

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 875 of 2017

Ashok Kumar and others

Versus

.....Petitioners

State of Uttarakhand and others

.....Respondents

Advocate : Mr. I.P. Gairola, Advocate for the petitioners
Mr. Anurag Bisaria, Standing Counsel along with Mr. Devesh Ghildiyal,
Brief Holder for the State of Uttarakhand
Mr. D.S. Patni, Advocate along with Mr. M.S. Rawat, Advocate for
respondent Nos. 2 and 3

Hon'ble Sharad Kumar Sharma, J.

In this writ petition, the petitioners have prayed for the following reliefs:-

- "i) Issue a writ, order or direction in the nature of certiorari quashing the seniority list dated 21.08.2012 passed by respondent No. 3 (contained as Annexure no. 6 to this writ petition) by which the direct recruitee Junior Engineers have been awarded seniority in the cadre of Junior Engineer (E & M) from the day when they had joined as Trainee.
- ii) Issue a writ order or direction in the nature of mandamus commanding/directing the respondent no. 3 to declare the seniority list of the Junior Engineers (Electrical & Mechanical) showing therein the seniority of the direct recruitee Junior Engineers w.e.f. the day of satisfactory completion of one year training as Junior Engineers (Trainee).
- iii) Issue a writ order or direction in the nature of mandamus commanding /directing the respondent no. 3 to issue the seniority list of the petitioners.
- iv) issue any other writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.
- v) award the costs of the writ petition in favour of the petitioners."

2. The main grievance, which has been canvassed by the petitioners, is that on account of inaction on part of the respondent in not considering and determining the seniority of the petitioners and simultaneously proceeding to determine the seniority of the private respondent Nos. 4 to 59 by the impugned seniority list dated 21.08.2012 by virtue of which, it is the case of the petitioners that direct recruitee Junior Engineers have been awarded seniority in the cadre of Junior Engineer (E & M) from the day they have joined as "Trainees".

3. After being noticed, the private respondents, who were the beneficiaries of the impugned seniority list dated 21.08.2012, have not put in appearance nor had engaged any counsel, and consequently the writ petition was directed to be proceeded with *ex parte* against them by an order dated 21.06.2018.

4. The learned counsel for the respondent Nos. 2 and 3 had raised a preliminary objection in para 4 of the counter affidavit to the effect that on the questions of seniority, the writ petition would not be maintainable in the light of the ratio as laid down by the Division Bench in a judgement as reported in 2006(2) UD 439, *Bhuvan Chandra Pandey and others v. State of Uttaranchal and others* and in particular, the reference is made to para 9 of the said judgement which is quoted hereunder:-

"9. It is well settled principle of law that the High Court cannot lose sight of the fact that the matters of alternative remedy has nothing to do with the jurisdiction of the cases, normally the High Court should not interfere if there is an adequate efficacious alternative remedy available. If anybody approaches the High Court without availing the alternate remedy the High Court would ensure that he had made out a strong case or that there exist good ground to invoke the extraordinary jurisdiction. The rule of alternative remedy is essentially a rule of policy, convenience and discretion. When the petitioner files the petition before the High Court he should also state the reasons as to why he thought that the alternative remedy would not be efficacious. The High Court should not bypass the said Tribunal where the government servant is aggrieved by an order of the

government pertaining to the service matter within the jurisdiction of the Tribunal."

5. Admittedly, the petitioners themselves have approached this Court by filing the instant writ petition on 04.05.2017 i.e. almost after about 5 years from the date of determination of the seniority list as passed by the respondent on 21.08.2012. It is also ratio propounded that long standing seniority settled as per law are not to be disturbed by the Court, unless it suffers from same apparent error.

6. In the peculiar circumstances of the case, the *interse* determination of seniority list of the petitioners along with the respondent Nos. 4 to 59, which has been determined on 21.08.2012, could not be possibly decided in absence of private respondents who would be effected and also until and unless the respondent take a decision with regard to relief No. (ii), as claimed by the petitioners for determining their seniority in accordance with the Rules, on which the reliance has been placed by the learned counsel for the respondents called as "U.P. State Electricity Board Employees Seniority Regulation, 1998."

