

THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

ON THE 06TH DAY OF JANUARY, 2021

BEFORE:

HON'BLE SHRI JUSTICE LOK PAL SINGH

WRIT PETITIOIN (S/S) NO.1661 OF 2017

BETWEEN:

Anuj Kumar Saini,

S/o ShriChatar Singh,

R/o Village Jawahar Khan @Jhiwarheri, Tehsil
Laksar, District Haridwar.

.....Petitioner.

(By ShriAjay Veer Pundir, Advocate)

AND:

1. State of Uttarakhand, through Principal Secretary, Homes, Civil Secretariat, Dehradun.
2. Director General of Police, P.H.Q., Subash Road, Dehradun.
3. Superintendent of Police, Uttarkashi.

.....Respondents.

(By ShriNarainDutt, learned Brief Holder for the State/respondents).

ORDER

This writ petition is filed seeking for a writ of certiorari to quash the impugned orders dated 11.05.2017 and 25.05.2017 passed by respondent nos.2 and 3 respectively, and to issue a writ of mandamus directing the respondents to give appointment to the petitioner on the post of Sub Inspector under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules,

1974 (for short 'the 1974 Rules'), as applicable in Uttarakhand.

2. Earlier Writ Petition (S/S) No.99 of 2013 was filed by the petitioner before this Hon'ble Court. The said writ petition was disposed of by a Co-ordinate Bench of this Court by its judgment and order dated 30.03.2017 with a direction to the respondents to consider the case of the petitioner for appointment to the post of Sub-Inspector within a period of ten weeks from the date of the order.

3. By the impugned order dated 11.05.2017, respondent no.2 rejected the claim of the petitioner on the ground that, in view of the judgment rendered by the Hon'ble Apex Court in the case of "State of Haryana vs. Ankur Gupta", rendered in Civil Appeal No.6950 of 2003 on 03.09.2003, the dependents of the deceased employee cannot claim appointment on a particular post. The purpose of appointment under the 1974 Rules is just to provide immediate financial assistance to the family of the deceased. It is further stated that the age for appointment on the post of Sub-Inspector is 21 years to 28 years and the petitioner has attained the age of about 35 years. For these two reasons, the claim of the petitioner for appointment on the post of Sub-Inspector has been rejected.

4. Rule 8 of the 1974 Rules reads as under:-

"8. Relaxation from age and other requirements.- (1) *The candidate seeking appointment under these rules must not be less than 18 years at the time of appointment.*

(2) *The procedural requirements for selection, such as written test or interview by a selection committee or any other authority, shall be dispensed with, but it shall be open to the*

appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standards of work and efficiency expected on the post.

(3) An appointment under these rules shall be made against an existing vacancy only”.

5. When this Court heard the writ petition and was conscious of the fact that the order dated 11.05.2017, was passed by respondent no.2 by ignoring the directions issued by this Court in the Writ Petition (S/S) No.99 of 2013 dated 30.03.2017 and the authority concerned has tried to sit over the judgment of this Court and has acted as an appellate authority, then this Court had directed to ensure the presence of the Inspector General of Police, Head Quarters, Karmik by order dated 14.05.2018.

6. It is stated that the respondents have given the appointment on the post of Sub-Inspector to the similarly situated candidates, but since the petitioner has approached this Court, the respondents are not considering the case of the petitioner. It is averred that, at the time of deciding the writ petition by this Court by its judgment and order dated 30.03.2017, the respondents did not raise the plea that the petitioner is not entitled for appointment on the post of Sub-Inspector as per his claim. Furthermore, the respondents did not raise the plea that the petitioner has become overage and therefore, he is not entitled for appointment.

7. On perusal of the record, it would reveal that the contention of the respondents that the petitioner cannot claim appointment on the post of Sub-Inspector, in view of the dictum of the Hon'ble Supreme Court in the case of "State of Haryana vs.

Ankur Gupta”, rendered in Civil Appeal No.6950 of 2003 dated 03.09.2003, is an afterthought. Another ground raised by the respondents is that the age for appointment on the post of Sub-Inspector is from 21 years to 28 years. The averment made by the respondents, in this regard, is untenable for the reason that for appointment under the 1974 Rules, the age has no relevance. Further, it seems to this Court that this ground of age, raised by the respondents, is an afterthought and it is only just to defeat the claim of the petitioner for appointment that the unwanted reasons have been assigned.

8. Since in view of the provisions of Rule 8 of the 1974 Rules, the petitioner is entitled for appointment under the said Rules as per his qualification and the reasons shown by the respondents denying the claim for appointment to the petitioner on the post of Sub-Inspector are unsustainable in the eyes of law.

9. In so far as the criteria of age from 21 years to 28 years is concerned, it is made clear that the same is not applicable while giving appointment under the 1974 Rules.

10. For the reasons stated above, the writ petition is liable to be allowed and is hereby allowed. The orders dated 11.05.2017 and 25.05.2017 passed by respondent nos.2 and 3 are untenable in law and the same are hereby quashed. A mandamus is issued to the respondents to consider the case of the petitioner for appointment to the post of Sub-Inspector, as he fulfills the requisite qualification. The respondents are directed to complete the entire exercise within a period of three months from today.

11. Pending application, if any, stands disposed of.

(Lok Pal Singh, J.)

NISHANT