

Court No. - 4

Case :- WRIT - A No. - 4999 of 2025

Petitioner :- Sangam Dwivedi And 5 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- M.N. Singh,C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Seemant Singh, Learned Counsel appearing for the petitioner and Sri Mukesh Prasad, learned Senior Advocate assisted by Sri B.K. Singh, learned counsel for the Public Service Commission.

2. Petitioners before this Court are applicants against the post advertised by the U.P. Public Service Commission for U.P. Combined State Engineering Service (General/Special recruitment) Examination, 2024 dated 17.12.2024.

3. The advertisement has been put to challenge on the ground that Public Service Commission was not justified in holding the preliminary examination to short list the candidates as the examination for holding selection to the various posts stands governed by the U.P. Assistant Engineers Combined Competitive Examination Rules, 2014 framed under Article 349 of the Constitution.

4. According to Sri Seemant Singh, learned counsel appearing for the petitioner, the procedure for recruitment as contained in the Rule 6 of the Said Rules provide for competitive examination by the Commission in the format notified in the advertisement issued by them and the merit shall be prepared accordingly on the basis of marks obtained by the candidate against total 1000 marks assigned for selection for the purposes of recruitment against various posts in the establishment.

5. Sri Singh has also pointed out that the Rules are very specific in providing for objective type written examination of 750 marks consisting of two papers of 375 marks each and then the interview of 250 marks, thus, totaling to 1000 marks allocated for the

purposes of examination and interview for selection in question. However, despite the Rules not providing for preliminary examination, Mr. Singh argued, Public Service Commission wholly illegally provided for preliminary examination to be held for short listing the candidates as the successful candidate will only be permitted to apply and participate in the main written examination to be conducted by the Commission for holding selection. Sri Singh submitted further that the Commission has relied upon the U.P. Direct Recruitment through Public Service Commission Preliminary Service Commission Rules, 1986 that authorizes the Public Service Commission to hold preliminary examination for short listing the candidates before the main examination is held but the Rules do provide that where no such preliminary examination is prescribed for under the relevant recruitment Rules then prior permission of the Government was necessary. However, Mr. Singh argues that in the instant case there was no such permission obtained.

6. Besides the above, another argument has been advanced by learned counsel appearing for the petitioner Sri Seemant Singh that the new U.P. Public Service Commission Procedure and Conduct of Business Rules, 2011 have been promulgated which provide that where the selection is through interview only and if the proportion of candidates is too high as against the posts advertised, then only Commission may proceed to hold preliminary examination or screening test of the candidates. Thus, according to learned counsel, 1986 Rules have stood superseded by Conduct of Business Rules, 2011.

7. Sri Seemant Singh has also raised a legal point in support of his challenge to the advertisement that in the event two rules operates in the same field for the purposes of selection, it is the subsequent rule that would prevail and shall have an overriding effect and 2014 Examination Rules being subsequent in point of view it shall have precedence over previous rule. In support of his submission, learned counsel has placed reliance upon the authority of Supreme Court in the matter of **Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. & Ors. being Civil Appeal No.3760 of 1995, decided on 07.02.2001**. He has placed before the Court relevant part of the paragraph 10 of the judgment which is reproduced hereinunder:

"...10..... It is a settled rule of interpretation that if one construction leads to a conflict whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial. Companies (Special Provisions) Act, 1985, is to prevail

then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst considering a scheme for reconstruction has to keep in mind the fact that. It is to be paid off or directed by the Special Court. The Special Court can, if it is convinced, grant time or instalments."

8. Meeting the submissions so advanced as above by learned counsel appearing for the petitioner, learned Senior Advocate Sri Mukesh Prasad has raised three arguments:

(i) The Conduct of Business Rules, 1986 still hold the field and have not superseded by 2011 Rules, as 2011 Rules are only in super-session to 1986 Rules and not 2014 Rules. Elaborating the argument further Sri Prasad contends that as far as the 2011 Rules are concerned, they operate in a different field in a sense where only selection is by way of walk in interview and rules are not providing for any preliminary examination. Thus, according to him, there is no overlapping between the two rules.

(ii) The other argument that has been advanced by Sri Prasad is that the instructions have been obtained in the matter from the Commission regarding conditions for enforcing a preliminary examination test under 1986 Rules *qua* prior permission from the State Government as the Rules of Selection Examination Rules, 2014 do not provide for preliminary test and the said permission has been duly granted by the State Government both for the scheme of preliminary examination and main examination as well as the interview.

