

(2010) 10 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 63688, 63945 and 64381 of 2010

Dr. Abhishek Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Uttar Pradesh Dental Surgeons Service Rules, 1979 — Rule 15(2), 6
Uttar Pradesh Public Service Commission (Procedure of Conduct and Business) Rules, 1976 — Rule 53, 54

Citation : (2011) 1 UPLBEC 269

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Singh and Sabhajeet Yadav, JJ.—These are three writ petitions in which common question is involved for being decided and, therefore, Sri R.K. Ojha, learned Advocate and other learned Advocates appearing in other petitions were jointly heard in support of their respective petitions and Sri Baghel, learned Senior Advocate appearing for the U.P. Public Service Commission (hereinafter referred to as the Commission).

2. In all the three writ petitions action of the Commission of not allowing the Petitioners to appear in the interview for the post of Dental Surgeon pursuant to the advertisement dated 29.8.2009 is under challenge.

3. In one of the writ petition a declaration is also sought on the method of short listing of the candidates for the post in question.

4. Submission of the learned Counsel for the Petitioners which was vehemently pressed is that short listing done by the Commission on the basis of the marks of B.D.S. Course, without having any screening test is illegal and is not justified.

5. Sri Ojha, learned Advocate submits that in the general instructions published

in the advertisement it is provided that screening test is to be held in case of large number of applications are there. Clause 8 of the general instructions relevant for our purpose is quoted here:

In case of large number of applications for any post/posts, the Commission may hold screening test which will be communicated in due course.

6. In respect to the aforesaid Sri Ojha also placed decision of the Commission dated 5.8.2008 in which there is mention that if the number of post is more than 50 and the Applicants are about 1000 i.e., 1 post with the ratio of the 20 Applicants then screening examination is to be conducted.

7. To support the submission that Commission has no right to deviate from the criteria so mentioned in the advertisement and if that is so then exercise is faulty, reliance has been placed on the decision of the Apex Court in the case of Amlan Jyoti Borooah Vs. State of Assam and Others, and the decision given by the Apex Court in the case of B. Ramakichenin @ Balagandhi Vs. Union of India (UOI) and Others,

8. In response to the aforesaid, Sri Baghel submits that holding of the screening examination is not the part of the terms/criteria as mentioned in the advertisement rather that is mentioned in the general instructions which is just for guidance.

9. It is submitted that service rules i.e., U.P. Dental Surgeons Service Rules, 1979 (hereinafter referred to as Rules of 1979) under which selection is to take place clearly provides for selection on the basis of the interview only and no written examination is provided therein.

10. Rule 15(2) of the Rules of 1979 is to be quoted here:

(2) The Commission, shall, having regard to the need for securing due representation to the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories in accordance with Rule 6, call for interview such candidates as fulfil the requisite qualifications.

11. It is further submitted that the rules framed by the Commission which is known as U.P. Public Service Commission (Procedure and Conduct of Business) Rules, 1976 (hereinafter referred to as the Rules of 1976) gives a discretion to the Commission in respect to the decision about preliminary weeding of the candidates and admitting such number of candidates to interview as it deems fit.

12. Rules 53 and 54 of the Rules of 1976 which are relevant for our purpose are quoted herein below:

53. Selection by Direct Recruitment.: The advertisement for selection to various posts by direct recruitment shall be issued and application from eligible candidates invited by the Commission in accordance with the provisions of service rules or adhoc principles agreed to by the Commission where there are no service rules.

54. Notes for preliminary weeding of candidates shall be submitted in the manner prescribed, to the Commission, and the Commission shall admit such number of candidates to interview as they deem fit.

13. It is then submitted that as 60 posts were advertised and number of candidates are hardly about 2500, holding of screening test was not required and it is only in the contingency of there being large number of applications a decision may/may not be taken for holding screening test. The general instructions in this respect (Clause 8) which has been relied also speaks about the same thing and thus submission of holding the preliminary test is totally misconceived and uncalled for.

14. Submission is that for one post eight candidates have been called and thus candidates up to the merit of 65% have been called for the purpose and, therefore, criteria which cannot be said to be arbitrary or something whimsical is there for the purpose of short listing, which is not to be interfered. Argument is that short listing of candidates has been already approved by the Apex Court and by this Court and, therefore, the claim of the Petitioners is not at all justified.

15. Lastly, it is submitted that the Commission already intimated rejection of the candidature of the Petitioners long back but in none of the writ petition there is challenge to the decision rather writ of mandamus is prayed but in any view of the matter even if the merit in the decision of the Commission is considered no fault can be pointed out.

