
(2001) 12 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 24257 of 1998

Patram Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 AWC 507 : (2002) 1 UPLBEC 792

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioners have prayed for quashing of the order dated 14.5.1998 by which their results relating to the Lekhpal School Examination, 1996-97 have been cancelled.

2. In pursuance of an advertisement to select the candidates for giving training on the post of Lekhpal. the petitioners appear to have applied. The petitioners application forms have been found to be valid in every respect for Lekhpal School Examination, 1996-97. They were permitted to appear in the examination, Admit cards were issued to the petitioners. The admit cards so issued to the petitioners is Annexure-5 to the writ petition. After completion of the examination, so far the petitioners are concerned, their results have been cancelled by order impugned in this petition, on the ground that they are over age, i.e., they are more than 25 years of age.

3. Learned counsel for the petitioners submits that action on the part of the respondents besides being illegal arbitrary, is also discriminatory. It has been pointed out that the respondents themselves are not clear that what should be the maximum age on which selection is to be made inasmuch as although Lekhpal Service Rules, 1958, which has been framed under Article 309 of the

Constitution provides for upper age of 35 years but the respondents in the advertisement have mentioned upper age as 25 years. It has also been pointed out that although, age as 18-25 year is mentioned in the advertisement but right from 1990 onward, irrespective of mention of that age, i.e., 18-25 years, candidates even of more than 25 years of age have been permitted to appear and their results have finally been declared. Learned counsel for the petitioner has taken the Court to the averments as mentioned in paras 17, 18, 19 of the writ petition. In para 18, it has been stated that although the petitioner No. 3 was of more than 25 years of age, was permitted to appear in 1992 examination and his result was also declared. Similarly in 1994, petitioner No. 4 also being more than 25 years of age. was permitted to appear and his result was also declared. In paras 17 and 19 of the writ petition, a specific averment has been made that there are large number of persons whose results have been declared in respect to this very examination of 1996-97 in which the petitioners have appeared, although those candidates were also of more than 25 years of age. The petitioners have annexed, copy of the list of 33 candidates as Annexure-6 to the writ petition who appeared in 1997 Lekhpal School Examination, being more than 25 years of age, whose results have been declared. Admit cards so issued to the petitioner vide Annexure-5 shows that the petitioners were also permitted to appear in the examination, which took place in the year 1997. On the basis of the aforesaid material, it has been vehemently argued that the respondents cannot be permitted to act in arbitrary and discriminatory manner.

4. On 8.10.1998, learned standing counsel was granted four weeks and no more time to file counter-affidavit. Although, no counter-affidavit was filed on 30.10.2001 when the matter was again taken up, hearing of the case was deferred to enable the learned standing counsel to come with reply to the averments made in the writ petition. But till date, no counter-affidavit has come on record from the side of the respondents.

5. Learned standing counsel in response to the submissions as has been made by the learned counsel for petitioners argues that in the advertisement, there was a prescription in respect to the age i.e., 18-25 years and in the event, the petitioners are over age, they are not entitled to get their results declared. In support of his submission, learned standing counsel places reliance on the decision in the case of Hanuman Prasad v. Union of India 1997 (6) UPLBEC 93. In the decision as has been referred by learned standing counsel, it has been laid down that even after final selection, a candidate has no vested right to get himself appointed. The facts in case of Hanuman Prasad (supra) happens to be that after selection, a report of malpractice was made in respect to which various kinds of enquiries were undertaken. The matter was referred to C.B.I. for enquiry. After full-fledged enquiry, it was found that various kinds of irregularities including malpractice have prevailed in the selection. In view of this, selection was cancelled which the Apex Court upheld as well. In the facts of present case, there appears to be no such dispute that examination in which the petitioners have appeared cannot be said to be affected on account of any malpractice or

any foul play on the part of the petitioners. Admittedly, the petitioners have applied giving their correct date of birth/age in the application form. The respondents have permitted the petitioners to appear in the examination. There is no allegation of any malpractice or foul play on the part of the petitioners. In view of the fact that no counter-affidavit has been filed on behalf of the respondents applying the doctrine of non-traverse, the averments made in the writ petition in paras 17, 18 and 19 will have to be accepted. In view of this, no exception can be taken to the fact that right from 1990 and in other years irrespective of prescription of the age, it appears that the respondents have been acting in the light of the age so prescribed in concerned Rules for accepting the candidates to appear in the said examination. The facts as stated by the petitioners that in the year 1992 and 1994, the petitioners themselves have appeared being more than 25 years of age and their results were declared. In view of this, it cannot be said that the petitioners have in any way committed any mistake in applying in the Lekhpal School Examinations, 1996-97. Besides aforesaid facts, most important factor which prevails in favour of the petitioners is that in the same examination in which the petitioners have appeared which took place in 1997 as many as 33 candidates whose result has been declared details of which has been annexed as Annexure-5 although they were at that time of more than 25 years of age. In view of this fact, the respondents cannot be permitted to act in discriminatory manner and cancel the petitioners' result. The respondents are expected to take the same stand and approach for all the candidates appearing in the said examination. The respondents cannot be permitted to take a different stand in case of the petitioners in view of the declaration of the result of large number of candidates similarly situated to that of the petitioners. The decision as has been relied upon by learned standing counsel appears to have no application in the facts of the present case. The petitioners are only claiming declaration of their results by taking the stand of declaration of results of large number of candidates. The Apex Court has never permitted the respondents to behave in an arbitrary and discriminatory manner. The case law relied upon by the learned standing counsel was that entire selection was cancelled but here in the case in hand, large number of candidates who appeared in the same examination, results have been declared although they were also entitled to be rejected on the same charge on which the petitioners' results have been cancelled.

6. In view of the aforesaid discussions, this writ petition succeeds and is hereby allowed. The impugned order as has been passed by the respondent on 14.5.1998 cancelling the petitioners' result is hereby quashed. The respondents are hereby commanded to declare the petitioners' result of Lekhpal School Examinations, 1996-97, within a period of six weeks from the date of production of a certified copy of this order before the concerned respondent.