



2025:AHC:137450

AFR

Neutral Citation No. - 2025:AHC:137450

Court No. - 4

Case :- WRIT - A No. - 11184 of 2024

Petitioner :- Abhay Gupta

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Durvesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for petitioner and Shri S.K.Pal, learned Additional Chief Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has prayed for a writ of mandamus to consider the claim of the petitioner for compassionate appointment on the post of Sub-Inspector in Civil Police pursuant to the advertisement issued for recruitment of the year 2021-2022.

3 It is contended on behalf of the petitioner that respondents at the time of disposal of objections to the question and answer asked in the written examination found three questions to be incorrect therefore taking together total 160 questions in the question booklet the marks should have been awarded in terms of the judgment of the Division Bench of this Court in the case of **Pawan Kumar Agharari Vs. Public Service Commission U.P and others Writ Petition No. 2669 (MB) of 2009**. He has placed relevant paragraphs of the said judgment in support of his arguments which are reproduced hereunder:

"After the report of the subject expert committee and on the basis of the modified answers, the evaluation of answer sheets of all the candidates including the petitioner had been done and marks have been awarded accordingly. The maximum marks of the papers was 300 and each question carried equal marks i.e. 2.5 for each of 120 questions in all, so deletion of one question enhanced the marks allotted to one question and evaluation and allotment of marks have been done on the basis of 300 marks and deletion of one question, which means $120-1=119$.

The petitioner had done 91 right answers as such he has been awarded actual marks on the basis of number of right answers i.e. $300/119 \times 91 = 229.41$, rounded up as 229. this actual marks has been enhanced is scaling score to 235.31 after applying the principle of scaling as per the guidelines of the Supreme Court.

It is thus, clear on detection, that one question was wrongly put in the question paper, care has been taken and marks have been modified as per the aforesaid statement given by the Commission, which again find support from a Division Bench judgment of this Court in Civil Misc. Writ Petition No. 9685 of 2007: Riyaz Khan Vs. State of U.P. and others, decided on 05.1.08."

4. The grievance of the petitioner is that the respondents since found three questions to be incorrect in the part three numerical aptitude bearing question No. 113, 112 and 116, proceeded to consider the deduction in respect of 40 questions asked in part III numerical aptitude whereas entire booklet consisted of 160 questions in four categories Hindi (part I) General Knowledge (part II), Numerical aptitude (part III) and Mental Aptitude (part IV). In support of his submission learned counsel for the petitioner has further relied upon the Government Order dated 24.11.2015 which prescribed for only written examination and not for any particular qualifying marks in each of the papers that form part of the question series booklet during such examination conducted by the respondents. Learned counsel for the petitioner has placed clause 1(3) of the said Government Order which is reproduced hereunder:

"(iii) लिखित परीक्षा

अगर दक्षता मूल्यांकन में सफल अभ्यर्थियों की संख्या मृतक आश्रित के रूप में इस पद पर भर्ती किए जाने वाले पदों की संख्या से अधिक है तो भर्ती बोर्ड द्वारा उन सभी अभ्यर्थियों को एक लिखित परीक्षा करायी जाएगी। यः परीक्षा वस्तुनिष्ठ प्रकार की होगी एवं इस परीक्षा में कोई अर्हकारी अंक नहीं होंगे एवं इस परीक्षा को केवल अभ्यर्थियों का श्रेष्ठता कम निर्धारित करने के लिए आयोजित किया जाएगा जिसके आधार पर उनका अन्तिम रूप से चयन किया जा सके। यह परीक्षा 400 अंको की होगी जिसमें सामान्य हिन्दी/सामान्य ज्ञान, संख्यात्मक एवं मानसिक योग्यता/तार्किक परीक्षा/बुद्धिलब्धि परीक्षा विषयों के वस्तुनिष्ठ प्रकार के प्रश्न होंगे। इस परीक्षा को कराये जाने की प्रक्रिया बोर्ड द्वारा निर्धारित की जाएगी। इस परीक्षा में सभी अभ्यर्थियों द्वारा प्राप्त अंकों के श्रेष्ठता क्रम के अनुसार एक सूची (Merit List) बनायो जाएगी। यदि इस श्रेष्ठता सूची में दो या अधिक अभ्यर्थियों के अंक समान हो तो उस दशा में उनकी वरीयता निर्धारित करने की प्रक्रिया निम्न प्रकार होगी :-

(1) अगर अभ्यर्थी के पास इस पद की सेवा नियमावली के अन्तर्गत कोई अधिमानी अर्हता हो तो नियमावली में अधिमानी अर्हता के दिये गये क्रम के अनुसार।

(2) अगर उसके बाद भी श्रेष्ठता समान हो तो अधिक आयु के अनुसार ।

(3) अगर उसके बाद भी श्रेष्ठता समान हो तो अंग्रेजी वर्णमाला के नाम के कम के अनुसार ।"

(emphasis added)

