

Court No. - 18

Case :- WRIT - A No. - 13836 of 2021

Petitioner :- Tribhuvan Tyagi @ Tribhuvan And Ors.

Respondent :- State Of U.P. Thru. Prin.Secy. Home Affairs And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla,Pallavi Dubey

Counsel for Respondent :- C.S.C.

along with

Case :- WRIT - A No. - 14086 of 2021

Petitioner :- Rajnish Kumar Tiwari And Ors.

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Home Affairs And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla,Pallavi Dubey

Counsel for Respondent :- C.S.C.

along with

Case :- WRIT - A No. - 14471 of 2021

Petitioner :- Narayan Singh Pno No. 020440103

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla,Pallavi Dubey

Counsel for Respondent :- C.S.C.

along with

Case :- WRIT - A No. - 14268 of 2021

Petitioner :- Upendra Kumar Shukla Pno No.860440552

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin.Secy. Home And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla,Pallavi Dubey

Counsel for Respondent :- C.S.C.

along with

Case :- WRIT - A No. - 14378 of 2021

Petitioner :- Vivek Mishra And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home. Affairs And Others

Counsel for Petitioner :- Rajendra Prasad

Shukla,Durgesh Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the State.

2. The reliefs sought in all these writ petitions are identical and thus, these petitions are being decided by this common judgment.

3. All these writ petitions have been preferred for quashing of the impugned Government Orders dated 16.03.2021 & 09.06.2021 passed by opposite party no. 1 i.e. Principal Secretary, Home Affairs/ Additional Chief Secretary, Govt. of U.P., Civil Secretariat, Lucknow rejecting the claim of the petitioners for providing the salary in the pay-scale of Rs. 4000-6000/- and denied the parity of the judgment and order dated 01.04.2019 passed in W.P. No. 4127 (S/S) of 2007 (Satya Prakash Sharma and Ors. vs. State of U.P. and Ors.) where also the petitioners were working as Pump Attendant/Operators and Switch Board Attendant as the present petitioners are working in the Police Department and for issuing directions to the opposite parties to re-consider the case of the petitioners for grant of pay-scale of Rs. 4000-6000/- revised from time to time, as recommended in para 26(4)(ka) in the G.O. dated 08.10.2002.

4. Learned counsel for the petitioners have submitted that the petitioners are working on the post of Tube well Operator/Pump Operator/Switch Board Attendants and they are entitled for the pay scale of Rs 4000-6000/- as per the para 26(4)(ka) in the G.O. dated 08.10.2002 in which it has been provided that higher pay-scale would be admissible only in case, the qualifications required for a particular post to be filled in by direct recruitment is High School with I.T.I. Certificate. The petitioners in all the writ petitions are having qualification of High School with I.T.I. Certificate and thereafter they have been appointed on the abovementioned posts.

5. It is further submitted that the identical controversy had come up before this Court when the order of recovery was issued against the similarly situated persons for recovery of excess salary. They had approached this Court by filing W.P. No. 4127 (S/S) of 2007. The said writ petition was allowed by judgment and order dated 01.04.2019. Against

the said order, a Special Appeal was preferred by the State which was also dismissed by judgment dated 30.08.2019 against which a Special Leave to Appeal no. 26389 of 2019 was preferred by the State which was also dismissed on 18.11.2019 by the Hon'ble Supreme Court.

6. On the other hand, learned Standing Counsel has submitted that the arguments advanced by the learned counsel for the petitioners are not acceptable in view of the fact that even if there were no service regulations pertaining to the post which were held by the petitioners, the provisions of U.P. Police Group D Employees Service Rules, 2009 (hereinafter referred to as 'the Rules, 2009') would be applicable in which again there is no requirement of the qualification of High School with I.T.I. Certificate with regard to the post held by the petitioners. It is further submitted that the pay scale has been provided under the Rules, so the G.O. dated 08.10.2002 is not applicable in the case of the petitioners.

7. It is further submitted that the parity claimed by the petitioners from the judgment in the case of Satya Prakash Sharma and Ors. (supra) is not applicable in the present case for the reason as in that judgment, Sub Rule 5 of Rule 10 of the Group D Employees Service (U.P.) Rules, 1985 (hereinafter referred to as, 'the Rules, 1985') was under consideration. Here the services of the petitioners are governed by the Rules, 2009 and Rule 9(3) is attracted in the present writ petitions.

