



2025:UHC:6606-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition Service Bench No. 491 of 2021
29 July, 2025

Dinesh Chandra Kandpal

... Petitioner

Versus

State of Uttarakhand & another

... Respondents

Presence:-

Mr. Vikas Bahuguna, Advocate for the petitioner.

Mr. K.N. Joshi, learned Dy. A.G. for the State of Uttarakhand.

Hon'ble Manoj Kumar Tiwari, J.

Hon'ble Subhash Upadhyay, J.

(Per: Hon'ble Manoj Kumar Tiwari, J.)

JUDGMENT

1. Petitioner was enrolled in Indian Army as *Sepoy* and he retired from service as *Hawaldar* on 31.01.2014. He is receiving service pension from Indian Army; thus, he is an ex-serviceman. After retirement from Indian Army, petitioner was appointed as Assistant Teacher in a Government Primary School on a post reserved for ex-servicemen, and presently, he is an employee of State Education Department.

2. Petitioner is challenging Clause 8 of Order dated 22.05.2020 issued by Additional Chief Secretary, Government of Uttarakhand, which is extracted below:-

“भूतपूर्व सैनिकों को राज्याधीन सेवाओं में सेवायोजन के सन्दर्भ में भारत सरकार के O.M. No. 36034/27/84-Estt. (SCT) dated 02.05.1985, it was decided that once an ex-serviceman has joined the Government job on civil side after availing of the benefits given to him as an ex-serviceman for his re-employment, his ex-serviceman status for the purpose of re-employment in Government would cease.” का प्राविधान राज्याधीन सेवाओं में लागू किया गया है। अतएव राज्याधीन सेवा संवर्गों में सेवायोजन हेतु भारत सरकार की नीति के अनुसार क्षैतिज आरक्षण की गणना की जायेगी।”



3. Clause 8 of the Government Order dated 22.05.2020, impugned herein, refers to an Office Memorandum issued by Central Government on 02.05.1985. The said Office Memorandum provides that benefit of ex-servicemen status would be available only once and if an ex-serviceman gets civil employment due to his ex-servicemen status, then he shall not be entitled to such benefit again.

4. By order dated 22.05.2020, Government of Uttarakhand adopted the Central Government Policy, as contained in Office Memo dated 02.05.1985 for State services also, meaning thereby that once appointed in a State service, ex-servicemen cannot get the benefit available to ex-servicemen in the selection for some other post under the State.

5. Petitioner has challenged the condition mentioned in Clause 8 of Government Order dated 22.05.2020 on the ground that as a State Legislation is in place which provides reservation to ex-servicemen in State Services, therefore, benefit available to them under the said Legislation cannot be restricted or taken away by the State Government, by a Government Order.

6. It is not in dispute that State Legislature enacted The Uttar Pradesh Public Service (Reservation For Physically Handicapped, Dependents of Freedom Fighters and (Ex-Servicemen) Act, 1993 (*from hereinafter referred to as "Act"*), which was amended from time to time. The said Legislation is applicable in State of Uttarakhand also. The expression "Ex-Servicemen", used in the aforesaid Legislation, was substituted by the expression "Purva Sainik" by Uttarakhand Act No. 3 of 2009 w.e.f. 16.03.2009.



7. Section 2(c) of the Act defines “Purva Sainik”, as follows:-

“**2(c)** Purva Sainik” means domicile of Uttarakhand who has served in Indian Army, Navy or Air Force as fighter or non-fighter and who has-

- (1) retired from such service after earning their pension; or
- (2) who has been released from such service on medical grounds as required for military service or has been released under such circumstances beyond his control and who has been given medical or other eligibility pension; or
- (3) who has been released on account on resignation in establishment of such service and not on his own request; or
- (4) who has been released from such service after completing a specific period but has not on his own request, or has not been terminated or removed from service because of misconduct or inefficiency and who has been paid gratuity, and includes following categories of Territorial Army personnel are also:-
 - (i) Those receiving pension for continuous organized service.
 - (ii) Medically unfit due to military service.
 - (iii) Those who received bravery award.”

8. Section 3(1)(i) provides reservation in State Services to the extent of 5 percent of vacancies to Purva Sainik, besides 2 percent reservation to dependants of Freedom Fighters. Section 3(1) of the Act is reproduced below:-

“3 Reservation of vacancies in favour of physically handicapped etc.

- (1) In the procedure for direct recruitment the reservation shall be as follows:-
 - (i) In public services posts 2% of the vacancies for dependents of freedom fighters and 5% of the vacancies for Purva Sainik.
 - (ii) In public services and posts as may be notified through notification by State Government, 1% of the vacancies for each suffering from the following:-
 - (a) Blindness or low vision;
 - (b) Hearing impairment;
 - (c) Locomotor disability or cerebral palsy.”

9. The expression “Purva Sainik”, as defined in Section 2(c) of the Act leaves no room for doubt that (i) a



domicile of Uttarakhand, who served in Indian Army, Navy or Air Force and who retired from such service, after earning pension; (ii) or released from service on medical grounds or who was released under circumstances beyond his control and was given medical or other eligibility pension; (iii) or who was released from service for reasons other than his own request (iv) or who was released from service after completing a specific period for reasons other than termination or removal from service and who was paid gratuity, is a Purva Sainik or Ex-servicemen. Thus, the expression “Purva Sainik”, as defined in the aforesaid Act, includes every person who falls in any of the four categories enumerated in Section 2(c) of the Act.

