

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 295 of 2023

Appellant :- Chhotey Lal Verma

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. , Deptt. Of Ayush Civil Sectr. Lko. And Others

Counsel for Appellant :- Alok Kr. Misra, Arun Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Shri Alok Kumar Misra, learned counsel for the appellant, Shri Anand Kumar Singh, learned standing counsel for the respondents No.1, 3 and 4, Shri Khanna holding brief of Shri Gaurav Mehrotra, learned counsel for the respondent No.2 and Shri Mrinal Chandra, learned counsel for the respondent No.5.

2. The instant intra-Court appeal has been preferred against the judgment dated 19.05.2023 passed in Writ Petition No.3716 of 2023 (Writ-A) whereby the writ petition of the appellant has been dismissed.

3. The submission of the learned counsel for the appellant is that the appellant had applied on the post of Yoga Trainer/Yoga Assistant on contractual basis at Wellness Centre, Rajkiya Ayurvedic Hosipital, Tanda, District Ambedkar Nagar in pursuance of an advertisement.

4. It is urged that in the said advertisement, a copy of which has been brought on record as Annexure No.3, provides for granting preference to B.N.Y.S. Degree Holder, hence, the appellant should have been granted preference.

5. It is also pointed out that 68 candidates had applied, out of which 60 candidates were found eligible for the post. After the interview was conducted, it was found that the appellant had obtained 112.5 marks

whereas the private-respondent No.5 - Ram Kripal Yadav, the selected candidate had obtained 134 marks. It is thus, submitted that since the appellant had B.N.Y.S. Degree, accordingly, he should have been granted the preference and appointed to the post, hence, the appointment offered to the private-respondent is bad.

6. Shri Khanna, learned counsel for the respondent No.2 has pointed out that the entire premise upon which the submission of the learned counsel for the appellant is based, is flawed, inasmuch as no en bloc preference can be given as suggested. The purpose of granting preference is only when there are two or more persons equally poised. It is urged that in the instant case, the private-respondent No.5 had obtained 134 marks and had a higher score than the appellant, hence, he was offered the appointment.

7. It has also been pointed out that the appellant had earlier preferred a Writ Petition No.2163 of 2023 wherein liberty was granted to the appellant to move a fresh representation to the answering-respondent No.2, who was required to decide the same by reasoned and a speaking order.

8. Considering the representation of the appellant, it was found that out of 160 marks, the appellant had scored only 112.5 marks with an average of 28.12 whereas the private-respondent No.5 had obtained 134 marks with an average of 33.5 and considering the aforesaid, it was the respondent No.5, who was selected and the appeal, for the aforesaid reasons, deserves to be dismissed.

9. The Court has heard learned counsel for the parties and also perused

the material on record.

10. Apparently, from a perusal of the advertisement dated 03.10.2022, a copy of which has been brought on record as Annexure No.3, it only indicates the eligibility conditions and it further indicates that B.N.Y.S. Degree Holders be given preference.

11. In the instant case, it is not disputed that the appellant had lesser marks than the respondent No.5. Merely because, the appellant is a B.N.Y.S. Degree Holder in itself will not permit him to get the preference and appointment especially when there is no such stipulation in the advertisement or any Rule or Regulation under which the appointment is to be made that irrespective of the marks scored a B.N.Y.S. Degree Holder would be selected.

12. It is now well settled that in an appointment/recruitment process where some requisite qualification is mentioned in the advertisement and it is also provided that preference would be given to some persons having a higher degree then it does not mean that the said persons who has a higher qualification would be selected only on account of the given preference, over the other candidates. All that it means is that where two or more persons are equally poised then such persons who as per the advertisement have a higher qualification would be given the preference.

13. In this regard, the decisions of the Apex Court clinch the issue. [See : **Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu and others, (2003) 5 SCC 341 and State of U.P. and another v. Om Prakash and others, (2006) 6 SCC 474**].

14. Applying the aforesaid proposition to the present case, the only inescapable conclusion which can be arrived at is that there is no provision for grant of en bloc preference to B.N.Y.S. Degree Holder. It is not disputed that the appellant is equally poised with the respondent No.5, rather the appellant has much lower score than the respondent No.5.

15. In view of the aforesaid, the submissions made by the learned counsel for the appellant is not well founded and is accordingly rejected.

16. For the aforesaid reasons, we do not find that there is any error in the order passed by the learned Single Judge dated 19.05.2023 which is affirmed. Accordingly, the appeal is devoid of merits and is **dismissed**.

Order Date :- 19.07.2023
Rakesh/-

[Jaspreet Singh, J.] [Pritinker Diwaker, C.J.]