

**(1993) 02 AHC CK 0073**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 10963 of 1992

Kumari Poonam Choudhary

APPELLANT

Vs

U.P. State of Public Service Commission

RESPONDENT

**Date of Decision :** 08-02-1993

**Acts Referred:**

Constitution of India, 1950 — Article 16(1)  
Uttar Pradesh Public Service Commission (Procedure of Conduct and Business) Rules,  
1976 — Rule 54

**Citation :** (1993) 2 AWC 902 : (1993) 1 UPLBEC 724

**Hon'ble Judges :** P.P. Gupta, J;B.M. Lal, J

**Bench :** Division Bench

**Advocate :** S.V. Misra, for the Appellant; Vinod Misra, for the Respondent

**Final Decision :** Disposed Of

## **Judgement**

P.P. Gupta, J.—In pursuance to an advertisement for the post of Regional Tourist Officer, vide advertisement No. 1/90-91 Sewa 9, made by the U.P. Public Service Commission, Allahabad, (hereinafter referred to as the Commission), the Petitioner, Km. Poonam Chaudhary applied for the post. The minimum qualifications for the post were divided into two parts, firstly, essential qualification which was on the degree basis from a recognized University, and secondly, professional qualification having passed from any University with one of the subjects as History, Geography, English Literature, or Arithmetic and experience in travel trade or having obtained Diploma/Degree in Tourism from an Institution recognized by the Government. The age was between 21 and 30 years.

2. The Petitioner possesses B.A. Degree in First Glass having obtained 61% marks with Geography. History as subjects and in addition she has also passed M.A. Final Examination in Geography, in Second, Division, having obtained 52% marks. She also possesses Diploma in Tourism from Kumaun University having secured First Division and second position in the class. She was also appointed as Receptionist in the Tourism Department of Government of Uttar Pradesh, vide

order dated 24-7-1989, contained in Annexure "11" to the writ petition. Subsequently, she was selected for the post of Tourist Officer and was posted at Pithoragarh in leave vacancy. Since then she is working as Incharge Tourist Officer at Pithoragarh. She also received honorarium for the year 1990-91 from the Director General of Tourism, Dehradun. She also participated in 14th Management Development Programme held on 17-6-1991 and secured first position. She also organised "Sharedotsava-1991" in Pithoragarh and received a cash award along with a certificate of the best organizer from Sri S.S. Pngti, Director General of Tourism. Thus, she possesses not only minimum essential qualification but also preferential qualification, as per advertisement for the post.

3. When the Petitioner did not receive an interview call, she contacted the Public Service Commission Office at Allahabad. She was informed that she was not called for interview as she did not possess all the requisite qualification for the post. Subsequently, the Petitioner, by an order dated 28-2-1992 (Annexure "1" to the writ petition), was informed by the Respondent that she was not entitled to appear in the Interview because she failed to secure 68.46% or more marks in a degree course and as such did not possess the minimum qualification required for the post.

4. Alongwith this writ petition, the Petitioner also moved a stay application in which a direction was issued to the Respondent to permit the, Petitioner to appear in interview for the post of Regional Tourist Officer which was scheduled to be held on 2-4-1992. It was further directed that the result of the Interview shall be subject to the final decision of the writ petition. In pursuance of this order, the Petitioner appeared in the interview, but her result has not so far been declared.

5. The main grievance of the Petitioner is that she has wrongly been weeded out from being called for interview by the Commission.

6. The submission of the learned Counsel for the Petitioner was that Article 16(1) of the Constitution guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. Therefore, the decision of the Commission to call for Interview only those who had obtained 68.46% or more marks in degree course contravened Article 16(1) of the Constitution.

7. Learned Counsel appearing for the Respondent Commission submitted that there was no illegality in not inviting for interview all the applicants who applied for appointment and restricting the same only to those who had secured 68.46% or more marks. According to him, this method of selection was likely to maintain the standard which may be advantageous for the service to which appointments had been advertised.

8. In support of the above submission the following cases were cited:

(i) Civil Misc. Writ Petition No. 6974 of 1992; In re Ramesh Kumar Tewari,

decided by a Division Bench of this Court on 3--8-1982 (unreported case).

