

(2013) 05 AHC CK 0416

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25035 of 2013

Ashok Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 359 : (2013) 99 ALR 191 : (2013) 3 UPLBEC 1865

Hon'ble Judges : Vineet Saran, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Ashok Khare and Siddharth Khare, for the Appellant; A.K. Sinha and V.P. Mathur, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner appeared in the Combined State/Upper Subordinate Services Examination-2010 in which he was declared provisionally selected. At the time of interview, he was however required to submit his no objection certificate from his employer as he was employed with the State Government. On 28.8.2012 when the petitioner appeared before the interview board, he was interviewed and was required to give an undertaking that he would furnish the no objection certificate within 21 days. According to the respondents, the said certificate was not furnished within the said period of 21 days and as such, by order dated 12.3.2013 passed by the respondent No. 4 his candidature was cancelled on the ground that the petitioner did not furnish his no objection certificate within 21 days of the interview which was held on 28.8.2012. Challenging the said order dated 12.3.2013 passed by the respondent No. 4, this writ petition has been filed. Further prayer has been made for a direction to the respondents to grant appointment as Manager (Marketing & Economic Survey) in pursuance of the result as published by the U.P. Public Service Commission on 10.10.2012. We have heard Sri Ashok Khare, learned Senior Counsel alongwith Sri Siddharth Khare, learned counsel for the petitioner as well as learned Standing Counsel appearing for the State respondent No. 1 and Sri A.K. Sinha, learned counsel

appearing for the contesting respondent Nos. 2, 3 and 4 (U.P. Public Service Commission). Pleadings between the contesting parties have been exchanged and with consent of the learned counsel for the parties, this writ petition is being disposed of finally at the admission stage itself.

2. The case of the petitioner is that on 28.8.2012 the no objection certificate was not available with the petitioner even though he had applied for grant of such certificate on 18.8.2012, before the institution where the petitioner was working. It is admitted to the respondents that such certificate was issued after the same being countersigned by the District Inspector of Schools on 3.9.2012. It is also the specific case of the petitioner that he visited the office of the U.P. Public Service Commission on 13.9.2012 and was issued a gate-pass to enter the premises of the Commission on the said date in which the purpose of visit was mentioned as "for submission of no objection certificate". The issuance of the gate-pass, (filed as Annexure-7) mentioning the said purpose of the visit of the petitioner in the premises of the Commission is admitted to the respondents. The issuance of the certificate and countersignature of the District Inspector of Schools has also been got verified by the Commission through a letter sent to the District Inspector of Schools, Allahabad by the Commission on 7.5.2013 to which the District Inspector of Schools, Allahabad has responded on 8.5.2013 intimating that no objection certificate of the petitioner was sent by the Principal of the College to the District Inspector of Schools on 3.9.2012 for countersignature, which was returned back on the same day after being countersigned by the District Inspector of Schools. Such communication has been filed by the petitioner as Annexure-1 alongwith the rejoinder-affidavit. The same would go to show that the matter relating to the filing of the no objection certificate and its correctness was under consideration of the Commission even after filing of this petition.

3. Sri A.K. Sinha, learned counsel appearing for the contesting respondents has placed reliance on a letter of the petitioner dated 5.12.2012 in which it is stated that he was filing the no objection certificate. Sri A.K. Sinha has however stated that the recommendation for cancellation of the candidature of the petitioner was made by the Commission on 5.12.2012 and thereafter the candidature of the petitioner was cancelled by the Commission on 21.2.2013 and the petitioner was informed of the said cancellation by letter dated 13.3.2013. Specific averments in this regard have been made in paragraph 3 (D) of the counter-affidavit filed by Sri Brijendra Kumar Dwivedi who is said to be posted as Under Secretary in the office of the U.P. Public Service Commission and in paragraph 1 he has been described as Section Officer of the Commission.

4. Sri A.K. Sinha, learned counsel for the contesting respondents has today passed on a communication of the State Government dated 13.3.2013 wherein in paragraph 3 it is mentioned that the candidature of 18 candidates including that of the petitioner was cancelled by the Commission vide letter dated 17.1.2013. Such communication, which has been passed on today during the course of

argument, is taken on record.