10. There is no provision, either in the definition clause or in other Sections of the Act, which excludes a person from benefits of the Act merely because he secured appointment in State Service with or without the benefit available to ex-servicemen. As per Scheme of the Legislation, an ex-servicemen will remain so, even after getting employment under the State or the Central Government after availing the benefits meant for ex-servicemen.

11. Learned counsel for the petitioner is right in submitting that the benefits conferred to ex-servicemen by a State Legislation cannot be taken away by executive instructions issued by the Government and the objective which State Government is trying to achieve can be achieved only by amending the Legislation.

12. From plain reading of Section 2(c) and Section 3(1)(i) of the Act, it is apparent that a “Ex-servicemen” does not cease to be ex-servicemen merely by accepting employment under the State/Central Government. He



retains his status of ex-servicemen, even after availing the benefit meant for ex-servicemen, in a selection. In other words, when the Legislation does not impose any restriction regarding the number of times benefit can be availed by ex-servicemen, then such restriction cannot be imposed by executive instructions. Law is settled that executive instruction can only supplement the Statute but cannot supplant statutory provisions.

13. Mr. K.N. Joshi, learned Deputy Advocate General contended that Army, Navy and Air Force personnel are employees of the Central Government, defence being Union Subject, and since Central Government has formulated policy to give benefit of ex-servicemen status for re-employment only once, therefore, State Government did the right thing by following the policy of the Central Government. He relies upon a judgment rendered by learned Single Judge of Hon'ble Delhi High Court in the case of *All India Ex-Serviceman Bank Employee's Federation (Regd.) vs. The Chairman, State Bank of India & others, reported in 2013 SCC OnLine Del 1533*.

14. In the said judgment, Hon'ble Delhi High Court was considering the Office Memo dated 02.05.1985, issued by Central Government, which provided that relaxation/benefit in the matter of re-employment to ex-servicemen would be available only once. Careful perusal of that judgment reveals that Hon'ble Delhi High Court was not dealing with any Legislation, but it was called upon to interpret the Office Memorandum issued by Central Government in 1985. The facts here are entirely different. We are concerned with a Legislation which provides reservation to a ex-servicemen and it does not impose any restriction regarding number of times benefit of ex-servicemen status can be availed of by a person. State



Government, by issuing executive instructions, is trying to interfere with that right available to ex-serviceman. Thus, the said judgment is distinguishable on facts.

15. Learned State Counsel relied upon another judgment rendered by learned Single Judge of Hon'ble Delhi High Court in the case of *Kavinder Singh Vohra vs. Lok Sabha Secretariat & another, reported in 2024 SCC Online Del 4888*. In the said case also, Hon'ble Delhi High Court was considering Office Memo dated 02.05.1985 issued by Central Government, whereby benefit available to ex-servicemen, for seeking re-employment, was restricted in the context of selection for appointment under the Central Government.

16. In the absence of any Central Legislation providing benefits to ex-servicemen, Office Memo dated 02.05.1985, issued by Central Government, held the field. Here, facts are entirely different, as in State of Uttarakhand, there is a Legislation providing reservation to ex-servicemen, and without amending that Legislation, benefits available to ex-servicemen, cannot be curtailed. Under the Act, Ex-servicemen form a homogeneous class and they cannot be further classified as State Government has attempted to do.

17. It is settled position in law that when the field is covered by Statute, then Government cannot issue any instructions contrary to the express provisions of the Statute. A purported policy decision, issued by way of executive instruction cannot override the Statute or Statutory Rules, as held by Hon'ble Supreme Court in the Case of *State of Orissa & others vs Prasana Kumar Sahoo, reported in 2007 (15) SCC 129*. Para 12 of the said judgment is extracted below:-



“12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.”

18. In the case of *Union of India & another vs Dimple Happy Dhakad*, reported in 2019 (20) SCC 609, Hon’ble Supreme Court in para 29 reiterated that “it is well-settled principle that any executive instruction like the guidelines cannot curtail the provisions of any statute or whittled down any provision of law”.

19. Hon’ble Supreme Court in the case of *State of Madhya Pradesh & another vs. M/s G.S. Dall and Flour Mills reported in 1992 Supp. (1) SCC 150* has held that “executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provision or whittle down their effect.”

20. Similarly, in the case of *Jaiveer Singh & others vs. State of Uttarakhand & others*, reported in 2023 SCC OnLine SC 1584, Hon’ble Supreme Court has held as under:-

“49. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the Rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.”



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21. Clause 8 of Government Order dated 22.05.2020 suffers from vice of artificial classification. Legislation, which covers the field, does not permit classification of Purva Sainik (Ex-servicemen) based on their re-employment status. The definition, as given in the Act, includes all persons within the fold of "Purva Sainik", who fall in any one of the four categories enumerated in Section 2(c) of the Act. Thus, the classification made by State Government between those who are yet to be appointed vis-à-vis those who are employed by or under the Government, by executive instructions, cannot but be castigated as discriminatory. It is settled position in law that executive instructions cannot run counter to a Legislation dealing directly on the subject.

22. In view of the legal position as discussed above, Clause 8 of the Government Order dated 22.05.2020 is liable to be set aside and is hereby set aside. The writ petition is accordingly allowed.

MANOJ KUMAR TIWARI, J.

SUBHASH UPADHYAY, J.

29.07.2025

Aswal