
(2010) 09 AHC CK 0310

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45866 of 2007

Manish Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 14

Citation : (2010) 09 AHC CK 0310

Hon'ble Judges : Ran Vijai Singh, J

Final Decision : Disposed Of

Judgement

Ran Vijai Singh,J.

1. The petitioner who happens to be recruit constable selected in the year 2006 has filed this writ petition for issuing a writ of certiorari quashing the order dated 24.08.2007 passed by the Superintendent of Police Badaun District Badaun, (the respondent no.6) by which petitioner's selection has been cancelled by the said officer on the ground that the petitioner who possess Prathama certificate issued by Hindi Sahitya Sammelan is not equivalent to High School certificate issued by the Madhyamik Shiksha Parishad U.P., Allahabad, further the petitioner has filed false affidavit before the authorities before entering into selection that no material fact has been concealed.

2. The brief facts giving rise to this case are that the petitioner pursuant to an advertisement meant for inviting the application for selection on the post of constable in the police department has applied for the same. Thereafter measurement test was held at Reserve Police Lines Badaun in the month of July/ August 2005 and the petitioner was found fit. This was followed by physical test in April 2006 by the duly constituted Board, and after qualifying in the same, written examination was held in the month of May 2006. The petitioner qualified and appeared in the interview, finally he was declared successful in the final selection. In paragraphs 5 & 6 of the writ petition it is stated that the petitioner was appointed as constable in Reserve Police Lines, Badaun on 19.6.2006 and

completed his J.T.C. course in Reserve Police Lines, Badaun for a period of one month and thereafter he was sent for R.T.C. course at Reserve Police Lines, Sitapur. After completion of training the petitioner has been posted at Reserve Police Lines Badaun and thereafter at police station Usait, District Badaun on 02.08.2007. While he was working at police station Usait the impugned order dated 24.8.2007 has been served on the petitioner.

The aforesaid order has been challenged mainly on two grounds:

(1). The Prathama certificate issued by the Hindi Sahitya Sammelan Allahabad is equivalent to High School certificate issued by the Mandhymik Shiksha Parishad, U.P.,Allahabad.

(2). The impugned order has been passed without affording an opportunity of hearing to the petitioner as the petitioner was neither associated while making the preliminary inquiry and verification of certificates from Madhyamik Shiksha Parishad or before passing the impugned order of cancellation of selection.

3. A counter affidavit has been filed by the State respondent sworn by one Radhey Shyam Kol, Deputy Superintendent of Police, Ujhani, District Badaun.

4. In paragraph no. 5 of the counter affidavit, it is stated that the Police Headquarter, Director General of Police, Uttar Pradesh has issued a letter on 29th June, 2007 requiring the all recruitment centres to get verify the recruit's caste certificate, educational certificate and physical fitness etc., and in case any discrepancy reveals the appointing authority was required to dismiss the recruit from service.

5. In paragraphs no.6 & 7 of the counter affidavit, it is stated that petitioner has shown himself to be having Prathama certificate issued by Hindi Sahitya Sammelan Allahabad, therefore, his certificate was sent for verification to Madhyamik Shiksha Parishad U.P.,Allahabad with a view to verify whether it has equivalence with High School Examination conducted by Madhyamik Shiksha Parishad.

6. Thereafter the Secretary of Board of High School and Intermediate Examination has sent verification report stating therein that Prathama certificate issued by the Hindi Sahitya Sammelan Allahabad was never granted equivalence to High School Examination conducted by Madhyamik Shiksha Parishad U.P. and any government order issued saying otherwise, are forged and frivolous. The stand taken in the counter affidavit is that as the petitioner has filed an affidavit that in case anything transpires with regard to concealment of fact, his services/ selection can be terminated/cancelled without any notice or an opportunity of hearing.

7. I have heard Sri Sanjay Kumar learned counsel appearing for the petitioner and learned Standing Counsel and considered their submissions. With the consent of learned counsel for the parties, the matter was heard with a view to decide it finally.

