

Court No. - 20

Case :- WRIT - A No. - 5368 of 2023

Petitioner :- Kajal Bajpai

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Revenue, Lucknow
And 2 Others

Counsel for Petitioner :- Anurag Narain Srivastava, Shailendra Kumar
Misra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Anurag Narain Srivastava, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 29.04.2023 whereby petitioner's appointment on the post of Lekhpal in pursuance of advertisement issued in the year 2016 has been cancelled. It has been submitted that initially an advertisement was issued on 02.07.2015 inviting applications for filling up of 231 posts of Lekhpal for the District Lakhimpur Kheri. Petitioner applied for the said post in the general category and was declared selected in the result issued on 28.03.2016 indicating petitioner having obtained 62.933% in the female category. Petitioner was thereafter appointed vide order dated 05.04.2016 and submitted her joining on 06.05.2016 whereafter one Manjesh Kumar belonging to scheduled caste category who was treated as a general candidate filed Writ Petition No.10346 (S/S) of 2016 which was decided vide judgment and order dated 21.11.2016 directing the authorities concerned to offer appointment to Manjesh Kumar within specified date.

3. It is submitted that although the judgment and order dated 21.11.2016 pertained only to the scheduled caste category and that too specifically with regard to right of the said Manjesh Kumar, opposite parties reviewed the entire select list whereafter vide order dated 15.03.2017 cancelled petitioner's appointment on the ground that a clerical mistake had occurred while indicating marks obtained by petitioner due to which she obtained less than the minimum cut off marks required for general category under female quota.

4. The said order was challenged in Writ A No.8942 of 2017 which was allowed vide judgment and order dated 13.07.2022 primarily on the ground that vested right of petitioner had been interfered with without providing any opportunity of hearing. Liberty was granted to opposite party to pass a fresh order in accordance with law and it is in pursuance thereof that the

impugned order has been passed again rejecting petitioner's representation.

5. It has been submitted that as would be evident from select list that petitioner's name was indicated at serial no.197 in the general female quota with the names of Parul Pandey and Dali Shukla being the only other candidates indicated below petitioner in the general female category.

6. Learned counsel has drawn attention to the impugned order to submit that after revisiting the entire selection process as well as the marks obtained by candidates, petitioner's marks were revised from 62.933 to 61.6 on the ground of clerical mistake in feeding the marks obtained by petitioner in interview. It is also submitted that the impugned order while considering point no.4 has clearly indicated that petitioner was being removed from the select list only on the ground that after re-adjustment of marks, she has obtained 61.6 marks which is below the cut off marks of 62.067.

7. Learned counsel has again drawn attention to point no.4 discussed in the impugned order to submit that there was no prescribed cut off marks for the general quota (female) and the minimum marks of 62.067 of in fact the marks obtained by one Anamika Tiwari who was selected in place of petitioner.

8. It is therefore submitted that since there were no minimum prescribed cut off marks, the cut off marks being adhered to by opposite party are in fact the marks obtained by last selected candidate under the general female category. It has also been submitted that a perusal of select list will indicate that the name of Anamika Tiwari does not feature therein and has been incorporated after rejection of petitioner's candidature but since the opposite parties have admitted that there was no waiting list, such inclusion is against the Rules.

9. It is also submitted as pleaded in the writ petition that even thereafter the said Anamika Tiwari did not join her post due to which the said post remained vacant and in which the petitioner being a selected candidate could very well have been adjusted. Learned counsel has in the alternative submitted that since the entire selection was not under challenge in the petition filed by said Manjesh Kumar, the entire selection could not have been re-visited by the opposite party since it would amount to review of the entire list after more than one year of selection.

10. Learned State Counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that although there was no specific

direction in the writ petition filed by Manjesh Kumar regarding selection but since it indicated errors in the selection, a Committee was constituted to verify the selection made earlier in pursuance of the advertisement whereafter it was discovered that there was error in feedings marks of petitioner obtained in the interview due to which total marks obtained by her reduced from 62.933 to 61.6 which being below the cut off marks of 62.067, candidature of petitioner was rightly cancelled. It has also been submitted that since candidature of petitioner was cancelled, the name of Anamika Tiwari was included but when she also failed to join the post, said vacancy was carried forwarded.

11. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is admitted that petitioner's name features at serial no.197 of the select list under the general category (female). There are only two other selected candidates under the said category namely Parul Pandey at serial no.198 and Dali Shukla at serial no.201. The other names featuring below the names of such persons are in some reserved category or the other. It is also evident from the select list that the name of Anamika Tiwari does not feature in the select list.

