

Writ-A No. 10296 of 2023

Dr.Arvind Kumar and others vs. State of U.P. & another.

Hon'ble Ajit Kumar, J.

1. Heard Sri Awadh Narain Rai, learned counsel for the petitioners, Sri G.K. Singh, learned Senior Advocate assisted by Sri Fuzail Ahmad Ansari, learned counsel appearing on behalf of Public Service Commission, learned Additional Chief Standing Counsel appearing on behalf of State-respondents and perused the record.

2. The petitioners before this Court have been applicants for the post of Medical Officer, Community Health Centre (Ayurvedic & Unani) in Other Backward Caste (for short 'OBC') and Scheduled Castes (for short 'SC') categories respectively, pursuant to the advertisement issued by Public Service Commission (for short 'the Commission'). While they qualified amongst 1058 candidates to be screened out for the next stage, they were asked to submit offline application annexing therewith their requisite documents of eligibility for verification. After due verification, when call letters were issued by the Commission for interview, their names did not figure in that list, which consisted of 182 candidates in OBC category and 87 candidates in SC category respectively.

3. The challenge has been made to the act and conduct of the Commission on the ground that once screening test was held as per Claus-7 of the advertisement, in terms of Claus-14, that prescribes for minimum qualification marks for different categories of the candidates, in all 132 candidates had applied and petitioners were found to be eligible on the basis of

verification of their documents, they could not have been denied participation in the interview. It is submitted, therefore, that adopting any other yardstick except the bench mark prescribed for under Claus-14 of the advertisement, the Commission was not justified in discriminating against petitioners in the matter of interview so as to deny participation to petitioners in the final selection process. It is thus, submitted that in spite of what has been given under the advertisement for the purposes of holding selection against the posts advertised, the Commission has changed the procedure prescribed for and has thus wrongly and in other words wholly illegally denied participation of the petitioners in the interview selection process. The procedure, having been thus adopted, being *de hors* the procedure prescribed was vitiated and petitioners, therefore, deserve to be allowed to participate in the interview process.

4. *Per contra*, learned Senior Advocate Sri G.K. Singh, appearing on behalf of Commission argued before the Court that while in terms of Claus-14 of the advertisement the minimum percentage of marks prescribed for, was to be attained by a candidate to become eligible for the next stage to apply for offline application form for the purposes of verification of the documents, the Commission under the relevant rules read with relevant service rules was well, acted well within its discretion to call for requisite number of candidates for the purposes of interview as per the resolution adopted by it. The resolution according to him, prescribes that for the purpose of documents verification, candidates would be called in a ratio of 1:8, whereas for the purpose of final interview, candidates would be called in a ratio of 1:3 in terms

of the posts advertised. This Court had, for this purpose, earlier summoned the original minutes of the resolution as the copy annexed with the counter affidavit was quite blurred and it appeared that some cutting was done thereon.

5. The original minutes register of the Commission has been placed before the Court and from perusal thereof, it clearly transpires that the Board earlier in respect of one examination adopted the resolution dated 31.12.2012, which provides that for the purposes of document verification, the candidates would be called in a ratio of 1:8 but at the time of interview, they will be called in a ratio of 1:3 as against the posts advertised. This resolution does not bear any cutting as to ratio prescribed for. It transpires that the Commission has been adopting this procedure in several other examinations as a rule of practice and that is why reiterating the earlier resolution it passed another resolution on 30th August, 2023, modifying the earlier one to the extent that marks secured in the screening examination shall be declared only after the selection/final result, is declared. The original selection records have also been placed in respect of the selection in question, which bear the signatures of the authorities of the Commission endorsing the resolution of the Commission to call candidates for verification of documents in a ratio of 1:8 and then to call them for interview in a ratio of 1:3. In support of this resolution that has been adopted by the Commission, learned Senior Advocate has also drawn the attention of the Court towards the relevant service rules relating to medical education department, which has been brought as annexure-2 to the writ petition dated 3rd December, 1990, framed under Proviso to article 309 of the constitution. Vide Rule 14 (2) of the Rules very much

