

Court No. - 34

Case :- WRIT - A No. - 17692 of 2023

Petitioner :- Sita Devi

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Santosh Kumar Kesarwani, Ritvik Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Santosh Kumar Kesarwani, learned counsel for the petitioner and Sri M.N. Singh, learned counsel for the respondent-Public Service Commission.

2. Petitioner who has been applicant against the post of Assistant Prosecution Officer in the examination held by the Commission in the year 2022 was initially aggrieved for not providing the marks that she had obtained in the written examination. However, during pendency of this petition, she has already been shown the marks and, therefore, now petitioner presses the second relief prayed in the writ petition for preparation of waiting list.

3. Learned Advocate appearing for the Commission, Sri M.N. Singh, submits that in the matter of recruitment and selection, the relevant recruitment rules are followed which are statutory in nature tracing their source under proviso to Article 309 or under the State legislation. Since the Rules did not provide for preparation of any supplementary list or waiting list, it goes beyond the domain of the selecting body to prepare the waiting list on its own. He has placed reliance upon a Division Bench judgment of this Court in ***Special Appeal Defective No.416 of 2021 (Ajay Prakash Mishra & ors vs. State of UP & ors)*** and affirmed by Supreme Court in the case of ***Special Leave to Appeal (C) No.16073-16074 of 2021*** and then a very recent judgment of this Court passed in ***Writ A No.17398 of 2023 (Balwant Pal & ors. vs State of UP & ors) on 17.10.2023.***

4. Upon a pointed query being made to learned Advocate appearing for the petitioner, he has placed before the Court certain orders passed in different writ petitions where the directions were issued to follow the relevant rules and regulations and government orders issued from time to time in the matter of recruitment and

selection. The principle of law that has been cited by the learned Advocate appearing for the respondents, I do not find to have been discussed in the judgments that are cited: in the case of ***Atul Tiwari & ors vs. State of UP & ors in Service Single No.25175 of 2018*** and ***Mohd. Akram Siddeeqe & ors vs. State of UP & ors in Writ-A No.20955 of 2018*** and, therefore, in my considered view, these orders are not having force of any binding precedent for the principle of *sub silentio*.

5. Petition lacks merit and is, accordingly, dismissed.

Order Date :- 3.11.2023

P Kesari