7. So far as the relief No. (i) is concerned, where there is a challenge to the seniority of the private respondents, the relief claimed for in the writ petition would be tenable only before the State Public Service Tribunal in the light of the judgement as rendered in *Bhuvan Chandra Pandey's case (Supra)*. But, so far as the relief nos. (ii) and (iii) are concerned, the same would not be barred by Section 5 of the State Public Service Tribunal Act, because the remedy before the Tribunal in relation to relief No. (ii) and (iii) would not lie as the Tribunal has got no power to either determine the seniority or to issue an order of mandamus.

8. In the peculiar set of circumstances of the case, this writ petition is being disposed of in the following manner:-

So far as the relief No. (i) is concerned, where the challenge is given to the seniority list dated 21.08.2012 passed by respondent No. 3 in

relation to respondent Nos. 4 to 59 by filing the writ petition at a belated stage after almost five years, the remedy would lie before the State Public Service Tribunal, in the light of the judgement as rendered in *Bhuvan Chandra Pandey's case (Supra)*. Hence, for relief No. (i), the writ petition would stand dismissed on account of the availability of an alternative remedy.


So far as the relief No. (ii) is concerned, it speaks about the inaction on the part of the respondent, which has been contended by the learned counsel for the petitioners that the determination of seniority of the petitioners has been deliberately delayed in order to provide undue benefits to the private respondents. In that eventuality, so far as the relief Nos. (ii) and (iii) are concerned, the respondent No. 3 is directed to determine the seniority of the petitioners vis-à-vis seniority of respondent Nos. 4 to 59, within a period of six weeks from the date of production of certified copy of this order.

9. On determination of seniority of the petitioners thus directed above, it will be open for the petitioners to put challenge the seniority list dated 21.08.2012 before the State Public Service Tribunal if they are so advised.

10. Subject to the above observation and the liberty given, the writ petition stands dismissed. However, there would be no order as to costs.

(Sharad Kumar Sharma, J.)
24.04.2019

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High Court of Uttarakhand
NAINITAL

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IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL
INDEX
IN

WRIT PETITION NO. OF 2017 (S/S)

(Under Article 226 of the constitution of India)

District- Haridwar

Ashok Kumar & others

.....Petitioners

Versus

State of Uttarakhand & others

.....Respondents

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Dated: 05-2017

(I.P. Garola) (Adv.)
(Adv.)
Advocates
Counsel for the petitioners

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IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL
DATES AND EVENTS
IN

WRIT PETITION NO. OF 2017 (S/S)
(Under Article 226 of the constitution of India)

District- Haridwar

Ashok Kumar & others

.....Petitioners

Versus

State of Uttarakhand & others

.....Respondents

Sl.No.	Dates	Events
1.		The petitioners were appointed in the erstwhile U.P. State Electricity Board against the substantive posts of <i>operating cables</i> ✓ through regular selection ✓
2.		The next higher promotion of <i>operating cables</i> ✓ is Junior Engineer. The post of Junior Engineer is regulated under the Service regulations namely U.P. State Electricity Board Subordinate Electrical and Mechanical Engineering Services Regulation, 1972.
3.		After creation of the State of

		<p>Uttarakhand, Uttarakhand Power Corporation Ltd. was created as a wholly owned Company of the State of Uttarakhand. The services of the petitioners were merged into Uttarakhand Power Corporation Ltd. with a condition that the service conditions in respect of the employees of the UPSEB at the time of transfer to the newly created Company i.e. Uttarakhand Power Corporation Ltd. Dehradun shall not be inferior to those which were applicable to them earlier.</p>
4.	23-08-2006	<p>An advertisement was released for appointment by way of direct recruitment of Junior Engineer (Trainee) on 01-06-2006. This advertisement was in accordance with the Service Regulation, 1972 (Annexure no. 1).</p>
5		<p>In response to the aforesaid advertisement Junior Engineer (Trainee) were selected and they have joined as Junior Engineer (Trainee) in Uttarakhand</p>

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		Power Corporation Ltd.
6		The petitioners have become members of the service as Junior Engineer on their promotion from the post of ^{operating caste} to Junior Engineers under the quota provided for promotion in Regulations 17 & 18 of the aforesaid rules.
7		Hence this writ petition.

