

HIGH COURT OF UTTARAKHAND AT NAINITAL

**Hon’ble Chief Justice Ms. Ritu Bahri
Hon’ble Justice Sri Rakesh Thapliyal
30th April 2024**

Writ Petition (S/B) No. 123 of 2024

Ravishankar Gusain & others
..... Petitioners
Vs.
State of Uttarakhand & Ors.
.....Respondents

Counsel for the Petitioners : Mr. Sandeep Tiwari.
Counsel for the State : Mr. P.S. Bisht, Addl. C.S.C.

With

Writ Petition (S/B) No. 140 of 2024

Ranjit Singh & others
..... Petitioners
Vs.
State of Uttarakhand & Ors.
.....Respondents

Counsel for the Petitioners : Mr. Hem Chandra Joshi.
Counsel for the State : Mr. P.S. Bisht, Addl. C.S.C.
and Mr. Ashish Joshi

Upon hearing the learned Counsel, the Court made the following Judgment:
(Per Mr. Rakesh Thapliyal, J.)

1. Since, in both the petitions common question of law and facts are involved, therefore, both the petitions are being decided by a common judgment. For deciding the issue, facts of WPSB No. 123 of 2024 are being taken into consideration.
2. By the instant petition, the petitioners are praying for the following reliefs:-
 - i) *Issue a writ or order in the nature of certiorari to call for the records and to quash Rule 5(3)(),5(4)(), Rule 6 and Rule 8 of the Uttarakhand State Educational (Teaching Cadre) Gazetted Service Rules, 2022 declaring the same to be invalid being arbitrary and*

unreasonable and ultra vires to Article 14 and 16 of the Constitution of India.

ii) Issue a writ or order in the nature of certiorari quashing the impugned advertisement dated 11.03.2024 issued by respondent no. 4 (contained as Annexure No. 1) for limited departmental examination on the post of principal in Government Inter College and Government Girls Inter College.

3. Brief facts, of the case, are that petitioner no. 1 was appointed as an Assistant Teacher (L.T. Grade) in Art subject in the year 2016, petitioner no. 2 was also appointed as an Assistant Teacher (L.T. Grade) in Sports subject in the year 2007 and similarly petitioner no. 3 was also appointed as an Assistant Teacher (L.T. Grade) in Commerce subject in the year 1998. All the petitioners are non B.Ed. There are the Rules which were prevailed in the erstwhile State of U.P., i.e., U.P. Educational Teaching (Subordinate Gazette) Service Rules 1993 and Rule 5(1) of the said Rules contemplates promotion to the post of Head Master in Government High School according to which the promotion on the post of Head Master shall be made 45% amongst the substantively appointed Lecturer who have completed three years of service on the first day of recruitment year and 55% from the teachers substantively appointed as an Assistant Teacher (L.T. Grade) who have completed 12 years of service on the first day of recruitment year.

4. In the year 2006, after creation of the State of Uttarakhand, first time the Rules, i.e., Uttarakhand Education (General Education Cadre) Service Rules , 2006 (hereinafter referred to as the Service Rules 2006

for brevity) were framed, and, as per Sub-rule (5) of Rule 5 of the said Rules, post of Principal in Government Inter College and Government Girls Inter College shall be filled amongst the Head Master of the Government High School who have completed 5 years of service on the first day of recruitment year, and vide Government Order dated 14.06.2011, the Education Department was re-structured and the same was bifurcated in Educational Cadre and Academic Cadre and the higher post of Educational Cadre was Principal, which was a promotional post. Subsequently, by Government Order dated 18.07.2011, the structuring of Group A and Group B post in Academic Cadre was undertaken and the post of Principal Government Inter College and Government Girls Inter College were kept in the pay scale of 15,600-39,10 grade pay 7,600/-. Subsequently, by Notification dated 15.09.2022, the Uttarakhand State Education (Teaching Cadre) Gazetted Service Rules, 2022 were notified and as per Rule 5(1) and 5(2) of the 2022 Rules, the earlier scheme of promotion for the post of Head Master in Government High School and Head Master in Government Girls high School was kept as it is, as it was in earlier Rules, i.e, 100% promotion in Head Master Cadre which was further divided as 45% from Uttarakhand Special Subordinate Education (Lecturer Cadre) and 55% from Uttarakhand Subordinate Education (Trained Graduate Category).

5. Rule 5(3)(क) and (ख) pertains to the promotion to the post of Principal in Government Inter College

(General Cadre) which are being reproduced as hereunder:-

5(3) (क) 50% posts of Principals shall be filled up by promotion of the substantively appointed Head Masters of the Govt. High Schools who possesses post graduation degree from any University established by law and have rendered 5 years continuous service on the first day of the recruitment year, through Selection Committee on the basis of seniority subject to the rejection of unfit.