8. Sri Sanjay Kumar learned counsel for the petitioner has urged that the impugned order has been passed without affording an opportunity of hearing to the petitioner on the ex parte version of Madhyamik Shiksha Parishad, U.P., Allahabad that Prathama certificate issued by the Hindi Sahitya Sammelan is not equivalent to the High School certificate issued by Madhyamik Shiksha Parishad, U.P., Allahabad. In his submissions had the opportunity was afforded to the petitioner the petitioner would have apprised the respondent no.6 with regard to the correctness of the certificate. In his submissions the Central Government has issued so many circulars stating therein that for the purpose of appointment, the Prathama certificate issued by the Hindi Sahitya Sammelan is valid. He has also placed reliance upon the judgment of this Court Committee of Management, Krishna Vidya Mandir High School, Kabaraut, District Muzaffarnagar vs Joint Director of Education Saharanpur Region, Saharanpur and others along with another connected writ petition no.3036 of 2001 decided on 25.1.2001, where this court has held that Prathama and Madhyama certificate issued by the Hindi Sahitya Sammelan Allahabad is equivalent to High School certificate issued by the Madhyamik Shiksha Parishad U.P. Sri Kumar has lastly urged that the impugned order has been passed on wrong pretext on the false information furnished by Secretary Madhyamik Shiksha Parishad and the respondents have erred in placing reliance upon the said version and cancelling the petitioner's selection. In his submissions the impugned order is unsustainable in the eye of law and deserves to be quashed and the writ petition be allowed with costs.

9. Refuting the submissions of learned counsel for the petitioner, learned standing counsel has submitted that Prathama certificate issued by the Hindi Sahitya Sammelan is not equivalent to High School certificate issued by the Madhyamik Shiksha Parishad, U.P., Allahabad, as it would transpire from the perusal of annexures 1 & 2 to the counter affidavit. According to which the Prathama certificate issued by the Hindi Sahitya Sammelan was never granted equivalence to High School certificate issued by Madhyamik Shiksha Parishad and any government order issued to that effect are forged and vagues, therefore, even if opportunity was offered to the petitioner, he would not have been able to improve his case, as ultimately it is the Madhyamik Shiksha Parishad which grant equivalence to a particular certificate be equal to High School and Intermediate Examination conducted by Madhyamik Shiksha Parishad and the Government has no role in it and if there is any such government order that will not have a valid effect, so far it relates to the Board unless said government order has been issued under Section 9 of the U.P. Intermediate Education Act 1921. In his further submissions the opportunity of hearing is not a ritual which should be offered in each and every case. Here in the present case the petitioner himself has filed an affidavit before the authority that in case anything is found to be concealed in the process of selection, the selection/appointment may be cancelled without affording an opportunity of hearing, therefore, no infirmity can be attached to the impugned order.

10. After going through the contents of the writ petition, counter affidavit and considering the submissions of learned counsel for the parties, I find that mainly two points needs consideration of this Court.

(1).Whether the certificate of Prathama issued by Hindi Sammelan Allahabad is equivalent to High School certificate issued by Madhyamik Shiksha Parishad U.P. Allahabad (hereinafter referred to as Parishad).

(2).Whether the impugned order is vitiated on the ground of breach of principle of natural justice.

11. In so far as the point no.1 is concerned it is stated in paragraphs no. 6 & 7 of the counter affidavit that Prathama certificate issued by Hindi Sahitya Sammelan has never been recognized equivalent to High School certificate issued by the Parishad. The statement has been made on the basis of letter of the Secretary of Madhyamik Shiksha Parishad which is reproduced below:

@@Hindi@@

12. The learned counsel for the petitioner has contended that in view of the judgment of this court in the case of Committee of Management, Krishna Vidya Mandir High School, Kabaraut, District Muzaffarnagar vs Joint Director of Education Saharanpur Region, Saharanpur and others (supra), the Certificate of Prathama issued by the Hindi Sahitya Sammelan Allahabad is equivalent to High School certificate issued by Madhyamik Shiksha Parishad. Therefore, respondents have taken wrong view in not treating the Prathama certificate equivalent to High School certificate and cancelling selection of the petitioner as recruit constable. In the submissions of Sri Sanjay Kumar had an opportunity was afforded to the petitioner this mistake had not occurred.

13. To test the submission of learned counsel for the petitioner the relevant provisions contained under U.P. Intermediate Education Act as well as other relevant Government Order granting equivalence to a certificate equal to a High School certificate issued by the Parishad is required to be looked into. Chapter XIV of the Regulations framed under Uttar Pradesh Intermediate Education Act, 1921 mentions as many as 71 certificates recognized by the U.P. Madhyamik Shiksha Parishad equivalent to High School for the purpose of appearance in the Intermediate Examination conducted by the Madhyamik Shiksha Parishad.

14. I have given an anxious look to these categories but I did not find that the Prathama certificate issued by Hindi Sahitya Sammelan Allahabad has been recognized by the U.P. Intermediate Education Board equivalent to High School certificate for the purpose to appear in the Intermediate Examination conducted by Parishad.