Dated: 05-2017

(I.P. Gairola) (Anil Anthwal)
Advocates
Counsel for the petitioners

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IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL

WRIT PETITION NO. OF 2017 (S/S)

(Under Article 226 of the constitution of India)

District- Haridwar

1. Ashok Kumar S/o Shri Kishan Lal R/o 11 Yogi Vihar
Haridwar, District Haridwar
2. Biram Pal Singh, S/o Shri Shambhu Prasad, R/o House no.
125, Gali No. 13, Krishana Nagar Roorkee, District
Haridwar
3. Gunjan Kumar Pundir, S/o Late Jaypal Singh R/o House
no. 167/1' Chau Mandi Road Roorkee, District Haridwar
4. Vichitra Kumar Chaturvedi S/o Shri S.P. Chaturvedi R/o
Karvadi Grant, near Manak Siddh Mandir Shimla Road
Dehradun
5. Sudhir Kumar S/o Late Amar Singh, R/o 33KV Sub Station
Lachhiwala Doiwala Dehradun, District Dehradun

.....Petitioners

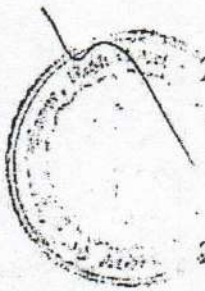
Versus

1. State of Uttarakhand through its Secretary Energy,
Dehradun
2. Chairman, Uttarakhand Power Corporation Ltd. Urja
Bhawan Kanwali Dehradun
3. Managing Director, Uttarakhand Power Corporation Ltd.
Urja Bhawan Kanwali Dehradun
4. Avneesh Kumar Sharma, Junior Engineer Electrical
through office of Managing Director Uttarakhand Power
Corporation Ltd. Urja Bhawan Kanwali Dehradun

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5. Gautam Kumar Sanyal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
6. Ashish Kala, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
7. Atol Singh Rawat, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
8. Rajendra Singh Bisht, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
9. Vimal Kuliya, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
10. Sachin Mewarguru, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
11. Subodh Kumar Negi, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
12. Mohd. Shakeb, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
13. Sachin Agarwal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
14. Surendra Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun

15. Devendra Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
16. Rajesh Bisht, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
17. Lalit Mohan, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
18. Bhavan Chandra Upreti, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
19. Dharmendra Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
20. Raman Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
21. Deepak Chandra Joshi, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
22. Anand Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
23. Satish Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
24. Ranjan Kumar Rana, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun



25. Amit Raunchhela, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
26. Neeraj Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
27. Jagbeer Singh Chauhan, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
28. Pramod Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
29. Satendra Kumar Tapparwal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
30. Shyam Sunder, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
31. Rajendra Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
32. Amit Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
33. Sandeep Chauhan, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
34. Kanwar Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun

35. Ashish Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
36. Umesh Singh Rana, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
37. Arvind Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
38. Mukesh Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
39. Manghe Ram, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
40. Sanjeev Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
41. Bhupender Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
42. Satendra Prakash Jogiyal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
43. Mahendra Singh Brijwal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
44. Gaurav Nath, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun

45. Sunil Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
46. Madhu Paliwal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
47. Hemlata, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
48. Rashmi Lata Arya, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
49. Manmohan Singh Bagri, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
50. Komal, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
51. Vinod Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
52. Suresh Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
53. Sheesh Pal Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun

- ✓ 54. Vikram Singh Rana, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
- ✓ 55. Vinod Chand Pathak, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
- ✓ 56. Sheetal Saini, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
- ✓ 57. Anjula Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
- ✓ 58. Ashish Kumar, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun
- ✓ 59. Gajendra Singh, Junior Engineer Electrical through office of Managing Director Uttarakhand Power Corporation Ltd. Urja Bhawan Kanwali Dehradun

.....Respondents

To,

The Hon'ble the Chief Justice and his other companion
Judges of the aforesaid Court.

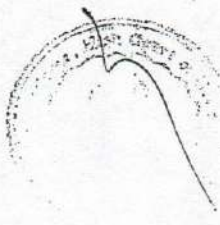
The humble writ petition of the above named petitioners
most respectfully sheweth as under.

