

**(2012) 08 AHC CK 0222**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No"s. 28151, 28421, 29019, 29635, 30028, 30069, 30518, 30760, 30803, 31526, 31716, 31726, 31774, 32246, 32672, 33007, 33024, 33105, 33954, 33963, 34208, 34872, 35268, 35361, 35391, 36212, 36582, 36694, 37246, 37535, 3790

Atul Kumar Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 30-08-2012

**Acts Referred:**

**Citation :** (2012) 9 ADJ 696

**Hon'ble Judges :** V.K. Shukla, J

**Bench :** Single Bench

**Advocate :** Ashok Khare and Siddharth Khare, for the Appellant; S.K. Srivastava, Rakesh Pandey and C.S.C., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Hon"ble V.K. Shukla, J.—Civil Misc. Writ Petition No. 28151 of 2012 has been filed with the prayer to quash the result declared by the Secretary, Electricity Service Commission, U.P. Power Corporation Ltd. Lucknow as published in the newspaper "Rashtriya Sahara", in so far as it includes the candidates in the select list, who have obtained DOEACC certificates between 28.12.2011 and 31.3.2012 as also the candidates included under the head "withheld DOEACC". Further prayer has been made to publish a revised result after excluding such ineligible candidates as are governed by prayer (a) and to publish a revised select list forthwith, and not to give any appointment in pursuance of the said select list. Civil Misc. Writ petition No. 36694 of 2012 has been filed with the prayer questioning the validity of the same result issued by the Secretary, Electricity Service Commission, U.P. Power Corporation Limited published in the newspaper "Rashtriya Sahara" dated 21.5.2012 in so far as it includes the candidates in the select list, who have obtained DOEACC certificates under the head "withheld DOEACC" with liberty to file such certificate up to 31.7.2012.

2. The other writ petitions of the bunch contain similar payer, as such entire bunch of writ petitions is being decided by one common judgment and the writ petition No. 28151 of 2012 is direct to be treated as leading writ petition, wherein pleadings inter se parties have been exchanged. Even some of the candidates who have been selected and have not been impleaded, are before this Court by means of Impleadment Application, Said application has been allowed by a separate order dated 17.8.2012.

3. Brief background of the case, as is reflected from the pleadings as set out in the records of writ petition, is that the Electricity Service Commission, U.P. Power Corporation Limited issued An advertisement No. 3-ESC/2011. Said advertisement was published in weekly newspaper "Rojgar Sangrah" dated 4-10th March, 2011, providing the qualifications as follows:

4. The selection in question was to take place on the basis of written examination and interview. The candidates who qualified the written examination, were to be called for interview. Total 16712 applicants had applied for the post in question; 13576 had appeared in the written examination held on 7.8.2011. In all 6288 candidates qualified in the written examination and they were required to appear in the interview, which was subsequently notified and scheduled to take place with effect from 28.11.2011 to 28.12.2011.

5. At the time when interview was to take place, various representations had been moved in respect of production of DOEACC certificates, one Raj Kumar Sonkar had preferred writ petition No. 72853 of 2011 before this Court seeking a direction that he be allowed to participate in the interview even in the absence of DOEACC certificate, as he had not been issued formal certificate although he had completed the course, in view of the fact that formal certificates had not been issued by the DOEACC society till that time or that the necessary additional qualification was in the process of acquisition and to give relaxation to the candidates regarding time for submission of DOEACC certificates, since the candidates in sufficient number had appeared for DOEACC, but formal certificates had not been issued by the society concerned. It is reflected that taking cognizance of the same, the President of the Electricity Service Commission addressed a letter to the Director, Personnel (Administration), U.P. Power Corporation Limited, seeking necessary direction. Thereafter the Director Personnel (Administration) prepared a note on the said letter of the President on 26.11.2011 recommending therein that since 2974 posts were to be filled up and the selected candidates had been called for interview on the basis of merit, the selected candidates be allowed to appear in the interview, as denial would give chance of losing meritorious candidates, and would violate the criteria of selecting best suitable candidates for the post in question, and the result of those candidates, who submit their certificates, be declared and the candidates, who have submitted formal certificate or failed to submit DOEACC certificate may be considered for selection subject to submission of necessary certificates within three months, but the appointment letters will be issued to such candidates only

after submission of such certificates. Said note was approved by the Managing Director/ Chairman vide letter dated 2.11.2011. The Chairman/Managing Director of the U.P. Power Corporation Limited proceeded to exercise its authority as provided under sub-rule (2) of Rule 45 of the U.P. Rajya Vidyut Parishad Parichalkiya Karmchari Varg Sewa Niyamawali, 1995, by relaxing the requirement of producing DOEACC certificate at the time of interview.

