

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

WRIT PETITION NO.185 OF 2021 (S/B)

31ST MAY, 2021

Between:

Kamlesh Kumar Dixit and two others

....Petitioners

and

State of Uttarakhand and others

.....Respondents

Counsel for the petitioners: Mr. S.S. Yadav.

Counsel for the respondent/State : Mr. C.S. Rawat, learned
Chief Standing Counsel for
the State.

Counsel for the respondent : Mr. Sagar Kothari, learned
No.6 counsel holding brief of Mr.
Ramji Srivastava, learned
counsel.

The Court made the following :

JUDGMENT : (per Hon'ble Sri Justice Alok Kumar Verma)

This writ petition is filed for seeking a writ of certiorari for quashing the Clause Nos.5 (b) and 7 (b) of the impugned advertisement dated 1.5.2021, issued by the Secretary, Uttarakhand Medical Services Selection Board, the respondent no.6; a writ of mandamus directing the respondents to complete the recruitment process excluding the posts on which the petitioners are presently working, and not to disturb the peaceful functioning of the petitioners in the department; a writ of mandamus directing the respondents to provide rebate and relaxation to the petitioners as per existing rules and regulations dated 07.01.2019; a writ of mandamus directing the respondent nos. 1, 2 & 6 to provide the age relaxation to the petitioner no.2 to participate in the examination for which the last date of submission of form is 02.06.2021, and to direct the respondents to receive the application form of the petitioner no.2 through registered post for the recruitment of Assistant Professor, Nursing College at Dehradun.

2. Heard Mr. S.S. Yadav, the learned counsel for the petitioners, Mr. C.S. Rawat, the learned Chief Standing Counsel for the State and Mr. Sagar Kothari, the learned

counsel holding brief of Mr. Ramji Srivastava, the learned counsel for the respondent no.6.

3. Mr. S.S. Yadav, the learned counsel for the petitioners submitted that the petitioners are M.Sc. Nursing. Pursuant to the advertisement dated 29.05.2010, they were selected as contract faculty against the vacant posts of Assistant Professors. Their appointments, as a contract faculty, were extended time to time on same terms and conditions. Till date, they are continuing in the Medical Education Department. Vide order dated 12.05.2021, the Director General, Medical Health & Family Welfare Department, the respondent no.5, has issued an order, by virtue of which the contract service of the petitioners have been extended in the contract faculty till 31.07.2021. The age of the petitioner no.2 is more than 48 years 11 months, whereas, the maximum age limit for appointment to the post of Assistant Professor is 42 years as per the impugned advertisement dated 01.05.2021. The petitioner no.2 has now become overage as per the impugned advertisement dated 01.05.2021. However, she is still working as Assistant Professor on the contract basis since 2010. Earlier, the petitioners had filed a Writ Petition No.247 (S/B) of 2018 "Kamlesh Kumar Dixit and others vs. State of Uttarakhand

and others", before this Court, which was finally decided on 23.09.2020 with the directions that the services of the petitioners shall not be discontinued till the final selection on the posts. On 01.05.2021, the respondent no.6 invited applications for the recruitment of Associate Professors, and Assistant Professors in the Government Nursing Colleges. In total, there are 13 posts of the Assistant Professors. The respondents have not given any rebate for their past services as per Notification of the Government of Uttarakhand dated 07.01.2019, by which the Government has given weightage points and age relaxation. As she became overage, the petitioner no.2 is unable to participate in the selection process. On 07.10.2020, the Government of India has issued a memorandum, by which, it was directed that one time exercise will be done in terms of para no.44 of Uma Devi case. On 17.05.2021, the petitioners submitted representation before the respondent no.6. But the respondent no.6 has not considered the case of the petitioners for weightage point, and relaxation of the age.

4. On the other hand, Mr. C.S. Rawat, the learned Chief Standing Counsel and Mr. Sagar Kothari, the learned counsel appearing for the respondent no.6, submitted that the said rules, which were notified on 07.01.2019, are not

applicable in the present matter. Therefore, the writ petition is devoid of merit. Hence, the writ petition is liable to be dismissed.

5. Earlier, the State of Uttarakhand issued a Regularization Rules, 2013, namely, "The Regularization of Daily Wager, Work-charge, Contract, Fixed Salary, Part-time and Ad-hoc Appointed Employees Regularization Rules, 2013" (hereinafter referred to as, "the Rules, 2013").

6. The Rules, 2013 was amended in the year 2016. The validity of the Amendment Rules, 2016 was challenged before this Court in Writ Petition (S/S) No.154 of 2017, "Himanshu Joshi and others vs. State of Uttarakhand and others", and Writ Petition (S/S) No.155 of 2017, "Charu Bhatt and another vs. State of Uttarakhand and others". This Court, by order dated 17.04.2018 quashed and set aside the Amendment Rules, 2016.

