IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Special Appeal No.68 of 2015

Kaur Singh .....Appellant

Vs.

Jyoti Prasad Bhatt and another ...Respondents

Shri Arun Pratap Shah, learned counsel for the appellant.
Shri Bhagwat Mehra, learned counsel for the respondent no.2.

22nd December, 2020

Coram : Hon'ble Ravi Malimath, A.C.J.
Hon'ble Alok Kumar Verma, J.

Ravi Malimath, A.C.J. (Oral)

Aggrieved by the order dated 05.01.2015 passed by the learned Single Judge in allowing Writ Petition No.349 of 2014 (S/S), hence, appellant (respondent No.2 in writ petition) is in appeal.

2. The case of the appellant is that he is working as a class IV employee in the District Judgeship, Tehri Garhwal. He sought for promotion to Class III. Eligible candidates appeared in a written exam. He secured equal number of marks as respondent no.1. However, the

appellant was selected for promotion. He was promoted vide office order No.158/2013 dated 23.12.2013 with effect from on 01.01.2014.

3. Challenging the same, the writ petitioner-respondent No.1 herein filed a writ petition before this High Court. The writ petition was allowed vide order dated 05.01.2015 and the promotion of respondent no.2-appellant herein was cancelled. Hence, the respondent no.2-appellant herein is in appeal.

4. Learned counsel for the appellant contends that the order passed by the learned Single Judge is erroneous that he could not have been discriminated against. The appellant secured more marks in English than the selected candidate. However, the learned Single Judge did not accept the plea of appellant. Admittedly, the appellant and respondent no.1 (writ petitioner) secured equal number of marks, therefore, one of the methods to be chosen, the procedure for selecting the person who senior as is applicable in the case of direct recruits, was held applicable to the case of promotions also. We do not find any law to the contrary that has been shown to us by the appellant's counsel. Therefore, when two candidates secured equal number of marks, the person who is senior amongst them required to be promoted i.e. exactly what the employer-respondent no.2 has done. Admittedly, respondent no.1 is senior to the appellant, therefore, he has been preferred.

5. The learned Single Judge having considered the contentions, rightly allowed the writ petition. We do

not find any error in the judgment of the learned Single Judge dated 05.01.2015 and hence, the appeal is dismissed.

6. Stay application (CLMA No.1832 of 2015) is rejected accordingly.

(Alok Kumar Verma, J.) **(Ravi Malimath)**
A.C.J.

JKJ/SK