

Neutral Citation No. - 2023:AHC:223389

AFR

Reserved on: 07.11.2023

Delivered on: 24.11.2023

Court No. - 35

Case :- WRIT - A No. - 16436 of 2023

Petitioner :- Raj Singh

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Namit Srivastava, Sarthak Verma

Counsel for Respondent :- A.S.G.I., Ajal Krishna, Pooja Agarwal, Satendra Kumar Upadhyay

Hon'ble Vikas Budhwar, J.

1. Heard Sri Namit Srivastava, learned counsel for the writ petitioner, notice on behalf of the first respondent has been accepted by the Office of learned ASGI, Sri Ajal Krishna, learned counsel who appears for respondent No. 2 and Ms. Pooja Agarwal, learned counsel who appears for respondents No. 3, 4 and 5.

2. Since affidavits have been exchanged between the parties and the rival parties do not propose to file any further affidavit, thus, with the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the third respondent, Director, Indian Institute of Technology, Banaras Hindu University (hereinafter referred to as the respondent institute) got published an advertisement No. 2 of 2022-23 inviting online applications for non-faculty post in Administrative/Ministerial/Works Department/Technical Sector in the Indian Institute of Technology, Banaras Hindu University including the post of Assistant Registrar. As per same the opening date for submission of online application was 04.02.2023 and the last date of submission of online application was 28.02.2023 till 5:00 P.M. The writ petitioner claims to have applied for the post of Assistant Registrar break up whereof was 1 OBC, 1 ST,

2 Un-reserved Level 10 and the upper age limit as on the last date of submission of online application was 45 years. The essential qualification for the said post was Masters Degree with at least 55% of the marks or its equivalent Grade 'B' in the UGC seven point scale along with a good academic record. Relaxation of 5% marks (from 55% to 50%) would be provided at Masters Level in the case of SC/ST/PD candidates. So far as desirable qualifications are concerned degree in Management or LL.B, knowledge of Computer, knowledge of GOI rules, familiarity with working in technical/educational institutions of higher education was provided containing a note that the selection process may consist of written test, group discussion and interview.

4. Under the general instructions to the candidates clause 4 provided as under:-

“4. Mere eligibility will not entitle any candidate for being called for interview/appear in the selection process. More stringent criteria may be applied for short-listing the candidates at any stage of the selection process. Applicants having higher qualification and merit may be given preference.”

5. The writ petitioner claims to have applied for the said post and the application form has been appended as Annexure 2 at page 24 relevant extract at page 25 dated 24.02.2023 reference whereof has been given in para 5. According to the writ petitioner, he possessed the necessary qualification of 10th ICSE, CMS with 77.50 marks, 12th ISE. CMS, Lucknow with 69.80 marks, Graduation from Lucknow University from the subject Eco-Social Work AIH 2006 with 50.60 marks and Post-Graduation JIIT University JBS subject, MBA in the year 2009 with 83 marks. The writ petitioner alleges that on 28.04.2023 a communication has been issued under the caption "notice" wherein a list of applicants not eligible for the post of Assistant Registrar was published in which the name of the writ petitioner has been mentioned at serial No. 582.

6. The writ petitioner being shocked and surprised to gather knowledge that he has been not found to be eligible preferred an E Mail dated 01.05.2023 which was responded by the University on 17.05.2023 that, during the course of short listing he was not found to be eligible for the post of Assistant Registrar.
7. Questioning the said communication dated 28.04.2023 and 17.05.2023 the writ petitioner has filed the present writ petition.
8. This Court entertained the writ petition on 05.10.2023 while passing the following orders.-

"The argument of the learned counsel for the writ petitioner is that pursuant to an advertisement published by the respondent-University under the caption "Indian Institute of Technology, Banaras Hindu University, Advertisement No.02/2022-23". Amongst other posts, the post of Assistant Registrar was also advertised, which comprised of one post of OBC, one Scheduled Caste and Two Un-reserved and as per the essential qualifications it was provided that the incumbent should have Master's Degree with at least 55% of marks or its equivalent grade of B in the UGC seven-point scale, along with a good academic record providing for relaxation for SC/ST and desirable qualification was also mentioned.

According to the writ petitioner, he applied in pursuance of the said advertisement and he possesses the Graduation as well as Post-Graduation Degree. However, he was ousted, as his name did not find place in the list of applicants eligible for being put to selection.

According to the learned counsel for the writ petitioner, the writ petitioner obtained 50.60% marks in Graduation, so he has been found to be ineligible for the post of Assistant Registrar.

Learned counsel for the writ petitioner relies upon the judgment in the case of State of U.P. Vs. Karunesh Kumar, Civil Appeal No.8822-8823/2022 decided on 12.12.2022, so as to contend that the rules of the game cannot be changed, when the selection process commences.