prescribes that the Commission as would consider it appropriate, to call candidates for interview in the respective categories. Learned Senior Advocate has also drawn the attention of the Court to the rules, namely, U.P. Public Service (Procedure and Conduct of Business) Rules, 2011 (for short, the Rules, 2011) that prescribes power that vests with the Commission to adopt the modalities for holding selection process though of course, in consonance with the relevant service rules of the respective department. According to Rule 3 (II) of the Rules, 2011, it provides discretion for the Commission to call suitable candidates in a required proportion that may be determined/fixed. To buttress the argument, learned Senior Counsel has also drawn the attention of the Court to Rule-52 of the said rules, which gives absolute discretion to the Commission to admit such number of candidates for interview as it may deem fit and for this purpose candidates admitted in the preliminary weeding stage, will be called as per the procedure prescribed by the Commission. Thus, it is argued by learned Senior Advocate that act of the Commission to call requisite number of candidates as against the post advertized, prescribing particular ratio, cannot be said to be *de hors* the procedure prescribed under the relevant rules and in any manner exceeding the authority which the Commission is vested with, so as to vitiate the entire selection process, inasmuch as the procedure prescribed for in the present selection, cannot be held to be in any manner to be in derogation to what has been laid down in Clause-14 of the advertisement, which is final bench mark for the candidates to be passed both at the first stage of screening and at the final selection when the interview is held and thus select list is

prepared accordingly.

6. Meeting the submissions so advanced by learned Senior Advocate appearing for the Commission, learned counsel for the petitioners, in rejoinder, has submitted that the Commission as a matter on fact had not disclosed the last cut off marks and it is only when this petition was filed and interim order was passed by this Court that the Commission has produced the final cut off mark in black and white by means of counter affidavit. He submits that even if the procedure so adopted is claimed to be guarded and protected under the relevant service rules, the Commission ought to have made it public in the advertisement itself so that the candidates would not have been misguided or misled. In this regard, he has placed reliance upon certain authorities of this Court as well as Supreme Court.

7. Having heard learned counsel appearing for respective parties and having perused pleadings raised by them, the documents appended along with the pleadings and also the original records relating to the minutes of the meeting of the Commission and the original records relating to selection in question, I find that the only issue to be arising for consideration before this Court in this petition is *“as to whether the Commission is justified in requiring candidates in a ratio of 1:8 for verification of documents after the preliminary screening test is held and then only asking successful candidates to participate in the interview for final selection in a ratio of 1:3 and for this purpose fixing cut off marks at these two stages respectively.”*

8. In order to resolve the above issue and find answer to the contentious question of giving call for interview in a particular

ratio by the Commission at two different stages after the screening test, it is necessary to first go through the advertisement and then relevant rules to test the two resolutions passed by the Commission on 31st December, 2012 reiterated on 30th August, 2013.

9. Against, the posts in question advertised on 05.08.2022 vide advertisement no. 02/2022-23 by the Commission, general guidelines/instructions were prescribed in the advertisement itself. Vide clause-7 of the general instruction, it was thus provided:-

“7. In case of large number of applicants for the post/ posts. the Commission may hold screening test, which will be communicated in due course of time. Under the conditions of holding screening test (Objective Type), penalty shall be imposed for wrong answers given by the candidates as below.

(i) There are four alternatives for the answer to every question. For each question for which a wrong answer has been given by the candidate, one third (0.33) of the marks , assigned to that question will be deducted as penalty.

be (ii) If a candidate gives more than one answer, it will be one treated as a wrong answer even if one of the given answer be happens to be correct and there will be same penalty as above for that question.

(iii) If a question is left blank i.e. no answer is given by the candidate, there will be no penalty for that question.”

