

Civil Misc. Writ Petition No. 11935 of 2021

Jai Karan and others vs. State of U.P. and others

with

Civil Misc. Writ Petition No. 12210 of 2021

Raju Kumar vs. State of U.P. and others

Hon'ble Ajit Kumar, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Mohammad Yasin, learned counsel for the petitioners, Sri G.K. Singh, learned Senior Advocate assisted by Sri M.N. Singh, learned counsel appearing for Public Service Commission and learned Standing Counsel for the State, Sri Ajai Kumar Patel, learned Advocate appearing on behalf of those, who seek impleadment and perused the record.

2. All the five petitioners in Writ-A No. 11935 of 2021 and the sole petitioner in Writ-A No. 12210 of 2021, had participated in the selection process held for the post of Additional Private Secretaries in the department of U.P. Secretariat, advertised by U.P. Public Service Commission vide Advertisement No. A-6/E-1/2013 notified on 13.12.2013, and have been successful to make it to the merit list, prepared by the Public Service Commission of such qualified candidates.

3. Petitioners are aggrieved by the notification issued by Public Service Commission dated 24th August, 2021, whereby it has cancelled the entire advertisement of the year 2013 and also the selection held pursuant thereto. The grievance of the petitioners is that the U.P. Public Service Commission has acted

quite arbitrarily in the matter and even after conducting selection for recruitment on the posts in question, which took nearly 7 to 8 years of time, has now cancelled the advertisement holding that the advertisement was *de hors* U.P. Secretariat Personal Assistant Service Rules, 2001 (for short 'Service Rules, 2001').

4. *Per contra*, it is argued by learned Senior Advocate appearing for U.P. Public Service Commission that the U.P. Public Service Commission having realized that particular Clause-(A) of Appendix-9 to the advertisement of the year 2013, having wrongly prescribed for relaxation in relation to mistakes during type test even though no such relaxation was permissible under the relevant service rules and coupled with the fact that the State Government, under its Order dated 10th June, 2019, had directed the Public Service Commission to carry out selection as per the Service Rule, 2001 for the fact that 2001 notification had been there prior to issuance of the advertisement of 2013, the Public Service Commission, rightly decided to act in accordance with the service rules. It is next argued that the notification does not, in any manner, cause prejudice to the petitioners, rather it protects the interest of all those including the petitioners, who had applied against the Advertisement, 2013, as they have been permitted to participate in the new recruitment process, which is now to be undertaken pursuant advertisement to be issued afresh.

5. In order to appreciate the controversy that has led to the cancellation of the earlier advertisement and the selection process pursuant thereto under the order impugned and further to appreciate the necessity thereof, *viz-a-viz* the grievance of the

petitioners, who are now successful candidates as they have been able to make it to the merit list and also to appreciate whether it was necessary in the public interest to do so and would any one stand prejudiced, if the order impugned is quashed and the selection process already undergone is directed to be finalized, it is necessary to refer the facts briefly.

6. In the advertisement that was issued in the year 2013, there was Appendix Clause-(A) which provided that in the matter of typing test, a candidate was required to pass through by showing typing speed of minimum 25 words per minute in Hindi. 5% mistakes were condanable but in addition to 5% mistakes, 3% more mistakes were prescribed to be condanable by way of relaxation, so in all, 8% mistakes could be condoned. This advertisement became subject matter of challenge before this Court in Writ Petition No. 22115 of 2018; Ajeet Kumar Singh & others vs. State of U.P. & others, by as many as four candidates, on the ground that Public Service Commission was not justified in providing relaxation of mistakes upto 8% in typing test. This Court while entertaining that petition passed an interim order in following terms:-

“9. Therefore, as an interim measure this Court provides that since the computer knowledge test is yet to be held, the same can be held but when the final results are declared, then such persons who have been given the benefit of 3 per cent relaxation shall be put in a separate select list by the Commission showing them as provisionally selected only.”

