
(2012) 12 AHC CK 0203

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30002 of 2010

Ajit Kumar Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Constitution of India, 1950 — Article 315

Citation : (2013) 1 ADJ 344 : (2013) 3 ALJ 240 : (2013) 136 FLR 686

Hon'ble Judges : V.V. Singh, J;S.K. Singh, J

Bench : Division Bench

Advocate : Yogesh Agarwal, for the Appellant; B.P. Singh, K.C. Sinha, P.S. Baghel, Pushpendra Singh, V.P. Mathur, Sunil and Gautam Baghel, for the Respondent

Final Decision : Allowed

Judgement

Virendra Vikram Singh, J.—The petitioner has rushed to this Court while complaining the indiscriminate orders passed by the Union Public Service Commission (hereinafter to be referred as Commission) and U.P. Public Service Commission (hereinafter to be referred as U.P. Commission). The brief facts are that the petitioner in search of Government job appeared in different examinations conducted by the Commission and the U.P. Commission presently respondents No. 2 and 3.

2. In the same series of examinations he appeared in the Civil Services Examinations, 2009 conducted by the Commission. In the Civil Services Main Examinations while the application of the petitioner was scrutinized by the Commission, it was found that the petitioner made false statement regarding the previous attempts made by him. It was eighth attempt whereas the petitioner showed it to be seventh only. It was found that if the petitioner would have disclosed the correct number of previous attempts made, he would not have been eligible for appearing in all the concerned examinations.

3. After issuing notice to the petitioner on 22.1.2010, the Commission passed the impugned order dated 15.2.2010 and thereby cancelled the candidature of the petitioner for the Civil Services Main Examination, 2009 and also debarred him from all the examinations to be conducted by the Commission for a period of ten years to be computed from 11.2.2010. This order was also circulated to all the State Commissions.

4. Apart from the examinations conducted by the Commission, the petitioner also appeared in the examinations conducted by the U.P. Commission. The details whereof have been given in the writ petition.

5. Having received the information about debarring the petitioner, the U.P. Commission also debarred the petitioner from all the examinations with effect from 11.2.2010 for a period of ten years and did not declare the results of the petitioner. While the result of the petitioner was not declared by U.P. Commission, he on 5.4.2010 filed an application under Right to Information Act, which was replied in terms that he has been debarred for all examinations to be conducted by the U.P. Commission, This office memo dated 12.4.2010 is also under challenge in the present writ petition.

6. By filing the present petition, the petitioner has made the following prayers.

I. Issue a writ, order or direction in the nature of certiorari quashing the decision dated 15.2.2010 taken by the U.P. Public Service Commission as informed by the information dated 12.4.2010 given to the petitioner under Right to Information Act.

II. Issue a writ, order or direction in the nature of mandamus directing the opposite parties to declare the results of the petitioner for the examinations that is Combined Lower Subordinate Mains Exams-2004 (General Recruitment), (Combined State Lower Subordinate Prelims Examination Special Recruitment-2004, Combined State/Upper Subordinate Service Mains Examination-2007, Combined State/Upper Subordinate Mains Examination-2008, Combined State Upper Subordinate Special Recruitment Prelims Examination-2008, Combined State Upper Subordinate Special Recruitment Prelims Examination-2008, Combined State/Upper Subordinate Prelims Examination-2009, GIC Inter College Screening Examination-2009 and may not be treated as debarred.

7. In the present case, pleadings have been exchanged between the parties and after hearing learned Counsel for the parties the petition is being decided.

8. It has been argued on behalf of the petitioner that the decision of the Commission dated 15.2.2010 is indiscriminately harsh to the petitioner. It has further been argued that under the provisions of Article 315 of the Constitution of India, the Commission and the U.P. Commission are two different and separate entities and simply by the fact that the Commission has debarred the petitioner from further examination conducted by it, the U.P. Commission was nowhere

bound by the decision and it could not have debarred the petitioner in the manner it has done and has been communicated to the petitioner by its memo dated 12.4.2010.

9. It has also been argued that the U.P. Commission has nowhere issued any notice to the petitioner before debarring him from examinations. Hence the order is bad in law and cannot be allowed to sustain.

10. Learned Counsel for the Commission has argued that according to the prevalent policy, the order passed by the Commission is being adopted by the U.P. Commission and by the memo dated 12.4.2010, same has been communicated to the petitioner.

11. It is not in dispute that the petitioner could have been punished for furnishing wrong information in the Civil Services Main Examination, 2009 for furnishing incorrect number of attempts made by him. If the petitioner would have submitted the correct number of attempts made by him, he would not have been eligible to appear in the Civil Services Main Examination. Hence the decision of the Commission to the extent that he was debarred from the Civil Services Main Examination, 2009 could not said to be illegal exercise of powers by the Commission.