Learned counsel for the petitioner has also placed reliance upon the supplementary affidavit filed today whereby such type of stand, at no point of time, was put to service to IIT, New Delhi.

Ms. Pooja Agarwal, who appears for the respondent-University has submitted that there was clear stipulation in the advertisement itself under the General Instructions to the Candidate, point no.4, according to which mere eligibility will not entitle any candidate for being called for interview/ appear in the selection process, as stringent criteria may be applied for short-listing the candidates at any stage of the selection process. She further submits that for the said posts, 1793 applications were filed and 652 were found to be eligible being put to selection, thus she submits that short-listing is a device, which in Service Jurisprudence is adopted for the purposes of limiting the candidates, who appear in the

selection in that regard.

Since a writ of certiorari is being sought, let Ms. Pooja Agarwal who appears for the University file an affidavit by 10.10.2023.

Rejoinder, if any, may be filed by 11.10.2023.

Put up this case as fresh on 12.10.2023.

Supplementary affidavit filed today is taken on record.

Sri Ajal Krishna has appeared for the Respondent no.2."

9. A short counter affidavit has been filed on behalf of respondents No. 3, 4 and 5 sworn by the Assistant Registrar NFRC IIT B.H.U., Varanasi dated 10.10.2023 followed by a supplementary counter affidavit filed on behalf of second respondent of the Assistant Director, Northern Region AICTE dated 30.10.2023, the writ petitioner has filed a supplementary affidavit dated 18.09.2023 and a rejoinder affidavit to the counter affidavit filed on behalf of third, fourth and fifth respondents.

10. As already noticed, the counsels for the rival parties did not propose to file any further response, thus, the writ petition is being decided at the fresh stage.

11. Sri Namit Srivastava, learned counsel for the writ petitioner while assailing the communications impugned in the writ petition has sought to argue that once as per the eligibility prescribed in the advertisement in question for the post of Assistant Registrar the writ petitioner fulfilled the same then there was no occasion for the respondents to have short listed the name of the writ petitioner so as to exclude him to participate in the selection. He submits that the only basis which has been taken for non-suiting the claim of the writ petitioner is the fact that huge number of candidates had applied for the said post, thus, in order to limit the candidates to appear in the selections the first division (or 60% or higher) in High School, Intermediate, Under Graduate and Post-graduate was taken as a tool. He submits that the games of the selections could not have been changed in the mid-way particularly when the selection process stood

commenced after publication of the advertisement and, thus, according to him, the entire exercise is per se illegal arbitrary and cannot be sustained in the eyes of law. He seeks to rely upon the judgment of Kerala High Court in the case of ***State of Kerala Vs. K.S. Govindan Nair reported in 2022 (0) Supreme (Ker) 387*** as well as the judgment in the case of ***K. Manjusree Vs. State of A.P. in Appeal (Civil) 1313 of 2008*** decided on 15 February, 2008.

12. Countering the said submission, Ms. Pooja Agarwal, learned counsel who appears for the respondent-University has sought to contend against 4 vacancies which were being advertised comprising 1 OBC, 1 ST and 2 un-reserved as many as 1793 applications were received and after witnessing the said position in order to short list the candidates the respondents applied the criteria of making those applicants eligible who were having first division (or 60% or higher) in High Schools, Intermediate, Under-graduate and Post-graduate and after applying the said criteria also 652 candidates were short listed.

13. The submission of Ms. Pooja Agarwal, learned counsel who appears for the University is that there happens to be a specific clause contained in the general instructions to the candidates in the advertisement in question that, mere eligibility will not entitle any candidate for being called for interview/appear in the selection process as mere stringent criteria may be applied for short listing the candidates at any stage of selection process and applicants having higher qualifications and merits may be given preference. She seeks to rely upon the decision in the case of ***B. Ramakichenin Vs. Union of India (2008) 1 SCC 362*** so as to contend that short listing can even be resorted to if there is no rule to the said effect or there is no mention in the advertisement as short listing is a criteria which is widely recognized in service jurisprudence which is used as a tool to limit the number of candidates once there are huge number of candidates

against lesser post. She has also placed reliance upon the decision in the case of *Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and others reported in (1994) 6 SCC 293* as well as the decision in the case of *Banaras Hindu University Vs. Dr. Alok Kumar reported in 2023 (2) ADJ 353*.

14. Sri Ajal Krishna who appears for the AICTE, second respondent has adopted the argument of Ms. Pooja Agarwal.

15. I have heard the learned counsel for the parties and perused the record carefully.

16. Undisputedly, an advertisement was published by the respondents-Institute, advertisement No. 2 of 2022-23 for various posts including the post of Assistant Registrar which are four in number 1 OBC, 1 ST and 2 un-reserved. Though the advertisement prescribed the essential and desirable qualifications on the post of Assistant Registrar but clause IV of the general instructions to the candidates of the advertisement itself provided in clear terms that mere eligibility will not entitle a candidate for being called for interview/appear in the selection process and mere stringent criteria may be applied for short listing the candidates at any stage of selection process and applicants having higher qualification and merit may be given preference.