7. Since the selection process was not stayed and the merit list was to be prepared on the basis of both, the written examination and the typing test to be held for selection, the Commission proceeded to hold written examination and the typing test. The results were prepared in both categories where

5% mistakes in typing test were condoned and also in cases where 8% such mistakes were condoned. A report was submitted by the Member of Public Service Commission on 27th July, 2020, in which, it was reported that without condoning the mistakes against the total vacancies of 176 Additional Private Secretaries, only eight candidates were qualifying and in case 5% mistakes were to be condoned then 813 candidates were qualifying, so in all 821 candidates were qualifying, whereas if, further 3% mistakes in addition to 5% mistakes were to be condoned by way of relaxation then 226 candidates are qualifying additionally. So in all if, 8% mistakes are condoned then 1047 candidates qualify.

8. The argument advanced on behalf of the Commission is, since there was a challenge to the advertisement and the matter was getting delayed, U.P. Public Service Commission, was in constant consultation with the State Government to find way out to resolve the issue and the State Government having examined the Service Rules, 2001, found that it did not provide for any relaxation in the typing test under Rule-8 (II) thereof and so it issued a Circular letter dated 10th June, 2019 directing the Public Service Commission that since rule did not provide for any such relaxation, it should proceed to follow the procedure, which was being followed in respect of other notifications. Insofar as, the selection process in question is concerned, the government clarified that the Service Rules, 2001 came into force on 29th August, 2001, much prior to the issuance of advertisement, therefore, there was no question of any relaxation in terms of mistakes in typing test. The Public Service Commission, accordingly, immediately acted upon the Circular letter of the State Government and cancelled the

advertisement of the year 2013 and also the selection process already undergone pursuant thereto, however, permitting participation of all the applicants of the previous advertisement in the fresh selection process and thus directed, under the order impugned for fresh notification, that was issued on 10th June, 2021.

9. It is worth noticing here that even though the Advertisement of the year 2013 had been challenged in Writ Petition No. 22115 of 2018 but the selection process was not stayed. Only five candidates had approached this Court to challenge the said advertisement, whereas large number of candidates had duly participated in the selection process, who had no complaints and the selection was brought to its logical end. The said Writ Petition No. 22115 of 2018, has been withdrawn so the interim order has also got discharged.

10. Now the question, therefore, remains to be unanswered as to who stands prejudiced and as to what public interest is going to be served in the event, earlier advertisement and entire selection process is permitted to be cancelled and the selection is permitted to be held *de novo*.

11. It is true that the Service rules, 2001 do not provide for relaxation but an argument has been advanced by learned Senior Counsel Sri Khare that there can be no typing test without a candidate committing mistakes and in principle, certain mistakes in every typing test is condoned and the speed is calculated by taking into account the correct words typed and divided by a certain figure. He submits that a settled formula is adopted in every selection so held and the Public Service Commission cannot just say that it does not have its own

formula. He argued that even if, the formula adopted by the Public Service Commission in calculating the correct speed of a candidate in the typing, is taken into account: 5% or 8%, the result was bound to be the same. He has argued that except for challenge made by four persons, all the other candidates, who had applied against the posts in question pursuant to the advertisement of the year 2013, had duly participated and a select list had been prepared out of all such candidates on the basis of marks obtained by them in the written examination as well as typing test. He submitted that those, who have qualified and found place in the merit list, are taken to have succeeded in written examination on merits and have thus successfully passed out the typing text with requisite speed as per the rules. So according to him, nobody is going to be prejudiced.

12. Thus, according to Mr. Khare, those, who had not applied against the advertisement could not have any grievance and those, who had applied and duly participated in the selection process could have equally no grievance. He further submitted that the petitioners are ready to accept relaxation upto 8% as originally given in the advertisement. He also placed reliance upon a judgment of the Supreme Court in the case of **Alok Kumar Pandey and others vs. State of U.P. and others; Special Leave to Appeal No. 5626 of 2028**, in which there was also 8% relaxation granted under the advertisement, and while dismissing Special Leave Petition, the Court passed following order on 29.03.2023:-

“The selection process was initiated by the Public Service Commission pursuant to advertisement dated 21.01.2011 holding the selection for the post of Additional Private Secretary (U.P. Secretariat). It is not disputed that the advertisement contained the clause that if the error of the candidate is more

than 5% then he will be treated ineligible for appointment but the Commission may relax the error upto 3% at its own discretion. It is not the case of the parties that the clause of which reference has been made notified by the Commission its own advertisement is not being rationally followed.