12. Now the question is whether the petitioner could have been debarred for further ten years by both the two Commissions for this act of the petitioner. It was necessary for both the two Commissions presently respondent Nos. 2 and 3 to have justified the punishment in terms that it was proportionately awarded punishment.

13. On behalf of the Commission, the only argument advanced was that as per the prevalent policy and to provide uniform punishment to all such candidates, who have not given correct information, or have submitted wrong information, order is passed debarring them for ten years and such order is accepted and enforced by all the State Commission as well.

14. At the argument as it has been advanced on behalf of respondents No. 2 and 3, the Commissions, cannot be permitted to prevail in each and every case. The facts are different and the punishment should have been awarded as per the prevailing and the attending circumstances. Thus it has to be decided whether the punishment awarded can be said to be proportionate punishment.

15. The matter of proportionality has repeatedly been considered by the Apex Court. in the case of Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, . In para 19 and 20 of this judgment the Apex Court while discussing the proportionality held as follows

19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial

intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. On of the tests to be applied while dealing with the question of quantum of punishment would be would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

16. Again in the case of Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others, explained the principle of proportionality as a ground of judicial review of administrative action. The factor of proportionality has been considered with the following observations:

Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent Court may indulge in a merit review and if the Court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the Court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

17. The matter about the disproportionate punishment for Wrong disclosure of number of attempts by the petitioner has reasonably been considered by the Division Bench of this Court in the case of Prem Chandra Yadav v. Union of India and others 2012 (2) ESC 1021. The Court has considered the question as to whether the candidate who does not disclose correctly the number of attempts that he has taken in the competitive examinations, whether the candidature of the petitioner can be debarred for further period of ten years apart from the examinations in question.

18. While considering the different pronouncement of Hon"ble the Apex Court, the Court has decided that the such punishment is indiscriminate and held that the order for debarring the petitioner's candidature in the concerned examination alone was sufficient and the proportionate punishment. We feel accede to the decision of the Court.

19. The petitioner at the time he filled up the Civil Services Main Examination form Was under giving his circumstances when he was rushing for obtaining the Government job and from his end, he filled up almost all the examination form regarding examination conducted by the Commission and U.P. Commission

respondent No. 2 and 3. In such a situation it was most likely for the petitioner to have forgotten or misplaced the exact number of attempts made by him or in any case such a possibility cannot be excluded. Apart from it, nothing could be put forward on behalf of the Commission or the State Commission that while making wrong number of attempts, the petitioner has any malicious or fraudulent intention. On the contrary, the petitioner being a literate/person could have easily considered that such wrong reply made by him may expose him to peril and he was this wrong information by him may easily be detected, specially when the entire system with all the Commissions is fully computerized, Since there is no such circumstances to suggest the malice on the part of the petitioner, the punishment of the petitioner for debarring for a further period of ten years is definitely is indiscriminately disproportionate and this Court has every reason to accede to the view held by this Court in the case of Prem Chandra Yadav (supra), referred to above.

20. Thus, we found that the punishment to the petitioner for disclosing wrong number of attempts made by him in terms of not only debarring him from the Civil Services Main Examinations, 2009 but also debarring him for a further period of ten years was definitely in disproportionate punishment to him. The action of the U.P. Commission in blindly accepting the mandate without issuance of the mandatory notice, debarring the petitioner from all examinations to be conducted by it for a period of ten years also can not be held to be the legal exercise of the powers of the U.P. Commission.

21. It has been argued on behalf of the U.P. Commission respondent No. 2 that it is the prevailing practice that the order passed by the Commission is adopted by the U.P. Commission and the candidature of the erring candidate is also debarred for the same period as ordered by the Commission.

22. No legal strength could be put forward on behalf of the respondents as to why such practice is prevalent. Thus the order of the U.P. Commission deserves to be set aside. The order is otherwise also is not sustainable as previous discussion makes it clear that the proportionate punishment for furnishing incorrect information in the application form was debarring him in the concerned examination only.

23. In view of the discussion made above, the writ petition deserves to be partly allowed with the following conditions.

24. The order passed by respondent No. 3 dated 15.2.2010 insofar as it relates to debarring the petitioner from the Civil Services Main Examination, 2009 is hereby upheld.

25. The remaining part of the order debarring the petitioner from all the examinations conducted by the Commission from 11.2.2010 for a period of ten years is hereby quashed.

The order and the memo passed by respondent No. 2 U.P. Commission whereby

the order of the Commission dated 15.2.2010 and the memo dated 12.4.2010 whereby the decision was communicated to the petitioner has been adopted debarring the petitioner to the same tune are hereby set aside.

It is being made clear that in pursuance of the order passed by this Court, the petitioner shall not be allowed to appear in any examination or the interview which has already taken place and no examination or the interview shall be conducted for the petitioner alone.