

HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (S/B) No.357 of 2021

Rahul Giri and anotherPetitioners

Versus

State of Uttarakhand and anotherRespondents

Present:-

Mr. A.S. Rawat, learned Senior Advocate assisted by Mr. Raveendra Singh Bisht,
learned counsel for the petitioners.

Mr. K.N. Joshi, learned D.A.G. for the State.

Mr. Dharmendra Barthwal, learned counsel for respondent no.2.

Coram : Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Per: Hon'ble Manoj Kumar Tiwari, J.

By means of this writ petition, petitioners have sought the following reliefs:-

- (i) Issue a writ, order or direction in the nature of mandamus declaring Clause 20 (B) of the Uttarakhand Power Corporation Ltd. Junior Engineer (Electrical & Mechanical) Service Bye-laws, 2018 (Annexure No.5) as null and void being ultra virus to the Constitution of India, as the same is highly discriminatory and provides discrimination between the petitioners and other similarly situated Technician Grade-II (TG-II) of the erstwhile UPSEB/UPPCL whose services are protected.
- (ii) Issue a writ, order or direction in the nature of certiorari to quash Clause (Two) under eligibility and conditions clause of advertisement dated 14.04.2020 issued by the Respondent No.2 (Annexure No.6).
- (iii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No.2 to consider the case of petitioners for promotion with similarly situated employees of U.P. State Electricity Board/U.P. Power Corporation Ltd. who have been absorbed in Uttarakhand Power Corporation Ltd.

2. Petitioners were appointed as Labour after creation of Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL") and they were thereafter promoted as Technician Grade-II in the years 2011-2012. Petitioners are challenging Rule 20(B) of UPCL Junior Engineer (Electrical and Mechanical) Service Bye-Laws, 2018.

3. According to petitioners, next promotional post available to Technician Grade-I and Technician Grade-II is that of Junior Engineer. Clause 20(B)(two) of Service Bye-Laws, 2018 provides that Technician Grade-I/Technician Grade-II shall be eligible to participate in departmental examination for promotion upon completing qualifying service of ten years. However proviso to Rule 20(B) provides that employees who were absorbed in service of UPCL and were earlier serving in Uttar Pradesh State Electricity Board (hereinafter referred to as “UPSEB”) or Uttar Pradesh Power Corporation Ltd. (hereinafter referred to as “UPPCL”), Clause 20(B) would be applicable to them only to the extent permissible under the Uttar Pradesh State Electricity Board Subordinate Electrical and Mechanical Engineering Service Regulations, 1972 (hereinafter referred to as “Regulations of 1972”).

4. Learned counsel for the petitioners submits that as per the Regulations of 1972, persons serving as Technician Grade-II who possessed High School qualification were eligible for promotion after putting only five years of service.

5. Thus it is contended that on account of the proviso to Rule 20(B) of the Service Bye-Laws, 2018, the members of one homogeneous class have been segregated into two groups, for one group of persons, qualifying service needed for promotion is five years while for the other group, the qualifying service needed for promotion is ten years.

6. It is contended that since petitioners were appointed in UPCL after its creation, therefore they would have to wait for ten years for their claim for promotion to be considered.

7. Thus according to learned counsel, it amounts to artificial classification which does not have any *intelligible differentia*, and the

classification made is violative of Article 14 of the Constitution of India.

8. Learned counsel for the UPCL (respondent no.2) per contra submits that UPCL came into being on 05.11.2001 and before its creation, UPPCL was responsible for distribution of electricity. He submits that upon creation of UPCL, officers/employees of UPPCL were deemed to be on deputation to UPCL and later on their services were absorbed in UPCL. He submits that Chairman and Managing Director of UPCL issued an office memo on 18.12.2002 providing for absorption of Group-C and Group-D employees w.e.f., 01.01.2003 who were deemed to be on deputation, in UPCL.

9. The said office memo dated 18.12.2002 is enclosed as annexure no.2 to the counter affidavit dated 24.06.2022 filed by respondent no.2.

