

Court No. - 29

Case :- SPECIAL APPEAL No. - 679 of 2024

Appellant :- Secretary Up Basic Education Board At Prayagraj
And Another

Respondent :- Surjeet Singh And 3 Others

Counsel for Appellant :- Archana Singh

Counsel for Respondent :- Siddharth Khare

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. Learned Single Judge has allowed the writ petition filed by respondent and has quashed the order passed by the appellant dated 14.9.2022, whereby the respondent/writ petitioner was terminated. A mandamus is issued to the appellant to permit the writ petitioner to continue on the post of Assistant Teacher and pay him salary month to month. A further direction is issued to give all consequential benefits to the petitioner.

2. Facts of the case lie in a narrow compass. The appellant Basic Shiksha Parishad initiated process for recruitment to the post of 69000 Assistant Teachers in the primary schools established by the Board. The petitioner was also an applicant. In his application form he has disclosed his marks of High School as 324 out of 600. He has been declared successful and appointment letter was issued to him on 4.12.2020. The writ petitioner joined on 1.2.2021. An institution was also allotted to him. However, before he could actually join, certain complaints were made that the marks disclosed by the writ petitioner in his High School Examination is more than the marks obtained by him. It is in this context that the matter was examined and ultimately the petitioner's appointment has been terminated on 14.9.2022.

3. The writ petitioner contended before the learned Single Judge that he had secured 316 marks out of 600 marks in the High School, but he was granted 8 grace marks, as a result of which his total marks in the application form was filled as 324 out of 600. It was, therefore, submitted that the marks disclosed by the writ petitioner in the application form was correct. Alternatively it was argued before the learned Single Judge that even if the marks of the writ petitioner is taken 316 out of 600, yet it would not make any difference, inasmuch as his merit position would remain

unaltered. The marks indicated in the select list have been relied upon by the learned Single Judge to accept such argument of the writ petitioner.

4. The claim of petitioner was resisted relying upon the judgment of Hon'ble Supreme Court in the case of Jyoti Yadav and another Vs. The State of Uttar Pradesh and others [Writ Petition (Civil) No.322 of 2021], wherein the Supreme Court has clearly held that those, who have disclosed marks higher than their entitlement, would not be entitled to any relief.

5. On behalf of writ petitioner it was also contended that the Government Order dated 5.3.2021 would come to the rescue of the writ petitioner, inasmuch as the appointments offered to Assistant Teachers were to remain unaffected, even if the change of marks were not to vary the merit position. Learned Single Judge has accepted such contention and allowed the writ petition.

6. Mrs. Archana Singh, appearing for the appellant submits that merit position reflected in the select list does not truly demonstrate the impact of change of 8 marks. She submits that Madhyamik Shiksha Parishad has filed an affidavit before the learned Single Judge clearly stating that the grace marks awarded to a candidate is merely for the purposes of passing him and does not form part of the marks secured by the candidate.

7. We have perused the stand of the Deputy Secretary of the Board in his affidavit filed before the learned Single Judge. In para 3 to 5, the Deputy Secretary has stated as under:-

"3. That in regard to aforesaid direction of this Hon'ble Court it is submitted that in terms of Chapter-6 (Examination Committee) Regulation-2(H), the Secondary Education Board is empowered to formulate Rules for awarding grace marks.

4. That the petitioner secured 25 marks in the subject of Mathematics in High School Examination of the year 2010 while for passing the same, minimum 33 marks is mandatory to be secured. As a result of which 8 grace marks have been awarded to him.

5. That grace marks have not been calculated in total marks secured by him, in-fact he has been awarded Grade-D treating him pass in the Mathematics Subject. For kind perusal of this Hon'ble Court true copy of Calculation Chart (Original Records) is being annexed herewith and marked as Annexure-2 to this affidavit."

8. From the specific stand taken by the Board, it is apparent that the grace marks awarded to a candidate cannot be treated to be a part of the marks secured by him. It, therefore, remains undisputed that the writ petitioner had incorrectly showed his High School marks to be 324, whereas his marks in fact were 316 out of 600.

