

Court No. - 18

Case :- WRIT - A No. - 20207 of 2016

Petitioner :- Durga Dutt Pandey

Respondent :- State Of U.P Thru.Prin.Secy.Vidhan Sabha Sachivalaya And Ors

Counsel for Petitioner :- Alok Kumar Pandey,Amrendra Nath Tripathi,Badrish Kumar Tripathi,Girish Chandra Verma,Lalta Prasad Misra,Manushreshth Misra,Niteesh Kumar,Ramesh Pandey,Vinod Kumar

Counsel for Respondent :- C.S.C,Abhinav Trivedi,Arti Ganguly,Hemant Kumar Misra,Purendu Shukla,Radhey Shyam

Hon'ble Manish Kumar,J.

1. Heard Shri Lalta Prasad Misra, learned counsel for the petitioner, Sri Abhinav Trivedi, learned counsel for Respondent Nos.2 and 4 and learned Standing Counsel.

2. The present writ petition was earlier dismissed by judgement and order dated 27.02.2018 on the ground that the petition was misconceived as the petitioner had approached this court after participation in the selection and no objection was raised during selection process and all the candidates had participated in the selection and none of them had made any complaint. It has also been mentioned in the judgement / order that no qualification for the post of Information Officer is provided under the Rules and, therefore, it was in the discretion of the Speaker to have granted relaxation.

3. Against the said judgement, petitioner/ review applicant had filed Review Application No.64707 of 2018, which was allowed by judgement and order dated 31.08.2022, the relevant paras are quoted hereinbelow:

"15. In view of above and considering the overall facts and circumstances of the case, we are of the view that there is error apparent on the face of

record, therefore the order under review is liable to be reviewed.

16. We have been informed that now the jurisdiction of this writ petition is with the learned Single Judge.

17. In view of above we deem it appropriate to set aside the order under review and restore the writ petition to consider the rival claims of the parties in regard to the selection of the respondent no.3 as to whether it is in accordance with Rules or not.

18. The review application is allowed. The judgment and order dated 27.02.2018 passed in writ petition No.20207 (S/B) of 2016 is reviewed and hereby set aside. The writ petition is restored on the Board of learned Single Judge. We request the learned Single Judge to dispose of the writ petition expeditiously. "

4. The present writ petition has been preferred for quashing of the selection / appointment of Respondent No.3 on the post of Information Officer and with further prayer to direct the respondents to declare the result of the interview for the post of Information Officer held on 28.12.2015; considering the case of the petitioner for appointment on the post of Information Officer.

5. Learned counsel for the petitioner has submitted that advertisement dated 27.05.2015 was published for the selection / appointment on the post of Information Officer in the U.P. Legislative Assembly Secretariat, Lucknow. The minimum education / eligibility qualification provided in the advertisement was that the candidate must have a bachelor degree from a recognized institute or university with Hindi as a subject. The petitioner being fully eligible and qualified had applied against the said advertisement for his selection on the post of Information Officer.

6. It is further submitted that the interviews were conducted and to the best of the knowledge of the petitioner more than 20 candidates had appeared in the interview. It is further submitted that it was

utter surprise to the petitioner that without declaring the result, the appointment was given to the respondent no. 3 but the petitioner somehow had got the information that the respondent no. 3 was not having minimum eligibility educational qualification as he was not graduate with Hindi subject, so the Respondent no. 3 was not qualified and entitled for appointment on the said post, ignoring the eligible candidates available at the time of selection including the petitioner.

7. Learned counsel for the petitioner has further submitted that the selection is to be made as per terms and conditions mentioned in advertisement and the same shall be strictly adhered to, though the eligible persons were available but ineligible person has been appointed, in support of his submission, learned counsel for the petitioner has relied upon the cases of Hon'ble Supreme Court reported in **(2011) 12 SCC 85 (Bedanga Talukdar vs. Saifudullah Khan and Others)** and **(2014) 3 SCC 769 (Ganapath Singh Gangaram Singh Rajoot Vs. Gulbarga University Represented by its Registrar and others)**.

8. On the other hand, learned counsel for the Respondent no. 2 and learned counsel for private respondent no. 3 have submitted that appointment given to the Respondent no. 3 is after the relaxation granted by the Speaker while exercising its power under Rule 49 of the U.P. Legislative Assembly Secretariat Service (Recruitment and Conditions of Service) Rules, 1974 (hereinafter referred to as 'the Rules, 1974').

9. It is further submitted by the learned counsel for the respondents that there is no educational qualification provided under the Rules, hence, the Speaker has power to relax the same under Rule 49 of the Rules, 1974 and in support of his submission, learned counsel for the Respondent no. 3 has relied upon the judgment of Hon'ble Supreme Court in the case of **Malik Mazhar Sultan and Another vs. U.P. Public Service Commission and Ors. [2006 (9) SCC 507]**.

10. After hearing learned counsel for the parties,

going through the record of the case, rules and the case cited by the learned counsel for the Respondent No. 3, in the advertisement, the minimum eligible educational qualification was mentioned i.e. Graduation with Hindi subject from any recognized Institute or University and it is an admitted case of the respondent nos. 2 & 3 in their counter affidavit that the respondent no. 3 is not having Graduate Degree with Hindi subject but the submission advanced by learned counsel for the respondent that the Speaker under Rule 49 of the Rules, 1974 is empowered to grant relaxation and after the grant of relaxation the appointment order has been issued in favour of respondent no. 3. The said submission of learned counsel for the respondents is contrary to the Rule 49 of the Rules, 1974 itself. For convenience, the same is quoted hereinbelow:-

"49.Power of the Speaker to relax Rules - The Speaker may, in exceptional circumstances, relax the age limit and other qualifications, other than educational qualification, prescribed for any post in these rules."