10. Clause-14, which is also relevant and is reproduced hereunder:

“14. सीधी भर्ती की प्रक्रिया:-

(1) चयन के लिये विचार किये जाने के लिये आवेदन-पत्र आयोग द्वारा विहित प्रपत्र में आमंत्रित किये जायेंगे । (2) आयोग, नियम 6 के अनुसार अनुसूचित जातियों, अनुसूचित जन-जातियों और अन्य श्रेणियों के अभ्यर्थियों का सम्यक् प्रतिनिधित्व सुनिश्चित करने की आवश्यकता को ध्यान में रखकर उतने अभ्यर्थियों को, जैसा वह उचित समझे, साक्षात्कार के लिये आमंत्रित करेगा जो अपेक्षित अर्हताएं रखते हों ।

(3) आयोग अभ्यर्थियों को, उनकी प्रविणता क्रम में, जैसा कि

साक्षात्कार में, प्रत्येक अभ्यर्थी द्वारा प्राप्त अंकों से प्रकट हो, एक सूची तैयार करेगा। यदि दो या अधिक अभ्यर्थी बराबर-बराबर अंक प्राप्त करें तो आयोग सेवा के लिये उसकी सामान्य उपयुक्तता के आधार पर उनके नाम योग्यता क्रम में रखेगा। सूची में नामों की संख्या रिक्तियों की संख्या से अधिक (किन्तु पच्चीस प्रतिशत से अनधिक) होगी। आयोग सूची नियुक्ति प्राधिकारी को अग्रसारित करेगा।”

11. Upon bare reading of general instructions, I find from instruction no. 7, it to be clear that if the application forms against the number of vacancies advertised, are found to be excessive then screening test would be held and negative marking will be prescribed for every wrong answer. The screening test will further be held in multiple choice question form and then 1/3 marks would be cut for every wrong answer. If two options are chosen in respect of a question then it will be taken to be wrong answer may be one of the option chosen is found to be correct. However, in the event, no option is attempted in a question then no minus marking will be done.

12. From reading of instruction no. 14, it is also clear that minimum efficiency standard fixed for general category was to obtain 35% marks, both in screening and interview so also 40% marks for other categories which means including reserved categories. Combined reading of two instructions becomes necessary because both relate to preparation of list of candidates both at both the stages of screening test and then final test. While instruction no. 7 does not lay down any criterion of minimum standard of marks but instruction no. 14 does provide for 35% and 40% marks for general category and other categories respectively.

13. Now after reading both the above instructions together, it clearly transpires that for a candidate to pass in the screening

test, if he or she belongs to general category, such candidate has to secure minimum 35% marks and for other category candidates, it is necessary for such candidates to secure 40% marks. This being the minimum marks to be obtained by a candidate, a candidate would be eligible for next stage, i.e., document verification before interview is held because the instructions did require a candidate to fill up off line form after being screened out at the initial stage as per clause-7, annexing therewith documents for the purposes of verification. There are no further instructions as to how and in what manner, the select list will be prepared for the purposes of calling candidates to the next stage of interview. Here, therefore, it becomes important to know as to what modalities the Commission is expected to adopt, in the event number of candidates are very large or become not manageable for the purposes of interview because it is ultimately, only one candidate has to be selected against each vacancy. Here, therefore, it becomes necessary to go through the relevant service rules that prescribes for recruitment procedure for the post in question and also procedure under the conduct of business rules as have been framed for the Commission to carry out exercise of selection. First, I proceed to consider the relevant service rules that are called U.P. State Medical (Ayurvedic and Unani) Service Rules, 1990 framed under Proviso 2 article 309 of the constitution. Rule 14 of the said rules, which provides for procedure for recruitment is reproduced hereunder:-

“14. Procedure for direct recruitment-

- (1) Applications for being considered for selection shall be invited by the Commission in the prescribed form.
- (2) The Commission, shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories

in accordance with rule 6, call for interview such number of candidates who fulfil the requisite qualifications as they think proper.

