
(1994) 01 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28563 of 1993

Dinesh Kumar Garg

APPELLANT

Vs

Public Service Commission and Others

RESPONDENT

Date of Decision : 19-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 AWC 835 : (1994) 2 UPLBEC 1112

Hon'ble Judges : S.R. Misra, J;B.M. Lal, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Misra, J.—By means of present writ petition, Sri Dinesh Kumar Garg seeks directions in the nature of writ of certiorari quashing the impugned order dated 3-5-1993 passed by Public Service Commission, Uttar Pradesh, Allahabad Respondent No. 1 and, a writ of mandamus, commanding the Respondents to issue appointment letter for the post of District Information Officer to the Petitioner.

2. The facts giving rise of the present petition are that in response to an advertisement issued by Public Service Commission, Uttar Pradesh, Allahabad (for short "UPPSC"), being advertisement No. 3/89-90, for various posts, including six posts of Information Officer, in the pay scale of Rs. 770, 1600, the Petitioner applied for the post of District Information Officer (hereinafter referred to as the post"). Necessary qualifications for the aforesaid posts are given as under:

Six Information Officers....

Qualifications: Essential (1) Bachelor's Degree from a University established by law in India or a degree recognised by Government as equivalent thereto, (2) Working knowledge of Hindi, English and Urdu. (3) Diploma in Journalism.

Preferential: Served in the Territorial Army for a minimum period of two years, or, obtained "B" Certificate of National Cadet Corps.

3. Since the Petitioner's case is confined to District Information Officer in the present petition, it is, therefore, not necessary to make any comment in regard to other posts.

4. According to the Petitioner, after completion of M.A., L.L.B., he also did his Graduation in Diploma course in 1986 from the University of Allahabad. He also claimed that he is possessed of working experience in Journalism for a period of five years (1-7-1984 to 1-7-1989). He also made a mention in his application that he is possessed of working knowledge in three languages, i.e., in Hindi, English and Urdu.

5. According to the Petitioner, the UPPSC scrutinised the application forms of the candidates, including that of Petitioner and it found the form submitted by the Petitioner to be complete in all respects. It found that Petitioner fulfils all necessary qualifications specified in the aforesaid advertisement .

6. Accordingly, the Petitioner was called for an interview vide letter dated 4-3-1993 and he was interviewed on 19-4-1993. According to the procedure prescribed, the Petitioner was also required to submit another form at the time of interview regarding his qualifications and other particulars in pursuance of the aforesaid advertisement.

7. The Petitioner further alleges that some of the candidates, who did not fulfil essential qualifications, were not allowed to participate in the interview by the UPPSC However, so far as Petitioner is concerned, the Chairman of the Interview Board categorically made an endorsement to the effect that the Petitioner was eligible for Interview, and, after making all sores of necessary queries ,the Petitioner was ultimately allowed to participate in the interview.

8. However, after the aforesaid interview of the Petitioner was over, all of sudden the UPPSC, through its letter dated 3-5-1993 (Annexure 9) rejected the candidature of the Petitioner on the ground that he does not have working knowledge of Urdu. The exact wordings are "Chunki Unhe Urdu Ka Kahyakari Cyan Nahin Hai" Thus, the candidature of the Petitioner was rejected on the sole ground that he does not possess working knowledge in Urdu. Aggrieved, the Petitioner has approached us by means of the present writ petition.

9. Counter and rejoinder affidavits have been exchanged in the present case and with the consent of the learned Counsel for the parties, we are finally deciding the present writ petition in accordance with Rules of the Court.

10. Learned Counsel for the Petitioner contended that a list of successful candidates was prepared by the UPPSC on 18-4-1993. From the material available on record, he drew our attention to the fact that in respect of another candidate, who was not possessed of requisite certificate, the UPPSC granted him time for producing the same. However, no such opportunity was given to the

Petitioner. Even otherwise, some of the selected candidates did not possess necessary qualification of Diploma in Journalism, either Graduate, or Post Graduate, whereas the Petitioner is possessed of Diploma in Journalism. According to the learned Counsel, once the Petitioner was found to have fulfilled requisite qualifications in accordance with the advertisement by thorough scrutiny of the form submitted by the Petitioner, and called for interview, his candidature could not be rejected in the manner, as has been done in the present case. It is not the case of the UPPSC that during the course of interview the Petitioner failed to pass requisite test. The only ground disclosed by the UPPSC is that the Petitioner does not fulfil essential qualifications of working knowledge in Urdu.

11. The Petitioner has attached a certificate in support of his case that he offered Urdu as one of his subjects in Class VIII. This aspect of the matter was examined at the time of interview but thereafter rejection of the candidature of the Petitioner amounts to rejecting application of the Petitioner for non-fulfilling essential qualifications, which is erroneous on the face of it and it amounts to rejection on a point, which was not supported by materials on record. Thus, this act of the UPPSC was arbitrary and without jurisdiction.

12. On the other hand, Sri V.M. Sahai, learned Counsel for the UPPSC defended the order on a number of grounds, He also raised a preliminary objection that the writ petition was filed before a Single Judge, although it was cognizable by a Division Bench. Thus, the writ petition deserves to be dismissed on this ground alone.

13. So far as preliminary objection is concerned, as the matter is listed before a Division Bench, the technical objection of presenting the writ petition before a Single Judge is, by implication cured as the case is being heard and disposed of by Division Bench which alone is competent to look into the matter and decide the controversy.

14. It was next contended by Sri Sahai that it was within the domain of the UPPSC to take a decision in the matter of selection of candidates, and, no opportunity of hearing was required to be given. According to him, the Petitioner does not possess minimum essential qualification and the moment it was detected, the candidature of the Petitioner was rejected. Thus, the order is eminently just and correct and calls for no interference.

