

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION No. 1003 of 2007 (M/S)

Appellate Authority

---Petitioner

Vs.

State Information Commissioner and another

---Respondents

Present : Mr. Arvind Vashista, Advocates for the petitioner.
None for the respondents.

Hon'ble Alok Singh, J. (Oral)

The complainant / respondent no.2, herein appeared in the written test held on 23.10.2005 for Higher Judicial Services (HJS); Complainant / respondent no.2 sought certain informations vide his application dated 02.09.2006 under the Right to Information Act from the Public Information Officer of this Court; Informations so sought were supplied to the complainant / respondent no.2 on 29.09.2006; Complainant / respondent no.2 moved second application on 11.10.2006, seeking five informations; All the informations sought were supplied to the complainant / respondent no.2 vide letter dated 31.10.2006; Third time, complainant / respondent no.2 sought four informations vide application dated 04.11.2006, which were replied/supplied to the complainant/respondent no.2 on 15.11.2006; Vide third application, complainant / respondent no.2 wanted to inspect answer sheet of the complainant / respondent no.2, which was denied to him

saying that there was no provision for inspection of the answer sheet. Feeling dissatisfied, instead of filing appeal before the Appellate Authority i.e. the petitioner, herein, under Section 19(1) of the Right to Information Act, 2005, complainant / respondent no.2 moved a complaint before the State Information Commission Uttarakhand / respondent no.1, herein, challenging the fairness of the competitive examination of HJS, requesting the Commission to permit the complainant / respondent no.2 to inspect his answer sheet pertaining to paper Nos. I, II & III of the HJS Examination.

Learned State Information Commissioner, vide order dated 09.04.2007, directed the Public Information Officer of this Court to submit his parawise reply to the complaint of respondent no.2 and thereafter the State Information Commissioner directed the Appellate Authority i.e. the petitioner, herein, to submit his comments on the complaint of the complainant / respondent no.2, and to produce certain documents before the Commission vide order dated 30.04.2007. Feeling aggrieved, the petitioner has invoked writ jurisdiction of this Court.

None is present for the respondents despite valid service.

I have heard Mr. Arvind Vashisth, learned counsel for the petitioner and have carefully perused the record.

Undisputedly, the complainant / respondent no.2 sought certain informations at three different stages and all the informations sought were supplied to the complainant / respondent no.2, herein, within the statutory time. Vide third application, complainant / respondent no.2 wanted to inspect his answer sheets of the HJS examination, which

was declined on the ground that there was no provision to inspect the answer sheet.

As per Section 19 of the Right to Information Act, any person feeling dissatisfied with the information supplied or in the event of non-supply of the information within time may file appeal before the appellate authority. Instead of filing the appeal before the petitioner, who was the appellate authority, the complainant / respondent no.2 straightway filed a complaint before the State Information Commission under Section 18 of the Act.

In my considered opinion, neither Information Officer nor Appellate Authority nor State or Central Information Commission has absolutely any authority or jurisdiction to entertain the complaint to examine the fairness of the examination held for any post. State or Central Information Commission can entertain the complaint under Section 18 of the Act only when Information Officer or Appellate Authority was not appointed or they refused to accept the application or the appeal or had demanded unreasonable fee for supplying the information sought. However, if information is not supplied within time or person is feeling aggrieved from the information sought being misleading or incomplete, in that event, he has an alternative remedy to approach Appellate Authority under Section 19 of the Act.

In the present case, the State Information Commission has not only entertained the complaint directly, however, he has asked for the comments from the Appellate Authority. In my considered opinion, comments ought not to have been asked from the appellate authority

in view of the fact that the complainant / respondent no.2 never approached Appellate Authority nor filed any appeal.

Consequently, the writ petition is allowed. Impugned order is set aside.

No order as to costs.

(Alok Singh, J.)
30.05.2014

Avneet