All the candidates had participated knowing it fully well that what will the mechanism in place according to which the process of selection to be finalized by the Commission. The Division Bench of High Court has taken note on this aspect while passing the order impugned.

After hearing learned counsel for the parties, we find no reason to interfere in the order impugned.

The Special Leave Petition (s) is, accordingly, dismissed.

Pending application (s), if any, shall stand disposed of.

(Emphasis added)”

13. On the point of right of cancellation of the advertisement and the entire recruitment process held pursuant thereto, learned Senior Advocate has placed reliance upon a judgment of the Supreme Court in the case of ***Sachin Kumar and others vs. Delhi Sub-ordinate Service Selection Board and others reported in 2001 (4) SCC 631*** wherein the Court while dealing with a matter of cancellation by way of discretion exercised by the Selecting Body, had observed that where irregularities in the selection process had the effect of denying equal access to similarly circumstanced candidates were suggestive of malaise that had eroded the credibility of the selection process, would only be one such case where such a discretion could be exercised. The Court observed that those who were innocent of the wrong doing, should not pay the price for those, who were actually found to be involved in irregularities, inasmuch, where the wrong doers could be identified to be segregated the selection of untainted candidates could be allowed to go through by bringing the selection process to its logical end. The Court held, *to treat the innocent and the wrong-doers equally*

by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.” The Court further vide paragraphs 38 and 39 observed thus:

“38. The decision in Inderpreet Singh Kahlon v. State of Punjab 7 MANU/SC/2433/2006: (2006) 11 SCC 356 (“Inderpreet Singh Kahlon”), again of a two judge Bench, involved a case where it was alleged that the Chairperson of the Punjab Public Service Commission (PSC) had got a large number of persons appointed on the basis of extraneous considerations between 1998 and 2001. The State government cancelled the entire selection for recruitment to the PSC (Executive Branch) and Allied Services 1998. Two Scrutiny Committees were appointed and on the acceptance of their reports, the services of those who were appointed on the basis of the selection made by the Commission against vacancies for 1998–2000 came to be terminated. The Full Bench of the High Court dismissed the writ petitions filed by the selected candidates. In appeal before this court, Justice SB Sinha enunciated in the course of his judgment the basis on which the services of persons who had put in some years of service could be validly terminated:

“41. If the services of the appointees who had put in few years of service were terminated, compliance with three principles at the hands of the State was imperative viz. (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the

State to arrive at a satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt”.

39. *The Court noted that there were serious imputations against the Chairperson who was at the helm of affairs of the State Public Service Commission, and all decisions made during his tenure were yet to be set aside. The Court noted that:*

“45. If fraud in the selection process was established, the State should not have offered to hold a reselection. Seniority of those who were reselected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees.”

In the above backdrop, Justice SB Sinha drew a distinction “between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved”.

14. Learned Senior Advocate submitted that the above judgments were being relied upon for the purposes to save selection process, if candidates falling in two different categories as in the case in hand, could be identified and segregated. If segregation was possible selection should stand. He submitted that here was a case where 3% additional relaxation was granted, so such candidates could have been segregated. It was then submitted that the respondents themselves, have got prepared a report from the member of Public Service Commission in which details had come of those selected without mistakes, those selected with 5% mistakes and those selected with further 3% relaxation *qua* mistakes, i.e., 8% mistakes and these figures have been shown as 8, 813 and 226 respectively. So according to Mr. Khare as per the report of the Member of the Public Service Commission dated 27th July, 2023, 821 candidates could very clearly be declared successful. He submitted that 5% mistakes in typographical error is inherently present or seen in every typing test.

