
(2018) 03 UK CK 0054
In the Uttarakhand High Court
Case No : Writ Petition No. 481 of 2018

MADHURI KUMARI

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Constitution of India, 1950 — Article 32, 226

Citation : (2018) 03 UK CK 0054

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Vikas Bahuguna, Rajesh Sharma, Monika Pant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties and perused the pleadings of writ petition carefully.

2. This petition has been filed seeking the following reliefs:-

(i) to issue a writ, order or direction in the nature of certiorari to call for entire records which is lying with the respondent no. 2 and 3 and quash the

appointment order/letter issued in favour of respondent no. 4.

(ii) to issue a writ, order or direction in the nature of mandamus to declare the recommendation dated 06.03.2018 of the selection committee consisting

of respondent no. 5 to 10 as illegal, arbitrary and mala-fide.

(iii) to issue a writ, order or direction in the nature of mandamus to consider the appointment of petitioner for the post of "Narrator" in pursuance of

advertisement issued by respondent no. 2 and 3.

3. Facts in brief are that respondent no. 2 and 3 issued an advertisement inviting applications from eligible candidates for various posts including post

of the petitioner reserved for Scheduled Caste. The petitioner had applied for the same and appeared for written test which was held on 06.03.2018

and qualified the test but she was not selected.

4. The respondent nos. 5 to 10, who are the Members of the Selection Committee have been arrayed as party respondents. No mala fide has been

alleged against them in the petition and in personal capacity all the Members of the Selection Committee have been impleaded. The Court has raised a

question to the counsel for the petitioner that whether he has alleged any mala fide against the members of Selection Committee, to this counsel for

the petitioner submitted that he has alleged mala fide against the members of the Selection Committee, therefore they have been impleaded as party

respondents and placed reliance upon paragraph 19 of the writ petition. Same is extracted hereunder:-

19. That the selection committee consisted of respondent no. 5 to 10 who were biased and intentionally changed the entire selection criteria on the

same date i.e. 06.03.2018 to benefit respondent no. 4 who was known to them since last five years.

5. From the perusal of para 19 of the writ petition, there is no allegation of mala fide against respondent nos. 5 to 10, the averments made in para 19 of

the writ petition are not sufficient to implead the Member of the Selection Committee, in personal capacity just to harass them without assigning any

kind of mala fide against them they have been impleaded as party respondents.

6. Learned counsel for the petitioner submitted that as per the advertisement, the written test was of 80% marks but respondent nos. 1 and 2 in

arbitrary manner awarded the total marks out of 40% and have gone beyond the advertisement and have changed the criteria of appointment by

reducing the marks of written examination from 80% to 40% marks. From the perusal of the advertisement, criteria of selection as mentioned in the

Advertisement which is Annexure 1 to the writ petition shows that it is not a written test of 80 marks rather it says 80% marks for written test, 10%

marks for desirable qualification and 10% marks for desirable experience. Thus, averments made in the writ petition that respondent nos. 1 and 2 have

illegally given appointment to the respondent no. 4 in arbitrary manner and against the criteria for selection as mentioned in the advertisement are

baseless and contrary to the criteria mentioned in the advertisement.

7. Counsel for the petitioner has vehemently argued that the petitioner is entitled for the interim relief, otherwise the writ petition would render

infructuous. After hearing learned counsel for the parties, this Court was not inclined to pass any interim order. Then counsel for the petitioner

submitted that keeping the writ petitioner pending would be a futile exercise and argued the case finally.

8. Admittedly, respondent no. 4 had secured 69 marks and petitioner had secured 68 marks, therefore this Court cannot scrutinize the marks awarded

by the Selection Committee, as the Selection Committee is the competent authority to award the marks to the respective candidates as per their

knowledge. It is also contended that respondent no. 4 was working since last five years in the department therefore she has acquaintance with the

Members of the Selection Committee, but this cannot be a ground that respondent nos. 1 and 2 have extended any undue benefit to respondent no. 4 in

selecting her. Respondent nos. 5 to 10 have wrongly been arrayed as party/respondents, counsel for the petitioner is not inclined to delete their names.

It appears to this Court that it is a pressure tactic being adopted by the petitioner to implead respondent nos. 5 to 10 without making any allegation of

mala fide against them.

9. As far as prayer no. 1 is concerned, the prayer cannot be granted without calling the record, as the appointment letter of respondent no. 4 has not

been annexed by the petitioner. Since, counsel for the petitioner has argued the case finally, thus at this stage petitioner is not entitled for relief sought.

As far as jurisdiction under Article 226 of the Constitution of India is concerned, it empowers the High Courts to issue certain writs. Article 226 of the

Constitution of India is extracted hereunder:-

â??226 Power of High Courts to issue certain writs-

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to

issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in

the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred

by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any

Government, authority or person may also be exercised by any High

Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power,

notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings

relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such

application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within

a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later,

or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if

the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand

vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of

Article 32

10. As far as second relief is concerned, mandamus has been sought in the name of declaration. This Court is not empowered to issue any declaratory

decree in the shape of mandamus for any kind of declaration and decree of declaration. The remedy available to the petitioner is to approach the civil

court. As far as relief no. 3 is concerned, petitioner has secure lesser mark in comparison to respondent no. 4. This Court cannot issue direction in the

nature of mandamus to consider the appointment of the petitioner on the post of â??Narratorâ??.

11. In the writ petition general allegations have been leveled and from the perusal of the pleadings and annexures annexed with the writ petition, the

petitioner is failed to make out any case of interference in exercising jurisdiction

under Article 226 of Constitution of India.Â

11. The writ petition is devoid of merits and is hereby dismissed.Â

12. No order as to costs.