(3) The Commission shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate in the interview. If two or more candidates obtain equal marks, the Commission shall arrange their names in order of merit on the basis of their general suitability for the service. The number of the names in the list shall be larger (but not larger by more than twenty-five percent) of the number of the vacancies. The Commission shall forward the list to the appointing authority. ”

14. From Clause-II of Rule-14, it is apparent that for securing due representation of the candidates belonging to Scheduled Castes/Scheduled Tribes and other categories, they will be called for interview in such number as is considered appropriate by the Commission. Again Rule-3 (II) of the Uttar Pradesh Public Service Commission (Procedure & Conduct of Business) Rules-2011 do vests discretion in the Commission to call such number of candidates in such proportion for interview that may be fixed by the Commission for each such categories of posts advertised. Now, I proceed to examine Rules 3 (ii), which is reproduced hereunder:-

“Notwithstanding anything to the contrary contained in relevant service rules or Government Orders regarding recruitment, the Commission may hold preliminary examination/screening test for finding out suitable candidates for admission to main examination or interview, as the case may be;

(ii) Preliminary examination shall mean screening test to be conducted by the Commission with the purpose of finding out suitable candidates in required proportion as fixed by the Commission in each category, reserved and unreserved, for admission to the main examination or interview, as the case may be;”

15. I further notice that Rule-52 of the Rules of 2011 vests further discretion in the Commission to call such number of candidates for interview as it may deem fit amongst the candidates from the preliminary stage of weeding of candidates.

Rule-52 of the said Rules is reproduced as under:-

“Notes for preliminary weeding of candidates shall be submitted in the manner prescribed, to the Commission, and the Commission shall admit such number of candidates to interview, as they deem fit.”

16. Thus, I find that both the Service Rules, 1990, framed for the purposes of selection against the posts in question and also the Uttar Pradesh Public Service Commission (Procedure & Conduct of Business) Rules-2011 relating to the Commission do provide for discretion to be exercised by it in setting up a formula to call candidates for interview in a ratio as it may deem fit for the purposes of verification of documents and then in a ratio which it may deem fit for the purposes of final call for interview. Now taking recourse these powers particularly, the Uttar Pradesh Public Service Commission (Procedure & Conduct of Business) Rules-2011, it appears that the Commission for the first time adopted a resolution on 31st December, 2012 while holding selection in respect of vacancies of lecturer in government colleges. The resolution prescribed that the candidates for verification of documents purposes shall be called in a ratio of 1:8 and then for the purpose of interview they will be called in a ratio of 1:3. This resolution was further reiterated by the Commission in its meeting which was with full coram on 30th August, 2023 that prescribes that final marks obtained in the screening examination shall be declared only after the selection is held and final result of selection is declared. Thus, I find merit in the submissions of learned Senior Advocate appearing on behalf of the Commission that the Commission has been adopting this formula prescribing for a particular ratio for the two stages of verification of documents and interview and in the original minutes of meeting dated 30th

August, 2013, I find that this is in respect of a large number of candidates. Thus, it cannot be said that the procedure adopted by the Commission was in any manner *de hors* the rules so as to question it and hold it as vitiated in law. The power is there and, therefore, I do not find that in passing the resolutions, the Commission in any manner exceeded its authority.

17. Insofar as, the argument advanced by learned counsel appearing on behalf of the petitioners that these modalities were not disclosed in the advertisement and the advertisement simply provided for preliminary screening stage and then minimum prescribed percentage for respective categories candidates to obtain and, therefore, the Commission was not justified in further prescribing any other criterion to call candidates for the purposes of document verification and then in interview in a particular ratio, I am of the considered view, the broad principles were laid down in the instructions regarding minimum marks a candidates is to obtain in the preliminary screening test and final interview and how the interview will be conducted and how the candidates will be called and in what ratio was not at all required to be disclosed in the advertisement. This relates to the day to day business of the Commission for which Conduct of Business Rules, 2011 have already been framed and are well within the public domain. Still further, I find that the service rules that govern the recruitment and the procedure for that as has been prescribed therein, also vests the power with the Commission to call candidates in a particular ratio. These rules are also available in public domain. Once, the rules for recruitment are there in public domain and the Conduct of Business Rules for the Commission are also there in public domain then what ratio the

