



2024:DHC:930



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05.02.2024

+ W.P.(C) 8157/2017

KULDEEP KUMAR

..... Petitioner

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R.R. Jangu, Advocate

For the Respondent : Mr. Santosh Kumar and Mr. Kushagra
Aman, Advocates for R-1
Mr. Yashwant S. Baghel and Mr.
Rishabh Thakur, Advocates for R-2**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition filed under Article 226 of the Constitution of India, 1950 seeking following prayers:-

i. that a writ of mandamus or any other writ directing respondent no.1 to quash and set aside the appointments made to the post of Junior Assistant in University of Delhi;

ii. Direct respondent no.1 to hold a fresh test in a transparent manner and as per the provisions of law;



iii. Direct to Respondent no.1 to consider the seniority of Petitioner and grant benefits of experience of service for recruiting junior assistant in recruitment of 2013.”

2. Learned counsel appearing for the petitioner submits that his first point of challenge to the selection process itself was on the ground that as per the Scheme of the Examination, the percentage of marks entitling the candidates to reach the interview level was 50%, whereas according to the same Scheme of Examination for the post of Junior Assistant, as per para 3 thereto, the minimum qualifying percentage of marks for the written examination were 45% for the unreserved post, 40% for the post reserved for OBC and 35% for the post reserved for SC/ST/PH category in each paper i.e. Paper I and Paper II of the test components.

3. Learned counsel for the petitioner submits that in contradistinction thereto, para 5 of the said Scheme of Examination stipulated that the minimum qualifying marks in the Interview/Personality Test (wherever applicable) shall be 50%. Learned counsel submits that this itself was contrary to the reservation law under Article 15 and 16 of the Constitution of India as also set out by the Hon'ble Supreme Court in various Constitution Bench judgments and as such, keeping the limitation of 50% for qualifying the interview is contrary to such provisions of the Constitution as also the Supreme Court judgments. As a result of such violation, the result of the Examination for the post of Junior Assistant in University of Delhi made pursuant to the said advertisement ought to be quashed and set aside in entirety.

4. Learned counsel for the petitioner, apart from the above, also



challenges the declaration of the result by the respondent no.1 University on the ground of various bungling and mistakes committed by the respondent no.1 itself. According to learned counsel, there are apparent mistakes and gross violations in complying with their own Scheme of Examination which is evident from the list of the interviewees which is given at page 114, particularly pointing out to serial number 66 whereby the name of Mr. Abhishek is mentioned. It reveals that the said Abhishek never participated in the interview and yet the said person was not only shown in the final list of the selected persons but, was also given the appointment letter.

5. Learned counsel draws attention of this Court to page 88 of the petition to submit that the said notification dated 24.04.2014 was issued in respect of those persons who attended the written test for the post of Junior Assistant and who were declared as passed. Learned counsel submits that out of those persons, who are shown in the list, four persons were over the age limit but were still selected. He submits that there is no reason given as to why those four persons have been selected and rest of the persons discarded.

6. Learned counsel draws attention of this Court to the result sheet which is compiled in the form of a chart in the body of the writ petition at page 28, where according to him, the marks awarded originally by the agency which was conducting the test and the marks finally compiled by the Delhi University/respondent no.1 are at variance. He submits that even if in case of four persons out of all the other candidates, there has been bungling, that would be an indicator of the gross negligence and the manner in which the results were prepared. He submits that as such,



the gross violation which has been brought to the notice of this Court may be considered and the prayer as sought for quashing and setting aside the appointments made to the post of Junior Assistant in the Delhi University pursuant to the aforesaid advertisement be quashed and set aside. He seeks further direction that a fresh test in transparent manner in accordance with law may be directed to be conducted.

7. *Per contra*, learned counsel appearing for the respondent opposes the aforesaid submissions of the learned counsel for the petitioner.

8. The counsel in the first instance draws attention of this Court to the advertisement which is at page 37, particularly at page 44 to submit that as per the Scheme of Examination, the said examination would include the weightage of marks for the written test and interview as prescribed by the University from time to time with the approval of the Executive Council.

9. He next draws attention of this Court to the Scheme of the Examination at page 49 of the present petition to submit that the minimum qualifying marks in the written examination as also minimum qualifying marks in interview/personality test were prescribed as per the statutory rules. Having regard to the fact that the petitioner had not challenged the advertisement or the Scheme of Examination on such ground, it would not be open to the petitioner to agitate these issues herein. In support thereof, the learned counsel relies upon the judgment of ***Ramesh Chandra Shah & Ors vs. Anil Joshi & Ors*** reported in (2013) 11 SCC 309 and ***Manish Kumar Shahi vs. State of Bihar*** reported in (2010) 12 SCC 576.