(ii) Dr. Vijay Krishna v. Principal. S.N. Medical College Agra 1983 UP LB EG 231.

(iii) Krishna Priya Ganguly etc v. The Principal K.G. Medical College, Lucknow.?

(iv) The State of Haryana Vs. Subash Chander Marwaha and Others, .

All these cases lay down the law that the marks obtained at an examination for the purpose of choosing the best can be a reasonable basis for classification and so a decision to select from amongst those who secure a certain minimum percentage or more marks in an examination cannot be said to be based on an irrelevant or extraneous consideration.

9. Learned Counsel for the Petitioner has not challenged before us the above legal position. He, however, pointed out that all the cases cited by the learned Counsel for the Respondent were those in which there was only one essential qualification of holding a degree. In none of them preferential qualification was also prescribed alongwith essential qualification of a degree. Therefore, it was argued that the above cases were distinguishable from the Instant case. The method adopted by the Commission in completely ignoring the preferential qualification and restricting the same only to those applicants who had secured 68.46% or more marks in a degree course, which was an essential qualification cannot be said to be legal.

10. We find force in the submission made by the learned Counsel for the Petitioner. The advertisement for the post of Regional Tourist Officer laid down two minimum qualifications, one was essential qualification which was on the degree basis and the other a preferential qualification. Therefore, restricting the invitation to only those applicants who had secured 68.46% or more marks in a degree course under essential qualification completely ignoring preferential qualification is arbitrary, and therefore, illegal. The object of classification was to select best suited persons for the post. In this case, for selecting the best the method adopted by the Commission by which the preferential qualification laid down in the advertisement were completely ignored and the invitation was restricted to only those applicants who secured 68.46% or more marks in degree course under essential qualification alone cannot be said to be a reasonable basis for (sic)--The same has, therefore, to be struck down as being arbitrary and consequently illegal.

11. Our attention was also drawn to Rule 54 of the Uttar Pradesh Public Service Commission (Procedure and conduct of Business) Rules, 1976, which is reproduced below:

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.

Under the above rule, the Commission on 24-6-1983 resolved that the

candidates shall be called for interview in accordance with a decision taken prior to the written test but where the selection is to be based on interview alone number of candidates to be called for interview will be 4 to 8 for each post.

12. The contention of the learned Counsel for the Respondent, therefore, was that under the aforesaid decision of the Commission taken under Rule 54 of the Rules of 1976, the method adopted by the Commission for calling the candidates for Interview by restricting the Invitation to only those applicants who had secured 68.46% or more marks was fully Justified.

13. We are unable to agree with this submission. The argument may be accepted in cases where there is only one minimum qualification. But in cases where both essential and preferential qualifications are prescribed, restricting the invitation to applicants who had obtained a certain minimum percentage or more marks in degree course alone, which was an essential Qualification and thereby completely ignoring the preferential qualification will be arbitrary unreasonable and illegal. The same will not be in consonance of the spirit of the authority given to the Commission by the decision dated 24-6-1983 referred to above. Therefore, even recourse to Rule 54 read with the decision of the Commission dated 24-6-1983 does not make the method of screening adopted by the Commission as reasonable classification.

14. Now, while granting the relief to the Petitioner, we are not unmindful of the grave hardship to be caused to those who have already been selected and are in service. They should not lose their job for no fault to their but due to an illegal and arbitrary method of selection adopted by the Commission.

15. We, therefore, allow this petition and direct the Commission to consider the Petitioner for the post of Regional Tourist Officer taking into account not only minimum qualification possessed by her but also the preferential qualification possessed by her, as per the requirement of the advertisement and accordingly if the Petitioner secures marks more than the marks secured by the candidate already selected by the Commission, her name be recommended by the Commission for appointment as Regional Tourist Officer.

16. Consequently we further direct that the appointment of the Petitioner shall, therefore, be made in accordance with the recommendations of the Commission.

17. Taking equitable view we make it clear that the services of Regional Tourist Officers, who are already in service on the basis of the selection made by the Commission, shall not be disturbed/dispensed with. However if it becomes necessary a supernumerary post to appoint the Petitioner shall be created. This order will be given effect to and punctually be complied with within a month from today.

18. Under the circumstances there shall be no order as to costs.