

Judgment reserved on: 16.12.2025
Judgment delivered on: 22.12.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 362 (S/S) of 2013

Jagdish Chand Kohli

-----Petitioner

Versus

State of Uttarakhand and others

-----Respondents

Presence:-

Mr. S.K.Mandal, learned counsel for the petitioner.

Mr. Naveen Chandra Tiwari, learned Brief Holder for the
State/respondents.

Hon'ble Mr. Subhash Upadhyay, J.

Petitioner has filed the Writ Petition with the
following prayers:

“i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 21.03.2013 passed by the Additional Director (Basic Education) Kumaun Mandal, Nainital, contained as Annexure No. 26, to the writ petition.

ii. Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to give promotion to the petitioner on the basis of seniority with all consequential service benefit and pay the full and regular salary along with arrear, of the post of clerk , in which he is discharging the duty.”

2. Petitioner had earlier filed a Writ Petition No. 412 (S/S) of 2009 and the said writ petition was decided vide order dated 10.10.2012. The operative portion of the order dated 10.10.2012 reads as under:

“9. Considering all facets of the matter, and in the

preceding facts and circumstances, the writ petition is disposed of by issuing directions to the competent authority to consider the case of the petitioner for promotion under 2004 Rules expeditiously, preferably within a period of six months from the date of production of a certified copy of this order. ”

3. Petitioner submitted a representation in pursuance to the said order and the said representation was rejected vide order dated 21.03.2013 and the present writ petition has been filed challenging the said order passed by the Additional Director (Basic Education), Kumaun Mandal, Nainital. The petitioner who was appointed under the Dying in Harness Rules on a group 'D' post on 16.10.1985, appeared in the examination conducted for the post of Clerk, but, could not qualify the said examination. Learned counsel for the petitioner submits that the petitioner was asked to work on the post of Junior Clerk *vide* order dated 15.05.1993 and thereafter he was allowed to work as Senior Clerk and he retired as a Senior Clerk.

4. The petitioner had earlier filed the writ petition with the prayer that his case is liable to be considered under the promotion rules framed by the State Government of Uttarakhand known as the Uttarakhand Government Servant (Criteria for Recruitment by Promotion) Rules 2004. The petitioner, as such, contends that there was no requirement of the examination to be conducted for the post of Clerk and promotion from Group 'D' to Group 'C' was to be made under the said rules of 2004.

5. *Per contra*, the learned counsel for the State submits that the rules which were notified on 15.06.2004, known as “the Uttarakhand Government Servant (Criteria for Recruitment by Promotion) Rules 2004”, were the subject matter of Special Leave Petition preferred by the State of Uttarakhand (Civil Appeal No. 7696 of 2019) and the Hon’ble Apex Court dealt with the issue as to whether the promotion from Group ‘D’ to Group ‘C’ is to be made as per the rules of 2004 or as per the departmental rules and the Government order issued for conducting the said examination. The Hon’ble Apex Court in para 10 to 12 of the judgment and order dated 16.10.2014 passed in the above referred Civil Appeal held as hereunder:-

“10. In its determination, the High Court was of the view, that Rule 4 of the 2004 Rules postulates only one criterion for promotion, namely, seniority. And that, seniority was the only relevant factor for determining onward promotion from group ‘D’ service to the lowest ministerial posts of Group ‘C’ service. Keeping in view the facts and circumstances of the present controversy, we are of the view that the High Court erred in recording the aforesaid determination. Whilst there can be no doubt Rule 4 postulates seniority as the basis for onward promotion, but the Rule also provides, that promotions would be made subject to the “rejection of the unfit”. If the Government Orders dated 17.07.2004 and 08.11.2004 were the basis of determining the fitness of concerned employees for onward promotion and for adopting measures for “rejection of the unfit” then the two Government orders would squarely fall within the purview of Rule 4 of the 2004 Rules. Otherwise, they would be in conflict therewith.

