
(2018) 02 AHC CK 0018
In the Allahabad High Court
Case No : 733 of 2010

Km. Anjuman Upadhyay

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0018

Hon'ble Judges : Bharati Sapru, Neeraj Tiwari

Bench : Division Bench

Advocate : K.K. Pandey, Ashok Khare,V. Singh,Arun Kumar,R.S. Misra

Final Decision : Dismissed

Judgement

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri V. Singh and Sri K.K. Pandey, learned counsel for the appellant, learned Standing Counsel appearing for respondent Nos. 2 to 5 and Sri Arun Kumar, learned counsel appearing for respondent No. 6. By way of present special appeal, appellant is assailing the common order of learned Single Judge dated 26.04.2010 passed in Civil Misc. Writ Petition No. 50029 of 2009 (Km. Anjuman Upadhyay Vs. Principal, District Institute of Education and Training, Jaunpur & Ors.) along with Civil Misc. Writ Petition No. 57384 of 2009 (Ms. Guru Priya Singh Vs. State of U.P. and Ors.) by which learned Single Judge has dismissed the petition filed by Km. Anjuman Upadhyay and allowed the writ petition filed by Ms. Guru Priya Singh.

2. Brief facts of the case are that both the petitioner and contending respondent are claiming admission in BTC-2004 Course against one seat of Sports Quota. So far as the case of Petitioner Km. Anjuman Upadhyay is concerned, according to her, she has taken admission pursuant to the letter dated 12.02.2009 sent by Principal, District Institute of Education and Training, Jaunpur (Principal DIET) but later on, she had not been issued admit card, therefore, she approached this Court by filing the Civil Misc. Writ Petition No. 50029 of 2009 (Km. Anjuman Upadhyay Vs. Principal, District Institute of Education and Training, Jaunpur &

Ors.) in which under an interim order of this Court, she had been permitted to appear in the examination. In the counter affidavit filed to the writ petition filed by contesting respondent Ms. Guru Priya Singh, it is also a case of Km. Anjuman Upadhyay that as Ms. Guru Priya Singh had not reported for counselling on 06.03.2009 pursuant to the notice published on 02.03.2009, therefore, neither she is entitled for the admission nor having the authority to challenge her admission.

3. The case of Ms. Guru Priya Singh in Writ Petition No. 57384 of 2009 is that pursuant to the public notice dated 2nd March, 2009, she had approached Principal (DIET) for admission in BTC-2004 Course but there she was informed that her name has not find place in the list of female candidates under the Sports Quota, therefore, she cannot be given admission. According to her, in advertisement dated 2nd March, 2009, the candidates having above 183.42 marks are required to report and she was having 183.53 marks, therefore, she has reported for her admission. It has also been stated by Ms. Guru Priya Singh that she has obtained higher marks than the marks obtained by Km. Anjuman Upadhyay. In fact, she had obtained 183.53 marks whereas Km. Anjuman Upadhyay had obtained 183.42 marks. The same stand was also taken by Principal (DIET) in the counter affidavit that as Ms. Guru Priya Singh has not reported for counselling on 06.03.2009 which was a date fixed in notice published on 02.03.2009, therefore, she has not been given admission.

4. The facts of the case in detail has already been given in the judgment and order of learned Single Judge dated 26.04.2010. Learned Single Judge considered the submissions raised by the counsel for the parties and ultimately dismissed the writ petition of Km. Anjuman Upadhyay and allowed the writ petition of Ms. Guru Priya Singh, therefore, appellant has challenged the order of learned Single Judge dated 26.04.2010 on two grounds, firstly as Ms. Guru Priya Singh has not reported at the time of counselling i.e. 06.03.2009 as mentioned in notice published on 02.03.2009, therefore, she has no right to challenge the admission of Km. Anjuman Upadhyay and she cannot be granted admission as well. He has taken another ground that though the application was invited in the year 2004 but admission took place in the year 2009 and in the mean time by way of improvement examination, appellant has improved her marks of Graduation and by virtue of that, now she is having higher merit than Ms. Guru Priya Singh, therefore, even on merit, she has rightly been given admission. In support of his contention he has relied upon different judgments. He has placed the judgment given in Civil Misc Writ Petition No. 39289 of 2000 (Kamlesh Kumar Yadav Vs. Director, Rajya Shaikshik Anusandhan Evam Prashikshan, Parishad, U.P., Lucknow and others) decided on 22.05.2003, where the petitioner in that writ petition has applied for Special B.T.C. Training Course and before the declaration of result, he has improved his marks in B.Ed. Course by appearing in back paper but the same was not considered by the authorities while calculating the quality point marks. Therefore, she had filed the writ petition. The writ petition was allowed with a direction to the concerend authority to consider the