17. Here, in the present case as apparent from the counter affidavit filed on behalf of respondent-institute it is apparent that against the 4 posts of Assistant Registrar as many as 1793 applications were received and in order to limit the number of candidates the tool of short listing was resorted to while fixing a criteria that the applicants having first division (or 60% or higher) in High School, Intermediate, Under-graduate and Post-graduate will be short listed. The counter affidavit of the respondent-institute further reveals that based on the said criteria 652 candidates were short listed.

18. Notably, clause IV to the general instructions to the candidates has not been put to challenge in the present writ petition which is a source of power for resorting to short listing and the terms and conditions and the modalities according to which short listing is to be done. The Hon'ble Apex Court in the case of Madhya Pradesh Public Service Commission (supra) had the occasion to consider the issue of short listing wherein it was specifically propounded that short listing can be resorted to even if there is no rule to the said effect for limiting the number of candidates.

19. In the case of **B. Ramakichenin** (supra) the Hon'ble Apex Court in paras 15, 16, 18 and 19 had observed as under:-

“15. It is well settled that the method of shortlisting can be validly adopted by the selection body vide M.P. Public Service Commission Vs. Navnit Kumar Potdar (vide paras 6, 8, 9 and 13) and Govt. of A.P. Vs. P. Dilip Kumar.

16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.

18. In the present case, no doubt, UPSC had resorted to an objective and rational criteria that only those who have two years' experience after getting M.Sc degree will not be considered, while those who have got such experience but only before getting M.Sc degree will not be called for the interview. Ordinarily we would not have taken exception to this procedure since it is based on an objective criteria, and ordinarily this Court does not interfere with administrative decisions vide Tata Cellular V. Union of India. As observed in the said decision, the modern approach is for courts to observe restraint in administrative matters.

19. Hence, if the method of shortlisting had not been prescribed by UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of shortlisting adopted by UPSC since it appears to be based on a rational and objective criteria.”

20. More so, the division Bench of this Court in the case of **Dr. Alok Kumar** (supra) in paras 21 and 27 further observed as under:-

“21. It is well-settled that any clause in a document or a statute is not to be

read in isolation as to find its true meaning. We would have therefore, to accord consideration to other relevant provisions in the advertisement which enables the University to adopt short-listing procedure. In the advertisement it has been specifically provided that “Mere eligibility will not entitle any candidate for being called for interview. More stringent criteria may be applied for short-listing the candidates to be called for interview. Applicants having higher qualification and merit will be given preference. For teaching positions short-listing shall be done as per guidelines approved by Executive Council of the University.

27. As the shortlisting exercise is to be conducted only after receipt of applications, the shortlisting criteria may be fixed after the last date for receipt of application forms, keeping in mind the number of applications received. This position is clear from the law laid down by the Apex Court in Madhya Pradesh Public Service Commission V. Navnit Kumar Potdar’s case (supra) and in B. Ramakichenin @ Balagandhi v. Union of India and others case (supra) wherein it has been clearly held that where selection is to be made only on the basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been specifically held by the Apex Court that even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the Selection Body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them.”

21. In the case of ***Union of India & Others Vs. T. Sundararaman & Others 1997 (4) SCC 664*** the Hon'ble Apex Court in paras 2 and 4 has observed as under:-

“2. In the present case 37 applications were received for the three posts. The Commission thereupon shortlisted the candidates to be called for interview on the basis of 4 years’ experience or more. As a result, 20 candidates were called for interview. Respondent No. 1 did not qualify for shortlisting and hence he was not called for interview.

4. The Tribunal has clearly erred in doing so. Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In the case of M.P. Public Service Commission Vs. Navnit Kumar Potdar this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview. This was upheld by this Court. In the case of Govt. of A.P. Vs. P. Dilip Kumar also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate. The decision of the Tribunal is, therefore, set aside and the appeal is allowed. There will, however, be no order as to

costs.”

22. More so, the interpretation so sought to be suggested by the learned counsel for the writ petitioner that it is not permissible for the respondents to have changed the rules of the game once the game has commenced is preposterous as the said principle is not applicable in the cases of shortlisting. Nonetheless, nothing has been brought on record to substantiate that even otherwise the criteria adopted for shortlisting is arbitrary or illegal or not backed by any provision. Insofar as the judgment in the case of ***K. Manjusree*** (supra) and ***K. S. Govindan Nair*** (supra) are not applicable in the facts of the case.

23. Resultantly, this Court does not find any good ground to interfere with the communications/orders impugned.

24. The writ petition is, accordingly, dismissed.

Order Date:- 24.11.2023

Rajesh