11. Rule 49 empowers the Speaker in exceptional case to relax the age limit and other qualifications, other than educational qualification, prescribed for any post in these Rules. The exceptional circumstance has not been defined or mentioned anywhere under the Rules.

12. In the present case, one of the exceptional circumstance could be that no one who had applied against the said post did not having the graduate degree in Hindi subject, but when there were candidates who were having the prescribed minimum educational qualification as per advertisement, then there was no occasion of exercising discretion in exceptional circumstances relaxing the educational qualification. No exceptional circumstance has been indicated by the Respondent Nos.2 and 3 which may have lead to relaxation in educational qualification to Respondent No.3. The relaxation has been given to the Respondent No.3 against the law and facts and circumstances of the case in a most arbitrary manner.

13. Undoubtedly, Section 49 empowers the authority with discretionary power but the said power is to be exercised in special circumstances. The special circumstances have not been defined under the Rules. So, it is absolute discretionary power vested with the authorities without their being any guideline and such a situation demands more reasonable, fair and non-arbitrary exercise of this discretionary power it is given with full trust and fair in the authority that the same will not be exercised arbitrarily.

14. Learned counsel for the respondents stressed on the line of Rule 49 of the Rules, 1974 "prescribed for any post in these rules" and has further submitted no qualification is provided under Rules 1974.

15. The said submission is also not tenable in the eyes of law for the reason Rule 50 of the Rules 1974, which is quoted hereinbelow:

"50 Other condition so services - (1) In regard to such matters as are not specifically covered by these rules, or orders or special orders made or issued there under, persons appointed in the Secretariat shall be governed by those rules, regulations and orders (with necessary modification) which are applicable generally to government servants serving on equivalent posts in connection with the affairs of the State of Uttar Pradesh.

(2) In case of doubt, the Speaker shall decide, in accordance with rule 51

(a) the posts under Government which are equivalent to posts in the Secretariat;

(b) the rules regulations and order, applicable to servants under the Government and the modifications there in which shall apply to equivalent posts in the Secretariat."

16. The perusal of Rule 50 shows that with regard to such matters as are not specifically covered by these rules in that case the persons appointed in the secretariat shall be governed by those rules, regulations and orders which are applicable

generally to Government servant on equivalent post in connection with the affairs of the State of U.P. In the counter affidavit it is an admitted case of the Respondents no.2 that the rules governing the services of Public Information Officer in the Department of Information, State of U.P. were adopted in which the educational qualification provided is graduate with Hindi subject and the same was prescribed in the advertisement.

17. The judgement relied by learned counsel for the respondent in the case of Malik Mazhar Sultan and another (*Supra*), the relevant Para 21 is quoted hereinbelow:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2002, shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

18. The judgement of **Malik Mazhar Sultan (*Supra*)** relied by learned counsel for respondent No.3 is not applicable in the facts of the present case. The para which was relied by the learned counsel for respondent no.3, wherein it has been held that the advertisement cannot override the rules and create a right in favour of a candidate if otherwise not eligible according to the rules. Here the advertisement is not overriding any of the rules of Rules 1974 and in absence of educational qualification provided under the Rules 1974, the same has been adopted from the information

department under Rule 50 of Rules 1974 and advertise the same, hence the condition mentioned in the advertisement is not in contravention of any rules.

19. The relevant paras no.29 and 32 of judgement of Hon'ble Supreme Court in the case of **Bedanga Talukdar (Supra)** cited by learned counsel for the petitioner is quoted hereinbelow:

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of respondent No.1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."

20. The relevant paras no.21, 23 and 25 of judgement of Hon'ble Supreme Court in the case of **Ganapath Singh Gangaram Singh Rajoot (Supra)** is also quoted hereinbelow:

"21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the 'relevant

subject'. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean post-graduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters' degree in the Mathematics is not the relevant subject. The advertisement requires Masters' degree in 'relevant subject' and not 'appropriate subject'. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment.

23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters' degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters' degree in MCA is available, the Board of appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. Natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters' of Computer Application.

25. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion"

21. From the perusal of the law laid down by Hon'ble the Supreme Court, the selection was to be made as per terms and conditions mentioned in the advertisement and the same must be strictly adhered to in place of giving appointment to ineligible person though the eligible persons were available. In this case relaxation given to Respondent No.3 is not shown to have been publicized.

21. In view of the above and the facts mentioned

in the preceding paragraphs, the writ petition is allowed. The appointment order issued in favour of the Respondent No.3 is hereby quashed.

22. Since the appointment of Respondent No.3 has been quashed on the ground that otherwise an ineligible candidate who was wrongly granted relaxation which was bad in law hence the respondents may proceed to declare the selection result of the eligible candidates and consequentially proceed further as permissible under the law as well other relevant facts and circumstances presently existing.

Order Date :- 25.1.2024

S. Kumar