1. That this is the first writ petition filed by the petitioners before this Hon'ble Court for present cause of action and no other writ petition is either pending or has been disposed of by this Hon'ble Court for the same cause of action.
2. That the petitioners were appointed in the erstwhile U.P. State Electricity Board against the substantive posts of Operating cadre (Technician ASK) through regular selection as per following details:-

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Sr. No.	Name of petitioners	Post held by him	Initial date of appointment	Qualification
1	Ashok Kumar	TGT	14-08-2000	High School ITI
2	Biram Pal Singh	T.G.II	28-08-00	Graduate (ITI)
3	Gunjan Kumar Pundir	ASK	10-09-98	B.Sc. PGDBM
4	Vichitra Kumar	T.G.II	26-04-86	Inter
5	Sudhir Kumar	T.G.II	12-06-98	Inter

3. That the next higher promotion of Operating cadre is Junior Engineer. The post of Junior Engineer is regulated under the Service regulations namely U.P. State Electricity Board Subordinate Electrical and Mechanical Engineering Services Regulation, 1972. A copy of the U.P. State Electricity Board Subordinate Electrical and Mechanical Engineering Services Regulation, 1972 is being filed herewith and marked as Annexure no. 1 to this writ petition.
4. That after creation of the State of Uttarakhand, Uttarakhand Power Corporation Ltd. was created as a wholly owned Company of the State of Uttarakhand. The services of the petitioners were merged into Uttarakhand Power Corporation Ltd. with a condition that the service conditions in respect of the employees of the UPSEB at the time of transfer to the newly created Company i.e.



1.5

Uttarakhand Power Corporation Ltd. Dehradun shall not be inferior to those which were applicable to them earlier.

5. That the Uttarakhand Power Corporation is a Corporation wholly owned by the State of Uttarakhand and therefore it falls under the purview of Article 12 of the Constitution of India being instrumentality of State.

6. That the posts of Junior Engineer (Ordinary Grade) are filled up as per clause 5 of the Service Regulations, 1972 which is as under:-

5 (b)- (i). By direct recruitment from Apprentice Supervisor selected in accordance with the procedure laid down in Part V of these Regulations.

(ii) By promotion in accordance with the procedure laid down in regulations 17 & 18.

7. That an advertisement was released for appointment by way of direct recruitment of Junior Engineer (Trainee) on 23-08-2006. This advertisement was in accordance with the Service Regulation, 1972 (Annexure no. 1). A copy of advertisement dated 23-08-2006 is being filed herewith and marked as Annexure no. 2 to this writ petition.

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8. That in response to the aforesaid advertisement Junior Engineer (Trainee) were selected and they have joined as Junior Engineer (Trainee) in Uttarakhand Power Corporation Ltd. A copy of candidates selected to join as Junior Engineer (Trainee) Electrical, Computer, Civil is being filed herewith and marked as Annexure no. 3 to this writ petition.
9. That according to the select list the successful candidates have joined their duties as Junior Engineer (Trainee) under the quota of direct recruitment. According to the Rules of 1972 the selected Junior Engineer (Trainee) shall remain under training for a period of one year and after successful completion of training they shall be placed in the cadre of Junior Engineer. Section 15 of Part V of the aforesaid rules provides as under:-
15. *Training of Apprentice Supervisors-*
- (1) *The Apprentice Supervisors selected and recruited for training under regulation 13 shall have to undergo such training as prescribed by the Chief Engineer and shall be paid such stipend during the period of their training as laid down by the Board from time to time.*
- (2) *The period of training shall be one year.*



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(3) Any Apprentice Supervisors can be removed from training by the Chief Engineer without any reason having to be assigned.

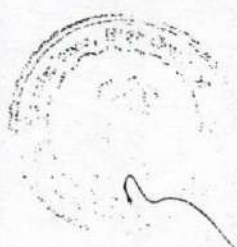
(4) On the satisfactory completion of their training the Apprentice Supervisors would become eligible for recruitment as members of the Ordinary Grade of the Service as provided in regulation 5 (b) (i).

10. That it is clear from the preceding paragraph that the period of training shall be one year and on satisfactory completion of their training the Apprentice Supervisors: (Junior Engineer Trainee) would become eligible to be included as members of the ordinary cadre of Junior Engineer as provided in regulation 5 (b) (i).

11. That the petitioners have become members of the service as Junior Engineer on their promotion from the post of Operating Cadre to Junior Engineers under the quota provided for promotion in Regulations 17 & 18 of the aforesaid rules. On the basis of the test held on 29-07-2007 petitioners along with others became the members of the service in the cadre of Junior Engineer. A copy of the select list by which the petitioners were promoted to the post of Junior Engineer is being filed herewith and marked as Annexure no. 4 to this writ petition.