Commission fixes taking aid to these provisions would be left to the Commission albeit free from any arbitrary exercise or malafide exercise of power. Once the rules are there, every citizen is expected to know the rules and at least those, who have applied against the posts in question, recruitment for which has to be made as per the procedure prescribed under the Rules.

18. Now to test the arbitrariness or malafidies although there is no pleading of malafides in the writ petition as such and the rejoinder affidavit filed, it is necessary to look into the bare facts that have been placed before the Court through the pleadings raised by respective parties. In paragraph-6 of the counter affidavit, it has been stated that following cut off marks of 35% and 40% for different categories of candidates in the screening test that was held a total 1058 candidates had obtained minimum efficiency standard marks, however, when the candidates were required to apply afresh by filling up off line form, only 1032 candidates applied and after verification of their documents in total 934 candidates were found to be eligible and suitable to be called for interview. All this exercise was done, insofar as verification of documents is concerned, in a ratio of 1:8 but since only 1058 candidates had achieved the bench mark as per Claus-14 in terms of minimum efficiency standard fixed, all could have applied for document verification. Now 934 candidates, who had been found suitable after verification, it is stated that only 570 candidates were of general category. Since there were 435 posts and the candidates were to be called for in a ratio of 1:3 as per the regulation of the Commission, the total number of would have come to 1035. In view of this, all 578 candidates were called for interview in

general category. Again in the EWS category, 83 candidates could only be found eligible and vacancies were 61 so in a ratio of 1:3, the number had come to 183, hence all 83 candidates were called for interview. In the OBC category, though candidates were 190 after document verification but by applying a ratio of 1:3 as to the number of vacancies being 58 only, 174 candidates only could have been called. However, since 8 candidates did pass the same marks the last cut off in the OBC category, which was 61, those 8 candidates were also called for interview totaling the number to 182. Admittedly, the petitioners falling in OBC category, did not obtain 61 marks, which was last cut off marks so they were not called for interview. Again in the Scheduled Castes category, 126 candidates were found suitable and eligible after document verification but looking to the number of vacancies being 29, therefore, in a ratio of 1:3, only 87 candidates were called for interview. Likewise, in a ratio of 1:3 against 29 vacancies falling in ST category, 88 candidates were called for interview. In paras-9 and 10 of the counter affidavit, the cut off marks of OBC and SC categories have been given as 61 and 59 marks respectively and since the petitioners falling in SC category could not secured 59 marks, therefore, they were not called for interview.

19. These above factual aspects regarding cut off marks and the candidates falling within the cut off marks were called for interview, is not questionable as no pleadings are as such there in the writ petition that the petitioners though had secured more than the last cut off marks and yet were not called for interview. Even in reply to paragraphs-9, 10 and 11 of the counter affidavit, nothing has been stated in the rejoinder affidavit so as

to be suggestive of that averments so made in the counter affidavit are consisted of incorrect statements of fact. Thus, there is nothing so apparent on the record as to be suggestive of any arbitrary exercise of power or any malafide exercise of power at the end of the Commission or its authorities in preparing merit list out of the screening of candidates for the purposes of calling candidates for interview in a ratio of 1:3.

