

(112)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 301 of 2011 (S/B)

Surya Darshan Singh Bisht & others

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Petitioners

Versus

Uttarakhand Power Corporation Ltd.
and others

.....

Respondents

Mr. Manoj Tiwari, Sr. Advocate assisted by Mr. Alok Mahra, Advocate
for the petitioners.
Mr. B.D. Upadhyaya, Sr. Advocate assisted by Mr. Sunil Upadhyaya,
Advocate for respondent Nos. 1 to 4.
Mr. D.S. Patni, Advocate for respondent Nos. 6, 12, 21, 27, 29, 30 and 31.

JUDGMENT

Coram : Hon'ble Barin Ghosh, C. J.
Hon'ble U.C. Dhyani, J.

BARIN GHOSH, C.J. (Oral)

Until the subject advertisement was published in the month of April 2003, the provisions contained in the Uttar Pradesh State Electricity Board Services of Engineers Regulations 1970, held the fort. In terms thereof, the lowest cadre in the service was that of Assistant Engineers. In order to be in the cadre of Assistant Engineers, one was required to be appointed as a trainee engineer, to be appointed by direct recruitment for the purpose of completion of training, and there upon to be declared as trained engineers, or

by promotion from the posts of Junior Engineers. For recruitment as trainee engineer, a candidate was required to have a degree in Electrical / Mechanical / Tele-Communication / Instrumentation Electronics Engineering from a University or Institution established by law in Uttar Pradesh or from any other Institution recognized by the State Government, or Degree or Diploma recognized as equivalent thereto by the State Government, or Sections 'A' and 'B' of the Associate Membership of the Institution of Engineers (London), or to be an associated member of the Institution of Electrical Engineer (India). However, in the advertisement, it was indicated that for Uttarakhand Power Corporation Limited, 90 vacancies in the posts of Assistant Engineers are available, of which 75 posts are available for Electrical Engineers, 10 posts for Electronics and Communication Engineers and, 05 posts for Computer Engineers. The advertisement mentioned that, respondees thereto, must have Bachelor of Engineering relevant to the Branch in respect of the vacancies, which have been advertised. It that time, although, 90 vacancies were advertised, but in point of fact, only 42 vacancies were available. Petitioners did not challenge the advertisement on the ground that the advertised cadre bifurcation requiring qualifications appropriate in regard thereto, was not permissible by the Rules governing the recruitment. They responded to the advertisement without any reservation. Petitioner Nos. 1 and 2 applied for being appointed as Computer

Engineers, whereas petitioner No. 3 applied for being appointed as Electronics and Communications Engineer. Thereafter, while the petitioners were asked to test their skill at the written examination, so were other respondents. It is the contention of Uttarakhand Power Corporation Limited that separate examinations were held for the purpose of ascertaining suitability of those, who would be appointed as Electrical Engineers or as Electronics and Communication Engineers or as Computer Engineers. This assertion was not specifically denied, until filing of the rejoinder affidavit in court today, where it has been contended that it was one selection, which was also the contention in the writ petition. After the selection was completed, on 3rd September 2004, 37 people were offered appointments to the posts of Electrical Engineers. Of those 37, 25 accepted the offer and, the remaining did not. On 10th October 2004, 24 posts of Electrical Engineers were sanctioned by the Government, of which 12 posts became available for direct recruitment. On 30th of October 2004, accordingly, 22 more offers were given, of them 17 accepted and, 05 did not. Subsequently, on 8th November 2004, 08 more offers were given, of which 07 were accepted, but not 01. At the same time, in and around that time, 02 persons were offered appointment as Electronics and Communication Engineers and they accepted the same. Therefore, while, out of available 54 posts, 49 posts were filled up by those aspiring to become Electrical Engineers, 02

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were filled up by those, who were aspiring to become Electronics and Communication Engineers. None of the petitioners were appointed. Petitioner No. 2 along with another person filed a writ petition seeking a direction to appoint him. This petition was disposed of on 24th February 2005, recording that Uttarakhand Power Corporation Limited is expecting sanction of posts and, no sooner, such sanction is accorded, steps will be taken to fill them up on the basis of the selection pursuant to the said advertisement published in 2003. Still then, none of the petitioners was appointed. Another person, similarly situate to that of the petitioners, filed yet another petition seeking a direction for appointment of the petitioner in the said writ petition. The petitioner in the said writ petition had also participated in the selection process pursuant to the said advertisement published in the month of April 2003. While, the said writ petition was pending, Managing Director of Uttarakhand Power Corporation Limited wrote a letter to the State Government and, thereby, sought its permission to convert part of the sanctioned posts of Assistant Engineers to be filled up by Electrical Engineers, some by Electronics and Communication Engineers and the remaining by Computer Engineers. The State Government did not pay any heed to the said request. However, on 18th August 2006, the State Government sanctioned 33 more posts of Assistant Engineers and, while doing so, did not indicate whether, the same were for Electrical

