

Court No. - 34

Case :- WRIT - A No. - 20295 of 2023

Petitioner :- Mukesh Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Dushyant Kumar,Gauri Shanker Prasad

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. Petitioner claims that in the selection held vide U.P. Police Recruitment and Promotion Board, Lucknow for the post of Constable, he has secured 175.3667 marks in OBC category whereas last candidate, who has been selected in the OBC category, has secured 176.3834 marks. He submits that candidates questioned the answer-key relating to the option in multiple choice question for question No.- 69 by approaching this Court vide Writ - A No.- 5477 of 2020 but the same was dismissed against which special appeal was preferred before this Court and the same was allowed by setting aside the judgment of learned Single Judge, directing petitioners, who have secured 2.5 or less marks from the cut of marks in their respective category will be accommodated and accordingly result will be revised. The observations made by the Division Bench in the penultimate paragraph 30 and operative portion of the judgment as contained in paragraph 31 are reproduced hereunder:

"30. These judgments, in our opinion, were based on facts of those cases. In the instant case, as noted above, the appellants have approached the Court immediately after their marks were notified and final result was uploaded and they came to know that they were short by a marginal difference. We have already held that the Recruitment Board has acted in a completely irrational manner in changing the key answer to Question No.68 of Test Booklet B, Series 17 at the time of notifying the revised answer key. Admittedly, there was no provision for filing objection after the changes made in the final answer key. There are still 603 posts vacant after final round of selection. Although it is alleged that these posts have been carried forward to the next recruitment, but even advertisement for fresh recruitment has not been issued so far. Therefore, we are of considered opinion that those appellants who are short of 2.5 marks (2 marks for correct answer and 0.5 marks deducted for negative marking) or less from the cut off marks in their respective categories, are entitled to be appointed against vacant posts, provided they qualify the

medical examination or any other norm prescribed in this behalf. But this benefit would be available only to those candidates who had filed the writ petitions before this Court soon after the cut off marks were notified and not to anyone who now approaches this Court. Those who have already been selected should also not be disturbed. This would balance the interest of all sides, without causing prejudice to any one.

31. Accordingly, we set aside the judgement of learned Single Judge and dispose of the instant appeals with the following directions:-

(a) The Recruitment Board will revise the result of written examination of such of the appellants who are short of 2.5 or less marks from the cut off marks in their respective categories.

(b) The Recruitment Board will hold their medical examination and in case they succeed on all other parameters, they shall be appointed against the posts which remained vacant after the final round of recruitment. The aforesaid exercise shall be carried out within six weeks from today after due intimation and public notice to all concerned.

(d) These candidates, if selected finally, will be placed at the bottom of the seniority list, while maintaining their inter-se merit position and they shall be entitled to salary and allowances only from the date of their actual appointment, as admissible under the Service Rules.

(e) The aforesaid benefits shall only be available to those who have approached this court so far and not to any other candidate."

3. Supreme Court in the case of **State of U.P. and others v. Arvind Kumar Srivastava and others: (2015) 1 SCC 347** has very clearly observed vide paragraph 22.1 that if a person is identically placed and approached the Court, he is entitled to identical relief and, therefore, he should not be discriminated in the matter of relief provided of course he has approached within time. Paragraph 22.1 of the said judgment runs as under:

"22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.'

4. The selection was held in the year 2018 of which result was declared in the year 2019 and the authorities in certain matters litigated in which special appeal came to be disposed of only on 31st October, 2023.

5. In the considered opinion of the Court, petitioner having scored just less than one mark of the last selected candidate in OBC category, his claim may be considered in accordance with law.

6. Accordingly, petitioner is directed to approach the authority, namely, respondent No.- 2 by means of an application annexing therewith a certified copy of this order and judgment of Division Bench decided on 31st October, 2023 in Special Appeal No.- 93 of 2023 within a period of three weeks from today and if recommendations have already not been made pursuant to the judgment of Division Bench, the concerned authority shall be passing appropriate order regarding candidature of the petitioner in accordance with law within a next two weeks' time.

7. With the aforesaid observations and directions, this petition stands disposed of.

Order Date :- 7.12.2023

Atmesh