HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA
20TH NOVEMBER, 2024

WRIT PETITION (S/B) NO. 70 OF 2024
Pramod Kumar and others. ……Petitioners.
Versus
State of Uttarakhand and others. ……..Respondents
WRIT PETITION (S/B) NO. 57 OF 2024
Jagdish Singh Bisht and others. ……Petitioners.
Versus
State of Uttarakhand and others. ……..Respondents
WRIT PETITION (S/B) NO. 195 OF 2024
Arvind Mohan and others. ……Petitioners.
Versus
State of Uttarakhand and others. ……..Respondents
&
WRIT PETITION (S/B) NO. 389 OF 2024
Anand Ballabh and others. ……Petitioners.
Versus
State of Uttarakhand and others. ……..Respondents

Counsel for the petitioners	:	Mr. Abhijay Negi, Ms. Snigdha Tiwari, & Mr. Tushar Upadhyay, learned counsel.
Counsel for the respondents	:	Mr. P.C. Bisht, learned Additional Chief Standing Counsel, Ms. Puja Banga and Mr. B.S. Parihar, learned Brief Holder for the State. Mr. Ashish Joshi and Ms. Menaka Tripathi, learned counsel for Uttarakhand Public Service Commission.

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

Petitioners are serving as Lecturers in different Government Intermediate Colleges in the State of Uttarakhand. In this bunch of writ petitions, they have challenged validity of Rule 5(3)(b) of Uttarakhand State Education (Teaching Cadre) Gazetted Service Rules, 2022. The said Rule provides that Lecturer, having 10

years of service, alone shall be eligible for participating in the examination, for appointment to the post of Principal, Government Intermediate College.

2. According to petitioners, the said condition is arbitrary, unjust and violative of Articles 14 and 16 of the Constitution of India.

3. Learned State Counsel, however, submits that validity of Rule 5(3)(b) of the aforesaid Rules, impugned in this bunch of writ petitions, has been upheld by this Court in Writ Petition (S/B) No. 135 of 2024 titled as '*Trivuwan Chandra Lobiyal and others vs. State of Uttarakhand and others*' and other connected writ petitions. Paragraph Nos. 19 and 25 of judgment dated 08.04.2024 passed by this Court in Writ Petition (S/B) No. 135 of 2024 are extracted herein below:-

> *"19. It is not the case of the petitioners that, because of the classification made by Rule 8 read with Rule 5(3)(b) of the Service Rules, their right to be considered for promotion has been taken away or that they will suffer stagnation for want of promotional avenue. In fact, the promotion avenue, which was available to them before 2022, is still available to them and all Lecturers, irrespective of their marks in Post Graduate examination, are eligible for promotion to the post of Head Master, Government High School, as per their seniority.*
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> *25. As per the Constitutional Scheme, appointment to services and posts in connection with the affairs of Union or of a State has to be made strictly as per merit and the only exception to this Rule is appointment given to weaker*

sections of society by way of affirmative action. Thus, the contention raised on behalf of petitioners that the classification based on marks scored in Post Graduate examination is not permissible, cannot be accepted. Since merit is a constitutionally accepted criteria of selection for appointment to public services, therefore, classification based on merit in the qualifying examination/ Post Graduate examination, cannot be said to be invalid. Thus, the 11 challenge thrown by petitioners to validity of Rule 8 read with Rule 5(3)(b) of Uttarakhand State Education (Teaching Cadre) Gazetted Service Rules, 2022, is without any substance. The advertisement issued in terms of the said Rules, therefore also cannot be interfered with. The writ petitions therefore are liable to be dismissed and are hereby dismissed. There will be no order as to costs."

4. By relying on the aforesaid judgment, learned State Counsel submits that this bunch of writ petitions deserves to be dismissed, as similar petitions filed by similarly situated persons serving in different Government Intermediate Colleges, have already been dismissed.

5. Learned counsel for petitioners, however, submits that there is one argument, which was not considered in the earlier judgment. He submits that there are separate rules in respect of the post of Principal in Government Aided Intermediate Colleges, which were notified on 10th July, 2009; in the said Rules, candidates, having five years of teaching experience on the post of lecturer, is eligible for participating in the

selection for appointment to the post of Principal of Government Aided Intermediate Colleges, while under the Rules in question, which are applicable to Government Intermediate Colleges, minimum service required as Lecturer is 10 years. Thus, he submits that the requirement of 10 years is unjust and in deviance with the condition mentioned in the Rules applicable to government aided institutions.

6. The submission now raised by learned counsel for petitioners is bereft of merit. Validity of statutory rules can be questioned only on the ground that it is violative of the fundamental rights or any other constitutional provision. Merely because the provision of service rules, which has been challenged in this bunch of writ petitions, is in deviance with some other service rules, applicable in respect of a different set of institutions, cannot be a ground for questioning validity of Rule 5(3)(b) of Uttarakhand State Education (Teaching Cadre) Gazetted Service Rules, 2022.

7. Law is well settled that employer can prescribe the eligibility conditions for promotion or direct recruitment to a post. The State Government, in its wisdom, has prescribed 10 years' qualifying service as lecturer for becoming eligible to participate in the examination for

appointment to the post of Principal, Government Intermediate College. It is not that lecturers serving in Government Intermediate Colleges have been deprived of their right to be considered for promotion. That right is still available to them as per their seniority. Thus, petitioners will have to wait for their turn and they will get promotion to the post of Principal, Government Intermediate College, when it becomes due to them as per their seniority position in the cadre. Rule 5(3)(b) gives them fast track promotion, through limited Departmental Examination.

8. In the case of *Chandan Banerjee & others vs. Krishna Prosad Ghosh & others, reported in (2022) 15 SCC 453*, Hon'ble Supreme Court has reiterated that judicial review in cases where classification is challenged, is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved and further Courts cannot indulge in a mathematical evaluation of the basis of classification or replace the wisdom of the legislature or its delegate with their own.

9. Even otherwise also, State as an employer, has certain inherent rights. One of such right is to prescribe eligibility conditions for appointment to a post

under the State. Courts interference with the eligibility condition prescribed by the State Government in the Service Rules would be warranted only when it neither has any intelligible differentia nor has any nexus with the object sought to be achieved; in other words, the conditions prescribed are so irrational which no reasonable person could have prescribed.

10. In the case of *State of Jammu & Kashmir vs. Shri Triloki Nath Khosa & others, reported in (1974) 1 SCC 19*, it has been held by Constitution Bench of Hon'ble Supreme Court that classification based on educational qualification, is valid. It was further held in the said judgment that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the Rule offends Article 14, the burden is on him to plead and prove the infirmity and further that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

11. Thus, this Court is not persuaded to take a different view in the matter than that taken by this Court in Writ Petition (S/B) No. 135 of 2024 titled as

'*Trivuwan Chandra Lobiyal and others vs. State of Uttarakhand and others*'. Accordingly, all the writ petitions are decided in terms of the judgment dated 08.04.2024 passed in Writ Petition (S/B) No. 135 of 2024 and other connected writ petitions.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 20th November, 2024
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PRAVINDRA S RATHOUR

Digitally signed by PRAVINDRA S RATHOUR
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