

(2013) 03 UK CK 0030

Uttarakhand High Court

Case No: Writ Petition No. 1127 of 2011

Rakesh Kumar Tripathi and
Others

APPELLANT

Vs

The Hon"ble High Court of
Uttarakhand and Others

RESPONDENT

Date of Decision: March 15, 2013

Citation: (2013) LabIC 4490

Hon'ble Judges: Sudhanshu Dhulia, J

Bench: Single Bench

Advocate: Sidhartha Singh and Kuldeep Rawal, for the Appellant; Shobhit Saharia, Lok Pal Singh, Tapan Singh, Mohd. Umar, Mrs. Anjali Bhargava and Subhash Upadhyay, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sudhanshu Dhulia, J.

Heard Mr. Sidhartha Singh, Advocate with Mr. Kuldeep Rawal, Advocate for the petitioners, Mr. Shobhit Saharia, Advocate for the Respondent Nos. 1 & 2, Mr. Lok Pal Singh, Advocate with Mr. Tapan Singh, Advocate for the Respondent No. 5, Mr. Mohd. Umar, Advocate for the Respondent No. 7, Mrs. Anjali Bhargava, Advocate for the Respondent Nos. 3, 4 & 6 and Mr. Subhash Upadhyaya, Standing Counsel present for the State of Uttarakhand. The petitioners before this Court are all Class III employees with the Haridwar Judgeship. Some of them were initially appointed on Class IV posts and subsequently promoted to Class III posts. The remaining petitioners were appointed as Class III employees and continued to exist as such. They have challenged the placement of private respondents, who are also Class III employees in Haridwar Judgeship, above them on the ground that the private respondents were not initially appointed in Haridwar Judgeship, but their initial appointments were made in other different judgeships in Uttarakhand, such as, Bageshwar, Nainital & Dehradun, and they were subsequently transferred to

Haridwar Judgeship by orders of the Hon"ble Chief Justice of this High Court. The transfer orders of each of private respondents have been perused. These transfer orders pertain to different dates in the year 2007 and 2008, but the common factor in all of them is that they have been transferred to Haridwar Judgeship, and although specifically mentioned only in a few case, yet it is also an admitted case that in all cases the respondents were transferred to Haridwar on their own request. A specific question in this regard was asked to Mr. Shobhit Saharia, Advocate for the Respondent Nos. 1 & 2, who on his instructions has replied that each of the transfer was made on the personal request, except that of Respondent No. 7 who was transferred on a mutual request. However, even in that case, the Court is of the view that this too would fall in the category of a personal request. In short, all such transfers which are presently in dispute were made on personal requests of the private respondents.

2. It may also be stated here at the very outset that Class III and Class IV cadre is a district level cadre, pertaining to that particular Judgeship alone, and transfers from outside district are rare and done mostly on a complaint or in public interest.

3. All the same, consequent to their transfer to Haridwar Judgeship, a seniority list belonging to cadre of Class III employees were prepared in which the petitioners found that the names of the private respondents were shown as senior to the petitioners. Feeling aggrieved, the petitioners made a representation to the District Judge, Haridwar, which was rejected. Consequently, they moved a statutory appeal before the High Court. Before the High Court, the contention of the petitioners, inter alia, was that after the notification dated 24.04.2007, the Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007 (hereinafter referred to as the Rules) came into force. It has been specifically given under Rule 3 of the Rules that the feeding cadre for promotion to the post of Suits Clerk/Execution Clerks, Ahalmads, Accounts Clerk, Sessions Clerk, Appeals Clerk, Cashier, Misc. Clerk, Munsarim etc. shall be from amongst the Copyist/Junior Clerk/Assistant Accounts Clerk etc. The contention of the petitioners is that the private respondents who came from other Judgeship have been placed above the petitioners. Moreover, their contention always remained that the private respondents, if at all have to be treated as members of Haridwar Judgeship, they should be placed at the bottom of the cadre and their transfer to Haridwar judgeship should not adversely affect their service condition. However, in the present case, due to the placement of private respondents, the service condition of the petitioners have been affected. Nevertheless the statutory appeal of the present petitioners was also rejected vide order dated 06.05.2011. The order reads as under:--
Considered the representation.