15. It is worth mentioning here that this Court on 3rd August, 2023 passed an order asking Public Service Commission to place the formula adopted by it, by means of an affidavit, as to the methodology adopted in making assessment of typing speed. While an affidavit of compliance has been filed but in a sealed cover a confidential paper has been placed before the Court, which is of the year 2017. A statement has been made by learned Senior Advocate appearing on behalf of Public Service Commission that the Public Service Commission has been adopting the formula by providing certain marks for correct words divided by certain number to assess 25 words per minute as a minimum speed. I have perused the document produced in sealed cover and find that certain category of mistakes has been taken as absolute mistake while certain other category of mistakes is taken as mistake in part and those mistakes due to machine, are taken to be condoned and additionally 5 initial mistakes are further condoned. Marks are curtailed for every mistakes except five initial mistakes as equivalent to certain words and thereafter the correct words are multiplied by a certain figure to obtain the net result. It being a confidential document of the Public Service Commission, which has its own credibility as an institution to hold selection for public employment, the Court is not reproducing the document in its order but the Court may record that out of total number of 15 marks allotted for typing, the typing speed has also been categorized between 25 to 50 in six slabs and for each slab different marks are allotted. This appears to be a sound criterion to prepare the merit list on the basis of marks obtained in the typing test and then added to the marks obtained in the written examination to make out a final merit list.

16. Upon a pointed query being made as to whether this formula had been adopted in respect of the selection pursuant to the advertisement of the year 2013 and whether all the 1047 candidates, who had been declared successful on the basis of this formula as far as typing test was concerned, learned Senior Advocate very fairly conceded that it was on this above formula that the merit list had been prepared with only difference of eight mistakes as compared to five mistakes, if entire merit list prepared containing 1047 candidates, is taken into account.

17. The object behind typing test is to select a candidate who knows not only typing but possesses minimum speed with accuracy. To err is to human and so while attempting a typing test in an examination hall every candidate is bound to commit mistakes due to time constraint and unread passage that may be dictated to be typed. In our day to day experience even those who are selected are often seen committing mistakes of even silly nature even though having a good typing speed. As a matter of policy the test conducting body condones certain number of mistakes as it may naturally occur and I do not see any flaw in such policy. Accuracy in typing is defined in terms of percentage of correct words typed. Mathematically correct words typed if divided by total words typed, say 'Y' multiplied by 100. Thus on above formula, if 80 words out of 100 words are correctly typed including corrected errors, a candidate must be taken to have 80 percentage of accuracy. However, I may hasten to add here that test conducting bodies are always in a better position to adopt formula that will give them suitable candidate. In the case of *Raghav Mann and others vs. The Office of District and Sessions, Judge Headquarters; 2021LabIC651=MANU/DE/2211/2020*, it was observed by the

Delhi High Court that, it was the employer who was best suited to decide the attributes a candidate must possess according to the needs of the employer and the nature of the work and also to decide the evaluation mechanism/Scheme of an examination, so as to ensure that the candidates selected meet the threshold of efficiency required to carry out the job requirement of a post. It is neither the domain of the Court to determine the method/criteria of selection, nor does the Court have the necessary expertise to decide which criteria would be best suited to the job requirement.

18. Rules provide for certain typing speed as minimum to select a candidate but now the assessment that has to be made falls within the domain of the test conducting body. It was not at all required to be mentioned in the advertisement and even if mentioned, a particular formula is adopted if in all examinations by Public Service Commission in general, it's approach can not be faulted with. So in my considered view whether Appendix Clause (A) was bad for there being no relaxation provided under the relevant service rules, that had hardly any bearing because the typing speed is tested upon certain formula only. I may further observe, condoning certain mistakes for there being human or of machine error does not amount to relaxation so as to hold it bad. Relaxation would mean that even if minimum typing speed is not achieved, still case is allowed to be considered by holding the prescribed speed. So relaxation could have been in respect of typing speed only and not the mistakes. So, for this reason also the advertisement need not be set aside as it did not provide for relaxation in minimum typing speed. As far as mistakes are concerned, I have already held above that selecting body can

adopt a suitable formula which has been done in the present case.