5. On the contrary defending the stand taken by the respondents learned Additional Chief Standing Counsel Shri Pal argued that petitioner since failed to secure marks matching with cut off of the last selected candidate in the category, could not be placed in the select list. He argued that marks were correctly awarded to him in the light of the judgment of the Division Bench of this Court in the case of **Pawan Kumar Aghrari (supra)**. Shri Pal argued that the question papers of Public Service Commission was in issue before the Division bench which consisted of 120 questions in the same series with 2.5 marks for each question and that was how the entire booklet series was considered as one question paper and accordingly deductions were made as per calculation of marks *qua* the correct answers by removing/ deducting three incorrect answers, whereas in the present case the question booklet series consisted four different papers of Hindi, General Knowledge, Numerical Aptitude, and Mental Ability and since the relevant rules for the post of Sub-Inspector concerned U.P. Sub-Inspector and Inspector Service Rules 2015 rules are applicable which provide for minimum qualification marks of 50 % in each of the papers, the deduction can be made only in respect of the relevant question papers consisting on 40 questions and will not be applicable in general to the entire booklet series which consisted of 160 questions. The relevant Rule 14 (b) is reproduced hereunder:

"(ग) ऑनलाइन लिखित परीक्षा के प्रत्येक विषय में 50 प्रतिशत अंक प्राप्त करने में विफल रहने वाले अभ्यर्थी, भर्ती के लिए पात्र नहीं होंगे। उपरोक्त परिस्थितियों के अधीन जहां कहीं इस नियम में शब्द 'अंक' आया हो उसका तात्पर्य प्रसामान्यीकृत अंक होगा अर्थात् ऑनलाइन लिखित परीक्षा में प्रतिभाग करने वाले समस्त अभ्यर्थियों के प्रत्येक विषय के मूल प्राप्तांकों का प्रसामान्यीकरण करने के पश्चात् जिन अभ्यर्थियों के प्रसामान्यीकृत प्राप्तांक प्रश्न-पत्र के प्रत्येक विषय में 50 प्रतिशत नहीं होंगे, वे अभ्यर्थी चयन प्रक्रिया के २ चरण में प्रतिभाग करने हेतु अर्ह/पात्र नहीं होंगे।"

6. Learned Additional Chief Standing Counsel further submits that

petitioner can be offered compassionate appointment to any other vacancy of a lower rank in terms of the Government Order dated 24.11.2015 vide its clause 5, which is reproduced hereunder:

"5-पुलिस विभाग के चतुर्थ श्रेणी पदों पर मृत पुलिस कर्मियों के आश्रितों की सेवायोजन की प्रक्रिया

मृतक आश्रित के चतुर्थ श्रेणी पद पर सेवायोजन के संबंध में उनको शैक्षिक अर्हता, न्यूनतम आयु, अन्य अर्हताएं व योग्यताएं तत्समय प्रचलित उत्तर प्रदेश पुलिस समूह "च" कर्मचारी सेवा नियमावली में दिए गए प्रावधानों के अनुसार होगी।

जनपदीय पुलिस के चतुर्थ श्रेणी के पदों पर मृतक आश्रित के सेवायोजन को कार्यवाही संबंधित जनपद के वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक द्वारा की जाएगी। यदि जनपद में रिक्तियां उपलब्ध न हो तो आश्रितों के सेवा योजन का प्रस्ताव संबंधित जौनल पुलिस महानिरीक्षक को भेजा जाएगा जो उसका समायोजन जोन के किसी अन्य जनपद में वर्तमान रिक्तियों के सापेक्ष कराएंगे। इसी प्रकार पुलिस विभाग की विभिन्न इकाईयों जैसे-पीएसी/सीबीसीआईडी, रेडियो मुख्यालय, अभिसूचना मुख्यालय, रेलवे इत्यादि द्वारा चतुर्थ श्रेणी पदों पर मृतक आश्रितों के सेवायोजन की कार्यवाही उनके स्तर से ही की जाएगी। यदि किसी कार्यालय में चतुर्थ श्रेणी की रिक्तियां उपलब्ध न हो तो इसका प्रस्ताव इकाई के मुख्यालय को भेजा जाएगा जो अपने स्तर से समायोजन का प्रयास करेंगे।

किन्तु अगर जोन स्तर पर या इकाई मुख्यालय स्तर पर रिक्तियों के सापेक्ष रिक्ति उपलब्ध न हो एवं भर्ती किया जाना सम्भव न हो तो उसका प्रस्ताव पुलिस मुख्यालय को भेजा जाएगा जहां पर इसे रिक्तियों का आंकलन कर किसी जनपद या इकाई में भर्ती हेतु भेजा जाएगा। रिक्तियों की गणना करते समय आगामी सम्भावित रिक्तियों को नहीं जोड़ा जाएगा बल्कि संबंधित कार्यालय में वर्तमान में रिक्तियों के सापेक्ष सेवायोजन की कार्यवाही की जाएगी।"

7. Replying the argument of learned Additional Chief Standing Counsel learned counsel for petitioner sought to rely upon another judgment of the Single Judge of Lucknow Bench of this Court in the matter of **Matin Rao v. State of U.P. and others Civil Misc. Writ Petition No. 38524 of 2010** decided on 23.12.2014 which has been brought on record by means of rejoinder affidavit. However, learned Additional Chief Standing Counsel has placed a Division Bench Judgement of this Court in Special Appeal Defective No. 343 of 2015 in which the Single Bench judgment has been set aside.