The Notification No. 161, D/- 24.04.2007 is of no help to the representationists as after Smt. Vidyavati Verma, Sri Nitin Agarwal and Sri Pawan Kumar Sharma are absorbed in Hardwar Judgeship, they cannot be treated outsiders. The

representation is rejected.

They are now before this Court in the present writ petition.

4. The service conditions of the subordinate civil courts ministerial staff are governed by the Rules known as the Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007. "Ministerial establishment" has been defined in the definition clause of Section 2(i) of the Rules, which reads as follows:--

2(i) "Ministerial Establishment" means the staff of the subordinate Civil Courts and Family Courts consisting of ministerial servants.

5. Subordinate Civil Courts have been defined under Rule 2(j) of the Rules, which reads as under:--

2(j) "Subordinate Civil Courts" means the Courts of District and Sessions Judges, Additional District and Sessions Judges, Civil Judges (Senior Division), Additional Civil Judges (Senior Division), Assistant Sessions Judge, Chief Judicial Magistrate, Additional Chief Judicial Magistrates, Additional Chief Judicial Magistrates (Railway), Judicial Magistrate, Civil Judge (Junior Division), Additional Civil Judge (Junior Division) and Courts of Judge Small Cause, Additional Judge Small Cause Courts Subordinate to the High Court of Uttarakhand.

6. Rule 3 defines the "cadre of service", which reads as follows:--

3. Cadre of the service: The ministerial service shall consists of the following classes and categories of officials employed in each Judgeship and Family Courts in Uttarakhand:--

7. These are the cadre of service from Sl. Nos. (a) to (h). Cadre of service always means "a group of service", under the present Rules. This fact has been further clarified by Rule 3 of the Rules wherein it has been specifically mentioned that the categories mentioned as Sl. Nos. (a) to (e) would form one cadre and categories (f) to (h) would form another cadre. The cadre with which the Court is presently concerned relates to Sl. Nos. (a) to (e) which forms one single cadre. In other words, the following posts of different pay-scales form one cadre. These are:--

8. It is further admitted fact that all the posts of cadre between (a) to (e) are district level posts and the seniority have to be calculated on the basis of the district i.e. the same judgeship. However, there is one provision under Rule 23 of the Rules wherein it provides that the Chief Justice may transfer any Sadar Munsarim or any Senior Administrative Officer or any member of the establishment from any Judgeship to another Judgeship in the same pay scale against existing vacancy on the complaint of the District Judge or in the public interest. Rule 23 of the Rules are quoted hereunder:--

23. Transfers: (1) The Chief Justice may transfer any Sadar Munsarim or any Senior Administrative Officer or any member of the establishment from any Judgeship to

another Judgeship in the same pay scale against existing vacancy on the complaint of the District Judge or in the public interest.

(2) The District Judge may transfer any member of the establishment within the District in the same pay scale from one Court/department to another as he deems fit.

9. There is no other provision in the Rules by which the employees of any Judgeship can be transferred to another Judgeship, except the aforesaid provision i.e. Rule 23. Apparently, the transfer of private respondents have been made on different dates in the year 2007 and then in the year 2008, under the aforesaid provisions, and in the case of Pawan Kumar Sharma and Nitin Agarwal Respondent Nos. 5 & 6 respectively, the orders dated 21.11.2008 and 19.09.2008 state that they would be placed at the bottom of cadre "in their pay scales" at Haridwar Judgeship. The remaining transfer orders only state that they would be placed at the bottom of seniority list in the pay scale of Rs. 4000-10-6000. In effect what has happened is that though they may have been placed at the bottom of their pay-scale, they have not been placed at the bottom of the cadre.