9. Observation of learned Single Judge that no advantage is obtained by the writ petitioner due to incorrect mentioning of his High School mark is based upon the percentage of his marks in the select list. Selection itself is based on the quality point marks, based on the marks obtained by such candidates in terms of the provisions contained in the Appendix appended to U.P. Basic Education (Teachers) Service Rules, 1981. Quality point marks of all the candidates are computed and based on such quality point marks the appointments are offered depending on the availability of number of vacancies. The Appendix of the aforesaid Service Rules, 1981 is referable to Rule 14 (3) of the Rules, according to which for the purposes of calculating the quality point marks for selection of a candidate, percentage of marks obtained by the candidates in his/her High School, Intermediate, Graduation Degree and Bachelor of Education/B.Ed etc. are to be divided by 10 and then they are added. Thus, the formula for computing the quality point marks can be found in the statutory rules according to which percentage of marks obtained by the candidate in each examination is to be divided by 10 and then same are added. Apart from the quality point marks obtained by the candidate in terms of the Appendix appended to the service rules, the marks obtained by a candidate in written examination, which is known as Assistant Teacher Recruitment Examination, are also taken into account for the purposes of preparing the final merit list. Based on such merit, appointments are offered and process of recruitment is thus concluded. Change of 8 marks in High School has to be viewed not only with reference to the marks shown in the select list but considering that lacs of candidates had applied for appointment to be made against 69000 posts. It is a matter of common knowledge that in such large scale recruitment hundreds of candidate are placed on same mark and change of 8 marks is bound to affect the merit position. We find force in the argument of Mrs. Singh that in the examination of the present kind where lacs of candidates had participated in the recruitment exercise, 8 marks is bound to effect thousands of candidates.

10. Even otherwise, we do not find this argument to be tenable, once the Hon'ble Supreme Court in the case of Jyoti Yadav (supra) has clarified that those, who have filled incorrect marks with an intent to secure appointment, would clearly be disentitled to appointment. The observations made by the Supreme Court in Jyoti Yadav (supra) in para 15 would be relevant and is reproduced hereinafter:-

"14. Wherever the mistakes committed by the candidates purportedly gave additional marks or weightage greater than what they actually deserved, according to the Communication dated

05.03.2021, their candidature would stand rejected. However, wherever mistakes committed by the candidates actually put them at a disadvantage as against their original entitlement or the variation could be one attributable to the University or issuing authority, an exception was made by said Communication. The reason for treating these two categories of candidates differently cannot thus be called irrational.

In the first case, going by the marks or information given in the application form the candidate would secure undue advantage whereas in the latter category of cases the candidate would actually be at a disadvantage or where the variation could not be attributed to them. The candidates in the latter category have been given a respite from the rigor of the declaration. The classification is clear and precise. Those who could possibly walk away with the undue advantage will continue to be governed by the terms of the declaration, while the other category would be given some relief.

15. Having considered all the rival submissions, in our view, the Communication dated 05.03.2021 made a rational distinction and was designed to achieve a purpose of securing fairness while maintaining the integrity of the entire process. If, at every juncture, any mistakes by the candidates were to be addressed and considered at individual level, the entire process of selection may stand delayed and put to prejudice. In order to have definiteness in the matter, certain norms had to be prescribed and prescription of such stipulations cannot be termed to be arbitrary or irrational. Every candidate was put to notice twice over, by the Guidelines and the Advertisement."

11. When the impact of change in the marks is analyzed, the Court cannot rest its analysis only on the evaluation of respective marks of the candidate and hold that it would not make any impact upon the result. Difference of 8 marks is bound to have impact on large number of other persons, who may otherwise have scored higher marks but were not selected. In that view of the matter, the reasoning assigned by learned Single Judge to allow the writ petition cannot be sustained.

12. Consequently, the special appeal succeeds and is allowed. The judgment and order passed by learned Single Judge in Writ-A No.17100 of 2022, dated 30.5.2024, is set aside. Since we find that the writ petitioner had not disclosed correct marks in his High School Examination and in terms of the applicable policy was not entitled to appointment, his writ petition fails and is dismissed.

Order Date :- 6.5.2025

Anil