HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 558 of 2011

Mohammad Yunus …Petitioner

Vs.

Uttarakhand Public Service Commission
through its Secretary and others …Respondents

Advocate: Mr. Siddhartha Sah, Advocate for the petitioner
Mr. Akshay Latwal, Brief Holder for the State of Uttarakhand.
Mr. B.D. Kandpal, Advocate for the respondent(s)

Hon'ble Sharad Kumar Sharma, J.
(Via Video Conferencing)

Owing to the subsequent developments, which had taken place but to deal with factual case of the petitioner, as agitated in the writ petition in detail, it may not be necessary at this stage. But for the purposes of brevity, and in order to decide the *lis* as such, this Court is precisely dealing with the factual aspects only.

2. The learned counsel for the petitioner contends that the petitioner was appointed on the post of Upper Divisional Assistant, with the respondents, by an order dated 29.04.2004. As a consequence thereto, the respondent department has published a final seniority list, as per the Seniority Rules applicable for the Review Officers, on 04.05.2010. On the basis of the placement of the petitioner in the seniority list dated 04.05.2010, the petitioner contends that he was selected and ultimately he was promoted too on the post of Section Officer.

3. After the aforesaid promotion, being granted to the petitioner on the post of Section Officer, the respondents undertook the process of preparation of the final seniority list of the officers, who were belonging to the section officers cadre, and on the basis of seniority list thus published, for the aforesaid cadre of section officer, on 17.01.2011, one Dr. Punita Vajpayee; was promoted to the next higher post i.e. the post of Under Secretary, by an order dated 20.01.2011. As a result of promotion of Dr. Punita Vajpayee, as Under Secretary; from the feeding cadre of section officer, a

promotional avenue for the post of section officer fell vacant as against one post, which had fallen vacant.

4. The learned counsel for the petitioner contended that while the petitioner was working as section officer and since there stood a vacancy in the cadre of section officer, due to promotion of Dr. Punita Vajpayee, the petitioner received an information under the Right to Information Act, that in pursuance to the meeting conducted by the Uttarakhand Public Service Commission, a decision was taken by the Commission; on the basis of proceedings of a contempt, being Contempt Petition No. 16 of 2011, Sunil Kumar Mishra Vs. M.H. Khan and others, where, in the said contempt petition, the controversy which was sought was to enforce the judgement dated 30.08.2010, which was passed in Writ Petition No. 1063 of 2009, Sunil Kumar Mishra and others Vs. State of Uttarakhand and others.

5. Faced with the contempt proceedings, the Uttarakhand Public Service Commission, ultimately decided that the petitioner therein of the writ petition, as well as Mr. Sunil Kumar and Mr. Ashish Kumar Jaiswal, their seniority has to be notionally rectified and they were to be given appointment on the promotional post of Review Officers i.e. the post which was subsequently re-designated as Upper Divisional Assistant. As a consequence of the revised recommendations which was made by the Uttarakhand Public Service Commission on 24.12.2009 and 29.12.2009, the High Court passed the order dated 31.08.2010, in the Writ Petition No. 1063 of 2009, as preferred by Mr. Sunil Kumar Mishra. In fact, if the order passed by the Division Bench of this Court is taken into consideration, in the matters of Sunil Kumar Mishra, the Division Bench has disposed of the writ petition with the following directions:-

> "4. We feel that the State Government is required to take a decision on the said recommendation dated 24th December, 2009, inasmuch as, four people belonging to reserved category did not get appointments despite they having been selected for appointments. We however, feel that while taking a decision to appoint those four candidates, the State Government, in the facts

> and circumstances narrated above, cannot in any event interfere with the appointments of the petitioners, inasmuch as, in the matter of obtaining such appointments the petitioners had no role to play and at the same time by reason of the said appointments, the status of the petitioners were altered by the State Government. It must be kept in mind that the petitioners had no role to play until the appointments in question were given to them, after they had appeared in the examination. It was the Commission who evaluated the examination given by the petitioners and thereupon it made recommendation and the said recommendation having been accepted by the State Government, the petitioners obtained the appointments. Upon obtaining such appointments the petitioners have been permitted to work for more than six years. In other words, the petitioners after having been accorded the status of Upper Division Assistant attached to the Secretariat for a period in excess of six years cannot be denied of such status, for in the matter of conferment of such status, it is the State Public Service Commission and the State Government played the entire role and to that the petitioners had nothing to do. At the same time, the people who for the mistake of the State Public Service Commission were not appointed cannot be left in lurch. We feel that they should also be accommodated by the State Government but without disturbing the status of the petitioners. The writ petition is disposed of with the directions as above."

6. Based on the said direction, issued by the Division Bench of this Court on 31.08.2010, and in view of the earlier final seniority list of the Review Officer Cadres employees, the Uttarakhand Public Service Commission has already made the seniority list and passed a memorandum of re-fixing the final seniority by the impugned order dated 16.05.2011, and as a consequence thereto, on the basis of revised seniority list, one Anupama Kandpal and the petitioner were reverted back in their respective seniority from Sl. Nos. 5 and 6 to Sl. Nos. 8 and 9 respectively.