15. Further reference may be given of para 981 of Chapter 136 of Manual of Government Orders Revised Edition 1981. The relevant para 981 is reproduced below:

" 981. Degrees and Diplomas: Government have decided that the following examinations should be considered as equivalent to the academic qualification prescribed in the rules for purposes of recruitment to services and posts under the State Government: (a) As far as the Degree examinations are concerned, a candidate for recruitment must hold a degree of a University established by law in Uttar Pradesh, or any other University recognized for this purpose by the Governor of Uttar Pradesh, (b) Where Intermediate Examination held by the Board of High School and Intermediate Education, Uttar Pradesh, has been prescribed, the following examinations will be regarded for purpose of recruitment as equivalent thereto: (1) Intermediate Examination in Commence of the Board of High School and Intermediate Education, Uttar Pradesh (Commercial Diploma). (2) Intermediate Examination in Agriculture. (3) Intermediate Examination of the Hindu University, Varanasi. (4) Intermediate Examination of the Muslim University, Aligarh. (5) Senior Diploma of the Mayo College Ajmer. (6) Cambridge Higher School Certificate Examination. (7) Other Madhyama (with English) of the Government Sanskrit College, Varanasi. (8) Intermediate Examination of the Ajmer Board. (c) Where a High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh, is prescribed, the following examination will be regarded as equivalent thereto for purposes of recruitment : (1) Admission examination of the Varanasi Hindu University. (2) Cambridge School Certificate Examination provided a student has passed in five of such subjects as are recognised for the High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh. (3) Diploma Examination of the Royal Indian Military College, Dehra Dun, so long as the syllabus and the standard of the examination continue to be the same, as those of Diploma Examination of the Chief's College. (4) The Indian Army Special Certificate of Education. (5) High School Examination of the Muslim University, Aligarh. (6) High School Examination of the Ajmer Board in the case of those students who happen to take the examination of the Ajmer Board but who are of the U.P. Domicile. (7) Poorva Madhyama (with English) of Government Sanskrit College, Varanasi."

From the perusal of above para it is apparent that Prathama certificate issued by Hindi Sahitya Sammelan Allahabad has not been recognised equivalent to High School for the purposes of selection in State Government Service.

16. Thus from the bare perusal of above two statutory provisions i.e., Chapter IX of U.P. Intermediate Education Act 1921 and para 981 of Government Manual (supra) it is clear that Prathama is not equivalent to High School Examination conducted by Madhyamik Shiksha Parishad.

17. The eligibility for recruitment of recruit constable was given in the advertisement, according to which person wishing to apply for recruit constable must possess High School qualification or any equivalent examination to High School examination recognized by Board of High School and Intermediate Examination, U.P., Allahabad. Therefore, in view of the above two statutory

provisions it is clear that Prathama certificate issued by Hindi Sahitya Sammelan is not equivalent to High School certificate issued by Madhyamik Shiksha Parishad, U.P., Allahabad.

18. So far as petitioner's reliance upon the judgment of this Court in the case of Committee of Management (Supra) is concerned, suffice it to note that the aforesaid judgment was rendered in a situation where the learned Standing Counsel has not disputed the factum of the government order dated 22.8.1998 (annexure 8 in that writ petition) granting equivalence of Prathama certificate issued by Hindi Sahitya Sammelan to High School certificate issued by Madhyamik Shiksha Parishad. It is noticeable that the aforesaid government order has been superseded later on by another government order dated 28.10.1998, therefore, the judgment cited by the learned counsel for the petitioner is of no help. The factum of supersession of government order dated 22.8.1998 by government order dated 28.10.1998 find mentioned in the latter decisions of this Court in the case of Sarojni Pandey Vs State of U.P. & others 2003 (7) UPLBEC 1129 where this court has held that Prathama and Madhyama Examination is not equivalent to High School and Intermediate Education conducted by the Madhyamik Shiksha Parishad. It may also be noticed the same Hon'ble Judge who has decided the case of Committee of management (supra) on which the petitioner has placed reliance has taken different view while deciding the case of Shailendra Kumar Singh vs State of U.P., and others (2004) 2 UPLBEC 1716. The Supreme Court in the case of State of Rajasthan and others vs Lata Arun AIR 2002 S.C. 2642 has held that the educational certificate of Madhyama issued from Hindi Sahitya Sammelan Allahabad had been deleted from the recognized qualification vide notification dated 28.6.1985. Recently the Apex Court in the case of Rajasthan Pradesh V.S.Sardarshahar & Another v. Union of India & Others J.T. 2010 (6) SC 306 has held as under:

43. At the cost of repetition, it may be pertinent to mention here that in view of the above, we have reached to the following inescapable conclusions:

(I) Hindi Sahitya Sammelan is neither a University/Deemed University nor an Educational Board.