11. We have extracted hereinabove both the

Government Orders. We are satisfied that it was the endeavour of the government to determine fitness of Group 'D' employees, for onward promotion to the lowest rank of ministerial posts in Group 'C' service. We say so because, it is apparent to us, that Group 'D', posts comprise of posts in the nature of Peons, Messengers, Chaukidars, Malies, Farrashes, Sweepers, Watermen, Bhistis, Tindals, Thelamen, Recerdfilters, Peon-Jamadars, Daftri, Book-Binders, Cyclostyle Operators, Farrash-Jamadar, Sweeper-Jamadars and Head Malis. The nature of duties of the posts referred to hereinabove, are too well-known. Merely because an employee while holding a Group 'D' post has been discharging the duties, of the nature referred to above, it cannot be presumed that he/she is suitable for onward promotion to a ministerial post. It is, therefore, that while determining the issue of onward promotion to ministerial posts, the State Government issued inter alia the above two Government Orders extracted hereinabove. Thereby, it would be possible to determine the fitness of those who fulfilled the conditions of eligibility for promotion. We are satisfied that the aforesaid two Government Orders squarely fall within the ambit of competence of the appointing authority, to determine the minimum fitness standards postulated under Rule 4 of the 2004 Rules.

12. In view of the above, we are satisfied that the impugned orders passed by the High Court, whereby, the above two Government Orders were quashed, deserve to be set aside. The two Government Orders dated 17.07.2024 and 08.11.2024 are hereby upheld. The instant appeals are accordingly allowed. The impugned orders passed by the High Court are therefore set aside."

6. Learned counsel for the respondents submits that the representation submitted by the petitioner was

considered and decided by the competent authority vide impugned order dated 21.03.2013 and in the said order it has been observed that the promotion from Group 'D' to Group 'C' is to be made as per the departmental service rules of 2004, as amended in the year 2008 which provides that the promotion from Group 'D' to Group 'C' has to be made on the basis of examination, in which, 50 marks are for written examination, 20 marks are for annual confidential report, 20 marks are for the typing test and 10 marks are for the computer knowledge, as such, the examination would be of 100 marks and the provisions of Uttarakhand Government Servant (Criteria for Recruitment by Promotion) Rules, 2004, would not be applicable in making promotion from Group 'D' to Group 'C'. It is further averred in the impugned order that the petitioner is working on the substantive post of Peon (Group 'D') and is getting salary for the said post and was paid the salary of Clerk from 31.03.1993 to 22.08.1995, i.e., during the period when he was allowed to work as Clerk. The impugned order, as such, specifies that the petitioner cannot be granted promotion on Group 'C' post in view of the specific provisions made in the departmental promotion Rules 2004, as amended in the year 2008.

7. Having heard learned counsel for the parties and on perusal of the record, it is evident that the petitioner had earlier filed a writ petition for consideration of his case for promotion from Group 'D' to Group 'C' and the writ petition was disposed of vide order dated 10.10.2012 and in pursuance thereof, the case of the petitioner was considered and was rejected by the impugned order. The

departmental authority has considered representation submitted by the petitioner on merits and it has rightly been observed that the promotion from Group 'D' to Group 'C' can be made as per the departmental rules of 2004 as amended in the year 2008.

8. The law is well settled that in case of any conflict between the Special Rules and General Rules, the Special Rules, i.e., the Departmental Rules shall prevail. Moreover, the Hon'ble Apex Court in the *Civil Appeal No. 7696 of 2009, State of Uttaranchal & others vs. C.S.R.K.S. Medical Health Services, Uttaranchal*, has held that the promotion from Group 'D' to Group 'C' are not governed by the Uttarakhand Government Servant (Criteria for Recruitment by Promotion) Rules, 2004, and the Government Orders dated 17.07.2004 and 08.11.2004, which held the field prior to the issuance of the departmental rules of 2004 were upheld.

9. Thus, there is no illegality or perversity in the decision taken by the departmental authority and there is no scope of interference in the present writ petition. The impugned order has been passed by providing opportunity of hearing to the petitioner and considering his representation which has been decided on merit.

10. In view of the above, the Writ Petition fails and the same is dismissed.

(SUBHASH UPADHYAY, J.)

Dated: 22.12.2025
Kaushal