15. Before dealing with the case on merits, we would like to take note of the fact that it is not a case where Interview Board has exercised its jurisdiction as to whether, on being interviewed, a candidate was found fit, or, unfit. Finding a candidate fit or unfit in the Interview is certainly well within the domain of the UPPSC but that is not the case here. The Petitioner, in the present case, was interviewed and his candidature was subsequently rejected on the ground that he does not: possess working knowledge in Urdu. After interview, rejection of candidature on the ground of non-fulfilment of essential qualification has to be

considered and judged on merits. We will, therefore, examine on merits as to whether the Petitioner fulfills requisite qualification, as prescribed in the advertisement or not.

16. After carefully going through the materials available on record and considering the submissions advanced before us by the learned Counsel for the parties, we are of considered opinion that after the interview was over, in which the Petitioner participated, UPPSC was not legally justified in rejecting candidature of the Petitioner. Rejection of application after interview means that after receipt of the application form of the Petitioner, the Petitioner was lacking inherent requisite qualification and his candidate was rejected on that ground. It is not the case of the UPPSC that Petitioner had withheld any information, or, that there was any over act on the part of the Petitioner on the basis of which he participated in the interview. UPPSC scrutinized the application form submitted by the Petitioner with open eyes, wherein the Petitioner specifically mentioned that he has working knowledge of Urdu. Before interview, when the Petitioner filled in yet another form, there too he made a mention that he studied Urdu upto VIIIth standard. Thus, there was no concealment of fact from the side of the Petitioner. In case UPPSC still wanted satisfaction on the question of study of Urdu upto VIIIth standard it ought to have asked the Petitioner to produce a certificate as was done in respect of other similarly placed candidates. Thus, without affording any opportunity to the Petitioner for producing requisite certificate, abrupt rejection of his candidature on the sole ground of non-possession of working knowledge in Urdu, is erroneous on the face of it.

17. The Petitioner has annexed a certified copy of the mark sheet of Class VIII showing that the Petitioner has studied Urdu in Class VIII. The original certificate and was also produced before us. We have examined the said certificate and Sri V.M. Sahai, learned Counsel for the UPPSC also perused the same. After perusal of the same, Sri Sahai did not dispute the legality and correctness of the said certificate. We are, therefore, of the firm view that Petitioner has studied Urdu upto Class VIII and, thus, we can safely infer that he does possess working knowledge in Urdu. We are also in agreement with the learned Counsel for the Petitioner that once the Petitioner was allowed to face interview, and the Chairman of the interview Board was fully satisfied that he fulfilled all requisite qualifications for the post in question, there was no justification for rejection of his candidature on the ground that he did not have working knowledge of Urdu. Even if the Commission wanted its satisfaction, the Petitioner ought to have been afforded an opportunity of producing necessary certificate and in the absence of such opportunity, the order of rejection is bad on this score also.

18. It has been next contended by the learned Counsel for the Petitioner that "working knowledge" is a vague term and the general interpretation of this term should mean that a person, who understands a language. When the Petitioner fulfils the requisite qualifications by possessing Bachelor of Arts degree, from University of Allahabad, Diploma in Journalism and working knowledge in Hindi,

English and Urdu, it cannot be said that the Petitioner did not fulfil essential qualifications in support of his case, he also submitted certificate so the effect that he studied Urdu upto Class VIII, which fact has not been denied. As such, when there was no requirement that the candidates must possess a minimum degree of "Graduation" or "post Graduation" in Urdu, it is sufficient for fulfilling the qualification of "working knowledge" that the Petitioner had studied Urdu upto class VIII. It is also not the case of the UPPSC that at the time of interview Petitioner showed his ignorance about working knowledge in Urdu.

19. Looking into all these aspects of the matter, we are left with no other option but to draw an inference that the Petitioner is possessed of all requisite qualifications prescribed in the advertisement in question, including working knowledge of Urdu. As already stated even if original certificate of Class VIII was not before the UPPSC, it was incumbent on the part of the UPPSC to have afforded an opportunity to the Petitioner for producing the same. In the case of Syed M.A. Abbas Naqvt UPPSC allowed him 15 days time to produce five years experience certificate and Journalism. However, this was not done in the case of the Petitioner.

20. It is true that in the normal circumstances if the UPPSC rejects form of a candidate for valid reason, even at the time of interview, no interference is called for in the writ jurisdiction as the same is well within the domain of the UPPSC. But where an abnormal procedure is adopted by the UPPSC, as has been done in the present case, by rejecting the candidature of the Petitioner, after scrutinising his application form with open eyes and allowing him to appear in the interview by finding him fully eligible, we are bound to interfere with such arbitrary and illegal order under Article 226 of the Constitution of India.

21. The facts of the present case clearly demonstrate that the UPPSC has acted arbitrarily and illegally in rejecting the claim of the Petitioner. Decision as to whether Petitioner did possess working knowledge of Urdu, or not, should have been taken before interview, or, even at the time of interview. Once the interview was over and Petitioner was found to have requisite qualifications, even the principle of estoppel would apply in the present case.

22. In view of what has been said above, we are of opinion that the impugned order passed by the Respondent No. J, dated 3-5-1993, is liable to be quashed.

23. In the result, the writ petition succeeds and is allowed. The Impugned order dated 3-5-1993 contained in Annexure II, is hereby quashed. The Respondent No. 1 is directed to declare the result of the Petitioner ignoring the order of rejection of his candidature, in accordance with law. We make it clear that this Court, by order dated 16-8-1993, directed the UPPSC to keep one post vacant till 30-9-1993. Thus, the UPPSC will have no difficulty in complying with this order of this Court, by absorbing the Petitioner on the aforesaid post.