marks obtained after appearing in back paper and accordingly calculate the quality point marks. Aforesaid judgment was challenged before Special Appeal No 86 of 2004 (Director, Rajya Shaikshik Anusandhan Evam Prashikshan Parishad, Uttar Pradesh, Lucknow and others Vs. Kamlesh Kumar Yadav) and Division Bench of this Court has uphold the decision of learned Single Judge vide judgment and order dated 11.09.2007. He has further placed reliance upon another judgment of this Court passed in 2009 (2) AWC 1852 (Sushil Kumar Singh and another Vs. State of U.P. and others) decided on 11.02.2009, which is entirely based upon the judgment of Kamlesh Kumar Yadav (Supra).

5. Rebutting the submission made by learned counsel for the appellant, Sri Arun Kumar, learned counsel appearing for respondent No. 6 has stated that respondent No. 6/petitioner in Writ Petition No. 57384 of 2009 has responded to the public notice dated 02.03.2009 and reported for counselling on 06.03.2009, but she was denied admission on the ground that her name has not found place in the merit list of Sports Quota and further she was given assurance that she would be informed for admission, but she has never been informed. Therefore, she had no option but to approach this Court by filing a writ petition. He has further rebutted the second argument raised by learned counsel for the appellant and stated that the law is very well settled on this point that once the last date of submission of application form is over, any improvement of the marks/qualification cannot be entertained for preparation of merit list and in support of his contention, he relied upon judgments of the Apex Court and this Court, where the Court has held that the qualification obtained by the candidate up to the last date of submission of application form shall only be considered and subsequent to that any improvement of the marks cannot be the basis of preparation of merit list and selection. We have carefully considered the arguments raised by learned counsel for the parties and also perused the records and law on this issue.

6. Sri Khare, learned Senior Counsel appearing for the appellant has vehemently argued that pursuant to the notice published on 02.03.2009, respondent No. 6 has not reported for counselling, therefore, she has no right either for admission or for challenging the admission of appellant. This issue was very well dealt by the learned Single Judge in the judgment and order dated 26.04.2010. Findings given by learned Single Judge on this point are being reproduced hereunder:-
".....

There is no dispute between the parties that Guru Priya Singh had obtained 183.53 marks while Anjuman Upadhyay had obtained 183.42 marks and that both the candidates had applied under the Sports Category for which there was a reservation of 2%. There is also no dispute between the parties that the first notice was published by the Principal in the newspaper on 29th January, 2009 requiring the female candidates under the Sports Category having marks upto 192.77 to report for counselling on 31st January, 2009 and that the second notice was published by the Principal in the newspaper on 2nd March, 2009

requiring the female candidates under the Sports Category having marks upto 183.42 to report for counselling on 6th March, 2009.

Guru Priya Singh and Anjuman Upadhayay could not have reported for counselling on the basis of the first notice since their marks were less than 192.77. However, both of them could have reported for counselling on the basis of the second notice dated 2nd March, 2009. The case of Guru Priya Singh is that she reported for counselling on 6th March, 2009 but she was not permitted to participate in the counselling as her name was not included in the list of Sports category candidates available at the Counselling Centre. The case taken up by the Principal in the counter affidavit as well as in the information supplied to Guru Priya Singh under the Right to Information Act is that she did not report for counselling on 6th March, 2009 and, therefore, the candidate with lesser marks, namely Anjuman Upadhayay, was admitted. This is also the stand of Anjuman Upadhayay.