8. After hearing learned counsel for the parties, going through the record of the case and the relevant Rules, the position which emerges out in the present case is that the petitioners have been appointed on the technical post of Tube well Operators/Pump Operators/Switch Board Attendants and the qualification which is required as per the advertisements dated 11.07.2013, 15.01.2014 & 27.01.2004 is quoted in paragraphs 4, 5, 6 & 7 of the counter affidavit, which are reproduced hereinbelow:-

"4. The following eligibilities were prescribed in the advertisement dated 11.07.2013:-

"1. अभ्यर्थी ने कम से कम कक्षा 5 की परीक्षा उत्तीर्ण की हो।

2. कोई व्यक्ति चतुर्थ श्रेणी के किसी पद पर नियुक्ति के लिए तभी पात्र होगा जब उसे विभागीय एवं पुलिस बल की आवश्यकता के दृष्टिगत उस पद के कार्य का अपेक्षित ज्ञान एवं समुचित अनुभव हो।

3- कोई व्यक्ति साइक्लोस्टाईल आपरेटर के रूप में या किसी अन्य पद पर जिसके लिए तकनीकी ज्ञान अपेक्षित हो, नियुक्ति के लिए पात्र नहीं होगा, जब तक कि उसे अपेक्षित तकनीकी ज्ञान और विशिष्ट कार्य

के सम्बन्ध में समुचित अनुभव न हो।

4- सेवा में प्रत्येक श्रेणी के पद पर यह आवश्यक है कि अभ्यर्थी साईकिल चलाना जानता हो, यह शर्त महिला अभ्यर्थियों पर लागू न होगी।

5- अन्य बातों के समान होने पर ऐसे अभ्यर्थियों को सेवा में किसी पद पर सीधी भर्ती के मामले में अधिमान दिया जायेगा, जिससे प्रादेशिक सेना में दो वर्ष की अवधि तक सेवा की हो।

5. The following eligibilities were prescribed in the advertisement dated 15.01.2014:-

1. अभ्यर्थी ने कम से कम कक्षा 5 की परीक्षा उत्तीर्ण की हो।

2. कोई व्यक्ति चतुर्थ श्रेणी के किसी पद पर नियुक्ति के लिए तभी पात्र होगा जब उसे विभागीय एवं पुलिस बल की आवश्यकता के दृष्टिगत उस पद के कार्य का अपेक्षित ज्ञान एवं समुचित अनुभव हो।

3- कोई व्यक्ति साइक्लोस्टाईल आपरेटर के रूप में या किसी अन्य पद पर जिसके लिए तकनीकी ज्ञान अपेक्षित हो, नियुक्ति के लिए पात्र नहीं होगा, जब तक कि उसे अपेक्षित तकनीकी ज्ञान और विशिष्ट कार्य के सम्बन्ध में समुचित अनुभव न हो।

4- सेवा में प्रत्येक श्रेणी के पद पर यह आवश्यक है कि अभ्यर्थी साईकिल चलाना जानता हो, यह शर्त महिला अभ्यर्थियों पर लागू न होगी।

5- अन्य बातों के समान होने पर ऐसे अभ्यर्थियों को सेवा में किसी पद पर सीधी भर्ती के मामले में अधिमान दिया जायेगा, जिससे प्रादेशिक सेना में दो वर्ष की अवधि तक सेवा की हो।

6. That petitioner No. 3 Manjeet Singh Ranaa has been appointed on the post of Switch Board Attendant in the pay scale of Rs. 2610-60-3150-65-3540 under the U.P. Police Group-D Employee Service Rules, 1985 (hereinafter referred to as, the Rules, 1985) by the order dated 09.01.2006 issued by the 23th Battalion PAC, Moradabad.

