
(2015) 08 AHC CK 0168

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 45209 of 2015

Dinesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2015) 10 ADJ 567 : (2016) 114 ALR 323 : (2015) 4 UPLBEC 2814

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Jagannath Singh and Mahendra Pratap Singh, for the Appellant; Ajay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner who is a practicing advocate appeared in the U.P. Judicial Service Examinations for recruitment of Civil Judge (Junior Division) in 2003, 2006, 2012 and 2013. In each of those attempts, he was unsuccessful. In these proceedings, the petitioner seeks to challenge the validity of the third proviso to Rule 10 of the Uttar Pradesh Judicial Service Rules, 2001 (Rules of 2001). Rule 10 provides as follows:

"10. Age.--A candidate for direct recruitment to the service must have attained the age of 22 years and must not have attained the age of more than 35 years on the first day of January next following the year in which the notification for holding the examination by the Commission inviting applications, is published:

Provided that the upper age limit shall be higher by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time:

Provided further that where a candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, he shall be deemed to be eligible in age to appear in the next following examination:

Provided also that the maximum number of chances a candidate is permitted to take will be four."

The submission which has been urged on behalf of the petitioner who claims to belong to the scheduled caste category is that the restriction on the maximum number of four chances to appear in the examination cannot be enforced having due regard to the provisions of Rule 38. Rule 38 provides as follows:

"38. Savings.--Nothing in these rules shall affect any order passed under the Uttar Pradesh Nyayik Seva Niyamawali, 1951 or reservations and other concessions required to be provided for the candidate belonging to the Scheduled Castes, Scheduled Tribes and other special categories of person in accordance with the orders of the Government issued from time to time in this regard."

2. The submission is that there was no provision restricting the number of chances in the earlier Rules of 1951 (The Uttar Pradesh Nyayik Seva Niyamawali, 1951) and Rule 11 which specified age requirements (which corresponds to present Rule 10 of Rules of 2001) did not contain a provision analogous to the fourth proviso. Hence, it is urged that in the absence of such a restriction in the Rules of 1951 the same benefit must enure to the petitioner by virtue of Rule 38.

3. Rule 10 of the Rules of 2001 restricts the maximum number of chances to a candidate at four. The third proviso forms part of the Rules which prescribes a minimum and maximum age in respect of direct recruitment to the service. A candidate should have attained the age of 22 years but must not have attained more than the age of 35 years on the first day of January next following year in which the notification for holding the examination by the Uttar Pradesh Public Service Commission is published, inviting applications. The first proviso relaxes the upper age limit by five years to persons belonging to Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time. The second proviso deals with a situation where a person was eligible in age to appear at the examination in any year of recruitment in which no such examination was held in which event, he shall be deemed to be eligible at the next examination.

4. The rule making authority has evidently considered it necessary in the interest of the service to confine the maximum number of attempts which a candidate can take for appearing at the examination. It may be that in the earlier Rules of 1951, there was no such bar but that does not render the present provision unconstitutional. The issue is whether the rule making authority in regulating entry into service is entitled to prescribe the maximum number of attempts which a candidate should be allowed. The answer to that must be plainly in the affirmative. A candidate cannot assert a vested right to appear an unlimited number of times, subject to fulfilling the maximum age limit. Such a provision is intended to ensure that candidates should have a fair opportunity of attempting the examination but if after even availing of a number of chances which is regarded as fair and reasonable, a candidate is not able to qualify in the

examination, the selection process should not be burdened by having to deal with such candidates. This is a fair assessment, which cannot be questioned since it intrinsically is an issue of policy.

5. The submission which is based on Rule 38 is lacking in substance. What Rule 38 preserves is any order passed under the Rules of 1951 or reservations and other concessions required to be provided to candidates belonging to Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders of the Government. This has absolutely no bearing on the constitutionality of the third proviso to Rule 10 of the Rules of 2001.

6. In this view of the matter, the challenge is lacking in substance. The petition is, accordingly, dismissed. There shall be no order as to costs.