

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE ACTING CHIEF JUSTICE SHRI SANJAYA KUMAR MISHRA
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE

WRIT PETITION (S/B) NO. 178 OF 2020

23rd MARCH, 2022

Between:

Vibhu
D/o Dr. Bharat Bhushan Chauhan
..... Petitioner

And

Uttarakhand Public Service Commission
Through its Secretary, Office at Gurukul
Kangri University Campus, Haridwar
..... Respondent

Counsel for the petitioner : Mr. Abhijay Negi, learned counsel

Counsel for the respondent : Mr. B.D. Kandpal, learned counsel

Upon hearing the learned Counsel, the Court made the following

JUDGMENT: (per the Acting Chief Justice Shri Sanjaya Kumar Mishra)

The petitioner in this case, an aspirant to the post of Assistant Conservator of Forest, has filed this writ petition praying for the following reliefs : -

- i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 18.03.2020 as being contrary to the directions of the Apex Court in Ms. Aakriti Bahuguna Vs

State of Uttarakhand, SLP (C) 29799 / 2019
dated 17.12.2019.

- ii) Issue a writ, order or direction in the nature of mandamus directing the Uttarakhand Public Service Commission to allow the petitioner to appear for the mains examination of the Assistant Conservator of Forest.
- iii) Issue any other writ, order or direction which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

2) While considering this matter, this Court on 08.03.2021, passed an interim order. But before reverting to the interim order, we take note of the fact that the petitioner applied for the post of Assistant Conservator of Forest, and in pursuance of the application, she was allowed to appear in the preliminary examination. Subsequently, she qualified the preliminary examination. As per the requirement of the advertisement, the petitioner was supposed to deposit the requisite fee and documents for the main examination by 01.02.2020.

3) The Uttarakhand Public Service Commission (hereinafter referred to as 'the Commission' for brevity) issued two advertisements. The second advertisement is of 17.01.2020. This Court taking into consideration the second advertisement had passed on dated 08.03.2021, the following order:

7. A bare perusal of the advertisement dated 17.01.2020 clearly reveals that in Item -5, the last date for submission of the documents and the fees is given as 01.02.2020. However, Item -8 clearly stipulates that those candidates, who have failed to deposit their documents and the fees by 01.02.2020, would be given a grace period till 10.02.2020. Obviously, the advertisement dated 17.01.2020 supersedes the original advertisement dated 30.07.2019. Therefore, the Commission is unjustified in relying on the original advertisement dated 30.07.2019. Therefore, the petitioner has an extremely strong case in her favour.

8. No harm would be caused to the Commission if the petitioner were allowed to appear in the main Examination on a provisional basis. Thus, the balance of convenience is in favour of the

petitioner. Moreover, in case she is denied the right to appear in the Main Examination, an irreparable loss would be caused to her. Therefore, this Court directs the respondent-Commission to permit the petitioner provisionally to appear in the main examination which is tentatively scheduled to be held on 13.03.2021. The result of the petitioner shall be declared only after seeking a prior permission of this Court.

4) In that view of the matter, the petitioner was allowed to appear in the examination on depositing the fee late. Thereafter, on 15.02.2021, the result of the petitioner was filed in this Court in a sealed cover, and this Court records that the petitioner has passed the main examination as per the result produced by the respondent-Commission.

5) The learned counsel for the petitioner submits that appropriate directions may be given to the Commission to publish the result and proceed with the process of selection.

6) The learned counsel for the respondent-Commission, on the other hand, relies upon the judgment of this Court passed in *Writ Petition (S/B) No.*

552 of 2019, Aakriti Bahuguna Vs Uttarakhand Public Service Commission, decided on 06.12.2019, wherein this Court has held that the petitioner, having failed to appear in the main examination and having failed to pay the prescribed fees on time, cannot now contend that, for her failure to secure the information from the website of the respondent-Commission, she should now be permitted to appear in the main examination. In any event, the main examination has already been held, and the results have already been declared.

7) However, that order was challenged by said Aakriti Bahuguna before the Hon'ble Supreme Court in *Petition for Special Leave to Appeal (C) No. 29799 of 2019*. The Hon'ble Supreme Court passed the following ad-interim order on 17.12.2019 :

Considering the fact that the petitioner had qualified the Preliminary Examination and her candidature for Main Examination is getting rejected on technical grounds, such as, non-deposit of fee and non-submission of online Application Form, we pass the following ad-interim directions:

- (a) The petitioner shall submit the requisite fee and the concerned

Application Form within three days from today;

- (b) If the requisite Form is filed and fee is deposited within the stipulated time, the Uttarakhand Public Service Commission shall accept the Form/Fee and accept the candidature of the petitioner for the Main Examination;
- (c) Uttarakhand Public Service Commission shall issue to the petitioner, the Examination Hall Ticket and permit her to appear in the Examination; and
- (d) The result of the petitioner shall however be withheld till further orders by this Court.

8) Keeping in view the spirit of the interim order passed by the Hon'ble Supreme Court, we consider that if the petitioner has qualified the preliminary examination, and on some technical ground her application was rejected by the Commission, and denied her the chance to appear in the main examination, and by virtue of the order passed by this Court in the interim, as quoted above, she has appeared in the

examination, and has come out successful, then in the interest of justice and also in the interest of competition, the result should be declared by the Commission.

9) In that view of the matter, the writ petition is allowed with the direction that the respondent-Commission shall declare the result of the recruitment process, as early as possible, treating the petitioner to be a qualified candidate to sit in the main examination, and proceed further with the same, and complete the same within a reasonable time.

10) With such observation, the writ petition stands disposed of.

11) Urgent copy of this order be supplied to the learned counsel for the parties, as per Rules, during the course of the day.

SANJAYA KUMAR MISHRA, A.C.J.

RAMESH CHANDRA KHULBE, J.

Dated: 23rd MARCH, 2022
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