10. That apart, learned counsel submits that there is not even a single



avermment in the entire writ petition that there is *mala fide* attributed to any of the officials of the University nor is there any averment that he has been discriminated against insofar as the interview is concerned. Learned counsel submits that there is not even an allegation of unfairness in his non-selection.

11. So far as the allegation of the petitioner in respect of 39 candidates from the Scheduled Caste category having been selected against the stipulated vacancies of 38 posts is concerned, he submits that out of the said persons, one person had got selected as a General Category candidate on the basis of high score of marks. It is a settled law that a person, even if belongs to reserved category, can always avail of the general category quota and the post so falling vacant shall again be filled up by another person from the same category.

12. Learned counsel further submits that so far as the reference to the four candidates having been selected despite being over the age limit is concerned, he submits that according to the judgment of Constitution Bench of Hon'ble Supreme Court in *Secretary, State of Karnataka vs. Uma Devi* reported in 2006 (4) SCC 1, the age relaxation was given to the departmental candidates. In pursuance of the aforesaid judgment, learned counsel refers to the notification dated 05.12.2013 in support of the aforesaid contention. He submits that the age relaxation which was granted was on the basis of the said notification and therefore, those four persons who are finally selected were given the benefit of the age relaxation according to the ratio laid down in *Uma Devi's* case (supra).

13. So far as the case of Abhishek, the candidate who is alleged to have been absent in the interview and yet selected, is concerned, learned



counsel draws attention of this Court to para 11 of the counter affidavit whereby the respondent University has very categorically stated that the moment they realized that there has been a mistake, a Committee was constituted for carrying out an inquiry and post inquiry, the appointment letter of said Abhishek was withdrawn. It was also submitted that the said Abhishek had filed a writ petition before this Court and the same was dismissed by the order dated 16.12.2014. As such, he submits that there is no substance in the arguments of the petitioner.

14. Learned counsel next submits that so far as the allegation of the petitioner in respect of the variation in the marks of the four candidates when the marks were being inducted from the testing agency to the Delhi University is concerned, the respondent found that certain errors were made while the marks were being transcribed. As such, after it was put to the Selection Committee, the necessary corrections were carried out. In any case, learned counsel submits that the errors did not change the final result in any manner and as such, there is no substance in the submission of the petitioner.

15. Learned counsel for the respondent submits that the petition should be dismissed with exemplary costs.

16. This Court has considered the arguments of the learned counsel for the petitioner as also the respondent and perused the records.

17. So far as the first issue of challenge in respect of the law on reservations in respect of the cut off percentage in interviews is concerned, the said issue cannot be entertained by this Court since the petitioner has not challenged the advertisement, or the Scheme of Examination or any of its clauses. Admittedly, when there is no such



challenge laid, the question of this Court going into the merits of the matter on this ground does not arise.

18. This Court is in complete agreement with the submissions made by the learned counsel for the respondent/Delhi University that unless the petitioner challenges the advertisement, the Scheme of Examination, subsequent to the conduct of the examination and Select List having been drawn up, the Court should not be interfering in such selection process. That apart, it is well settled by the Supreme Court in the judgment of **Ramesh Chander Shah** (Supra) whereby it is held that the party who has participated in the entire Examination Scheme up till the stage of interview and subsequently failed, should not be permitted to agitate the issue of fairness or to try to scuttle the further process of selection. In that view of the matter, to that extent, this Court does not agree with the submissions made by the learned counsel for the petitioner.

19. It is also correct that even otherwise, the petitioner has neither pleaded *mala fide* against any of the officers of the University nor has he stated anywhere that he has been discriminated in the interview. There is no whisper in respect of the allegations of unfairness in his non selection. The petitioner appears to be making vague and broad allegations regarding bungling in examination results in his writ petition, as if the present petition is a public interest litigation, which it is not.

20. So far as the argument of the learned counsel on the selection of 39 Scheduled Castes category candidates against the sanctioned post of 38 for SC category is concerned, this Court is inclined to agree with the



contention of the respondent. It is possible that when the selection was done, the list may show 39 candidates as selected however one of the candidates was subsequently shown in the list of successful candidates in General Category since he had scored high marks and as such the same cannot be an error. It is trite that the reserved category candidates can be adjusted against the General category vacancies in case they score more than the last candidate who appeared on the final list of the General Category candidate and as such, there is no substance in the aforesaid argument of the petitioner.