16. Lastly it is pointed out that interview is to start from 26.10.2010 and on the facts it is not a fit case for interference for an added reason that another writ petition on the same issue i.e. Writ Petition No. 63075 of 2010, Rahul Pandey and Ors. v. State of U.P. and Ors. has already been dismissed by this Court on 21.10.2010.

17. In view of the aforesaid, we are to consider the merit in respect to submission of the parties.

18. At the very outset we are to observe that service rules under which the selection is going to take place clearly provides the selection only by the method of the interview and no written examination is provided.

19. Rule 15(2) of the Rules of 1979 clearly states that Commission keeping in mind various factors call for interview such candidates as fulfil the requisite qualifications.

20. The business Rules 1976 as available with the Commission clearly states that for selecting the candidates to various posts by direct recruitment, requisite advertisement shall be issued and eligible candidates will be invited in accordance with the provisions of the Service Rules.

21. The service rules under which selection is to take place provides the selection only by interview and, therefore, the Commission is bound to call the candidates

for interview in accordance with the provisions of service rules.

22. Besides the aforesaid, the Commission has been given discretion for preliminary weeding of candidates and to admit such number of candidates to interview as the Commission deems fit.

23. The language of Clause 8 of general instructions of the advertisement also gives full discretion to the Commission for holding/not holding screening test.

24. So far the decision given by the Apex Court in the case of Amlan Jyoti Borooah (supra) is concerned suffice it to say that in the advertisement itself as a part of the criteria for selecting the candidates, holding of the written test and then the physical test was provided and thus any deviation was held to be a change in the basic terms/criteria which is not the situation here and thus Petitioners cannot get any help from the aforesaid decision.

25. In other decision given by Apex Court in the case of B. Ramakichenin alias Balagandhi (supra) in the advertisement itself as essential qualification, experience of two years in extension work was provided and basic eligibility was M. Sc. Degree and therefore the stand for not calling the candidates not having 2 years experience after M. Sc. Degree was found to be not correct and the denial to the candidates was disapproved.

26. So far the binding factor in respect to the terms of the advertisement that can be a case of strict adherence but so far the instructions and guidelines so contained in the advertisement is concerned that can be a matter of taking care by the candidates so as to avoid any inconvenience.

27. In a judgment given by the Apex Court in the case of Poonam Vertna and Ors. v. Delhi Development Authority reported in (2007) 13 SCC 154, relevant observation for our purpose can be quoted below:

27. Guidelines per se do not partake of the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Mr. Ram Prakash Himself has relied upon a decision of this Court in Narendra Kumar Maheshwari v. Union of India, wherein it has been laid down:

107... This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.

28. Guidelines being advisory in character per se do not confer any legal right.

(Emphasis supplied by us)

28. In view of the observations as made by the Apex Court in relation to the guidelines/instructions, it is clear that they by itself have no character of the statute unless the statutory backdrop is there. They have only an advisory role and the deviation is always permissible if the facts and situation so warrants. The general instructions /guidelines being advisory in nature do not confer any legal right unless it is demonstrated to be arbitrary, discriminatory or is so fundamental as to hit the basic public purpose for which it was intended to achieve.

29. In view of undisputed facts it is clear that candidates in the ratio of 1:8 are called for interview and thus candidates up to the cut of marks of 65% were called. Service Rules permit the selection only by holding interview. Number of applications as noted above are not huge on account of which the decision of the Commission for not holding the screening test cannot be said to be arbitrary or whimsical. Commission is to call the candidates for selection in accordance with the concerned service rules. Commission is conferred with the discretion of holding or not holding the screening test and the decision of the Commission so relied cannot be treated to be a mandate in the given set of facts. The decision of the Commission and the facts as mentioned in the general instructions has to be treated /accepted to be just advisory and guidelines and thus irrespective of the technical submission from the side of the Petitioner its non observance cannot vitiate selection process and that can not give any right to the Petitioner to challenge the same.

30. On the facts and totality of circumstances we are satisfied that decision of the Commission about calling of the candidates up to a particular cut of marks without holding any screening test, keeping in mind the number of applications form cannot be said to be illegal, arbitrary so as to entitle the Petitioners to get the writ issued.

31. For the reasons given above, we are not satisfied that any relief is required to be given to the Petitioners.

32. Writ petitions fail and they are dismissed.