
(2008) 08 UK CK 0038

In the Uttarakhand High Court

Case No : Writ Petition No. 254 of 2007 (S/B)

Dr. Ramesh Chand Tiwari and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Ayurvedic and Unani Degree College Lecturer Service Rules, 1990 —
Rule 15, 15(3), 6

Citation : (2009) 4 SLR 206 : (2009) 1 UC 138

Hon'ble Judges : V.K. Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; J.P. Joshi, Chief Standing Counsel for Respondent No. 1, B.D. Kandpal, for Respondent No 2. and Manoj Tiwari, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—With the consent of the learned Counsel for the parties, this petition is being disposed of finally today at the motion hearing stage without admitting it for hearing.

2. Respondent No. 2, Uttarakhand Public Service Commission invited applications from eligible candidates for appointment to the posts of Professors, Readers and Lecturers in Ayurvedic Colleges of the Government of Uttarakhand in various specialties. In this petition, we are concerned only with the selection on the posts of Lecturers because all the four Petitioners considering themselves eligible applied for the posts of Lecturers. Rule 15 of U.P. Ayurvedic and Unani Degree College Lecturer Service Rules, 1990 is the only Rule relevant for the procedure to be adopted for selection. It reads thus:

15. Procedure for direct recruitment -(1) Applications for being considered for selection shall be invited by the Commission in the prescribed form notified by the Commission.

(2) The Commission shall having regard to the need for securing due representation of the candidates belonging to Schedule Castes, Schedule Tribes and other categories in accordance with Rule 6 call for interview such number of candidates who fulfill the requisite qualifications as they consider proper.

(3) The Commission shall prepare a list of candidate in order of their proficiency as disclosed by the marks obtained by each candidate in the interview. If two or more candidates equal marks the Commission shall arrange their names in order of merit of the basis of their general suitability for the service. The number of the names in the list shall be larger (but not larger by more than 25 per cent) that number of vacancies. The Commission shall forward the list to the appointing authority.

3. Under Sub-rule (3) of aforesaid Rule 15 it is clear that the interview of the candidates is the only method of selection and the marks obtained in the interview alone would be the determinative factor in deciding the merit of the individual candidate or the inter-se merit of all the appearing candidates. As per Sub-rule (3) (supra) since no other mode of selection has been prescribed in Rule 15 or elsewhere, it becomes abundantly clear that the candidates have to be subjected to interview for selection and the marks obtained at the interview would decide the merit of the candidates.

4. The question which arises for our consideration in this case is how many out of the eligible candidates, and in what manner, were required to be called for interview.

5. In para 3 (iv) of the counter affidavit filed on behalf of Respondent No. 2 it has been stated that for two posts against the general category of Lecturers in the specialty of Dravya Gun 57 persons had applied, out of which 50 candidates were found eligible. For the post of Lecturer (Kaya Chikitsa) against four posts in the general category, 96 candidates had applied, out of which 88 were found eligible. For the post of Lecturer (Sharir Rachna) against the solitary post in the general category, 33 persons had applied, out of which 29 were found eligible. The Commission's stand is that for each post 10 candidates (or the requisite number, whichever is less) were required to be called for interview. We do not want to dwell into this aspect of the matter.

6. The only issue which thus arises for our consideration in this petition is this: How should the Commission decide as to which 10 (or shorter number) out of the candidates who had applied should be called for interview ? The answer which is non-controversial is that of course 10 best candidates out of the total candidates who have applied had to be picked up for being called for interview. The corresponding question which thus arises is: How to determine, based on merit, as to which were the best 10 candidates to be called for interview.

7. It is nobody's contention before us that any guidelines have been prescribed or laid down in the Rules for deciding as to who, and in what manner should be called for interview. In para (10) of the Advertisement No. 3/Service/2004-2005

the Commission itself has stipulated as under:

10. In the event of there being a high number of Applicants applying for a post, at the discretion of the Commission, a screening test can be held.

8. This gave a clear indication that if the number of Applicants applying for a post was high, a screening test could be held to select the best candidates. The Commission did not adopt the procedure of holding the screening test. Instead, the Commission adopted a procedure neither mentioned in the advertisement nor prescribed anywhere in the Rules. It decided to evaluate the merit of the candidates based on the marks obtained in the B.A.M.S. Examination and based on such evaluation it called the top ten candidates in order of merit. It is this action of the Commission which is under challenge in this petition filed by four Petitioners under Article 226 of the Constitution of India.

9. It has now been established (since long) that merit (marks) obtained in the graduation (M.B.B.S. or B.A.M.S.) examination does not determine and should not determine the eligibility of the candidates for their admission in the post-graduate courses. The criterion for admission in the post-graduate courses is the entrance test of graduates because the entrance test alone, objectively and rationally, determines the merit of the candidates for admission in the post-graduate courses. In the celebrated judgment of the Supreme Court in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , their Lordships of the Supreme Court held as under:

28. This argument ignores the reasons underlying the need for a common entrance examination for postgraduate medical courses in a State. There maybe several universities in a State which conduct MBBS courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the MBBS Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS Examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS Examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where

stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialized education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized postgraduate education which is one step below the superspecialities.

10. Marks obtained at the BAMS Examination which undoubtedly can be equated with MBBS Examination in Allopathic Branch of medicine cannot and should not determine the merit of such candidates who have passed post-graduation examination in any Ayurvedic subject/speciality. It is the common case of the parties before us that in the post graduation examination no marks are allotted. Once the Commission had itself decided (and indicated so in the advertisement) that in ease of high number of candidates the procedure of screening test would be adopted for selecting top suitable & best candidates for being called for interview, the Commission ought not have deviated from that procedure, should not have made a departure and should not have taken a recourse to a procedure which is not based on sound policy and objective criteria nor has it any support from the Rules. At the risk of reiteration we do wish to emphasize that marks obtained in the BAMS Examination should not be and could not be taken as any indicator of the inter-se merit of the appearing candidates because, as indicated in the aforesaid judgment of the Supreme Court marks obtained in the B.A.M.S. Examination can vary from candidate to candidate, institution to institution, university to university and circumstances to circumstances. These marks do not reflect the true and correct merit of the contending candidates. The best way to determine their merit for being called for interview is to hold entrance test which the Commission in the present case termed as "screening test". All the candidates who applied and who were found eligible should have been subjected to screening test and based upon merit obtained in the screening test the top candidates in order of merit should have been called for interview.

11. Based on the aforesaid discussion and reasoning, we have no hesitation in holding and declaring that in the present case the Commission has violated Article 14 of the Constitution of India by adopting an arbitrary procedure which has resulted in a hostile discrimination to the Petitioners. The procedure adopted by the Commission according to us has no nexus to the object sought to be achieved.

12. The writ petition accordingly is allowed. Interviews which the Commission

has conducted pursuant to the advertisement in question and based upon the merit arrived at and on taking into consideration BAMS marks is hereby quashed and set-aside. The Commission is directed to hold screening test of all the eligible candidates for the posts of Lecturers in the specialties concerned and strictly in order of merit as obtained in the screening test, requisite number of candidates should be called for interview.

13. No order to as to costs.