5(3) (ख) 50% posts shall be filled up by promotion from amongst Head Masters working in Government High School under the Government of Uttarakhand and Lecturers Government Inter Colleges (General Branch) through Commission on the basis of merit list prepared through limited Departmental Examination.

Such substantively appointed Head Masters shall be eligible for limited departmental examination who have completed at least two years of continuous satisfactory service on the first day of the recruitment year and possesses compulsory educational/training qualification in accordance with rule 8.

Substantively appointed such Lecturers of the Government Inter Colleges (General Cadre) shall be eligible for limited departmental examination who have completed at least 10 years of satisfactory service on the first day of the recruitment years and possesses compulsory educational/training qualification in accordance with rule 8.

6. Similarly, Rule 5(4)(क) and (ख) pertains to the promotion to the post of Principal in Government Girls Inter College which are being reproduced as hereunder:-

5(4) (क) 50% posts of Principals shall be filled up by promotion of the substantively appointed Head Masters of the Govt. Girls High Schools who possesses post graduation degree from any University established by law and have rendered 5 years continuous service on the first day of the recruitment year, through Selection Committee on the basis of seniority subject to the rejection of unfit.

5(4) (ख) 50% posts shall be filled up by promotion from amongst Head Masters working in Government Girls High School under the State

Government of Uttarakhand and Lecturers Government Inter Colleges (Women Branch) through Commission on the basis of the list selected through Limited Departmental Examination.

Such substantively appointed Head Masters shall be eligible for limited departmental examination who have completed at least two years of continuous satisfactory service on the first day of the recruitment year and possesses compulsory educational/training qualification in accordance with rule 8.

Substantively appointed such Lecturers of the Government Inter Colleges (General Cadre) shall be eligible for limited departmental examination who have completed at least 10 years satisfactory service on the first day of the recruitment year and possesses compulsory educational/ training qualification in accordance with rule 8.

Substantively appointed such Assistant Teachers, L.T. who have been promoted on the post of Lecturer but have completed at least ten years continuous substantive service as Lecturer and possesses compulsory educational/training qualification in accordance with rule 8.

7. As it appears from the said Rules of 2022, 50% post of Principal shall be filled up by promotion amongst substantively appointed Head Master of Government Higher Secondary school who possesses P.G. degree from any University established by law and have rendered five years continuous service on the first day of recruitment year. However, Rule 5 (3) (a) pertains to promotion by limited departments examination on remaining 50% post amongst Head Master working in Government High School and Lecturers Government Inter Colleges (General Branch) through Commission on the basis of the merit list prepared through limited departmental examination.

8. Similar provisions have been made for promotion for the post of Principal in Government Girls Inter College, i.e., Rule 5(4) (क) (ख).

9. It is submitted by the learned counsel for the petitioner that under said Rules those substantively appointed Assistant Teacher, (L.T.) who have been promoted on the post of Lecturer and have completed at least ten years continuous substantive service as Lecturer and possess compulsory educational/training qualification are also eligible for promotion to the post of Principal in accordance with Rule 8.

10. It is also submitted by the learned counsel for the petitioner that respondents/authorities have completely overlooked the vital aspect of the matter that in the subjects like physics, chemistry, biology and zoology, a person who is appointed as Assistant Teacher (L.T. Grade) avails promotions quickly on the post of Lecturer taking the subject benefit in 2 to 4 years whereas in other subjects like commerce, language and social science, it takes more than 20 to 25 years to avail promotion on the post of Lecturer, and, therefore, such teachers could never attain eligibility in less than 50 years to appear in limited departmental examination. It is further submitted that in one hand, as per Rule 6, upper age limit is not more than 50 years, and, therefore, requirement of 10 years on the post of Lecturer completely debarred their participation in limited departmental examination.

11. It is further submitted by the learned counsel for the petitioners that Rule 8 of 2022 Rules provides that a candidate must possess post graduate degree with 55% marks and B.Ed. or any other equivalent degree to participate in the limited departmental examination. He further submits for the subject like arts, sports, music and home science there is no requirement of B.Ed. but under Rule 8 , B.Ed. has been made mandatory which puts stumbling block on any chance of these teachers to appear in promotional exercise through limited departmental examination. The learned counsel for the petitioners further submits that even if an Assistant Teacher (L.T. Grade) is promoted on the post of Lecturer, requirement of 10 years of service on the post of Lecturer will be difficult to achieve because as per mandate of Rule 6 of 2022 Rules, the age limit to appear in limited departmental examination for promotion on the post of Principal in Government Inter College and Government Girls Inter College is not more than 50 years.