20. As far as discretionary power of the Commission is concerned regarding laying down modalities to make candidates admissible to the stage of interview in a particular ratio, the law is well settled that it is well within the authority of the selection and recruitment body to prescribe a particular formula. This Court has very recently in the case of **Jai Karan and others vs. State of U.P.** and others and in the connected matter being **Writ-A No. 11935 of 2021 decided on 26.10.2023** has held that it is well within the domain of the selecting body to determine the method/criterion of selection. The Courts cannot interfere to sit over and above the criterion adopted as an appellate authority. This Court has very categorically held that it was not at all required for the recruitment authority to have mentioned in the advertisement what formula is to be adopted for holding/conducting the examination for selection. Insofar as judgment cited by learned counsel for the petitioners in the case of **K Manjusree vs. State of Andhra Pradesh; 2008 (3) SCC 512:2008 LawSuit (SC) 1088**, I find that the Supreme Court in that case was examining the new requirement as to the minimum marks in the interview introduced by the full Court after the selection process had begun. It is in the background of special facts of that case that the Court had held that this approach was not warranted at all. Therein, criteria was written

examination and interview and so the Court held that new requirement of minimum marks in interview which had the effect of eliminating a candidate, could not have been introduced. In that case composite merit list was to be prepared on the basis of written examination and interview and so the Court deprecated the new approach of the High Court in prescribing minimum marks for a candidate to qualify in interview to be placed in the merit list. This was certainly incorrect approach because having prescribed minimum marks to qualify separately in interview had the effect of eliminating the candidates, who might have been successful in written examination and in total composite marks, would have secured more marks than the candidates, who have found place in the select list otherwise by securing higher marks in the interview. There is no such case, as far as the case in hand is concerned that 35% and 40% as the minimum standard efficiency marks fixed have been made applicable to both the stages of screening test and interview is subsequently by introducing it as a criterion of test though selection had begun, as is also apparent from instruction no. 14 of the general instructions published along with the advertisement. Calling a candidate in a particular ratio for interview after short listing, lay within the domain of the Commission and this discretion has been translated into the action by way of resolution adopted in the year 2012 and then reiterated in the year 2013, much prior to the advertisement in question whereas in the judgment cited by learned counsel appearing on behalf of the petitioners, the rules for selection to make it compulsory to qualify for interview separately came to be changed by adoption by the Administrative Committee and the full Court of the High Court after the selection process had

begun. So even if, part of the argument is accepted for argument's sake that this formula of 1:3 was not published but it was very much there in the resolution prior to issuance of the advertisement and this has been by way of practice also adopted by the Commission in every examination as has been argued and also placed before the Court.

21. Learned counsel appearing for the petitioner has also cited a judgment of this Court in the case of **Arvind Kumar and others vs. State of U.P. and others being Writ-A No. 17539 of 2021 decided on 12th January, 2022**, but I find that in the said case, the advertisement had been issued in the year 2015-16, prescribing last date for applications as 24th November, 2015 and 21st December, 2015 in respect of the vacancies advertised therein. The Service Rules, 2014 as then framed provided for walk in interview. While the selection and appointment was held against two vacancies but in respect of remaining vacancies, selection process was still underway and was not complete that in the meantime, new rules, namely, U.P. Direct Recruitment to Junior Level Posts (Discontinuation of Service) Rules, 2017, came to be framed. That was of course, a case where a complete procedure was obliterated by virtue of amendment while the selection process was underway. There is no such fact involved in the case in hand and, therefore, the judgment cited by learned counsel for the petitioner is distinguishable on facts. The broad principle laid down in the said judgment of course is applicable that the rules of the game cannot be changed once the game has started. So corollary would be that once the selection process has started then no new mode can be adopted to change the whole selection process. I do not see in the present case there to be any such

change to have taken place. The petitioner could not attained the qualifying cut off marks to be called at the stage of interview and so now they have approached this Court raising all these questions but as I have already held that neither there is any element of arbitrariness, nor malafides seen and found in the selection process in question for the posts advertised and hence, I do not see any justification to interfere with the selection process.

22. In view of the above, I do not find any merit in the arguments advanced by learned counsel for the petitioners. The writ petition fails and is, accordingly, dismissed.

Dated: 22.11.2023

Shiraz