6. After the said decision had been taken, Press Release was issued on 28.11.2011 and in a number of leading newspapers, including Dainik Jagaran published from Varanasi and Gorakhpur, Amar Ujala, published from Agra and Meerut, Rashtriya Sahara and Times of India published from Lucknow, publication has been made and same was also displayed on the website of the Power Corporation and the Electricity Service Commission. In all 5687 candidates appeared for interview between 28.11.2011 and 28.12.2011, and thereafter final select list was prepared. It has been stated by the Corporation-respondents that the said final select list contained the names of 1509 candidates. This included the candidates, who had submitted DOEACC certificate as also the candidates in regard to whom intimation had been sent by the DOEACC society that they had completed 80 hours Course on Computer Concept. 110 candidates had submitted DOEACC certificate during the course of interview and thereafter 674 submitted DOEACC certificate after facing the interview before 28.12.2011 within a period of three months as provided in the decision already taken. Large number of candidates had not been in a position to submit their certificate, and on account of ban imposed by State Government, result had not been declared, request had come to extend the time, qua them, Chairman, once again on 22.4.2012, extended time to produce certificate. 156 candidates submitted their DOEACC certificate in between 29.3.2012 and 20.5.2012. 59 out of 600 candidates had submitted their DOEACC certificate. It has also been mentioned that relaxation in the period stipulated for submission of DOEACC certificate had been granted in bona fide exercise of authority. Such relaxation has been granted to eligible candidates selected on the basis of merit. Such decision was taken keeping in view the fact that DOEACC certificate was only an additional qualification and not the essential qualification.

7. The petitioners at this juncture have rushed to this Court complaining therein that the conditions mentioned in the advertisement qua the last cut of date cannot be relaxed, and the candidates, who were not in possession of DOEACC certificate on the date of interview, have to be declared as ineligible. This Court on 31.5.2012 in writ petition No. 28151 of 2012 has proceeded to pass order that till the next date of listing no candidate shall be offered appointment, if he has not possessed DOEACC certificate on the date of interview and the details have been asked for. Thereafter counter and rejoinder-affidavits have been exchanged in leading writ petition, and selected candidates in representative capacity have rushed to this Court, and with the consent of the parties, present matter is taken up for hearing and final disposal.

8. Sri Ashok Khare, Senior Advocate, assisted by Sri Sidharth Khare Advocate advanced argument by contending that in the present case the terms and conditions of the advertisement were clear and categorical that at the time of interview DOEACC certificate of at least 80 hours Course on Computer Concept was mandatory and the said certificate had to be produced at the time of interview, and in view of this, by no stretch of imagination, the candidates, who were not possessing such certificates at the time of interview, could have been selected by giving them further time to produce DOEACC certificate by 23.3.2012 and then 31.7.2012 by further extending the time for submission of DOEACC certificate, in view of this the rules of selection and appointment/recruitment have been changed while selection process was on, as such writ petitions deserve to be allowed.

9. Sri R.K. Ojha, Advocate, has partly supported the arguments advanced by Sri Ashok Khare, Senior Advocate, and submits that as far as extension of time up to 31.3.2012 was concerned, the same was rightful exercise, but thereafter extension of time up to 31.7.2012 is not at all subscribed by the rules and the same is arbitrary exercise of power, as for the said extension, no corrigendum, whatsoever, has been issued. All other counsels, representing the petitioners, have adopted the arguments advanced by Sri Ashok Khare, Senior Advocate.

10. Sri Rakesh Pandey, Advocate, appearing with Sri Sandeep Kumar Srivastava, Advocate, representing the U.P. Power Corporation Limited, submitted that in the present case, Rules in question had been recently amended on 29.1.2011, wherein additional qualification was added for the posts in question requiring the candidates to possess 80 hours course on Computer Concept issued by the DOEACC society, and as various representations had come forward, giving therein reasons for non-production of such certificates at the time of interview, the competent authority, i.e., Chairman /Managing Director of the Power Corporation Limited exercised his authority under Rule 45 of the U.P. Rajya Vidyut Parishad Parichalkiya Karmchari Varg Sewa Niyamawali, 1995 by extending the period for submission of DOEACC certificate, initially by 31.3.2012 and subsequently extending the same up to 31.7.2012 instead of submitting the same at the time of interview, and said exercise has been undertaken in order to ensure that the candidates who have succeeded in making place for themselves based on merit, do not loose their chance, as selection is based on merit, and as such no interference should be made.