9. Having heard learned counsel for the respective parties and having perused the record, I find there to be only dispute being raised as to the applicability of the Rules 1986, as according to the petitioners, the said Rules have stood superseded by Rules 2011, whereas, Commission reiterates 1986 Rules. According to Commission's Counsel, Rules 2011 are to be read along with Rules 1986 and not derogation to the other.

10. Rival submissions fall for consideration.

11. The direct recruitment through Public Service Commission Preliminary Examination Rules, 1986 were framed specifically provided qualifying examination to be conducted by the Public

Service Commission upon posts being requisition by the State Government. Relevant Rule 3 of the Rules 1986 are reproduced hereinunder:

"3. Holding of preliminary examination.

(1) Notwithstanding anything to the contrary contained in relevant service rules or Government orders regarding recruitment, the Commission may, with the prior approval of Government hold preliminary examination for selection of suitable candidates for admission to main examination or interview, as the case may be.

(2)Where a preliminary examination is held only such candidates as qualify in the preliminary examination will be entitled for admission to Main Examination or Interview, as the case may be.

(3)The marks obtained in the preliminary examination will not be counted for determining the final orders of merit.

(i) [Preliminary examination will consist of two question papers of two hours' duration each in cases where it is to be followed by main examination. Out of the two question papers one will be the compulsory paper of General Knowledge and General Studies, while the other will be of one of the optional subjects which may be prescribed by the Commission with the concurrence of the Government; [Substituted by Notification No. 681/KA 3-90-15-106-85, dated March 6, 1990, published in U.P. Gazette, Part 1 (ka), dated 5th May, 1990.]

The ratio between the marks allotted for the compulsory and optional question papers shall be 1 : 2.]

(ii) In cases where selection by interview alone is prescribed the preliminary examination will be of one paper of two hours duration in such subjects as may be prescribed by the Commission in its discretion covering mainly questions on General Knowledge, General Studies and subjects relevant to the nature of job of the post.

(5) Question papers will be set in the language allowed for main Examination and in English and Hindi in cases where selection by interview is prescribed in Service rules and Government orders.

(6) The Preliminary Examination shall be held at places and on dates and time as is fixed by Commission."

(emphasis added)

12. Upon reading of the aforesaid provisions as contained under Rule 3, I see that the Public Service Commission has been empowered to conduct preliminary examination as a qualifying test with the prior approval of the State Government, notwithstanding anything contained to the contrary in any other

Service Rules or the Government Orders. The rules also provide that the marks obtained in the preliminary examination will not be counted for determining final merit.

13. Thus, it is clear that the State Government vested this power with the Public Service Commission to hold preliminary examination test in respect to recruitment through various posts of the State Government upon these posts being requisition to the Commission by the State Government.

14. Sri Mukesh Prasad, learned Senior Advocate has placed instructions before the Court in which vide Clause 6, it was stated that the prior approval was granted by the State Government vide its letter dated 05.03.2024 to hold preliminary test in respect of the selection and recruitment of the Combined State Engineering Services Recruitment Examination, 2024. I also find that, in the advertisement published by the up Public Service Commission on 17.12.2024 titled as Combined State Engineering Services (General/Special Recruitment) Examination, 2024, it was provided vide Clause 3 of the Important Information Clause that "U.P. Public Service Commission shall hold preliminary test at various centres for selecting suitable candidates for admission to the Combined State Engineering Services Main Examination, so, while the candidates applied for the posts advertised vide advertisement dated 17.12.2024, they were aware that the preliminary examination test will be held by the Public Service Commission as a qualifying service examination to shortlist candidates. It is admitted to the petitioners that they are applicants to the Combined State Engineering Services Examination, 2024, therefore, they have filled up their application forms pursuant to the advertisement which would be taken as subject to the conditions laid down under the advertisement and, therefore, the applicants-petitioners are equally bound by the same.

15. Now, coming to the U.P. Public Service Commission (Procedure and Conduct of Business) Rules, 2011 upon which heavy reliance has been placed by Sri Simant Singh, learned counsel for the petitioners, I find it necessary her to reproduce Rule 29 of the said Rules. Rule 29 of the said Rules are runs as under:

"29. (i) The Commission shall conduct examinations for the various posts to be filled by competitive examinations;

(ii) The Commission may hold combined competitive examination for selection to various posts under its purview.