This stand of the Principal and Anjuman Upadhayay is not correct in view of the other averments made in the counter affidavit and the documents available on the record. In paragraph 11 of the counter affidavit filed by the Principal to the writ petition filed by Guru Priya Singh it has been stated that the first merit list was published on 29th January, 2009 in which for the 2 seats earmarked for Sports Category candidates, the first place was occupied by Deep Mala Singh having 192.77 marks and the second place was occupied by Anjuman Upadhayay with 183.42 marks. Deep Mala Singh was admitted and after waiting for sometime and when no representation was filed by any candidate, the letter dated 12th February, 2009 was sent to Anjuman Upadhayay whose name was in the first list, to report for counselling with the relevant documents and seek admission. It has also been mentioned that as Anjuman Upadhayay was admitted, there is no vacancy. This stand of the Principal finds support from the documents filed by Anjuman Upadhayay in her Writ Petition in which she has annexed a copy of the communication dated 12th February, 2009 sent by the Principal to her which mentions that pursuant to the communication dated 7th January, 2009 of the Director, State Council for Educational Research and Training, U.P. Lucknow, and pursuant to the notification dated 29th January, 2009, a communication dated 2nd February, 2009 was sent to her to report with the relevant documents but as she did not report, she was being again informed to report for counselling on 16th February, 2009 with all the documents failing which it shall be presumed that she was not eager to take admission. Anjuman Upadhayay in her petition has stated that it is pursuant to the aforesaid communication that she reported for counselling on 16th February, 2009 and she was granted admission. The Principal has stated that there were only two seats reserved for Sports Category and, therefore, both the seats stood filled up on or before 16th February, 2009. There was, therefore, no seat vacant for Guru Priya Singh on 6th March, 2009 and the stand taken by the Principal that she was not admitted on 6th March, 2009 because she did not report for counselling is, therefore, not correct.

What needs to be also noticed is that under no circumstances Anjuman Upadhyay could have been asked to report for counselling on 16th February, 2009 since the first notice dated 29th January, 2009 only required the Female Sports Category Candidates having merit upto 192.77 marks to report for counselling on 31st January, 2009. The cut-off merit was lowered only by the notification dated 2nd March, 2009 to 183.42. The merit of Anjuman Upadhyay was 183.42 and, therefore, she could not have been offered admission before 6th March, 2009 which was the date notified for reporting for counselling in the notice dated 2nd March, 2009. Yet the Principal sent a letter to her on 12th February, 2009 asking her to report for counselling on 16th February, 2009. It is also surprising that this letter even refers to the earlier letters dated 2nd February, 2009 and 3rd February, 2009 sent to her to report for counselling. No satisfactory explanation whatsoever has been given by the learned Standing Counsel for sending this communication dated 12th February, 2009 except making reference to paragraph-11 to the counter affidavit that in the merit list declared on 29th January, 2009, the names of Deep Mala Singh and Anjuman Upadhyay were only mentioned under the Female Sports Category Candidates. Thus, the stand of Guru Priya Singh, that she was not given admission on 6th March, 2009 as her name did not find place in the list of candidates under the Sports Category finds support from the stand taken by the respondents.

The discussion made above leaves no manner of doubt that the Principal has given undue benefit to Anjuman Upadhyay while granting her admission to the B.TC-2004 Course even though she had obtained lesser marks than Guru Priya Singh who was otherwise entitled to be given admission.

It is true that Guru Priya Singh did wait up to August, 2009 before filing any representation to the Authorities for grant her admission but she has stated that she could not represent earlier as she had no access to the records. It is her case that on 6th March, 2009 she was not permitted to participate in the counselling as her name did not appear in the list and that she was given an assurance that the matter will be enquired into. Later on, when she came to know that all the seats of Sports Category Candidates had been filled up, she made a representation to the Principal as well as to the District Magistrate and it is only when she was given information under the Right to Information Act that she was not granted admission as she did not report for counselling, that she filed the present petition.

It has been found as a fact that she was entitled to be admitted on the basis of the second notice dated 2nd March, 2009 issued by the Principal as Anjuman Upadhyay had lesser marks. It has also been found as a fact that though the Principal had been writing continuously to Anjuman Upadhyay to report for counselling but the Principal has not placed any letter which may have been sent by the Principal to Guru Priya Singh to report for counselling.

....."

