



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE JUSTICE MR. MANOJ KUMAR TIWARI

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Special Appeal No. 607 of 2015

03 June, 2025

Pankaj Kumar

.....Appellant

Versus

State Of Uttarakhand and others

.....Respondents

Presence:-

Dr. Neha Gupta and Mr. Vivek Pathak, learned counsel for the appellant.

Mr. Sudhir Kumar Nainwal and Mr. Sushil Vashisth, learned Standing Counsel for the State.

Mr. T.A.Khan, learned Senior Counsel, assisted by Mr. Mohd. Shafy, learned counsel for the respondent nos. 3 & 4.

JUDGMENT: (per Manoj Kumar Tiwari, J.)

This *intra court* appeal is directed against the judgment and order dated 08.09.2015 rendered by learned Single Judge in the Writ Petition (S/S) No. 1875 of 2015. By the said judgment Writ Petition filed by the petitioner-appellant; challenging fixation of cut of marks by the selecting body after commencement of selection process was dismissed. The impugned judgment is reproduced herein below:-

“Having heard the arguments for and against, it is adverted that pursuant to the advertisement dated 23.4.2013, written examination was held on 15.12.2013 i.e. with the delay of almost eight months. Further, interview was conducted almost after fourteen months on 22/23.1. 2015. This inordinate delay of time gap between the advertisement and written examination and then interview is reprehensible on the part of



respondent- Uttarakhand Sugars.

Six posts of Cane Development Officer had to be filled wherein '4' seats were for general category candidates and '2' were for scheduled caste candidates, but in the final selection, only '3' general category candidates could be recruited whereas no S.C. candidate could qualify even the written examination making him eligible for interview call.

Grievance of the petitioner is that in the advertisement, no minimum qualifying marks were glossed and the petitioner has been declared ineligible for the interview on the ground that he could secure only '28' marks out of 100. Since, there were no minimum qualifying standard, hence it was not proper for the respondents to fix up those marks after holding the examination. That apart, in the Five-Member Committee constituted by the respondents, no S.C. candidate was there and the minimum qualifying marks for General as well as S.C. candidates were alike. This was again a shortcoming on the part of respondents.

The Court do agree with all these contentions but at the same time, it is not inclined to permit a candidate to be called for interview who even could not secure 33 percent marks in the written examination, nonetheless, minimum qualifying criteria was not countenanced in the advertisement.

Petitioner also made a complaint in this regard to the SC/ST Commission of the State which enquired into the matter; the answer submitted by respondent no.4 has been enclosed as Annexure No.9 to this petition.

The Court is satisfied with the explanation disclosed by the said respondent to the Commission as well.

There is no force in this petition and it is hereby dismissed at the threshold. (Stay application (CLMA 10416/15) also stands rejected accordingly)."

2. Dr. Neha Gupta, learned counsel for the appellant submits that writ petitioner (appellant herein) responded to an advertisement issued by the Uttarakhand Sugars on 23.04.2013 for the post of Cane Development Inspector, by which 6 vacancies were notified, out of which two were reserved for Scheduled Caste, he claimed benefit of reservation available to Scheduled Caste candidates. She further submits that only 3 General



category candidates were called for interview and no one from Scheduled Caste category was called for interview. The writ petitioner was not called for interview only on the ground that the marks scored by him in the written examination is less than 40%. She submits that the Rules of the game cannot be changed once the selection process has commenced; the decision to fix 40% as cut of marks in written examination was taken on 12.08.2014 while the advertisement, whereby selection process was set on motion, was issued on 23.04.2013. She further points out that written examination was also held on 15.12.2013, before the decision to fix the cut of marks was taken, therefore, the respondents were well aware about the marks scored by all the candidates. Thus, she submits that cut off marks could not have been fixed after holding written examination.