(iii) In cases of direct selection through interview only, if the proportion of candidates to the number of posts is high, the Commission may , after having considered feasibility ,expediency and other aspects to hold examination, decide to hold preliminary examination/ screening test of the candidates."

16. The provisions as quoted above provided for Commission to conduct examination for various posts to be filled up through competitive examination and also to hold combined competitive examination for selection to various posts within its purview. It further provides that in cases where direct selections through walk-in-interview is held and proportion of candidates in number of posts are higher then in these circumstances Commission considering feasibility, expediency and another aspects may hold preliminary examination/screen test of the candidate.

17. Sri Simant Singh while quoting Rule 29(iii) emphasizes the words and expression "selection through interview only" to argue that it is in those cases where selection is to be held through walk-in-interview that Commission is required to hold preliminary examination or screen test and this provision according to Shri Simant Singh is in supersession to the provisions contained under Rule 3 of the Rules, 1986. However, upon further examination of the said Rules, I find Rule 33 also empowers the Commission to hold preliminary examination/screen test to screen out suitable candidates for admission to main examination or interview as the case may be, and Clause (iii) of Rule 33 further provides that preliminary examination shall be conducted in the manner prescribed by the U.P. Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 as amended from time to time. Rule 33 of the Rules 2011 are reproduced hereinunder:

"33. (i) Notwithstanding anything to the contrary contained in relevant service rules or Government Orders regarding recruitment, the Commission may hold preliminary examination/screening test for finding out suitable candidates for admission to main examination or interview, as the case may be;

(ii) Preliminary examination shall mean screening test to be conducted by the Commission with the purpose of finding out suitable candidates in required proportion as fixed by the Commission in each category, reserved and unreserved, for admission to the main examination or interview, as the case may be;

(iii) Preliminary examination shall be conducted in the manner prescribed by the Uttar Pradesh Direct Recruitment through Public Service Commission Preliminary Examination Rule, 1986 as amended from time to

time. The marks obtained by the candidates in the preliminary examination/screening test shall not be counted for determining final order of merit.

(iv) The Commission shall fix the place, dates and time of examination which includes preliminary examination/screening test and main examination, as the case may be.

(v) The centres of examination shall be fixed with prior approval of the Chairman/Examination Committee.

(vi) All arrangements for such examinations shall be made by the Controller of Examination in consultation with the Secretary and in accordance with such directions as may be issued by the Commission in that behalf.

(emphasis added)

18. Upon reading of the aforesaid provisions, it becomes explicit that Rule 29 of the Rules 2011 and Rule 33 of the said Rules operate in distinct area and Rule 33 cannot be said to be qualified by Rule 29. Rule 33 of 2011 Rules and Rule 3 of 1986 Rules are almost *pari materia* and, therefore, by no stretch of imagination, it can be thought that Rules 2011 superseded Rules 1986. As a matter of fact Rule 29 of Rules 2011 goes a step further to authorize Commission to hold preliminary test/screen test even in those cases where selection is to be held only on the basis of interview. Thus, provisions of preliminary examination/preliminary test/screen test pitch in where the Public Service Commission is not required to hold written examination for selection and this discretion as is vested under Rule 29 with the Public Service Commission is an absolute one and does not require any permission from the State Government.

19. In view of the above, it can be safely concluded that provisions as contained under Rules 2011 and Examination Rules 1986 are to be read harmoniously as they operate in the same area providing for preliminary test/screen test and are, therefore, not to be read in derogation to each other. Thus, the rule being in not in derogation to each other and nor being in supersession to each other, it cannot be said that Rule 2011 have superseded the provisions contained under Rules 1986 especially when the non obstant Clause is contained in both Rule 33 of Rules 2011 and Rule 3 of Rules 1986.

20. In view of the above, therefore, since the prior permission has been granted by the State Government as per Rule 1986 to the Public Service Commission to hold preliminary examination/screen test as a qualifying examination to shortlist the

candidates under the Combined State Engineering (General/Special Recruitment) Examination, 2024, I do not see any illegality on the part of the Public Service Commission in holding preliminary examination test.

21. Petition is thus held to be devoid of merits and is accordingly hereby dismissed.

Order Date :- 23.4.2025

S.A.