(II) It is a Society registered under the Societies Registration Act.

(III) It is not an educational institution imparting education in any subject inasmuch as the Ayurveda or any other branch of medical field.

(IV) No school/college imparting education in any subject is affiliated to it. Nor Hindi Sahitya Sammelan is affiliated to any University/Board.

(V) Hindi Sahitya Sammelan has got no recognition from the Statutory Authority after 1967. No attempt had ever been made by the Society to get recognition as required under Section 14 of the Act, 1970 and further did not seek modification of entry No.105 in II Schedule to the Act, 1970.

(VI) Hindi Sahitya Sammelan only conducts examinations without verifying as to

whether the candidate has come elementary/basic education or has attended classes in Ayurveda in any recognized college.

(VII) After commencement of Act, 1970, a person not possessing the qualification prescribed in Schedule II, III and IV to the Act, 1970 is not entitled to practice.

(VIII) Mere inclusion of name of a person in the State Register maintained under the State Act is not enough making him eligible to practice.

(IX) The right to practice under Article 19 (1) (g) of the Constitution is not absolute and thus subject to reasonable restrictions as provided under Article 19 (6) of the Constitution.

(X) Restriction on practice without possessing the requisite qualification prescribed in Schedule II, III, & IV to the Act, 1970 is not violative of Article 14 or ultra vires to any of the provisions of the State Act.

19. In view of the observation made by the Apex Court, it is apparent that the Hindi Sahitya Sammelan is a recognized society and not more than that. It is neither deemed University nor attached with any University or Board therefore in view of Chapter XIV of Regulations of U.P. Intermediate Education Act and para 981 of the manual (supra), no the certificate of Prathama issued by the Hindi Sahitya Sammelan got equivalence to the High School certificate issued by the Parishad. In view of that the view taken by the authorities not treating the Prathama certificate issued by Hindi Sahitya Sammelan equivalent to the High School on the basis of the letter of Secretary Board of High School & Intermediate Examination U.P. annexure 1 to the counter affidavit cannot be faulted with.

20. Thus the point number 1 is answered in negative.

21. In so far as the petitioner's argument with respect to the breach of principle of natural justice while passing the impugned order is concerned, it is well settled the principle of natural justice is not a ritual which should be offered in each and every case, as under a given circumstance even after giving an opportunity of hearing, the same result is likely to come and the order has been passed without opportunity of hearing such order should not be interfered with merely for the reason that the opportunity of hearing was not afforded. The Apex Court in the case of *Malloch Vs Aberdeen Corporation* (1971) 2 All ER 1278 has held that the breach of natural justice does also occur where all facts are not admitted or are not all beyond dispute but relief can be refused when the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different even if natural justice is followed. The same view has been reiterated in the case of *Glynn Vs. Keele University*, *Cinnamond Vs. British Airports Authority*, not only in England but here also the Supreme Court in the case of *S.L. Kapoor Vs. Jagmohan and others* reported in (1980) 4 SCC 379 has held as under:

"In our view the principles of natural justice know of no exclusionary rule

dependent on whether it would have made any difference if natural justice had been observed. The nonobservance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal".

22. The same view has been reiterated in *M.C.Mehta Vs Union of India and others* (1999)6 SCC 237 and *Aligarh Muslim University and others Vs. Mansoor Ali Khan* (2000) 7 SCC 529 and many other decisions of Apex Court as well as of this Court.

23. Here in the present case as has been held that Prathama certificate issued by Hindi Sahitya Sammelan is not equivalent to High School certificate issued by Madhyamik Shiksha Parishad, Allahabad, even if an opportunity was offered to the petitioner, he would not have been able to improve his case and the argument of learned counsel for the petitioner, to the effect had the opportunity was offered to him, the authorities would have taken a different view after considering the petitioner reply, does not hold any water.

24. In view of that point no.2 is also answered in negative.

25. In the result no infirmity can be attached with the impugned order dated 24.08.2007 passed by the Superintendent of Police Badaun District Badaun (the respondent no.6).

26. The writ petition lacks merit and it is hereby dismissed.