary during the period they pursued B.V.Sc. & A.H. Course.

4. It is contended by learned counsel for petitioners that since respondent nos. 4 to 8 were admitted to B.V.Sc. & A.H. Course without facing any selection against seats reserved for candidates sponsored by Animal Husbandry Department and they pursued B.V.Sc. & A.H. Course, which is of five years duration, at Government expense, while receiving full salary as Livestock Extension Officer, therefore, they cannot be permitted to participate in the selection held for vacancies, which are set apart for direct recruitment and they can only be considered for promotion to the post of Veterinary Officer under the quota made available to them in the Recruitment Rules.

5. The mode of appointment to the post of Veterinary Officer is made as per provisions contained in Uttaranchal Veterinary (Group 'B') Service Rules, 2006 notified on 15.12.2006. Rule 5(1) of the said Rule deals with 'Source of Recruitment' and provides that 98% posts of Veterinary Officer shall be filled by direct recruitment through Public Service Commission and 2% posts of Veterinary Officer shall be filled by promotion of such Livestock Extension Officer, through Public Service Commission, who possess B.V.Sc. & A.H. Degree from an University established by Law.

6. First proviso to Rule 5(1)(A)(ii) of the Rules provides that if in any year of recruitment, the required number of qualified departmental Livestock Extension Officers are not available against the said promotion quota, then in such situation, recruitment to the remaining

unfilled posts shall be made by direct recruitment through the Commission. This indicates that both the quotas are maintained as watertight compartments and only when no eligible candidate is available for promotion, vacancy in promotion quota can be filled by direct recruitment.

7. Second proviso to Rule 5(1)(A)(ii) of the aforesaid Rules further provides that all Livestock Extension Officers, who have acquired B.V.Sc. & A.H. qualification before enforcement of 2006 Rules, shall be considered for promotion by the Commission and, if found eligible, they shall be promoted, even though no vacancies are available on the promotion quota post of Veterinary Officer and the vacancies in promotion quota shall be increased to that extent, however, this will be done only in the first selection made after enforcement of those Rules.

8. The aforesaid Rules 2006 were amended in 2009 vide notification dated 13.11.2009. Rule 5, as amended in the year 2009, is extracted below:-

“5. Source of Recruitment

Recruitment to various categories of posts in the service shall be made from the following sources, namely :-

(A) *Veterinary Officer :*

(i) *Ninety Five percent by direct recruitment through the Commission.*

(ii) *Five Percent by promotion through the Commission from amongst substantively appointed such departmental Livestock Extension Officer who has obtained degree of Bachelor of Veterinary Science and Animal Husbandry (B.V.Sc. & A.H.) from a University established by Law in India or a degree from any other institution recognized by the Government equivalent thereto;*

Provided that if in any year of recruitment the required number of qualified departmental Livestock Extension Officers are not available against the said promotion quota then in such situation the recruitment to the remaining unfilled posts shall be made by direct recruitment through the Commission."

9. From the amendment in the Rules made in 2009, it is revealed that the promotion quota available to Livestock Extension Officer was increased from 2 percent to 5 percent of the total posts of Veterinary Officer and the direct recruitment quota was accordingly reduced from 98 percent to 95 percent.

10. Learned counsel for petitioners has drawn our attention to a letter dated 01.10.2016 issued by Director, Animal Husbandry to the State Government. In the said letter, Director, Animal Husbandry has mentioned that at the time of sponsoring the names of respondent nos. 4 to 8 for admission in B.V.Sc. & A.H. Course, there were only five vacancies on promotion quota post of Veterinary Officer, against which three Livestock Extension Officers had acquired B.V.Sc. & A.H. Degree and six Livestock Extension Officers were pursuing said course, therefore, respondent nos. 4 to 8, were asked to give an undertaking that they will not claim promotion as a matter of right upon successful completion of B.V.Sc. & A.H. Course and State shall not be under any compulsion to promote them.

11. In the penultimate paragraph of the said letter, Director, Animal Husbandry has stated that private respondents were sponsored for pursuing B.V.Sc. & A.H.

Course so that they may be considered against promotion quota posts of Veterinary Officer and they do not have any right to be considered against direct recruitment quota post. In the said letter, Director has also stated that at present all 15 promotion quota posts of Veterinary Officers are occupied by promotees.