7. Learned Single Judge has considered each and every facts with regard to this controversy and given a detailed finding on each and every point. No infirmity was found by us in the finding given by learned Single Judge. We have no reason to interfere with the same, therefore, the first argument raised by learned Senior Counsel appearing for appellant is not acceptable.

8. So far as the second argument of learned Senior Counsel for the appellant is concerned, we have perused the judgments relied by learned counsel for the appellant. This fact is undisputed between the parties that appellant had improved her marks after last date of submission of form and seeking benefit of that at the time of preparation of merit list. No doubt that the judgment cited by learned counsel for the appellant is based on same facts which involved in the matter of appellant and this dispute is also squarely covered by those judgments. It is necessary to point out here that in identical dispute the Apex Court has given its categorical finding that any qualification obtained after the last date of submission of form cannot be taken into consideration for preparation of merit list.

9. A three Judge Bench of the Apex Court in *State of Punjab & Ors. V. Surinder Kumar & Ors.*, AIR 1992 SC 1593 dealt with a case where regular appointment had not been made. The court held that unless a person holds the post permanently, his services would be governed by the terms and conditions incorporated in the appointment letter and the court must in all circumstances enforce the terms specifically stated therein.

10. Again three Judge Bench of the Apex Court, in *Dr. M.V. Nair v. Union of India & Ors.*, (1993) 2 SCC 429, held as under:- "It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

11. Apex Court in *Rekha Chaturvedi v. University of Rajasthan*, 1993 Supp (3) SCC 168 held: "The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection

may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/ notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission v. B. Sarat Chandra*, (1990) 2 SCC 669; and *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655."

12. In *Dr Prit Singh V. S.K. Mangal and others* 1993 Supp(1) SCC 714, the Apex Court has held: "13. We fail to understand as to how the Vice- Chancellor who himself was of the opinion that the appellant did not possess the requisite qualifications for the post of Principal and who had refused to approve the said appointment, later approved the same appointment on 13th November, 1987 with effect from 16th October, 1987. It has rightly been submitted on behalf of the respondents that the Vice-Chancellor approved the appointment after 15th October, 1987 when the amendment was made in the prescribed qualifications for the post of Principal of a recognised College of Education. If he was not eligible for appointment in terms of the prescribed qualifications on the date he was appointed by the Managing Committee subject to the approval of the Vice-Chancellor, then later he cannot become eligible after the qualifications for the post were amended. As such we are in agreement with the view expressed by the High Court, that on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed."

13. In *Ashok Kumar Sharma v. Chander Shekhar*, 1993 Supp (2) SCC 611 [hereinafter referred to as *Ashok Kumar* (1993)], the majority view was as under: "The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect".

However, the opinion of Justice R.M. Sahai had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the

requisite eligibility/qualification on the last date of submission of applications.

14. A three-Judge Bench of the Apex Court in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) (supra) observing: "The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment." (Emphasis added) The Court further explained that the majority view in *Ashok Kumar Sharma* (1993)(supra) was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

"The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview." (Emphasis added) It may also be pertinent to mention here that in the aforesaid case reference to *Rekha Chaturvedi* (supra) appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. Infact the court wanted to make a reference to the case of *Ashok Kumar Sharma* (1993) (supra).

15. In *U.P. Public Service Commission, U .P., Allahabad & Anr. v. Alpana*, (1994) 2 SCC 723, the Apex Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

16. In Smt. Harpal Kaur Chahal V. Director, Punjab Instructions, Punjab and another, 1995 (Suppl) 4 SCC 706, the Apex Court held: "2.....It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to Rules"

17. In Bhupinderpar Singh v. State of Punjab, AIR 2000 SC 2011, the Apex Court placing reliance on various earlier judgments of this Court held: "The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with."

18. The Apex Court in Anand Pandey Vs. King George's Medical University, 2014(10) ADJ 313, held: "Law on the subject i.e date of eligibility has been clarified by the Apex court in the case of Rajasthan Public Service Commission V. Kaila Kumar Paliwal and another (2007) 10 SCC 260 by taking the view that recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be relevant date. It has also been mentioned therein that where there exists a provision for relaxation the same must be strictly complied with. It has also been mentioned, as to whether a person fulfils the criteria of teaching experience or not would depend upon the rules operating in the field and when the rules are clear and explicit, the same have to be given effect to and only in a case where the rules are not clear, the candidate concerned must place adequate material to show that he fulfils the requisite qualification."