11. Sri Shashi Nandan, Senior Advocate, assisted by Sri A. Chaturvedi, Advocate, submitted that in the present case authority to accord relaxation vests in the authority concerned, as such in the facts of the case, no interference should be made, and selected candidates, who have made place for themselves, opportunity be given to them to serve.

12. After respective arguments have been advanced, factual situation, which has so emerged in the present case is that the Electricity Service Commission issued advertisement inviting applications for filling up 2974 posts of Technician Grade-

II (Apprentice) in U.P. Power Corporation Limited. The advertisement was published in Rozgar Sangrah dated 04-10 March, 2011. The eligibility criteria provided for was High School or equivalent examination with Science and Arithmetic's from Madhyamik Shiksha Parishad together with two years experience in All India/ State Industrial certificate in electrical trade. In addition to the same, it was also mentioned that at the time of interview the incumbent was required to produce certificate obtained from the DOEACC society of having achieved 80 hours course on Computer Concept. In the advertisement, it was also clearly and categorically mentioned that the DOEACC certificate was required to be produced at the time of interview, in case it is not produced, then in that event the candidature of such candidates shall stand automatically ipso facto cancelled.

13. Written examination had been held on 7.8.2011. In all 6288 candidates qualified the written examination and they were required to face the interview, which was scheduled to take place between 28.11.2011 and 28.12.2011. Record in question reflects that before the interview could take place, a large number of representations had been moved, and even one writ petition No. 72853 of 2011 had been filed by one Raj Kumar Sonkar before this Court, seeking a direction to permit the incumbents to appear in the interview to such candidates also, who had not been issued DOEACC certificate. Keeping in view the large number of representations and realizing this fact that large number of candidates, who had succeeded in making place for themselves on the basis of merit, would be excluded from the zone of consideration at the time of interview in the absence of DOEACC certificates, the respondent-Corporation, referred the matter to the Chairman/Managing Director, and the said authority proceeded to exercise the authority vested in him under rule 45 of the U.P. Rajya Vidyut Parishad Parichalkiya Karmchari Varg Sewa Niyamawali 1995, relaxing the requirement of submission of DOEACC certificates at the time of interview. A note in this regard was prepared by the President of the Electricity Service Commission and the same was duly approved by the Chairman/Managing Director of the U.P. Power Corporation Limited by order dated 26.11.2011 according time up to three months to produce said certificates from the date of interview. Thereafter, Press Release was issued, and it was also placed on the notice board and website of the U.P. Power Corporation Limited. In newspapers also requisite publication was made. In all 5687 candidates had appeared in the interview, and the petitioners of the present bunch of writ petitions had also appeared in the interview between 28.11.2011 and 28.12.2011. Thereafter before the final select list had been published, again time provided for had been extended, and the petitioners have found that in the main select list they have failed to make place for themselves, then present writ petitions have been filed, contending therein that the changes affected midway were unjustifiable and by no stretch of imagination said exercise could have been undertaken.

14. As action taken is under the umbrella of Rule 45, this Court proceeds to consider the impact of Rule 45 of 1995 Rules. Same is extracted below:

15. As far as sub-rule (1) of Rule 45 is concerned, it is clarificatory in nature as it proceeds to mention that nothing contained in this Rule, shall be construed as meaning to limit or minimise the authority of Board in the matter of appointment/ control, to take any just and fair decision. Sub-rule (2) inheres authority in the Chairman, if in his opinion it is expedient, he can from amongst such Rules or from any other Rule, by according partial relaxation in the rules appointment can be done and any such appointment, which is not fully in accordance with the Rules, it would be presumed that the appointment has been done in accordance with these Rules.

16. This much is not in dispute in the present case that the Chairman/Managing Director of the Power Corporation Limited on 26.11.2011 had proceeded to pass an order according relaxation from producing DOEACC certificate at the time of interview, and this much is also reflected that when such decision had been taken, telephonic talk had been made by the DOEACC society, wherein the DOEACC society had informed that interim certificates had been issued and of the existing difficulties. Said period thereafter had been extended, as by that time on account of ban imposed by State Government, result had been kept on hold.

17. Counsel for the petitioners had placed reliance on the judgment of Apex Court, in the case of U.P. Public Service Commission v. Alpana, 1994 SCC (L & S) 742; Hemani Malhotra Vs. High Court of Delhi, ; K. Manjusree Vs. State of A.P. and Another, , submits that midway interference should not be made by introducing new procedure not substantiated by law. In the case of U.P. Public Service Commission v. Alpana, the candidate was allowed to appear in written examination, even though by the last cut of date, she was not possessing the degree of Bachelor of Law from a University established by law, and her appearance was not subscribed any Rule or practice. The Apex Court also took note of the fact that many candidates superior in merit may not have applied as the result of the examination was not declared. In the case of Himani Mehrotra (supra) and K. Manjushree (supra) introduction of minimum bench mark and introducing of minimum marks for interview in the midstream of the selection process has been held to be illogical. In none of the cases, the authority of relaxation has been there, and on facts, principle laid down therein will not apply.

