SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			WPSS/866/2019 Jaspal Singh Bhandari --Petitioner **Versus** State Of Uttarakhand --Respondent **Hon'ble Rakesh Thapliyal, J.** 1. Mr. Reituparna Joshi, learned counsel holding the brief of Mr. Shivanand Bhatt, learned counsel for the petitioner. 2. Mr. S.S. Chaudhary, learned Standing Counsel for the State. 3. The petitioner who suffers from the physical disability to the extent of 60% was inducted in service as a Peon (Group-D) in the Education Department on 15.11.1984. 4. By virtue of advertisement dated 29.03.2010, the respondents initiated the promotional exercise from Group 'D' to Group 'C' post. Despite the statutory mandate, under the prevailing Rules, the petitioner was not considered under 3% quota reservation for physically handicapped candidates and aggrieved by such action, the petitioner approached this Court by means of Writ Petition No. 2212 (S/S) of 2017 which was disposed of by the Coordinate Bench on 05.09.2017 in the light of the judgment rendered by the Division Bench dated 29.11.2016 in WPSB No. 126 of 2015. In compliance to the order of the Writ Court, the Additional Director of Education examined the matter and passed the formal order on 29.03.2018

			wherein the Addl. Director clearly observed that there is a mistake on the part of the Department in implementing the Government Order dated 10.11.2010 which mandates the grant of reservation benefit to the disabled employees in promotional exercise. 5. Subsequent to the order passed by the Addl. Director of Education, the petitioner was finally promoted to Group 'C' post by order dated 02.06.2019, however, this promotion was granted prospectively. 6. Now, the petitioner has preferred this petition for claiming promotion with a retrospective date when the juniors to him were promoted. 7. It is argued by the learned counsel for the petitioner that since the department itself admits that due to the mistake on the part of the department the petitioner could not be promoted, therefore, he should not suffer due to the fault and mistake on the part of the State Administration, and, as such, he at least is entitled to get all the notional benefits including seniority from the date when the junior incumbents were promoted. 8. On the other side learned State Counsel vehemently opposed the submissions, as made by the learned counsel for the petitioner on two primary grounds:- (i) Firstly the petitioner failed to declare his disability status in the application form. (ii) Secondly, the Addl. Director is the actual Appointing Authority who issued the order of promotion but the Addl. Director has not been arrayed as party/ respondent, and, as such, the writ petition suffers from non-joinder of necessary party. 9. Heard learned counsel for the

			parties. This Court carefully considered the submissions of the learned counsel for the parties and examined the record. The first contention of the State that the petitioner did not disclose disability in his application form cannot sustain, since, the petitioner was internal candidate, working in the same department since 1984 and his service record which remains in the custody of the respondent clearly reflects his status particularly with regard to the disability. More importantly the Addl. Director (Appointing Authority) already passed the formal order on 29.03.2018 observing that the department committed error in ignoring the GO dated 10.11.2010 by not granting benefit of reservation to the petitioner, and, as such, mistake on the part of the department was acknowledged by the officials and the respondents cannot take contrary stand to defeat the beneficial piece of social legislation meant for persons with disability. Regarding second technical objection, i.e., non-joinder of the Addl. Director as party-respondent, this Court does not find any substance particularly when the Director is party-respondent herein and, furthermore, Addl. Director is the subordinate to the Director, and, therefore, the writ petition cannot be dismissed on such a hyper technical ground. 10. Apart from this, this Court take note of this fact that for persons with disability there is social welfare legislation. The right has to be considered for promotion under the reserved category. The statutory right was wrongly denied to the petitioner in the year 2010 since his juniors were promoted and the petitioner could not be promoted at the relevant point of time,

			therefore, for the fault of the department the petitioner should not be made to suffer, and, as such, entitled to get the notional benefit attached to the post of Group 'C' in which the petitioner was promoted by the order dated 02.06.2019. 11. In view of the observation as above, the writ petition is allowed. A writ of mandamus is issued to the respondents to treat the petitioner's promotion to Group 'C' post retrospectively w.e.f. the date his immediate junior incumbents were promoted pursuant to the advertisement dated 29.03.2010. The respondents are further directed to re-fix the petitioner's seniority in the cadre of Group 'C' accordingly with notional benefits and pay fixation retrospectively within a period of two months from the date the certified copy of this order is produced before the Authority concerned. No order as to costs. **(Rakesh Thapliyal, J.)** 26-10-2026 Parul