19. Sri Singh, learned Senior Advocate also admitted that this formula, as per instructions obtained from the Public Service Commission, was being adopted in every examination and was bound to be adopted also if fresh selection was held pursuant to the order impugned and notification made.

20. In view of the above statement so made before this Court and the formula placed in the sealed cover which I did not find to be faulty one, it is clear that this formula is going to be adopted in the subsequent selection and this very formula has been already adopted in the selection pursuant to the advertisement of 2013 and so, it makes no difference whether 8% relaxation, as prescribed for under the advertisement of 2013, is upheld or not. Writ Petition challenging the said advertisement has already been dismissed as withdrawn, so even that challenge is gone. Five successful candidates are before this Court and nobody has questioned the selection process except those five candidates, who have moved the impleadment application making charges of corruption etc. The plea taken is of Rule 8 of the Service Rule, 2001 in their impleadment application to question the selection process but no basis has been given or pleading has been raised as to why corruption is being claimed except for certain reports that have been referred to in the pleadings.

21. As to the allegations, that the entire process of selection suffered from serious irregularities, suffice it to hold that once the selection process has been undertaken and the applicants have participated in the selection process, it was not open for

them to allege that the entire selection process was unfair. It is rightly held that the candidates, who had taken calculated risk or chance by subjecting themselves to the selection process, cannot turn around and complain that the process of selection was unfair. The allegations that have been made are not supported by any cogent material to find favour with them to hold that selection criterion adopted was vitiated for any corrupt practice. On the basis of baseless allegations, the applicants want to thwart the whole examination process to render them as otiose, for which I do not find any justification in the given facts and circumstances.

22. Accordingly, whether the advertisement of 2013 is cancelled and the new advertisement is permitted to stand and whether the earlier advertisement is upheld and new notification is cancelled, merit list as was prepared, shall be prepared again by adopting the formula furnished before the Court, to evaluate the typing speed. So there is nothing wrong with the merit list already prepared pursuant to the earlier advertisement and has nothing to do with the condonation of mistakes. The advertisement was not so bad for any relaxation in selection to compromise with merit so as to justify its cancellation. The only changed circumstance, if cancellation of old selection process is sustained, would be that certain more candidates would now be the new applicants today.

23. In my considered view, the candidates, who have already participated in the selection process and have been able to make it to the merit list, would stand seriously prejudiced and more prejudiced because typing requires practice and those, who have already qualified, may not have been practicing typing

over these years and they are now to participate with fresh candidates and that would make their competition tougher. Those, who could be the prospective candidates, could not have been candidates previously in the year 2013, either for not having attained the minimum age or not having eligibility qualification or might have chosen voluntarily not to apply against the vacancies, so they cannot be said to be prejudiced, nor they ever raised any question as to the condition prescribed in the advertisement regarding relaxation. Limited number of seats were advertised and to that extent only selection has been held. It is always open for the fresh candidates to apply against the vacant situation, if subsequent advertisement is issued for selection and recruitment qua new vacancies. So both in law and equity, the petitioners and those, who have participated in the selection pursuant to the advertisement of 2013, deserve to be rewarded with final recommendations and appointment pursuant to the merit list, already prepared and not much prejudice is going to be caused to any one, if the order impugned is set aside and 2013 advertisement and selection pursuant thereto, is upheld.

24. In view of the above, writ petitions succeed and are allowed. The order impugned passed by the Public Service Commission dated 24th August, 2021 is hereby quashed and so also the consequential notification issued in that regard dated 24.08.2021.

25. Since now the final merit list has been prepared by the Public Service Commission of 1047 candidates, who according to the Public Service Commission have been placed in the merit list applying the formula as placed before the Court, it is hereby

directed to proceed to make necessary recommendation of all such selected candidates,.

26. The impleadment application also stands disposed of in terms of Chapter XXII Rule 5A of the Rules of the Court.

27. Cost made easy.

Dated: 16.10.2023
Shiraz