3. Learned counsel for the appellant further submits that the impugned judgment is untenable for the observation that anyone who has not secured 33 percent marks in the written examination cannot be permitted to be called for interview as it is based on value judgment and not on any objective criteria. She further submits that the requirement of scoring minimum 33% marks may be relevant for examinations conducted by School Education Boards or Universities, however, in competitive examinations there is no such law which requires scoring minimum 33% marks to be called for interview. She further submits that employer or the selecting body can fix cut of marks, but it has to be done before commencement of selection process and not thereafter. In support of her contention, learned counsel for the appellant has placed reliance upon a judgment rendered



by Hon'ble Supreme Court in the case of ***Salam Samarjeet Singh vs. High Court of Manipur at Imphal and another***, reported in **2024 SCC OnLine SC 2316**.

Para 31 of the said Judgment is reproduced below:

“31. In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview. Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules. The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the un-amended Rules is clearly violative of the substantive legitimate expectation of the petitioners. It also fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India.”

4. Mr. T. A. Khan, learned Senior Counsel appearing for respondent nos. 3 & 4, *per contra* submits that since the rule was silent regarding cut of marks therefore, a Committee constituted by Uttarakhand Cooperative Sugar Mills Ltd. (Uttarakhand Sugar) took a decision to fix 40% as cut of marks. He further submits that the employer was well within his right to fix the cut of marks. Learned Senior Counsel for the appellant has placed reliance upon para 37 and 39 of the Constitution Bench Judgment, rendered by Hon'ble Supreme Court in the case of ***Tej Prakash Pathak vs. Rajasthan High Court (SC) Constitution Bench***, reported in **2024 SCC Online SC 3184**. Para 37 and 39 of the said judgment are being reproduced herein below:

“37. In Sivanandan C.T. (Supra) the issue before the Constitution Bench was whether for selection minimum



marks could be prescribed contrary to the extant rules and the advertisement. Answering in the negative, the Constitution Bench, speaking through one of us (Dr. D.Y. Chandrachud, CJ), held:-

“15. The Administrative Committee of the High Court decided to impose a cut off for the viva-voce examination actuated by the bona fide reason of ensuring that candidates with requisite personality assume judicial office. However laudable that approach of the Administrative Committee may have been, such a change would be required to be brought in by a substantive amendment to the rules which came in much later as noticed above. This is not a case where the rules of the scheme of the High Court were silent. Where the statutory rules are silent, they can be supplemented in a manner consistent with the object and spirit of the Rules by an administrative order.

16. In the present case, the statutory rules expressly provided that the select list would be drawn up on the basis of the aggregate marks obtained in the written examination and the viva-voce. This was further elaborated in the scheme of examination which prescribed that there would be no cut off marks for the viva-voce. This position is also reflected in the notification of the High Court dated 30 September 2015. In this backdrop we have come to the conclusion that the decision of the High Court suffered from its being ultra vires the 1961 Rules besides being manifestly arbitrary.”

39. There can therefore be no doubt that where there are no Rules or the Rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the Rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the Rules or the Statue or the Constitution. But where the Rules expressly or impliedly cover the field, the recruiting body would have to abide by the Rules.”



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5. We have gone through the judgment relied upon by learned counsel for respondent nos. 3 & 4. Although, in the said judgment it is provided that administrative instructions may be issued to fill the blanks in the rules, however, the judgment nowhere provides that cut of marks can be fixed after commencement of selection process or after holding of written examination. Therefore, the judgment relied by learned counsel for the respondents does not support his case. In the present case, the Committee took decision of fixing cut of marks for written exam after the result of the written examination was declared. Moreover, the decision regarding fixation of cut off marks was not communicated to the candidates by issuing a notification or otherwise.

6. For the aforesaid reasons and also in view of the law declared by Hon'ble Supreme Court in the case of *Salam Samarjeet Singh (supra)*, we allow the appeal and set aside the judgment and order dated 08.09.2015 rendered by learned Single Judge in the Writ Petition (S/S) No. 1875 of 2015. Respondent no. 3 & 4 are directed to consider the claim of the appellant for appointment as per merit subject to availability of vacancy.

(Manoj Kumar Tiwari, J.)

(Subhash Upadhyay, J.)

Dated: 03.06.2025

Kaushal