

Reserved on 15.05.2023

Delivered on 25.05.2023

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 263 of 2023

Appellant :- Nishant Mishra And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Medical Education U.P. Lko. And Others

Counsel for Appellant :- Anu Pratap Singh, Vinod Kumar Singh

Counsel for Respondent :- C.S.C., Shubham Tripathi

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Rajan Roy, J.

1. Heard Sri Vinod Kumar Singh, learned counsel for the appellants, learned Standing Counsel for the State and Sri Shubham Tripathi, learned counsel for the opposite parties no.2 to 5.

2. This is an appeal against the judgment dated 03.03.2023 passed in Writ-A No.3979 of 2022 (Uday Singh and six others Vs. State of U.P. and others). The appellants herein had filed the aforesaid writ petition challenging the online common recruitment test held in pursuance to the advertisement dated 06.01.2022 for various post in the Sanjay Gandhi Post Graduate Institute of Medical Sciences. The appellants no.1 and 2 were the petitioners no.4 and 7 in the writ petition who had applied for selection and appointment to the post of Medical Lab Technologist and Junior Medical Lab Technologist in pursuance to the above mentioned advertisement. As they were eligible, they were called for online common recruitment test containing multiple choice questions of hundred marks. This test was held on 20.06.2022 and the appellants/petitioners participated in the said test, result of which was declared on 21.06.2022, wherein, they were found to be unsuccessful. After being unsuccessful, the appellants filed the aforesaid writ petition seeking the following reliefs:-

“i. Issue a writ, order or direction in the nature of Mandamus commanding to the opposite parties to conduct online Common Recruitment Test in Hindi Language for selection in pursuant of

Advertisement no.1-50/A to E/Rectt/2021-22, dated 06.01.2022, within time as directed by this Hon'ble Court.

ii. Issue a writ, order or direction in the nature of Mandamus commanding to the opposite parties to declare the final result of selection in pursuant of Advertisement dated 06.01.2022, only after conducting the 'Common Recruitment Test' in Hindi Language properly ,with all consequential benefits and within time as directed by this Hon'ble Court.

iii. To issue a writ, order or direction in the nature of Certiorari quashing the procedure of online Common Recruitment Test conducted on 20.06.2022 after summoning from the originals, with all consequential benefits

OR

In alternative this Hon'ble Court may kindly be issue a writ order or direction of a suitable nature commanding the Opp-parties to not make any selection and appointment only in pursuant of online Common Recruitment Test conducted on 20.06.2022 by Opp-parties.

iv. issue a writ, order or direction in the nature of Mandamus commanding to the opposite parties to declare the final result of petitioners in pursuant of Advertisement dated 06.01.2022 (as contained in Annexure No.1) only after conducting the Common Recruitment Test in Hindi Language ,with all consequential benefits within time as directed by this Hon'ble Court.

v. Issue a writ, order or direction in the nature of Mandamus commanding to the opposite parties to consider the candidature of petitioners for selection and appointment on posts advertised by advertisement dated 06.01.2022 (as contained in Annexure No.1) after conducting the Common Recruitment Test in Hindi Language, within time as directed by this Hon'ble Court.

vi. Issue a writ, order or direction in the nature of Mandamus commanding to the opposite parties to not giving effect the marks obtained in online Common Recruitment Test conducted on 20.06.2022.

vii. Issue any other writ order or direction in the favour of petitioner which this Hon'ble Court may deem fit and proper under the circumstances of the case.

viii. Petition allowed with cost.”

3. The grievance of the appellants / petitioners was that the examination had been conducted in English language whereas it should have been conducted in Hindi language.

4. Counsel for the appellants sought to address us on various issues such as rule position etc. However, on being confronted as to how they could raise a challenge in this regard after appearing and being unsuccessful in the test, learned counsel could not give any satisfactory reply.