5. From the facts of this case, it is not understood that when the petitioner was admittedly in possession of the no objection certificate, which was countersigned by the District Inspector of Schools on 3.9.2012 and the petitioner was to submit such certificate with the Commission within 21 days of the interview held on 28.8.2012 and the petitioner actually visited the premises of the Commission and got a gate-pass issued for the purpose of submitting the no objection certificate, why the petitioner would not submit the certificate, which was already in his possession and he very well knew that if the said certificate was not submitted, his candidature would be cancelled.

6. In paragraphs 18 and 19 of the writ petition, it is specifically stated by the petitioner that the no objection certificate was submitted by him personally on 13.9.2012 in the office of the U.P. Public Service Commission to which there is no specific denial in paragraph 8 of the counter-affidavit except that it is stated that the no objection certificate was received in the office of the Commission on 5.12.2012. It is not disputed that if the candidature of the petitioner is considered to be valid, he would be selected on the post of Manager (Marketing & Economic Survey) after the result of interview. The appointment to the petitioner has not been given merely because of the alleged non-submission of the no objection certificate within 21 days of the interview.

7. Sri A.K. Sinha, learned counsel for the contesting respondents has vehemently argued that the advertisement issued by the Commission inviting applications clearly provided that the candidates serving under the Central or State Government will have to produce a "no objection certificate" from their employer at the time of interview and as such, he submits that since the no objection certificate was not produced within the extended period, the petitioner's candidature has rightly been rejected.

8. From the facts, what this Court finds is that either the Commission ought to have strictly adhered to the terms and conditions of the advertisement and not interviewed the petitioner if no objection certificate was not filed or once the indulgence had been granted by the Commission and the petitioner was permitted to file the no objection certificate within 21 days of the interview and from the facts we find that the no objection certificate was prepared and countersigned by the competent authority on 3.9.2012 and submitted before the Commission on 13.9.2012, which is on record and was also admittedly produced before the passing of the impugned order dated 12.3.2013, there was no justification for canceling the candidature of the petitioner.

9. It is also noteworthy that the Commission itself has taken a decision on 18.4.2013 (filed as Annexure 16 to the writ petition and not denied in the counter-affidavit) to the effect that the Commission has decided that no candidature shall be cancelled because of non-production of the no objection certificate and while sending the recommendation to the State Government for

appointment of the candidate, the Commission shall make a request that those candidates, who have not produced the no objection certificate, may be issued appointment letter only after such certificate is produced. From this, it is absolutely clear that the Commission itself is conscious of the position that the no objection certificates are not delivered by the concerned authorities within time and therefore not produced at the time of interview and therefore such concession of the same being permitted to be produced till the issuance of the appointment letter is necessary.

10. Sri A.K. Sinha has placed reliance on a judgment of this Court passed in Writ Petition No. 14841 of 2013 (Amit Kapoor v. U.P.P.S.C. Through Secretary) decided on 15.3.2013. We find that the same is distinguishable on facts as in that case the caste certificate was not produced by the petitioner therein within the extended period of 21 days. In the present case, as we have already observed above, the no objection certificate of the petitioner was prepared and countersigned and also submitted on 13.9.2012, well within the extended period of 21 days of the interview.

11. However, considering the fact that the petitioner has approached this Court in its extraordinary discretionary and equity jurisdiction and what we find is that the petitioner had submitted the no objection certificate duly prepared and countersigned by the competent authority within 21 days of the interview, and even if it is presumed that the same was produced later but before the order of cancellation had been passed, the same ought to have been taken into consideration, especially keeping in view the subsequent decision of the Commission dated 18.8.2013. As such, in the aforesaid facts and circumstances, we are of the opinion that this writ petition deserves to be allowed.

12. Accordingly, this writ petition stands allowed. The order dated 12.3.2013 passed by the respondent No. 4 (Examination Controller, Public Service Commission UP, Allahabad) is quashed. The respondents are directed to grant appointment to the petitioner on the post on which he has been selected by the Commission in pursuance of the interview held on 28.8.2012, the result of which was published by the Commission on 10.10.2012. There shall be no order as to costs.