10. Learned counsel for the UPCL relies upon Clause 1 of office memo dated 18.12.2002 where it is mentioned that the service conditions of employees who are absorbed in UPUCL shall not be varied to their disadvantage. He submits that proviso to Rule 20(B) of the Service Bye-Laws, 2018 is referable to the said condition mentioned in the office memo dated 18.12.2002 issued by Chairman and Managing Director, UPCL.

11. Thus it is contended that persons who were appointed in UPPCL and who later became employee of UPCL by absorption constitute a separate class in view of the assurance given to them by the Competent Authority in the year 2002 and petitioners cannot claim parity with such employees who are protected by the aforesaid office memo.

12. Learned counsel for the UPCL submits that Clause 1 of office memo dated 18.12.2002 is in the nature of a promise to employees who were absorbed in the service of UPCL. He further

submits that the said promise was given to reassure employees of UPPCL that no prejudice will be caused to their conditions of service upon absorption in UPCL. He further submits that initially, officers/employees of UPPCL were not ready for absorption of their service in UPCL due to uncertainty about their carrier prospects. He submits that since a promise was made to persons who became officers/employees of UPCL by absorption, therefore such officers/employees were exempted from the requirement of ten years qualifying service for promotion, introduced in the Service Bye-Laws framed in 2018.

13. Learned counsel for the petitioners however submits that petitioners as well as the other group of persons who have to serve for five years for promotion, were appointed as Labour and upon their promotion to the post of Technician Grade-II, they became members of one homogenous class, therefore they cannot be treated differently.

14. We are not impressed by the contentions raised on behalf of the petitioners.

15. Article 14 of the Constitution of India provides that State shall not deny to any person equality before law or equal protection of law within territory of India.

16. Article 14 of the Constitution of India forbids class legislation but it does not forbid reasonable classification. The classification however must not be arbitrary, artificial or evasive, but must be based on some real and substantial bearing, just and reasonable relation to the object sought to be achieved by the classification. Article 14 of the Constitution of India applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 of the Constitution of India does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges

upon a class of persons arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted.

17. Classification to be reasonable must fulfil the following conditions:

I. The classification must be founded on *intelligible differentia* which distinguishes persons or things that are grouped together from others left out of the group.

II. The *differentia* must have a rational relation to the objects sought to be achieved by the Rule/Bye-law. The *differentia* which is basis of the classification and the objective of the classification are two distinct things. What is necessary that there must be nexus between the basis of classification and the object of the classification. It is only when there is no reasonable basis for a classification, then the statute making such classification may be declared discriminatory.

18. Now coming back to the facts of the present case. Persons who were appointed in UPPCL and became employee of the UPCL by absorption of service constitute a distinct class of persons by virtue of office memo dated 18.12.2002 as they were promised that their service conditions prevailing as on date of their absorption will remain unchanged.

19. UPCL as an employer can determine service conditions of its employees including the qualifying service needed for promotion to the next higher post. UPCL determined service conditions of its employees by framing Service Bye-Laws in 2018 and provided that for promotion to the post of Junior Engineer, Technician Grade-II will have to complete qualifying service of ten years.

20. The promise extended to employees of UPPCL, who were appointed by absorption in UPCL however prevented UPCL to apply

the new condition regarding qualifying service to employees who were protected by office memo dated 18.12.2002.

21. Since employees covered by office memo dated 18.12.2002 belong to “Protected Class”, while there is no such protection offered to petitioners, therefore the contention that petitioners are identically placed to such persons is without substance.

22. Thus the classification made by proviso to Rule 20(B)(two) of the Service Bye-Laws 2018 cannot be termed as artificial classification as it has *intelligible differentia* and nexus with the object sought to be achieved. For the aforesaid reasons, the relief as claimed by petitioners cannot be granted.

23. Accordingly writ petition fails and is dismissed.

(Pankaj Purohit, J.)
12.06.2026

(Manoj Kumar Tiwari, J.)
12.06.2026

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