8. Having heard learned counsel for the respective parties and having perused the records, I find that even though the Government Order dated 24.11.2015 provides for the procedure for the purposes of method and manner in which the selection is to be held by holding written examination and preparation of select list, but vide clause 1 of the said Government Order it is provided that recruitment shall be held in respect of the post for which provision has been given for direct recruitment

under the relevant recruitment rules. Clause 3 provides for procedure.

9. Thus, having examined Clause 1 (I)(iii) of the Government Order dated 24.11.2015 in no manner of doubt, it can be said that minimum 50 per cent qualifying marks in each of the paper as is argued to be mandatory, is contemplated for the purposes of preparation of merit list in the written examination conducted for the selection on the post of Sub Inspector is not applicable in compassionate appointment cases and hence, for computation of marks on principles laid down in the judgment of this Court in the case of **Pawan Kumar Agrahari (*supra*)**, course would be to take all the 160 questions together, to minus three questions of which incorrect answers were prescribed in the model answer key. It is this procedure which would be compatible to compassionate appointment rules to find out actual marks obtained by each such candidates who participated in the written examination.

10. There is no quarrel between the parties as to the principle which has been evolved in the judgment of **Pawan Kumar Agrahari (*supra*)** for its application in general to the competitive examination for the purposes of holding selection of candidates, whether in general category or compassionate category. Line of distinction that was sought to be drawn only for the reason that four different subject papers were there in the entire booklet series which consisted 160 questions, would be indicative of a fact that these examinations are distinguishable from the examinations conducted by Public Service Commission.

11. While dealing with relevant provision of Clause 2 of the Government Order dated 24.11.2015 on the face of it appears to be quite impressive but looking to the procedure prescribed in the same Government Order vide Clause 1(1)(iii) as already reproduced have been in this judgment, when it prescribed that there should be no qualifying marks in the written examination, then these provisions should have been taken to have further

qualified conditions with qualification of eligibility criterion laid down in Clause 2.

12. Learned Additional Chief Standing Counsel does not dispute the last cut off marks of the selected candidate. One of the argument that was advanced by learned Additional Chief Standing Counsel that rules of eligibility and qualification even for the purpose of compassionate appointment since would be governed by relevant statutory service rules as per Clause 2 of the Government Order dated 24.11.2015, the written examination and obtaining qualifying marks thereof should be also taken as one of the eligibility criterion for the purpose of success in the written examination to find place in the selected list.

13. On compassionate appointment, learned Additional Chief Standing Counsel could not demonstrate from the rules that eligibility criterion and the qualification as prescribed under Clause-2 of the Government Order dated 24.11.2015 will travel beyond eligibility criterion and qualification prescribed under the rules. This Court has no confusion as far as mandatory statutory provision prescribing eligibility qualification under the relevant service rules are concerned. The rules regarding written examination form part of procedural aspect and would certainly be not governing eligibility criterion and qualification laid down under the statutory rules.

14. Since there is no provision for qualifying marks in the written examination, the argument advanced by learned Additional Chief Standing Counsel is to be rejected only . According to the petitioner's calculation, he would be obtaining 100.889 marks which would be more than last cut off marks of the selected candidate being 100.703.

15. One must not get confused with the object for holding written examination as it is held only for short-listing candidates when a large number of candidates applied against limited number of vacancies. Thus, tools of procedure have been evolved only to segregate meritorious and

cannot in any manner, as said as diluting education qualification and other eligibility criterion laid down in substantive provision of the service rules. The Court is also reminded here of very object for which compassionate appointment rules are framed.

16. In recent judgment, the Supreme Court in the case of **Tinku v. State of Haryana and others 2024 SCC Online SC 3292** dealt with object of compassionate appointment and has held that these rules are exception to the general rules of the recruitment in government service and hence relaxations are obviously provided for to meet the objective for which rules have been held. Vide paragraph 14 the Court has held thus:

"14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner. "

17. Thus, in view of above I am of the considered view, respondents were not justified in calculating the marks by taking only 40 questions of booklet series in which all the subject of numerical aptitude to deduct them for the purpose of preparation of merit list. The ratio laid down in the judgment in Pawan Kumar Agrahar (supra) laying down also rules of calculation would be applied but taking all the 160 questions together.

18. Accordingly, respondents are directed to carry out fresh calculations by deducting three wrong questions/ answers of the booklet series minusing in total 160 questions.

19. Fresh calculation chart *qua* petitioner be required exercise shall be accomplished within a maximum period of four weeks from the date of presentation of certified copy of this order. If the petitioner finds place in the merit list matching or above the last selected candidate , he shall be offered appointment forthwith.

20. Thus the, writ petition succeeds and is allowed as above.

Order Date :- 7.8.2025
Sanjeev/Nadeem