7. The following eligibilities were prescribed in the advertisement dated 27.01.2004:-

1- अभ्यर्थी का ओ 0 पी0 के पद के लिये कक्षा 5 उत्तीर्ण होना आवश्यक है। शेष पदों के लिए कोई शैक्षिक योग्यता अपेक्षित नहीं है, किन्तु उस व्यक्तिगत की अधिमानिता दी जायेगी जो शिक्षित हो या कम से कम देवनागरी लिपि में हिन्दी लिख और पढ़ सकता हो। उपरोक्त सभी पद के अभ्यर्थियों के लिए साईकिल चलाने का ज्ञान होना आवश्यक है।

2- आवेदकों को यह भी सूचित किया जाता है कि भर्ती करते समय साक्षात्कार परीक्षा में ऐसे ही अभ्यर्थियों को ही सम्मिलित किया जायेगा जो विनिर्दिष्ट पद के कार्यों को सम्पादित करने में निपुण/सक्षम हो। उदाहरण कुक/कहार, बढ़ई, पम्प आपरेटर, धोबी, मोची, नाई के कार्य में पारंगत हो, इसकी पुष्टि में प्राप्त प्रशिक्षण एवं अनुभव का प्रमाण-पत्र आवेदन के साथ अवश्य ही संलग्न करें। "

9. Condition no. 3 in the advertisements dated 11.07.2013 & 15.01.2014 is the qualification prescribed under Rule 9(3) of the Rules, 2009, for convenience Rule 9(3) is quoted hereunder:-

"(3) No person shall be eligible for appointment as a cyclostyle operator or any other post requiring technical knowledge unless he is found to possess the requisite technical knowledge and has good experience pertaining to the particular job."

10. Rule 9(3) of the Rules, 2009 provides that no person shall be eligible for appointment on any post requiring technical knowledge unless he is found to possess the requisite technical knowledge and in the judgment it has been held that the post of Tube Well Operator/Pump Operator/Switch Board Attendants are technical in nature.

11. Clause III of the advertisement, which is Rule 9(3) of the Rules, 2009 is in verbatim same as Rule 5(10) of the Rules, 1985 and for convenience, Rule 5 (10) of 1985 is quoted hereinbelow:-

"No person shall be eligible for appointment as a cyclostyle operator or any other post requiring technical knowledge unless he is found to possess the requisite technical knowledge and has good experience pertaining to the particular job."

12. It is an admitted case between the parties that till date no Rules have been framed regarding or relating to minimum educational qualification for Group D post and the said lacuna was filled by the State Government by issuing G.O. dated 08.10.2002 where Clause 26(4)(ka) of the Government Order provides that the pay-scale of Rs. 4000-6000/- would be admissible for such post which are to be filled up either by direct recruitment with the basic educational qualification of High School with I.T.I. certificate or a certificate in the relevant field with two years experience from an institution recognized by the Government.

13. In absence of any service Rules pertaining to the posts of Tube Well Operator/Pump Operator/Switch Board Attendants, the General Rules of the Rules of 2009 would thus, be applicable to the petitioners and Rule 9(3) provides for requirement of technical knowledge as a requisite qualification for holding a particular post.

14. In the impugned order as well as in the counter affidavit, it has neither been disputed nor denied that post on which the petitioners are working as mentioned above are technical in nature hence merely discussing the different Rules in the judgment passed in the case of Satya Prakash Sharma (supra) does not make any difference as Rule 9(3) of the Rules, 2009, which governs the services of the petitioners is *pari-materia* to Rule 5(10) of the Rules, 1985, which were governing the services of the petitioners of the writ petition in the case of Satya Prakash Sharma (supra) and the judgment in that writ petition has been upheld by the Hon'ble Supreme Court.

15. Under these circumstances, as discussed above, the

impugned Government Orders dated 16.03.2021 & 09.06.2021 passed by opposite party no. 1 i.e. Principal Secretary, Home Affairs/ Additional Chief Secretary, Govt. of U.P., Civil Secretariat, Lucknow are not legally sustainable and are hereby quashed.

16. Writ petitions are **allowed**.

17. The writ in the nature of mandamus is issued directing the opposite parties to pay the pay-scale of Rs. 4000-6000 as revised from time to time to the petitioner with immediate effect alongwith arrears of difference of salary from the date of appointment.

Order Date :- 4.1.2024

Nitesh