12. On the strength of said letter, learned counsel for petitioners submits that private respondents were not eligible at all for participating in the selection held for appointment against Direct Recruitment quota post of Veterinary Officer. He further submits that when a separate channel for promotion as Veterinary Officer has been provided for Livestock Extension Officers, then they cannot be permitted to participate in open selection for recruitment as Veterinary Officer, merely because they acquired B.V.Sc. & A.H. Degree as sponsored candidates.

13. Per contra, learned counsel appearing for private respondents submitted that 'No Objection Certificate' was issued by the Competent Authority to private respondents for participating in the selection in question, therefore, according to him, there is no substance in the challenge thrown by the petitioners. He further contended that private respondents possessed requisite academic qualification and they fulfilled all conditions mentioned in the advertisement and after participating in the selection, due to their superior merit, they were recommended for appointment, therefore, the writ petition is liable to be dismissed.

14. This Court finds force in the contention raised on behalf of petitioners that a departmental candidate serving on a Group 'C' post, who upgraded his qualification as departmentally sponsored candidate, cannot be considered for appointment against direct recruitment quota post. From the relevant Rules, it is revealed that Livestock Extension Officers are given a specified percentage of vacancies for promotion as Veterinary Officer, therefore as in-service candidate, they cannot be permitted to apply for appointment as Veterinary Officer through a different route i.e. Open Selection. If they wish to apply against direct recruitment quota posts, then they will have to resign and then apply, as they cannot have best of both worlds. Open selection against direct recruitment quota post is meant for fresh candidates, who have recently passed out from college, while promotion quota is available only for persons serving on subordinate posts. Just as, a fresh candidate cannot compete against promotion quota posts, likewise a departmental candidate serving on a subordinate post cannot be permitted to compete for appointment against direct recruitment quota post, unless the Rules permit. In the applicable Recruitment Rules, there is nothing to indicate that departmental candidate can also compete for appointment as Veterinary Officer against direct recruitment quota posts.

15. Hon'ble Supreme Court in the case of *Dheeraj Mor vs High Court of Delhi*, reported in (2020) 7 SCC 401 while dealing with the eligibility of a person, already

serving in judicial service, for Higher Judicial Service against the quota meant for advocates/pleaders, held as under:-

“14. Article 233(2) provides that if an advocate or a pleader has to be appointed, he must have completed 7 years of practice. It is coupled with the condition in the opening part that the person should not be in service of the Union or State, which is the judicial service of the State. The person in judicial service is not eligible for being appointed as against the quota reserved for advocates. Once he has joined the stream of service, he ceases to be an advocate. The requirement of 7 years of minimum experience has to be considered as the practising advocate as on the cut-off date, the phrase used is a continuous state of affair from the past. The context “has been in practice” in which it has been used, it is apparent that the provisions refer to a person who has been an advocate or pleader not only on the cut-off date but continues to be so at the time of appointment.

24. The decision of Vijay Kumar Mishra v. High Court of Patna [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] , has also been referred in which judicial officers staked their claim as against the post reserved for the members of the Bar i.e. advocates/pleaders. The High Court repelled [Vijay Kumar Mishra v. High Court of Patna, 2016 SCC OnLine Pat 4063] the challenge; hence appeal was filed in this Court. A two-Judge Bench of this Court observed that a person who is not in service shall be eligible to be appointed as a District Judge. After that, the Bench distinguished between “selection” and “appointment”. It was observed that Article 233(2) prohibits the appointment of a person who is already in service of the Union or the State, but not selection of such a person. Even if a person, who is already in service, is selected, still he has an option to be a District Judge or continue with the existing employment. The relevant portion of the observations made is extracted hereunder : (Vijay Kumar Mishra case [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] , SCC pp. 219-21, paras 6-8 & 11)

“6. Article 233(1) [“233. Appointments of District Judges.—(1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.”] stipulates that appointment of District Judges be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. However, Article 233(2) [“233. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”] declares that only a person

not already in the service of either the Union or of the State shall be eligible to be appointed as District Judge. The said Article is couched in negative language creating a bar for the appointment of certain class of persons described therein. It does not prescribe any qualification. It only prescribes a disqualification.

7. It is well settled in service law that there is a distinction between selection and appointment. Every person who is successful in the selection process undertaken by the State for the purpose of filling up of certain posts under the State does not acquire any right to be appointed automatically. Textually, Article 233(2) only prohibits the appointment of a person who is already in the service of the Union or the State, but not the selection of such a person. The right of such a person to participate in the selection process undertaken by the State for appointment to any post in public service (subject to other rational prescriptions regarding the eligibility for participating in the selection process such as age, educational qualification, etc.) and be considered is guaranteed under Articles 14 and 16 of the Constitution.