Engineers or for Electronics and Communication Engineers or for Computer Engineers. Of those 33 more posts, 17 posts became available for direct recruitment. The second writ petition referred to above, came up for consideration on 30th April 2007, when it was represented by Uttarakhand Power Corporation Limited before the court that, now the posts are available and, the same may be converted suitably for accommodating Electronics and Communication Engineers and, no sooner, the same is done, the case of the petitioner in the said petition shall be considered. Uttarakhand Power Corporation Limited, accordingly, converted part of the sanctioned posts for Electronics and Communication Engineers and, also a part thereof, for Computer Engineers. After the said exercise was done, petitioners were appointed. Having had done so, and having had supplied the available vacancies through the selection pursuant to the said advertisement published in 2003, Uttarakhand Power Corporation Limited prepared a tentative seniority list. While preparing the tentative seniority list, it merged in it the marks obtained by each candidate in different Branches. After the list was thus prepared, it transpired that the petitioners' position in the combined merit list is above the private respondents to the present writ petition. According to Rule 19 of the said Rules, the seniority of the officers, on their appointment to the service, is required to be determined as per Uttar Pradesh Rajya Vidhyut Parishad Sewak Jyesththa Viniyamawali,

1998, as amended from time to time; in terms whereof, seniority of direct recruitees will be counted on the basis of their position in the merit list. Uttarakhand Power Corporation Limited having had made the said tentative seniority list, on the premise that, the petitioners obtained better marks than the private respondents herein in the selection process, held out that the petitioners are senior to the private respondents, although the private respondents were offered appointments and, they accepted the offers of appointment much prior to offers of appointment were given to the petitioners and, the petitioners accepted the same. This aspect of the matter having been brought to the notice of Uttarakhand Power Corporation Limited, the said tentative seniority list has been replaced by a final seniority list, whereby, it has been shown that despite the petitioners' obtaining higher place in the combined merit list, they would be treated to be juniors to the private respondents, since the private respondents were offered appointments and, they accepted such offers before the petitioners were offered appointments, and they accepted the same. This action has resulted in filing of the present writ petition.

2. The seniority rules governing the field contemplated determination of seniority in the normal situation, i.e. selection for direct recruitment would take place only in respect of those posts which are not only sanctioned, but are also available for being filled up by

direct recruitment. In the instant case, when availability of vacancy in 90 posts was advertised, infact 42 posts were available. Despite the Rules were not altered, the advertisement mentioned that, out of those 90 available vacancies, 75 are for Electrical Engineers, 10 are for Electronics and Communication Engineers and, 05 are for Computer Engineers. The advertisement further stated that a resposdee must apply either to became an Electrical Engineer, or an Electronics and Communication Engineer, or a Computer Engineer. The advertisement further provided that, the person so applying, must have Bachelor of Engineering Degree in the relevant Branch. In other words, it was made clear that, a person who has got a Bachelor of Engineering Degree in Computer Engineering will not be entitled to apply for a post available for Electrical Engineers or Electronics and Communication Engineers. It made it clear that, a person having Bachelor Degree in Electronics and Communication Engineering will not be entitled to apply for a post available for Electrical Engineers or Computer Engineers and, at the same time, a person having Bachelor of Engineering Degree in Electrical Engineering will not be entitled to apply for a post available for Electronics and Communication Engineers, or Computer Engineer. The fact remains that, there was no sanction, either by the Rules or otherwise, to recruit in the manner it was advertised. Despite requests made, the State Government did not show any inclination to permit division in the posts

available. However, when lastly on 18th of August 2006, further 33 posts were sanctioned, it was not indicated that, such sanction is only restricted to Electrical Engineers. In the meantime, the request of Uttarakhand Power Corporation Limited had been received by the State Government to bifurcate the available posts, in the manner and to the extent the request was made in that regard by the Managing Director of the Uttarakhand Power Corporation Limited. In that background, Uttarakhand Power Corporation Limited assumed that, it has been authorized to do, what it had proposed to do. Having had assumed so, Uttarakhand Power Corporation Limited made a specific representation before the court in the writ petition referred to above, which representation, the court had recorded in its order dated 30th April 2007. Only thereafter, the posts in which the petitioners were accommodated were created by bifurcating the posts, which were available in the normal course for Electrical Engineers. In that background, the petitioners were given offer of appointment. Petitioners having thus been appointed, cannot be treated as senior to people, who had been offered appointment before them and, who accepted those offers much before the petitioners were even offered appointment. In that background, the Rule of seniority must be read and, if the same is read, due credit must be given to those who had been recruited in respect of available posts at an earlier point of time than

those who had been recruited at a later point of time, in posts, which were not available at earlier point of time, despite they having scored in the combined merit list, better than those who had been appointed before. We, accordingly, refuse to interfere in the matter. The writ petition fails and, the same is dismissed.

(U.C. Dhyani, J.)

(Barin Ghosh, C.J.)

26.04.2012

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