12. In paragraph 26 of the counter affidavit, the opposite parties have clearly stated that according to decision taken by the State Government, waiting list was not to be prepared in any combined services except for post of single cadre. Thus the opposite parties have clearly admitted that there was no waiting list for the aforesaid selection in which petitioner was selected.

13. Nonetheless in sub-paragraph of paragraph 26 of the counter affidavit, opposite parties have stated that due to petitioner's candidature being cancelled, the said Anamika Tiwari was selected in the revised result. The counter affidavit is completely silent on the aspect as to how the name of Anamika Tiwari entered as a selected candidate when her name does not feature in the select list and no waiting list was prepared.

14. While considering point no.4 in the impugned order, the earlier selection and amendment thereto have been considered in a comparative chart with the name of Anamika Tiwari featuring therein with marks obtained as 62.0667 and the name of petitioner being indicated as having obtained marks of 61.6. The remarks column indicates that name of Anamika Tiwari has been included due to cancellation of selection of petitioner since she did not come within the cut off mark. In the impugned order as well as in the counter affidavit, the cancellation of

petitioner's selection has been attributed solely to the aspect that after revision of marks, she did not obtain the minimum cut of marks of 62.0667 and therefore her candidature has been cancelled. Neither the counter affidavit nor the impugned order indicates how the minimum cut off marks of 62.0667 have been determined but such determination would be evident from the impugned order while it considers point no.4 where in marks obtained by Anamika Tiwari are clearly indicated as 62.0667.

15. The aforesaid facts make it evident that there was no prescribed minimum cut off marks required to be obtained by candidate for selection under the general (female) category and such cut off marks are in fact the marks obtained by the last selected candidate. No rule to the contrary has been indicated.

16. In the counter affidavit, it has been indicated in paragraph 26 that marks obtained by Ms. Parul Pandey was 62.667 with Ms. Dali Shukla obtaining 62.333. Even if it is assumed that petitioner's marks required revision, it would mean that her marking would be reduced from 62.933 to 61.6 and resultantly she should have been required to feature at serial no.201 of the select list with Parul Pandey featuring at serial no.197 and Dali Shukla featuring at serial no.198. Due to such revision, the only prudent thing required to be done by opposite parties was to have indicated the name of petitioner as the last selected candidate in the general category (female) at serial no.201 with marks obtained being 61.6, which therefore would have become the cut off marks.

17. It is noticeable that petitioner's selection has been made under the U.P. Lekhpal Service Rules, 2006 as amended in 2014. The procedure for direct selection has been indicated in part V under Rule 14 onwards. The aforesaid rules were thereafter amended in 2014 with amendment of Rule 15(5) being set out. The only amendment incorporated pertained to total marks required to be obtained in the written examination being reduced from 90 to 80 and increase in marks allocated for interview from 10 to 20. The rules do not appear to prescribe any minimum qualifying marks for purposes of selection under any category.

18. In view of aforesaid discussion, it is quite evident that the opposite parties were well within their rights to have attributed a minimum qualifying cut off marks for purposes of selection and in the present case the cut off marks were the marks obtained by the last candidate, Anamika Tiwari, who even otherwise was not a selected candidate. The aforesaid discussion also is indicative that petitioner being the selected candidate, should have been included as the last selected

candidate in the reshuffle required to be undertaken due to review of marks due to which, the cut off marks would have been 61.6 as were obtained by petitioner. Such a procedure having not been adhered to by opposite parties, renders the impugned order vitiated.

19. Although, it has been stated in the counter affidavit that the vacancy was carried forwarded but the counter affidavit is silent with regard to such vacancy having been filled in any subsequent recruitment. Even otherwise since cancellation of petitioner's selection has already been held to be illegal, such carrying forward of the vacancy would be immaterial.

20. In view of aforesaid, the impugned order dated 29.04.2023 is quashed by issuance of a writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite parties to reinstate petitioner on the post of Lekhpal in pursuance of her selection by appointment order dated 05.04.2016 with consequential benefits of counting of period commencing from 21.11.2016 till reinstatement as qualifying service for all services benefits including seniority, increments, pensionary benefits etc. except for payment of salary which will be on a notional basis only apart from the period for which she has already been paid salary.

21. Resultantly, the petition succeeds and is **allowed**. The parties to bear their own costs.

Order Date :- 20.11.2023

Subodh/-