
(2005) 03 AHC CK 0200

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20045 of 2005

Dr. Pradeep Kumar

APPELLANT

Vs

Regional Ayurvedic/Unani Officer, Director, Ayurvedic and
Unani Services and The State of U.P.

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Citation : (2005) 5 AWC 4751 : (2005) 2 ESC 1197 : (2005) 105 FLR 777 :
(2005) 2 UPLBEC 1774 : (2005) 2 UPLBEC 1448

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : A.R. Dube, for the Appellant; C.K. Rai and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

B.S. Chauhan, J.—This writ petition has been filed for restraining the respondents from excluding the petitioner from consideration for the post in issue in view of the advertisement which provides for preference to the candidates who had acquired post-graduate degree from the Universities of the State of U.P.

2. Petitioner apprehends that in view of the aforesaid condition No. 1 incorporated in the advertisement, his candidature itself may not be considered. Hence, the present petition.

3. Shri C.K. Rai, learned Standing Counsel appearing for the respondents has submitted that the apprehension of the petitioner is totally misconceived for the reason that "preference" does not mean rejection of the candidature of any other person; it comes into play only if other qualities of candidates are equal. Thus, the petition is liable to be dismissed.

4. We have considered the submissions made by learned counsel for the parties and persused the record.

5. In Sher Singh Vs. Union of India (UOI) and Others, the Hon''ble Apex Court

considered the expression "preference" and held that "preference" amongst other means prior right, advantage, precedence etc. It signifies that other things being equal one will have preference over the others.

6. In *Executive Officer Vs. E. Tirupalu and others, C.R. Siva Reddy and another, T. Venkateswarlu and another, C. Vani, , the Hon"ble Supreme Court* held that where Rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied irrespective of the merit of the candidate, the inmates have to be given appointment. It means that the merit of the candidates being equal, "preference" should be given to the inmates of the class which is to be given preferential rights and it certainly does not mean an automatic appointment or preference over other candidates merely on the ground of possessing a particular qualification providing for preference.

7. In *Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, , the Hon"ble Apex Court* has categorially held that preferential qualifications do not, as a matter of right, entitle to selection for the reason that when an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference would be given for higher qualification/experience, the only meaning it conveys is that some additional weightage has to be given to the candidate having higher qualification/experience.

8. It cannot be construed to mean that: a person with higher qualification/experience is automatically entitled to be considered separately for appointment as the authority has to apply its mind on evaluation of merit and selection of candidates. Competence and merit of the candidate are adjudged not on the basis of the qualification/experience only, but also taking into account: other necessary factors like the career of the candidate throughout his educational curriculum, experience in the field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post. In such a fact situation, the "preference" rule was upheld by the Apex Court on the ground of higher qualification in *Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, .*

9. The word "preference" is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular

candidate is in possession of an additional qualification on the basis of which, a preference has also be envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The "preference" envisaged in the Rules, under the scheme of things and contextually also cannot mean, an absolute en block preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. (Vide The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others,

10. In view of the above, the law can be summarised that the word "preference" means the act of preferring one thing above another or choice of one thing rather than other. The "preference" comes into play only if other quality marks of the different candidates are equal, otherwise not.

11. In view of the above, we dispose of this writ petition observing that the petitioner or other similarly situated candidate shall not be excluded from the process of selection and they will be considered along with the candidates who had acquired degree from the Universities in the State of U.P. and only if they get equal quality marks, then those candidates will be given "preference" over others.