12. Apart from this, the learned counsel for the petitioners submits that the aided institutions which are run by Committee of Management though funded by the Government but these institutions are also run as per the provisions of Uttarakhand School Education, 2006 and Regulations framed therein in the year 2009. The post of teaching as well as non teaching staff in these institutions are created by the State Government but in the 2009 Regulations, for appointment on the post of Principal in such institutions, an Assistant Teacher (L.T.

Grade) is eligible for promotion after completion of 8 years of service, therefore, discrimination made with the Assistant Teacher (L.T. Grade) in promotion for the post of Principal in Government Inter College and Government Girls Inter College is hostile and discriminatory.

13. It is also submitted by the learned counsel for the petitioners that service condition of the employees who worked in the erstwhile State of U.P. and now presently serving in the State of Uttarakhand, could not change which place them under disadvantageous position. He further submits that here in this case by virtue of 2022 Rules, the petitioners have been deprived for promotion on the post of Principal (through limited departmental examination) as they have already completed 50 years of age.

14. It is argued that Rule 5(3) (ख), 5(4) (ख) and Rule 6 and 8 of Uttarakhand State Educational Teacher Cadre (Gazette Service) Rule 2022 being violative of Article 14 and 16 are ultra vires to the Constitution of India. It is further argued that respondent no. 3, on the basis of these Rules, issued an advertisement dated 11.03.2024 for 692 posts, and the last date for filing the application form is 03.04.2024. It is also submitted that post of Principal, Government Inter College and Government Girls Inter College is the post having pay scale of Rs. 15,600-39,100 grade pay Rs. 7,600 and is the highest academic cadre and therefore, there should be equal opportunity for all set of teachers to get equal

opportunity to participate in the promotional exercise to the aforesaid post and diminishing the promotional prospects of a particular section of teachers for the promotion exercise through limited departmental examination is arbitrary and discriminatory.

15. Mr. P.S. Bisht, learned Standing Counsel for the State vehemently opposed the arguments as advanced by the learned counsel for the petitioners by saying that promotion prospects of these petitioners, who are serving as Assistant Teacher (L.T.) Grade were not blocked and chance of promotion are still there. Being Assistant Teacher (L.T. Grade) they can be promoted to the post of Lecturer and thereafter after completing the required length of service as Lecturer they can be promoted to the post of Principal through limited departmental examination, therefore, he submits that argument as advanced by the learned counsel for the petitioner that the future promotion prospects of the petitioners are completely blocked is thoroughly misconceived.

16. Learned State Counsel further submits that no doubt under 2022 Rules, the Lecturers and the Assistant Teacher (LT. Grade) both are in the feeding cadre but for Assistant Teacher, who are promoted to the post of Lecturer and completed 10 years as such, and continue as Lecturer are eligible for the post of Lecturer, therefore, argument as advanced by the learned counsel for the petitioners that their future promotion prospects are blocked are not acceptable.

Apart from this, learned Standing Counsel submits that petitioners are not challenging the Rules on the ground of the competence and the Rules have been challenged merely by saying that it is arbitrary, discriminatory and ultra vires to Article 14 and 16 of the Constitution of India. He submits that being an Assistant Teacher (L.T. Grade) the next promotional post is Lecturer, thereafter, if such an incumbent continued as such, i.e. in the post of Lecturer for 10 years then he is also eligible for promotion to the post of Principal provided he possesses compulsory educational/training qualification in accordance with Rule 8, therefore, it is wrong to say that Rule as framed, being violative of Article 14 of the Constitution of India.

17. Mr. P.S. Bisht, learned Addl. C.S.C. further submits that as per their own case, the petitioners were inducted as an Assistant Teacher (L.T. Grade) and subsequently they were also promoted as Lecturer, Head Master in Government High School, and, therefore, even as per Rule of 2022 they are in the zone of consideration provided they have completed required length of service as Lecturer and have the eligibility.

18. After taking into consideration the arguments as advanced by the learned counsel for the petitioners and learned counsel for the State and further taking into consideration that being an Assistant Teacher (L.T. Grade) the petitioners have future promotional prospects to the post of Lecturer as well as to the post of Principal , provided the concerned incumbent fulfill

the required length of service and eligibility condition as stipulated in the Rules, which are applicable to all. The argument as advanced by the learned counsel for the petitioners that future promotion prospects of the petitioner are limited are misconceived, keeping in view the fact that petitioners were inducted as Assistant Teacher (L.T. Grade) and under the Rules the next promotional post is Lecturer and even under 2022 Rules they can be promoted to the post of Principal provided they completed required length of service as Lecturer and the eligibility, therefore we do not find any substance in the arguments as advanced by the learned counsel for the petitioner.

19. Hence, both the writ petitions are dismissed being devoid of merits without any cost.

(Ritu Bahri, C.J.)

(Rakesh Thapliyal, J.)