7. In compliance with the said order dated 17.04.2018, the State Government made "The Weightage Point and Age Relaxation in the Direct Recruitment to the Employees Regularized under the Regularization (Amendment) Rules, 2016, Rules, 2018" (hereinafter referred to as, "the Rules, 2018"), whereby all the posts

regularized, pursuant to the Amendment Rules, 2016 were declared as deemed to be vacant, and weightage points and relaxation in age were given, in filling up all these vacant posts, to the persons who were regularized pursuant to the Amendment Rules, 2016.

8. In Writ Petition (S/B) No.64 of 2019, "Dr. Hema Mehra and others vs. State of Uttarakhand and another", the validity of Rule 3 of the Rules, 2018 was challenged before this Court. Vide order dated 15.02.2019, this Court upheld the validity of Rule 3.

9. At this stage, it seems appropriate to notice the provisions of Rule 3, Rule 5 and Rule 6 of the Rules, 2018, which are follows : -

"Procedure of filling the posts : **3.** The concerned Department will ensure to fill-up the posts immediately under these rules after considering the posts filled by way of regularization under the Daily wages, Work-charged, Contract, Fixed wages, Part-time and Ad-hoc basis (Amendment) Rules, 2016 as vacant.

Determination of :
Weightage Point

5. Regularized employees in the different departments under the Regularization of

employees appointed on Daily wages, Work-charged, Contract, Fixed wages, Part-time and Ad-hoc basis (Amendment) Rule, 2016 will be eligible for 1.5 weightage point for each year of service rendered by him in the department for the selection in the direct recruitment on the concerned post.

But the highest limit of the weightage point will be 10 marks and in no circumstances the total of marks obtained will be exceed the prescribed full marks.

- Relaxation in the age limit : 6. The regularized employees in the different departments under the Regularization of employees appointed on Daily wages, Work-charged, Contract, Fixed wages, Part-time and Ad-hoc basis (Amendment) Rules, 2016 will be given age relaxation in the direct amendment in the concerned post, to the extent as to which he comes within the category of eligibility for applying for the concerned post."

10. Mr. S.S. Yadav, the learned counsel for the petitioners, after referring to the judgment of the Punjab-Haryana High Court in the case of **CWP No.12069 of 2015 (O & M), "Union Public Service Commission vs. Sunita**

Sharma and others with batch" dated 06.02.2017, contended that the directions should be issued to the respondents to provide weightage point to the petitioners and relaxation in upper age to the petitioner no. 2 as per existing Rules, 2018.

11. In **Bharat Petroleum Corporation Ltd. and another vs. N.R. Vairamani and another, AIR 2004 SC 4778**, the Hon'ble Supreme Court has held that a decision cannot be relied on without disclosing the factual situation.

12. In **Ambica Quarry Works vs. State of Gujarat and others, (1987) 1 SCC 213**, the Hon'ble Supreme Court has held that the ratio of any decision must be understood in the background of the facts of that case.

13. In **Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd., (2003) 2 SCC 111**, the Hon'ble Supreme Court has held that it is well settled that a little difference in fact or additional facts may make a lot of difference in the precedential value of a decision.

14. Therefore, each case depends on its own facts and a close similarity between one case and another is not

enough, because even a single significant detail may alter the entire aspect.

15. Coming now to the facts of the present case. The facts of the present matter are quite different to the facts of the judgment rendered by the Punjab-Haryana High Court, as referred by the learned counsel for the petitioners. In **Union Public Service Commission vs. Sunita Sharma and others (Supra)**, the Union Public Service commission advertised various posts of Assistant Professors for appointment in Government Colleges of Chandigarh. Clause 5 (c) of the Advertisement was "Age relaxation for Central Government employees". The claim for age relaxation for the contractually appointed Ayurvedic doctors was resisted by the Union Public Service Commission on the ground that only permanent or regular employees of MCD were entitled to such benefit. In the present matter, the petitioners are claiming weightage point and age relaxation in terms of the Rules, 2018. The dispute was entirely different in the case of Union Public Service Commission vs. Sunita Sharma (Supra). Therefore, we find that this judgment is inapplicable to the facts of the case in hand.

16. It is admitted fact between the parties that the Rules, 2018 is made to provide weightage point and age relaxation for one time in the direct recruitment to the personnel regularized under the Amendment Rules, 2016. Rule 5 of the Rules, 2018 stipulates that 1.5 weightage points will be admissible in direct recruitment to the relevant post for each year of service rendered by "the regularized personnel" in various departments under the Amendment Rules, 2016. Rule 6 of the Rules, 2018 stipulates that "the regularized employees" in the different departments under the Amendment Rules, 2016 will be given age relaxation in the direct recruitment on the concerned post.

17. The Rules, 2018 is promulgated under the proviso to Article 309 of the Constitution of India. These rules are special rules which are applicable only to a certain class of persons i.e. whose services were regularized pursuant to the Amendment Rules, 2016. Admittedly, the petitioners' services were not regularized under the Amendment Rules, 2016. Therefore, the petitioners are not entitled to get the benefit of weightage point, and relaxation in the upper age in terms of the Rules, 2018. The Writ Petition is, thus, devoid of merit; it is liable to be dismissed as such at the

admission stage. Consequently, the writ petition is dismissed.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 31st May, 2021
JKJ/Pant