19. The Apex Court in State of Gujarat v. Arvindkumar T. Tiwari, AIR 2012 SC 3281 held : "A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S.K. Mangal) 1993 Supp (1) SCC 714 and Pramod Kumar v. U.P. Secondary Education Services Commission (2008) 7 SCC 153.)"

9. In the instant case, the appellant did not possess the requisite qualification on

the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

10. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

20. Again the Apex Court in the case of Rakesh Kumar Sharma Vs. State (NCT of Delhi) and others 2013 (11) SCC 58 after considering the earlier judgments of this Court held: 21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

Not only this, the Division Bench of this Court in Special Appeal No. 28 of 2010 (Smt. Meera Devi Vs. Neelam Devi and others), decided on 13.01.2010 has

taken the same view held as under:

"Having appreciated the rival submissions, we find substance in the submission of Mr. Ali. Undisputedly, the last date for submission of the application form was 17th September, 2007 and a candidate was required to have minimum age of 21 years as on 01.07.2007. The writ petitioner - respondent No.1 offered her candidature disclosing her date of birth to be 20th of July, 1986. Although, on her own declaration her candidature ought not to have been considered, but erroneously, her candidature was considered, and she was selected for appointment as Aganbadi Karyakatri. Later on, by order dated 19.02.2009, her appointment was rescinded on the ground that she had not attained the minimum age required in terms of the advertisement. The correction made in the date of birth had taken place on the basis of the order dated 14.11.2008 by the authority of the Examination Board, which had conducted the High School Examination.

We are of the opinion that as the correction in the date of birth was made later on after the last date of submission of the application form, the writ petitioner - respondent No.1 was not eligible to be considered and her wrong consideration for appointment shall not enure to her benefit."

21. Similar issue has again come up before the Full Bench of this Court in Gaurav Sharma Vs. State of U.P. and others 2017 (5) ADJ 494 (FB) and certain questions were framed which was to be answered by the Full Bench, first question is relevant in the present controversy and the same is quoted herein below: "A. Whether the candidature of an OBC candidate is liable to be rejected on the ground of the caste certificate having been submitted after the last date of submission of applications?"

After considering the relevant law and judgments on this point, it was answered by the Full Bench and the answer is no, the Full Bench has held:

"28. We accordingly answer Question No. 1 in the negative and hold that an OBC candidate is not exempt from the rigours of a cut off or last date prescribed in an advertisement or recruitment notice."

22. By the perusal of different pronouncements made by the Apex Court as well as this Court, the ratio of law which emerges is that candidate must have obtained all the qualifications before the last date of submission of form and any qualification or any improvement in qualification/marks, which has been obtained after last date of submission of form cannot be accepted for any benefit like appointment, admission etc. and the only qualification/marks obtained prior to last date of submission of form is to be considered for any benefit.

23. Therefore, though the case of appellant is covered by the judgments cited by learned Senior Counsel for the appellant but in those judgments namely Kamlesh Kumar Yadav (supra), Smt. Meera Devi (supra) and Sushil Kumar Singh (supra), the relevant law laid down by the Apex Court by that time has not been

considered by the Court, therefore, those judgments are per incuriam and cannot be taken into account while deciding the controversy before us.

24. Here the controversy is also the same that whether the marks of appellant increased after the last date of submission of form can be considered for preparation of merit or not and certainly in the light of pronouncement made by the Apex Court and this Court, the answer is in the negative, therefore, we are of the considered view that any merit list prepared on the basis of marks obtained after last date of submission of form cannot be given effect. Therefore, the appellant is not entitled for benefit of her enhanced marks.

25. In the light of facts and law discussed herein above, we are of the view that there is no illegality, error or infirmity in the order of learned Single Judge dated 26.04.2010 and we have no reason to interfere with the same. Therefore, we uphold the judgment and order of learned Single Judge dated 26.04.2010. Appeal lacks merit and is accordingly dismissed. No order as to costs. Original record is released and be handed over to the learned Standing Counsel.