5. We were informed by the counsel of the SGPGI that on the posts which were advertised, eligible persons from all over India applied for the same. He submitted that the examination was to be conducted in English and there was no suggestion at all at any stage of selection that it would be conducted in Hindi. English is the medium in which it had been conducted for the past several years. Moreover, he submitted that having been unsuccessful in the test, it was not open for the appellants herein to challenge the same before the Writ Court.

6. Having heard learned counsel for the parties and having perused the record, we are of the opinion that writ petition of the appellants herein was not maintainable in the first place as they took a chance by appearing in the said test and only when they were unsuccessful, they turned around challenging the test held on 20.06.2022 and seeking other reliefs as already quoted herein above. If at all they had any grievance with regard to the conditions of recruitment or with regard to application of the Rules, 1994 etc. then they should have challenged the same prior to appearing in the said selection, as, the advertisement was issued on 06.01.2022 whereas the selection was held in June 2022. There was ample time for the petitioners to raise their grievance but they did not do so and by not doing so and appearing in the test without any demur and having failed to succeed in the test they were barred from challenging the selection at a subsequent stage. The legal preposition in this regard is well settled.

7. Moreover, at this stage, the counsel for the SGPGI submitted that the petitioners had English as one of the subjects in class 12, a fact which could not be denied by counsel for the appellants, rather, he admitted it.

8. Moreover, on perusal of the impugned judgment of the Writ Court, we find that the Writ Court has observed that the test was of hundred marks containing multiple choice questions. 60 marks were for knowledge related to the posts advertised and level of qualification required, whereas, 10 marks were for general english, another 10 marks for general knowledge, further 10 marks for reasoning and 10 marks for mathematical aptitude. The advertisement did not provide any medium of examination. As 10 marks were for general english, therefore, the person appearing in Combined Recruitment Test (CRT) was required to have knowledge of general english. Moreover, the question paper was a multiple choice question paper and as far as the U.P. competitive examination (Medium of Written Examination) Rules, 1994 relied by the petitioners was concerned, the writ court opined that apart from the fact that these Rules 1994 were applicable only to posts and services under the Rule making power of the Governor under Article 309 of the Constitution of India and to examinations held by the U.P. Subordinate Services Selection Committee and not to the post and services under the S.G.P.G.I. which are governed by first statute not to selection held by S.G.P.G.I., Rule 4 of the said Rules provides that a candidate may answer paper in english in roman script and hindi in devnagri script or urdu in persian script and the language paper may be answered in the same language; provided that question paper as a whole and not for each question separately must be answered in any of the above script; provided further that the question paper will be in English in roman script and in Hindi in Devanagari script. Therefore, the writ court opined that the rule indicates that it is not meant for multiple choice questions because in multiple choice questions there is no requirement of answering the question paper in any language. Thus in essence what the Writ Court has said is that correct answers to the multiple choice questions are to be ticked or marked, as the case may be, and there is no occasion for giving answer in any language, whether it be english or hindi.

9. The writ court has also referred to the decision of Hon'ble Supreme Court in the case of ***Hindi Hitrakshak Samiti and Ors. Vs. Union of India; (1990) 2 SCC 352*** wherein it was held that the medium in which an examination of selection is to be held is a matter of policy and it cannot be appropriately dealt with Article 32 of the Constitution of India.

10. The Writ Court has also referred to the decision of Hon'ble the Supreme Court in the case of **Ashok Kumar and another Vs. State of Bihar and others; (2017) 4 SCC 357**, wherein it has been held that it is not open for a candidate that after participating in the selection process to question the result on being declared unsuccessful.

11. We do not find any error in the reasoning of the writ court. Moreover, as already stated, once the appellants appeared in the selection without any demur, then, it was not open for them, in the facts and circumstances of this case, to challenge the advertisement or the conditions of recruitment etc. subsequently, after being unsuccessful.

12. We, therefore, find no reason to interfere with the judgment of the writ court in this intra Court appeal, which, we **dismiss**.

Order Date :- 25.05.2023

Saurabh

(Rajan Roy,J.) (Pritinker Diwaker,C.J.)