7. The sole basis of re-fixing the seniority and lowering the petitioner in the cadre was due to re-fixation of the seniority, as a consequence of the judgement rendered in the matter of Sunil Kumar Mishra. Subsequent thereto, the Secretary, Uttarakhand Public Service Commission, by the impugned order dated 19.05.2011, reverted the petitioner on the post of Review Officer, from the post of Section Officer, on the premise that Sunil Kumar Mishra and Ashish Kumar Jaiswal, since they have been granted a notional appointment in the year 2004, and also as a consequence to the re-

fixation of the seniority by the seniority list dated 16.05.2011, the petitioner since have been lowered in the seniority from Sl. Nos. 6 to 9. It is the petitioners of the writ petition, being Writ Petition No. 1063 of 2019, who were supposed to be promoted on the posts of Section Officers based on the revised seniority and since at that relevant point of time of passing the judgement dated 19.05.2011, impugned in the writ petition, there was only one promotional post available in the general category, for the promotional post of Section Officer and on the basis of petitioner being placed lower in the seniority due to the re-fixation of seniority, the petitioner was reverted and since 04.05.2010, he was reverted on the post of Review Officer.

8. The contention of the learned counsel for the petitioner in the writ petition is that after the grant of promotion to the petitioner, on the post of section officer, he could not have been reverted, as the said aspect was not considered and when he questioned the re-determination of seniority, when the same was not considered despite of his representation dated 23.05.2011, as served by him, upon the Secretary, Uttarakhand Public Service Commission. Contending thereof that since he being a direct recruitment in 2004, and there are total 11 posts, out of which 7 posts were available for promotion for the general category and as against 7 employees were already appointed, no decision was taken on the representation, consequently the present writ petition was filed by the petitioner for the following reliefs:-

> "i. issue a writ, order or direction in the nature of certiorari to quash the office orders dated 16.05.2011 and 19.05.2011 issued by the Secretary, Uttarakhand Public Service Commission (contained in Annexure No. 9 and 10 respectively).
>
> ii. issue any other writ, order or direction which this Hon'ble Court deems fit and proper under the facts and circumstances of the case.
>
> iii. Award cost of petitioner."

9. The writ petition was heard by the coordinate Bench of this Court, and while admitting the writ petition vide its order dated 14.06.2011, had stayed the impugned order of reversion dated 19.05.2011, on the logic that the judgement of the Division Bench dated 31.08.2011, never contained any direction of reverting the petitioner and even if at all a reversion so contemplated was required, though there was no fault on part of the petitioner, it could not have been done without providing an opportunity of hearing to the petitioner since reduction of a rank of a government servant he must be heard prior to passing of any order of reversion, the interim order was granted as a consequence the petitioner continued to work on the promoted post of section officer.

10. The respondents have filed their counter affidavit on 14.02.2019. In the counter affidavit, thus filed under an affidavit, in para 11, the Secretary, Uttarakhand Public Service Commission, the Secretary has raised the following pleadings:-

> "11. That it is further submitted that at the relevant time in 2011 there was only 1 post section officer was available in which the claim of the respondent no. 5 was prior then the petitioner as such for accommodating respondent no. 5 the petitioner was reverted to the post Upper Divisional Assistant. (Review Officer). However thereafter now since Hanuman Prasad Tiwari and Shiv Vibhuti Ranjan has been relieved to Secretariat as such one post of Section Officer is available to the petitioner. Further more it is stated that the petitioner is already working as Section Officer under the interim order dated 19.5.2011 of this Hon'ble Court. Thus the writ petition of the petitioner is liable to be dismissed."

11. In fact, as a consequence of the pleadings raised in para 11 of the counter affidavit, the Secretary has candidly and very fairly admitted the fact that the promotional posts has now been made available, due to the relieving of one Mr. Hanuman Prasad Tiwari and Mr. Shiv Vibhuti Ranjan to the Secretariat, as such one post of section officer is available for promotion, to which the petitioner could be promoted, since being next in the seniority list even after its

re-fixation, which has been made by one of the impugned orders dated 16.05.2011 under challenge in the writ petition.

12. Today, when the matter was taken up, both the counsels for the parties have candidly admitted the fact that the petitioner, as on an occurrence of a vacancy, as referred in para 11, has already been promoted on regular basis on the post of section officer, and he is accordingly working on the promotional post of section officer, hence as on date, the purpose of giving challenge to the impugned orders, does not subsists on account of grant of subsequent promotion to the petitioner. Since the petitioner otherwise also continued to work on the promotional post of section officer under the interim order, as passed by the coordinate Bench of this Court and subsequently, as per the statement of respondent's counsel, he is now been promoted against the post, which has fallen vacant thereof, the purpose of adjudication as against the impugned order has lost its significance, as now the petitioner admittedly is working on the promotional post, accordingly, no adjudication on merits is called for.

13. The writ petition is accordingly closed in view of the aforesaid averments.

(Sharad Kumar Sharma, J.)
10.08.2020

Mahinder/