

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No.1317 of 2019

Manohar Chandra UpadhyayPetitioner
Versus
State of Uttarakhand and OthersRespondents
With

Writ Petition (S/S) No.689 of 2018

Manohar Chandra UpadhyayPetitioner
Versus
State of Uttarakhand through Secretary, Cane
Development and Sugar Industries and Ors.Respondents

Presence:-

*Mr. M.C. Kandpal, learned senior counsel along with Mr. Devesh Kandpal, learned counsel for the petitioner.
Mr. Sachin Mohan Singh Mehta, learned Brief Holder for the State of Uttarakhand/respondents.*

Hon'ble Pankaj Purohit, J. (Oral)

Since common question of law is involved in both the writ petitions, hence, they are taken up together and decided by this common judgment. For the sake of brevity, the facts of WPSS No.1317 of 2019 are taken into consideration.

2. By means of these writ petitions, the petitioner has challenged the order dated 27.05.2019 passed by respondent No.2, Cane Commissioner/Director, Ganna Kisan Sansthan evam Prashikshan Kendra, Uttarakhand, Kashipur, by which the petitioner was reverted from the post of Stenographer to the post of Junior Clerk/Typist and further direction is sought to respondent authorities to provide 2nd Promotional Pay Scale, on the basis of A.C.P. to the petitioner in the pay scale of Rs.9300/- to Rs.34800/- with Grade Pay Rs.4600/- from the date 01.09.2008, as petitioner had completed more

that 16 years of services on 01.09.2008, from the date of his joining as the Stenographer in the department.

3. The facts of the case shorn-off unnecessary details are that the petitioner was appointed on the post of Junior Clerk on 17.12.1983 (Annexure No.1) and posted in the office of Assistant Director, Ganna Kisan Sansthan Evam Prashikshan Kendra, Sahjahanpur, U.P. and from time-to-time, was transferred to the several places in the State of Uttar Pradesh. Subsequently, the petitioner was promoted on the post of Stenographer vide resolution dated 25.05.1999 and since then, he has been working as a Stenographer. The name of the petitioner was also there in the Seniority List of the Stenographers.

4. After establishment of the new State-Uttarakhand carved out from State of U.P., at that juncture, the petitioner was working at Kashipur Centre; which came within the newly created State of Uttaranchal (Now Uttarakhand). The petitioner has given option for being allocated to the State of Uttarakhand. In the meeting dated 08.04.2002, the authorities of the State of Uttarakhand resolved to absorb the petitioner as employee in the Government of Uttarakhand. Since then, the petitioner was undoubtedly became an employee of the State of Uttarakhand. Vide order dated 16.08.2004, the Deputy Director, U.P. Ganna Kisan Sanstan, Lucknow reverted the petitioner to the post of Junior Clerk.

5. The said order was challenged by the petitioner by filing a Writ Petition No.74 of 2006 (S/S) Manohar Chandra Upadhyay Vs. State of Uttarakhand & Others, which came to be decided by judgment and order dated 01.04.2010 by the Coordinate Bench of this Court merely on the ground that after the creation of the State of Uttarakhand and absorption of the service of the petitioner by the State of Uttarakhand, the officials of the State of Uttar Pradesh has no business with the petitioner, and therefore, no reversion order could have been passed. Accordingly, the reversion order dated 16.08.2004 was set aside along with other orders impugned in that writ petition dated 02.02.2006 and 14.06.2007, by which the representation of the petitioner against the reversion order had been rejected. However, Coordinate Bench of this Court while allowing the said writ petition had given liberty to the respondent-employer that in the event, if it was found that the petitioner was not qualified under the Rules, it would be open to respondents to take action in accordance with law. The earlier writ petition came to be decided vide order dated 01.04.2010, thereafter, the petitioner has continued his service as Stenographer with the respondent-department.