18. Once authority to relax is there with the competent authority, then keeping in view the peculiar facts and circumstances as it existed at the given point of time, the authority concerned has proceeded to exercise the said authority so vested in him and the said exercise is not at all aimed to benefit any particular individual, rather said action is being taken in the direction of not compromising with the merit of the candidates. In view of this, the submissions, which have been advanced on behalf of the petitioners that such period could not have been extended while the selection process was ongoing, cannot be accepted, in the facts of the case on the premises that the Rules of game have been changed, keeping in view the language of the Rule 45 of the Rules, dealing with relaxation,

wherein such authority can be exercised, before making appointment. The intent behind conferment of such power in the high functionary, i.e., the Chairman is to remedy the situation, that may arise in myriad conditions, for the reasons spelt out. As per item No. 9 of Advertisement, selection was based on the basis of written examination + interview. Written examination was objective in nature carrying 150 marks for technical subject; 20 marks for general knowledge, 20 marks for reasoning and 10 marks for general Hindi. It was also mentioned therein that in reference of a candidate, who qualify the written examination, for the purposes of interview, separate information shall be given. Date of interview was not made known to the candidates, who were required to undertake the examination, and the same was to be fixed and informed accordingly, subsequently, after result of written examination had been declared, and said information was limited to only the candidates, who had qualified in the written examination. This much was also mentioned in the advertisement that at the time of interview, DOEACC certificate has to be produced, failing which candidature would stand cancelled.

19. In the present case, no change has been made in conducting the written examination on merit. Written examination has been held and based on qualifying test, interview was to take place. Date of interview was not known to any eligible candidate, who were entitled to apply, and in this background, such a situation cannot be conceived of, that many candidates may not have applied as result of examination was not declared before the last date of receipt of applications. Fixing date of interview, was exclusively within the domain of the respondents, and even after fixing of date of interview, the date of interview could have been differed, giving time to the candidates to produce respective DOEACC certificates, as per requirement of Rules and as per the terms and conditions of the advertisement, the DOEACC certificates were to be produced at the time of interview. Respondents, instead of proceeding to keep the interview on hold, in their wisdom, have chosen to proceed with the interview and to relax the condition of producing DOEACC certificates, at the time of interview, and accorded time to produce the same, within the extended time frame.

20. Once Rule making authority consciously has conferred such authority of according relaxation on the Chairman of the Commission and the Chairman in his wisdom in bona fide exercise of authority in order to advance the selection based on merit, has proceeded to take decision to accord time for production of such certificates, which in effect is additional qualification, with no impact on the merit status of respective candidate, selection being purely based on merit status of written examination and the interview, then in view this, the argument that the rules of game have been changed during the course of selection process or when it is over, cannot be accepted in the peculiar facts and circumstances of the case. Minimum required qualification has not at all been relaxed, the criteria of selection based on written examination and interview, has not at all been changed, the only relaxation has been accorded as to produce certificate subsequently.

21. Once such is the factual situation that the decision was taken to select the best suited candidates instead of making selection of less suited candidates keeping in view that large number of such candidates were not in a position to produce 80 hours course on Computer Concept, and qua whom the DOEACC society had already requested, and as the Rules in question had been amended, thereafter for the first time selection proceeding had been undertaken, then remedial measure has been taken by relaxing the condition of producing certificate at the time of interview. Once authority of relaxation is provided for in the Rules, the said authority can be exercised, but the said exercise has to be undertaken bona fide, serving the best interest of the department concerned by giving reasons, and here before interview started, decision had been taken to give extra time to produce DOEACC certificate, and reason for extending such time has also been given, so that only the candidates who stand on merit are there and thereafter once again before final result had been declared, said period had been extended. Therefore, the suggestion that the rules of the game has been changed, cannot be accepted, inasmuch as production of DOEACC certificate at the time of interview was an additional requirement and the selection was to be made on the basis of merit based on the marks obtained in the written examination and the interview. In view of this once time period has been extended for producing DOEACC certificate and each one of the petitioners have taken chance and have failed to make place for themselves on merit, then basing their claim on default cannot be subscribed by this Court. Consequently, in view of what has been discussed, writ petitions are devoid of substance, and they are being dismissed.