21. In so far as the issue of four candidates at page 88 of the petition is concerned, the explanation given by the counsel for the respondent that the same was done in pursuance of the judgment in *Uma Devi* (Supra) of the Hon'ble Supreme Court, is satisfactory to this Court. There is no *mala fide* in having done that. The process seems to have been fair and the law was applied correctly.

22. So far as the last contention of the learned counsel for petitioner is concerned regarding one Abhishek who was admittedly absent on the day of the interview yet was found on the final select list as also was offered the letter of appointment is concerned, the explanation submitted by the respondent/Delhi University in its counter affidavit in para 11 would suffice. The same is extracted hereunder:-

“11. *Re Para 11-13, 27(c)*

It is submitted that after the fact pertaining to Mr. Abhishek came to the knowledge of Respondent No.1, it held an inquiry to look into the appointment of Mr. Abhishek to the post of Junior Assistant. In pursuance of the said inquiry, the offer of appointment issued to the said candidate was withdrawn. It is important to note that the



*Mr. Abhishek had filed a writ petition being Writ Petition No. (Civil) 8933/2014 before the Hon'ble High Court of Delhi praying for quashing and setting aside the order dated 24.11.2014 issued by the Respondent University canceling the offer of appointment issued to him for the post of Junior Assistant. The writ petition was dismissed in limine as the Hon'ble Court did not find any illegality in the action of the University. A copy of the judgment and order dated 16.12.2014 of the Hon'ble High Court of Delhi in Writ Petition No. (Civil) 8933/2014 is annexed as **ANNEXURE R-1/C**. It is denied that respondent no.1 committed gross negligence/irregularities in the selection for the post of the Junior Assistants and Senior Assistants."*

The aforesaid averment made by the respondent no.1 is satisfactory to the consideration of this Court inasmuch as the moment the respondent no.1 realized that there has been a mistake, they conducted an inquiry and withdrew the offer of appointment in accordance with the powers conferred upon it. It is also relevant to note that the said Abhishek had also filed a writ petition bearing W.P.(C) 8933/2014 before this Court seeking to quash and set aside the order dated 24.11.2014 canceling his offer of appointment, which resulted in the dismissal of the writ petition by this Court *vide* order dated 16.12.2014. Thus, so far as the said issue is concerned, the same was taken care of in accordance with law by the respondent.

23. So far as the last issue in respect of the variation in the marks of those four candidates in the final mark list in respect of the induction of the marks from the respondent no.2 testing agency is concerned, the same is succinctly replied to by the respondent in para 7 of the counter affidavit which is extracted as under:-



“7. Re Para 5, 27(d)

In reply to contents of para 5 and 27(d) it is submitted that an inquiry committee was constituted by the University to look into possible errors in the process of appointment. The inquiry committee found that for four candidates there was a difference between marks given by the agency which conducted the written examination and marks attached with the selection committee minutes. It was further found that certain inadvertent errors were made while transcribing the marks for being placed before the selection committee. It was noted that even after the actual marks were accounted for, the concerned candidates had qualified and would remain in the select list of written exam. However, it was also noted that differences in marks did not exist in case of any other candidate shortlisted for the interview. Further these errors did not alter the final result in any manner. Nonetheless subsequently, the Respondent No.1 issued a corrigendum dated 06.11.2015 rectifying the said issue/marks and clarifying the same.”

On an overall examination of the contents of para 7, this Court is of the considered opinion that the explanation given by the respondent University that certain inadvertent errors were made while prescribing the marks from the testing agency report to the final result of the University is concerned, the same appears to be humanly possible and as such errors are not unknown. In any case, the stand taken by the University that even after recalculation and correction of those mistakes, those candidates were found suitable and have figured in the final result. As such, the said contention also is not available in support of the petitioner.

24. In view of the above, there is no case made out at all by the petitioner, this Court is of the considered opinion that the petition is devoid of merits and is accordingly dismissed with no order as to costs.



2024:DHC:930



25. This order shall also be attached with the connected matter i.e. W.P.(C) 1083/2015, for reference.

TUSHAR RAO GEDELA, J.

FEBRUARY 05, 2024

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