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12. That the direct recruitees Junior Engineers have been given seniority as Junior Engineer from the day when they have joined as Junior Engineer (Trainee), though they were supposed to be enrolled in the cadre of Junior Engineer considering them as Junior Engineer on the day of completion of one year training as Junior Engineer (Trainee). According to the rules they were supposed to be enrolled as Junior Engineer after successful completion of one year training as mentioned in the paragraph no. 9 & 10 of the writ petition.
13. That office memorandum dated 18-12-2013 clearly shows that the Junior Engineers (Trainee) have come in the regular cadre of Junior Engineers after successful completion of one year. Even the probation period of these direct recruitees private respondents shall start from the day of completion of their training. A copy of office memorandum dated 18-12-2013, 02-02-2013, 21-05-2011 & 15-03-2014 are being filed herewith and marked as Annexure no. 5(colly) to this writ petition.
14. That according to aforesaid office memorandum dated 18-12-2013 the seniority as Junior Engineers should be after completion of one year training but the seniority list issued



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on 25-07-2012 for the years 2007-08 clearly shows that the private respondents have been given their seniority from the date when they have joined as Junior Engineer (Trainee).

15. That in case the direct recruitee Junior Engineers get their seniority from the day when they have come in the regular cadre of Junior Engineers i.e. after successful completion of one year training as Junior Engineer (Trainee), the direct recruitee Junior Engineers shall be in the years 2008-09 instead of 2007-08 as shown in seniority list dated 21-08-2012. True copy of seniority list dated 21-08-2012 is being filed herewith and marked as Annexure no. 6 to this writ petition.
16. That the petitioners became aggrieved when the respondent no. 3 has awarded seniority to the private respondents right from the day when they have joined as Junior Engineer (Trainee). This action of the respondent no. 3 is against the provisions of Regulation 15 of the aforesaid Regulations, 1972 and therefore the seniority awarded to the private respondents from the day of their joining as Junior Engineer (Trainee) is not sustainable in the eyes of law and therefore is liable to be quashed by this Hon'ble Court.



17. That since the petitioners have joined as Junior Engineer much before the date of completion of one year training of direct recruitee Junior Engineers, it is binding on the respondent no. 3 to declare the petitioners senior to the direct recruitee Junior Engineers..
18. That the respondent no. 3 has not declare so far the seniority list of the petitioners for the reasons best known to him.
19. That it is in the interest of justice that this Hon'ble Court direct the respondent no. 3 to issue revised seniority list of Junior Engineers showing therein the seniority of direct recruitee Junior Engineers from the day of satisfactory completion of one year training, otherwise the petitioner shall suffer irreparable loss and injury.
20. That the petitioner has no other efficacious remedy except to invoke the writ jurisdiction of this Hon'ble Court under Article 226 of the constitution of India. The present writ petition is being filed inter-alia on following grounds.



GROUNDS

- a) Because an advertisement was released for appointment by way of direct recruitment of Junior Engineer (Trainee) on

23-08-2006. This advertisement was in accordance with the Service Regulation, 1972 (Annexure no. 1).

- b) Because in response to the aforesaid advertisement Junior Engineer (Trainee) were selected and they have joined as Junior Engineer (Trainee) in Uttarakhand Power Corporation Ltd.
- c) Because according to the select list the successful candidates have joined their duties as Junior Engineer (Trainee) under the quota of direct recruitment. According to the Rules of 1972 the selected Junior Engineer (Trainee) shall remain under training for a period of one year and after successful completion of training they shall be placed in the cadre of Junior Engineer. Section 15 of Part V of the aforesaid rules provides as under:-

15. *Training of Apprentice Supervisors-*

(1) *The Apprentice Supervisors selected and recruited for training under regulation 13 shall have to undergo such training as prescribed by the Chief Engineer and shall be paid such stipend during the period of their training as laid down by the Board from time to time.*

(2) *The period of training shall be one year.*



(3) Any Apprentice Supervisors can be removed from training by the Chief Engineer without any reason having to be assigned.