8. The text of Article 233(2) only prohibits the appointment of a person as a District Judge, if such person is already in the service of either the Union or the State. It does not prohibit the consideration of the candidature of a person who is in the service of the Union or the State. A person who is in the service of either the Union or the State would still have the option, if selected, to join the service as a District Judge or continue with his existing employment. Compelling a person to resign from his job even for the purpose of assessing his suitability for appointment as a District Judge, in our opinion, is not permitted either by the text of Article 233(2) nor contemplated under the scheme of the Constitution as it would not serve any constitutionally desirable purpose.

* * *

11. It appears from the reading of the judgment in *Satya Narain Singh* case [*Satya Narain Singh v. High Court of Allahabad*, (1985) 1 SCC 225 : 1985 SCC (L&S) 196] , that the case of the petitioners was that their claims for appointment to the post of District Judges be considered under the category of members of the Bar who had completed seven years of practice ignoring the fact that they were already in the judicial service. The said fact operates as a bar undoubtedly under Article 233(2) for their appointment to the Higher Judicial Service. It is in this context this Court rejected their claim. The question whether at what stage the bar comes into operation was not in issue before the Court nor did this Court go into that question.”

(emphasis in original)

We find ourselves unable to agree with the proposition laid down in *Vijay Kumar Mishra* [*Vijay Kumar Mishra v. High Court of Patna*, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] . In our opinion, in-service candidates cannot apply as against the post

reserved for the advocates/pleaders as he has to be in continuous practice in the past and at the time when he has applied and appointed. Thus, the decision in Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] cannot be said to be laying down the law correctly.”

16. From the Scheme of the Recruitment Rules, it is apparent that separate channels have been provided for promotees and direct recruits. If persons eligible for promotion are permitted to compete in the open selection for appointment as Veterinary Officer, then it will not only result in chaos but will also be unjust for the candidates from open market, as vacancies meant for them will be eaten away by departmental candidates who are otherwise eligible for promotion.

17. The letter dated 01.10.2016 issued by Director, Animal Husbandry is self-explanatory, wherein the entire background facts have been discussed. Although No Objection Certificate was issued in favour of respondent nos. 4 to 8, on the strength of which they participated in the selection in question, however, issuance of No Objection Certificate will not improve their case, if they are otherwise not eligible to participate in open selection for direct recruitment quota posts, as per applicable Recruitment Rules.

18. Learned counsel for private respondents contended that there was a condition in the Government Order dated 17.08.2011, whereby private respondents were nominated for pursuing B.V.Sc. & A.H. Course, that

upon completing the course, they will serve the State Government for at least five years, and if they resign earlier, then they will have to return the expenses incurred by the State on their studies. The said Government Order is part of record at Page 102 of the writ petition. In Clause III of the said Government Order, it is provided that all nominated candidates will have to submit an affidavit that there will be no compulsion on the State Government to promote them as Veterinary Officer upon their successful completion of course, which indicates that the private respondents were sent for higher studies at the cost and expense of State with clear understanding that they will be considered only against promotion quota vacancies on the post of Veterinary Officer.

19. Learned counsel for private respondents then submitted that his clients were not given any benefit whatsoever, on the strength of B.V.Sc. & A.H. Degree, which they acquired after pursuing five years' course.

20. The said submission is also bereft of merit, as private respondents were not only given study leave, but they were also paid full salary during the period they pursued B.V.Sc. & A.H. Course; thus, they upgraded their qualification at public expense, which itself is a huge benefit. Due to their upgraded qualification, private respondents have become eligible to be considered for promotion to the post of Veterinary Officer as and when their turn comes.

21. In view of the aforesaid discussion, we have no hesitation in holding that respondent nos. 4 to 8 , who were already serving on Group 'C' post of Livestock Extension Officer in Animal Husbandry Department, were not eligible for competing against direct recruitment quota post of Veterinary Officer. Thus, the communication dated 14.02.2017, whereby their names were recommended by Public Service Commission for appointment to the State Government is liable to be quashed and is hereby quashed.

22. The Writ Petition is, accordingly, allowed.

23. Uttarakhand Public Service Commission shall revise the merit list, and submit revised recommendation to the State Government within three months.

24. Consequently, pending application(s), if any, also stand disposed of, accordingly.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 04th JANUARY, 2024
Rahul