6. On 04.03.2016, petitioner moved an application for grant of 2nd ACP w.e.f. 01.09.2008 as he become eligible for the same. This application for ACP worked as an explosive in the department and instead of pursuing his case for grant of ACP, the service of the petitioner was reverted again vide order

dated 27.05.2019. It is feeling aggrieved by the said reversion order, petitioner is before this Court.

7. Respondent-State has filed its counter affidavit under the hand of Dr. Rajnish Singh posted as Assistant Cane Commissioner/Assistant Director, Ganna Kisan Sansthan evam Prashikshan Kendra, Uttarakhand, Kashipur. The reversion order was defended by filing a detail counter affidavit. In this counter affidavit, it is submitted that as per Rules, the petitioner does not fulfill the qualification required for the post of Stenographer. According to the counter affidavit, the required qualification was a certificate of stenography.

8. It is the case of the respondents that since the petitioner was not having the certificate of stenography, therefore, he was afforded an opportunity to clear the typing test conducted by the respondent itself. But, the petitioner could not qualify in the said typing test. He was also given opportunity thrice to appear in the said typing test, but, he did not participated in the same. Therefore, the petitioner was reverted.

9. Rejoinder affidavit has been filed by the petitioner to the counter affidavit of the State and in the said rejoinder affidavit the case put up in the writ petition was reiterated. In addition to it, it has been stated that the respondent-department in the year 1991 allowed the petitioner to sit in the shorthand and typing test and he was found satisfactory in both-shorthand as well as typing speed (Annexure

No. RA-2). Thereafter, petitioner was recommended by the committee, for promotion on the post stenographer.

10. It is submitted by learned senior counsel for the petitioner that after setting aside of the reversion order in the year 2010, no further typing test/shorthand test was organized by the respondent-employer rather employer is relying upon the typing and shorthand test of the year 1991, which are clearly contrary to the stand taken by the respondent-State in the counter affidavit.

11. It is also submitted by learned senior counsel for the petitioner that the department is against the petitioner since beginning, when the reversion order has been passed without any reason and that to when the officials of State of UP has no authority to pass such a reversion order after absorption of the petitioner in the State of Uttarakhand. Therefore, the said reversion order was set aside.

12. It is also contended by learned senior counsel for the petitioner that in the year 2010, when the reversion order was set aside, no action has been taken by the respondents with regard to the reversion of the petitioner for the last almost 09 years and the process for issuance of the reversion order was initiated, when the petitioner moved an application for claiming 2nd ACP to which he is entitled w.e.f. 01.09.2008.

13. It is further submitted by the learned senior counsel for the petitioner that in the counter affidavit, it is submitted that the petitioner was not having the requisite qualification of possessing a certificate of shorthand for being appointed as Stenographer with the department, but, the counter affidavit itself negates the fact when it says that in the absence of certificate of shorthand, the petitioner was directed to appear in the shorthand and typing test. Thus, the respondent-department cannot take a turn around now saying that the petitioner was not having any qualification like certificate of shorthand.

14. Having considered the rival contention of the parties and having perused the record, it is quite clear that the respondent has arbitrarily exercised the power vested upon it while issuing the reversion order without any reason. It is clear from the record that the petitioner has qualified the typing/shorthand test in the year 1991 in the erstwhile State of UP and therefore, the reversion order passed on 16.08.2004 as well as the impugned reversion order dated 27.05.2019 is nothing, but a kind of sheer harassment of the petitioner at the hand of the respondents.

15. In this view of the matter, both the writ petitions are allowed. The reversion order dated 27.05.2019 is hereby quashed. It is provided that the petitioner is notionally reinstated on the promotional post of Stenographer and the respondents are directed to provide 2nd ACP to the petitioner as per

law, which he is entitled to get from the date of his entitlement. Since, the petitioner has already been superannuated on 31.12.2020, the natural financial and service consequential would follow in accordance with law in favour of the petitioner.

16. Pending application(s), if any, also stands disposed of accordingly.

(Pankaj Purohit, J.)

30.04.2024

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