(4) On the satisfactory completion of their training the Apprentice Supervisors would become eligible for recruitment as members of the Ordinary Grade of the Service as provided in regulation 5 (b) (i).

d) Because the period of training shall be one year and on satisfactory completion of their training the Apprentice Supervisors (Junior Engineer Trainee) would become eligible to be included as members of the ordinary cadre of Junior Engineer as provided in regulation 5 (b) (i).

e) Because the petitioners have become members of the service as Junior Engineer on their promotion from the post of Operating Cadre to Junior Engineers under the quota provided for promotion in Regulations 17 & 18 of the aforesaid rules. On the basis of the test held on 29-07-2007 petitioners along with others became the members of the service in the cadre of Junior Engineer.

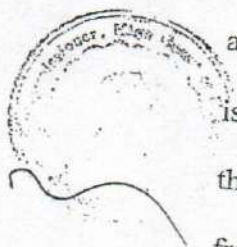


f) Because the direct recruitees Junior Engineers have been given seniority as Junior Engineer from the day when they have joined as Junior Engineer (Trainee), though they were

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supposed to be enrolled in the cadre of Junior Engineer considering them as Junior Engineer on the day of completion of one year training as Junior Engineer (Trainee). According to the rules they were supposed to be enrolled as Junior Engineer after successful completion of one year training as mentioned in the paragraph no. 9 & 10 of the writ petition.

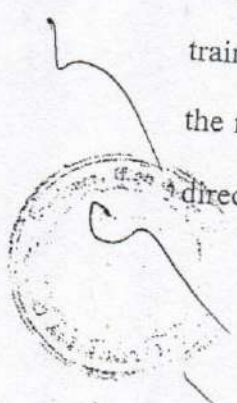
- g) Because office memorandum dated 18-12-2013 clearly shows that the Junior Engineers (Trainee) have come in the regular cadre of Junior Engineers after successful completion of one year. Even the probation period of these direct recruits private respondents shall start from the day of completion of their training.
- h) Because according to aforesaid office memorandum dated 18-12-2013 the seniority as Junior Engineers should be after completion of one year training but the seniority list issued on 25-07-2012 for the years 2007-08 clearly shows that the private respondents have been given their seniority from the date when they have joined as Junior Engineer (Trainee).
- i) Because in case the direct recruit Junior Engineers get their seniority from the day when they have come in the



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regular cadre of Junior Engineers i.e. after successful completion of one year training as Junior Engineer (Trainee), the direct recruitee Junior Engineers shall be in the years 2008-09 instead of 2007-08 as shown in seniority list dated 21-08-2012.

- j) Because the petitioners became aggrieved when the respondent no. 3 has awarded seniority to the private respondents right from the day when they have joined as Junior Engineer (Trainee). This action of the respondent no. 3 is against the provisions of Regulation 15 of the aforesaid Regulations, 1972 and therefore the seniority awarded to the private respondents from the day of their joining as Junior Engineer (Trainee) is not sustainable in the eyes of law and therefore is liable to be quashed by this Hon'ble Court.
- k) Because since the petitioners have joined as Junior Engineer much before the date of completion of one year training of direct recruitee Junior Engineers, it is binding on the respondent no. 3 to declare the petitioners senior to the direct recruitee Junior Engineers.



- 25
- 1) Because the respondent no. 3 has not declare so far the seniority list of the petitioners for the reasons best known to him.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- i) Issue a writ, order or direction in the nature of certiorari quashing the seniority list dated 21-08-2012 passed by respondent no. 3 (contained as Annexure no. 6 to this writ petition) by which the direct recruitee Junior Engineers have been awarded seniority in the cadre of Junior Engineer (E & M) from the day when they had joined as Trainee.
- ii) Issue a writ order or direction in the nature of mandamus commanding/directing the respondent no. 3 to declare the seniority list of the Junior Engineers (Electrical & Mechanical) showing therein the seniority of the direct recruitee Junior Engineers w.e.f. the day of satisfactory completion of one year training as Junior Engineers (Trainee).



25

- 1) Because the respondent no. 3 has not declare so far the seniority list of the petitioners for the reasons best known to him.