10. The question which now arises for determination before this Court is whether in view of such transfers, the private respondents are liable to be placed at the bottom of "cadre" or simply at the bottom of their existing pay scale. Since it is not a case which falls under Rule 23 of the Rules as there are not transfers based on the complaint of the District Judge nor are they in "public interest". Further the learned counsel for the Respondent Nos. 1 & 2 has informed the Court that in all cases, the transfers have been made on the basis of the request of the private respondents. Therefore, this Court is of the opinion that the provisions of Rule 23 of the Rules will not be fully attracted in the present case in as much as though the Hon"ble Chief Justice has powers to transfer any Sadar Munsarim or any Senior Administrative Officer or any member of the establishment from any Judgeship to another Judgeship in the same pay scale against existing vacancy on the complaint of the District Judge or in the public interest, yet the present case does not fall in that category. Again even if does the question would still remain as to their placement in the new Judgeship?

11. The question which has to be answered is where will these employees be placed in the new Judgeship. This Court has absolutely no doubt in its mind that though, normally an employee after his transfer carries the length of his service to the new place where he is transferred, yet in the present case, the private respondents have been transferred to Haridwar Judgeship at their own request and it would cause a hardship as well as heart burning to the employees who are already working at Haridwar, if they are placed above them. In other words, it is likely to affect the service condition of an existing employee at Haridwar, if an employee is transferred to this place. The transferred employee therefore has to be placed at the bottom of the "cadre" and not just at the bottom of "pay scale". As already discussed above

that the categories mentioned at Sl. Nos. (a) to (e) relates to one "cadre". Moreover, the annual seniority list which is published by Haridwar Judgeship is not a seniority list pertaining to one pay-scale, but it consists of combined seniority list of entire cadre i.e. all employees (a) to (e). Consequently, it has always been considered to be "one" cadre by the department. The day the private respondents joined their service at Haridwar Judgeship, they were liable to be placed at the bottom of the "cadre".

12. The attention of this Court has also been drawn to the case of [K.P. Sudhakaran and Another Vs. State of Kerala and Others](#), wherein the point which came up for consideration before the Hon"ble Apex Court was whether the seniority of transferred LDCs, transferred on their own request to another unit (district) in the same department be reckoned from the date of their initial appointment to the post, or from the date on which they were transferred to the new district. The Hon"ble Supreme Court has held as under:--

11. In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a Government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules.

13. The general principles governing service jurisprudence are therefore all in favour of the petitioners and against the private respondents. Moreover, the counsel appearing for the High Court and the private respondents have not been able to show any special rule governing the service conditions of the employees which may state a position contrary to the general principles referred above.

14. In view of the above, the contention of the petitioners before the Haridwar Judgeship was fully justified and it has been wrongly rejected on the administrative side as well. Consequently, the impugned orders dated 08.09.2008, 09.01.2009 and the order dated 06.05.2011 are hereby set aside. The two seniority lists vide orders dated 25.09.2008 and 07.01.2009 are also quashed. The learned District Judge, Haridwar is hereby directed to prepare a fresh seniority list in the light of the directions made above.

15. It is also made clear that any consequent action taken on the basis of this flawed seniority list is also illegal and corrections be made forthwith. The writ petition succeeds to the above extent.

16. Before concluding, this Court must place on record the objections raised by learned counsel for the respondent No. 5 which is that the petitioners have not come before this Court with clean hands in as much as the petitioners were initially appointed in different Judgeships and thereafter they too were transferred to Haridwar Judgeship. However, the fact of the matter is that the matter of the petitioners is not under challenge before this Court, yet needless to state their case also needs to be examined in the same manner. The District Judge, Haridwar is at liberty to make all possible corrections in view of the above position of law explained in the present case, but, after giving opportunity of hearing to the parties concerned. In the light of aforesaid, the writ petition is allowed. No order as to costs.