



2025:UHC:3165-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

**HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI ASHISH NAITHANI**

Writ Petition (S/B) No. 558 of 2021

Leela Devi and others

-Petitioners

Versus

State of Uttarakhand and Another

--Respondents

Presence:-

Mr. Nishant Krishna Adhikari, Advocate holding brief of Mr. Ramji Shrivastava, Advocate for the petitioners

Mr. Puran Singh Bisht, Additional CSC for the State

Mr. Yash Bisht, Advocate holding brief of Mr. Vikas Bahuguna, Advocate for the caveator

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. Petitioners are working as Anganwadi Karyakarti in Department of Women Empowerment and Child Development, Government of Uttarakhand. They are aggrieved by Rule 5(ii) of Uttarakhand Mahila Evam Balvikas Adhinasth (Supervisor) Seva Niyamavali, 2021, whereby qualification required for appointment to Group-C post of supervisor, was enhanced from Intermediate to Graduation. Thus feeling aggrieved, petitioners have challenged validity of Rule 5 (ii) of the aforesaid Rules.

2. It is contended that the qualification needed for appointment as Supervisor earlier was Intermediate which petitioners possessed; therefore, the qualification cannot be upgraded to graduation so as to render petitioners ineligible.



3. It is contended that petitioners are serving as Anganwadi Karyakartis for last several decades and they were waiting all through for their promotion/appointment to the next higher post of supervisor, but when they became due for promotion, the qualification needed for Supervisor was revised from Intermediate to Graduation, which has resulted in denial of their right to be considered for appointment.

4. Per contra, learned State Counsel submits that no one can claim a vested right of appointment or promotion and one must fulfill the eligibility conditions mentioned in the applicable recruitment rules for appointment to a public post.

5. Learned State Counsel submits that the post of Supervisor is not to be filled by promotion and direct recruitment is the only source of recruitment, however, a separate quota has been provided to Anganwadi Karyakarti for appointment as Supervisor.

6. Learned State Counsel further submits that with changing times, it was felt that a candidate with Intermediate qualification would not be able to discharge the multifarious duties of Supervisor, therefore, State Government decided to prescribe Graduation as minimum qualification for appointment as Supervisor.

7. He further submits that the State Government as employer, has plenary power of deciding qualifications needed for a particular post and State Government, in its wisdom, has prescribed Graduation as the



qualification, therefore, anyone who do not possess that qualification, is ineligible. He further submits that petitioners should upgrade their qualification if they are desirous of appointment as Supervisor.

8. He further submits that right to be considered for appointment has been declared to be a fundamental right but one has to be eligible as per the applicable rules for appointment and then only he can claim that right.

9. He further submits that process of selection, which was held as per the amended rules, has concluded and it is not known as to whether any unfilled vacancies are now available or not.

10. As per Article 310 of the Indian Constitution, a public servant holds office at the pleasure of the President or the Governor. This has a direct bearing on the powers of Parliament or legislature to make laws or the executive to make rules for specifying conditions of service, as provided under Article 309. The relationship between a state employee and the State originates in contract, but by virtue of the constitutional constraint, coupled with legislative and executive rules governing the service, the relation attains a unique position. In the case of **Roshan Lal Tandon v. Union of India**, reported in **AIR 1967 SC 1889**, Hon'ble Supreme Court had an occasion to consider a similar question, where by an amendment in the service Rules, the writ petitioner became ineligible for promotion. Hon'ble Supreme Court has held as under:-



“6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade ‘D’ and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure ‘B’, laid down that promotion to Grade ‘C’ from Grade ‘D’ was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by *Salmond and Williams on Contracts* as follows:

“So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory



incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.”

7. We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case.”

11. In the case of **State of H.P. v. Raj Kumar**, reported in **(2023) 3 SCC 773**, Hon’ble Supreme Court has summarized the legal position on the status of a employee serving under the State. Paragraph nos. 27 & 28 of the said judgment are reproduced below:-

“27. The principle laid down in Roshan Lal Tandon case is followed in a number of decisions of this Court. The following are the propositions emanating from the principles laid down in these precedents:

27.1. Except as expressly provided in the Constitution, every person employed in the civil service of the Union or the States holds office during the pleasure of the President or the Governor (Article 310). Tenure at pleasure is a constitutional policy for rendering services under the State for public interest and for the public good, as explained in Tulsiram Patel .

27.2. The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a status.

27.3. The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.



27.4. In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

27.5. In a recruitment by the State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

27.6. Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules. There are no vested rights independent of the rules governing the service.

27.7. With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review.

28. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in Rangaiah has not justified its observation by locating such a right on any principle or on the basis of the new Rules. As there are a large number of judgments which followed under the assumption that an overarching principle has been laid down in Rangaiah, we have to necessarily examine the cases that followed Rangaiah. We will now examine how subsequent decisions understood, applied or distinguished.

12. In view of legal position, as discussed above, we do not find any reason to interfere with Rule 5 (ii) of the applicable recruitment rules for appointment as Supervisor. However, in view of the prayer made by learned counsel for the petitioners, we dispose of the writ petition with liberty to petitioners to make representation to the State Government. If petitioners



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make representation for relaxing the condition of Rule 5(ii) of the applicable recruitment rules, then competent authority shall take decision on the representation, within four months from the date of its receipt, along with certified copy of this order.

MANOJ KUMAR TIWARI, J.

ASHISH NAITHANI, J.

Dt: 28th April, 2025
Mahinder