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IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL

AFFIDAVIT
IN

WRIT PETITION NO. OF 2017 (S/S)
(Under Article 226 of the constitution of India)

District- Haridwar

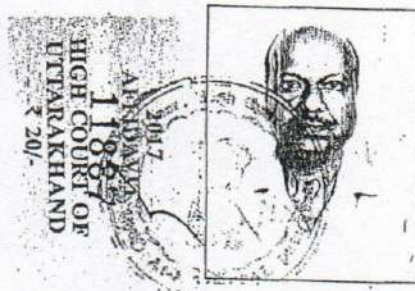
Ashok Kumar & others

.....Petitioners

Versus

State of Uttarakhand & others

.....Respondents



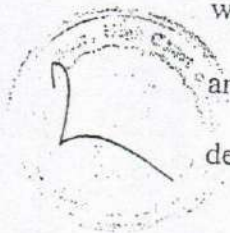
Affidavit of Ashok Kumar, aged
about 46 years, S/o Shri Kishan Lal
R/o 11 Yogi Vihar Haridwar,
District Haridwar

Certified that Deponent has
Signed/L.T./V.R.T.I. on 11/08/2017
Photograph taken on 11/08/2017

(Deponent)

I, the deponent above named do hereby solemnly affirm
and state on oath as under:-

1. That the deponent is the petitioner no. 1 in the above noted writ petition and doing pairvi on behalf of other petitioners and as such he is well acquainted with the facts of the case deposed in the accompanying writ petition.



I, the deponent above named do hereby solemnly affirm on oath and verify that the contents of paragraph no. 1 of the affidavit and those of paragraph no. 1, 2, 4, 5, 6, 9, 10, 12, 17, 16, 7, 19. of the writ petition are true to my personal knowledge and those of paragraph no. 3, 7, 8, 11, 13, 15. of the writ petition are based on perusal of records and those of paragraph no. 20. of the writ petition are based on legal advice, which I believe to be true and no part of this affidavit is false and nothing material has been concealed.

So Help Me God

Aswath K. K.
(Deponent)

I, I.P.Gairola, Advocate High Court of Uttarakhand at Nainital do hereby declare that the person making this affidavit and alleging himself to be the deponent is the same person known to me from the perusal of the papers produced by him in this case.

[Signature]
(Advocate)

Regd

Solemnly affirmed before me on this 30th day of April, 2017 at about 5.19 a.m./p.m. by the deponent, who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent that the deponent has understood the contents of this affidavit, which has been read over and explained to him by me



Regd. No. UK 17/2012
Oath Commissioner
High Court of Uttarakhand
(Oath Commissioner)
At Nainital
Sl. No. 1, 2, 3, 4

(63)

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 875 of 2017

Ashok Kumar and others

....Petitioners

Versus

State of Uttarakhand and others

....Respondents

Advocate : Mr. I.P. Gairola, Advocate for the petitioners
Mr. Anurag Bisaria, Standing Counsel along with Mr. Devesh Ghildiyal,
Brief Holder for the State of Uttarakhand
Mr. D.S. Patni, Advocate along with Mr. M.S. Rawat, Advocate for
respondent Nos. 2 and 3

Hon'ble Sharad Kumar Sharma, J.

In this writ petition, the petitioners have prayed for the following reliefs:-

- "i) Issue a writ, order or direction in the nature of certiorari quashing the seniority list dated 21.08.2012 passed by respondent No. 3 (contained as Annexure no. 6 to this writ petition) by which the direct recruitee Junior Engineers have been awarded seniority in the cadre of Junior Engineer (E & M) from the day when they had joined as Trainee.
- ii) Issue a writ order or direction in the nature of mandamus commanding/directing the respondent no. 3 to declare the seniority list of the Junior Engineers (Electrical & Mechanical) showing therein the seniority of the direct recruitee Junior Engineers w.e.f. the day of satisfactory completion of one year training as Junior Engineers (Trainee).
- iii) Issue a writ order or direction in the nature of mandamus commanding /directing the respondent no. 3 to issue the seniority list of the petitioners.
- iv) issue any other writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.
- v) award the costs of the writ petition in favour of the petitioners."

2. The main grievance, which has been canvassed by the petitioners, is that on account of inaction on part of the respondent in not considering and determining the seniority of the petitioners and simultaneously proceeding to determine the seniority of the private respondent Nos. 4 to 59 by the impugned seniority list dated 21.08.2012 by virtue of which, it is the case of the petitioners that direct recruitee Junior Engineers have been awarded seniority in the cadre of Junior Engineer (E & M) from the day they have joined as "Trainees".

3. After being noticed, the private respondents, who were the beneficiaries of the impugned seniority list dated 21.08.2012, have not put in appearance nor had engaged any counsel, and consequently the writ petition was directed to be proceeded with *ex parte* against them by an order dated 21.06.2018.

4. The learned counsel for the respondent Nos. 2 and 3 had raised a preliminary objection in para 4 of the counter affidavit to the effect that on the questions of seniority, the writ petition would not be maintainable in the light of the ratio as laid down by the Division Bench in a judgement as reported in 2006(2) UD 439, *Bhuvan Chandra Pandey and others v. State of Uttaranchal and others* and in particular, the reference is made to para 9 of the said judgement which is quoted hereunder:-

"9. It is well settled principle of law that the High Court cannot lose sight of the fact that the matters of alternative remedy has nothing to do with the jurisdiction of the cases, normally the High Court should not interfere if there is an adequate efficacious alternative remedy available. If anybody approaches the High Court without availing the alternate remedy the High Court would ensure that he had made out a strong case or that there exist good ground to invoke the extraordinary jurisdiction. The rule of alternative remedy is essentially a rule of policy, convenience and discretion. When the petitioner files the petition before the High Court he should also state the reasons as to why he thought that the alternative remedy would not be efficacious. The High Court should not bypass the said Tribunal where the government servant is aggrieved by an order of the

government pertaining to the service matter within the jurisdiction of the Tribunal.”

5. Admittedly, the petitioners themselves have approached this Court by filing the instant writ petition on 04.05.2017 i.e. almost after about 5 years from the date of determination of the seniority list as passed by the respondent on 21.08.2012. It is also ratio propounded that long standing seniority settled as per law are not to be disturbed by the Court, unless it suffers from same apparent error.

6. In the peculiar circumstances of the case, the *interse* determination of seniority list of the petitioners along with the respondent Nos. 4 to 59, which has been determined on 21.08.2012, could not be possibly decided in absence of private respondents who would be effected and also until and unless the respondent take a decision with regard to relief No. (ii), as claimed by the petitioners for determining their seniority in accordance with the Rules, on which the reliance has been placed by the learned counsel for the respondents called as “U.P. State Electricity Board Employees Seniority Regulation, 1998.”

7. So far as the relief No. (i) is concerned, where there is a challenge to the seniority of the private respondents, the relief claimed for in the writ petition would be tenable only before the State Public Service Tribunal in the light of the judgement as rendered in *Bhuvan Chandra Pandey's case (Supra)*. But, so far as the relief nos. (ii) and (iii) are concerned, the same would not be barred by Section 5 of the State Public Service Tribunal Act, because the remedy before the Tribunal in relation to relief No. (ii) and (iii) would not lie as the Tribunal has got no power to either determine the seniority or to issue an order of mandamus.

8. In the peculiar set of circumstances of the case, this writ petition is being disposed of in the following manner:-

So far as the relief No. (i) is concerned, where the challenge is given to the seniority list dated 21.08.2012 passed by respondent No. 3 in

relation to respondent Nos. 4 to 59 by filing the writ petition at a belated stage after almost five years, the remedy would lie before the State Public Service Tribunal, in the light of the judgement as rendered in *Bhuvan Chandra Pandey's case (Supra)*. Hence, for relief No. (i), the writ petition would stand dismissed on account of the availability of an alternative remedy.

So far as the relief No. (ii) is concerned, it speaks about the inaction on the part of the respondent, which has been contended by the learned counsel for the petitioners that the determination of seniority of the petitioners has been deliberately delayed in order to provide undue benefits to the private respondents. In that eventuality, so far as the relief Nos. (ii) and (iii) are concerned, the respondent No. 3 is directed to determine the seniority of the petitioners vis-à-vis seniority of respondent Nos. 4 to 59, within a period of six weeks from the date of production of certified copy of this order.

9. On determination of seniority of the petitioners thus directed above, it will be open for the petitioners to put challenge the seniority list dated 21.08.2012 before the State Public Service Tribunal if they are so advised.

10. Subject to the above observation and the liberty given, the writ petition stands dismissed. However, there would be no order as to costs.

(Sharad Kumar Sharma, J.)
24.04.2019