

(1994) 07 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 25981 of 1990

Public Service Commission, U.P. Allahabad through Chairman
and Another

APPELLANT

Vs

Shanker Charan Tripathi and Another

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Citation : (1994) 07 AHC CK 0036

Hon'ble Judges : S.S. Sodhi, CJ and R.A. Sharma, J

Final Decision : Allowed

Judgement

S. S. Sodhi, C. J.

1. The matter here arises from the challenge of respondents Shanker Charan Tripathi and Jagdish Sharma, who are exservicemen, and is to the extension of the last date for receipt of applications by the U. P. Public Service Commission (hereinafter referred to as "the Commission") for appointment to posts in the Uttar Pradesh Combined State Services, granted in favour of exservicemen a concession which did not enure to their benefit. This is what led them to question the legality of it on the ground that it violates Article 14 of the Constitution, inasmuch as the extended date, lacks any reasonable nexus with the object sought to be achieved.

2. To give the relevant factual background, Shanker Charan Tripathi and Jagdish Sharma, were Sargents in the Air Force. Shanker Charan Tripathi, joined service on May 22, 1975, and on completion of his term he was discharged on May 31, 1990, while Jagdish Sharma, who was appointed on June 6, 1975, was discharged from service, on June 30, 1990.

3. On July 22, 1989 an advertisement was issued by the Commission inviting applications for posts in the Uttar Pradesh, Combined State Services. The last date for receipt of such applications was September, 2, 1989, but in the case of exservicemen another six months period was granted for those who were to be

released from the Armed Forces not later than six months, from the last date for the receipt of the applications, in other words, they should have been exservicemen who were released from service on or before March 2, 1990. It will be seen that both, Shanker Charan Tripathi and Jagdish Sharma, had been released from service after this date and according to the advertisement, therefore, they were not eligible to apply, for appointment to these posts.

4. Be that as it may, both Shanker Charan Tripathi and Jagdish Sharma, applied for appointment in pursuance to the said advertisement. They were some how permitted to appear in the written test, which was held in January and February, 1990. Later they were also issued letters, calling them, for interview on March 22, 1991. On the date of the interview, however, they were informed that they were not eligible, for appointment in terms of the advertisement and they were, therefore, not Interviewed. It is then they approached this Court under Article 226 of the Constitution. By interim orders passed by this Court, they were both permitted to be interviewed and the Commission was later directed to declare their results and as they were found to have qualified, while finally disposing of the writ petition, the learned Single Judge, directed that their result be declared, treating them to be eligible exservicemen and that their names be recommended for appointment. It is this order that has now been challenged in Special Appeal.

5. As pointed out earlier, one of the essential conditions of eligibility was that the exservicemen should have been released from service not later than six months after the last date for the receipt of applications. The last date being September 2, 1989, this six months" period expired on March 2, 1990. Both these respondents were discharged from service after the said date. They did not, therefore, fulfil this condition of eligibility. It was faced with this situation that counsel for the respondents sought to contend that the fixing of this date, that is, release within six months from the last date of receipt of applications bore no reasonable nexus with the object sought to be achieved. In dealing with the contention raised it must be appreciated that it is inherent in inviting applications for appointment to any post that a cut off date has to be fixed, for the receipt of such application. To wriggle out of this obvious position counsel, for the respondents resorted to the rather anomalous stand that if the last date for receipt of applications had been the same for all applicants, no legal flaw could have been imputed to it but by the grant of this six months, relaxation in favour of exservicemen, that is, by extending the last date of receipt of applications, for them by another six months, such extended last date amounted to arbitrary and wholly unwarranted discrimination in terms of Article 14 of the Constitution. In other words, it is grant of this concession to exservicemen that renders the concession discriminatory and arbitrary for them. The argument being that as the process of selection takes several months, limiting this concession to only six months, was arbitrary This is indeed a contention wholly lacking in substance. As mentioned earlier, whenever applications, for appointment to any post are invited it is inevitable that there must be a cut off date for the receipt of such applications and the category of applicants, in whose favour a concession is

granted in this behalf cannot be heard to complain, either that there should have been no such cut off date or that it should have been extended for a greater period.

6. Next, counsel for the respondents sought to press in aid the principle of promissory estoppel founded upon the premises that as both the respondents had been allowed to take the written test their ineligibility stood condoned thereby and it was thus no longer open to the Commission to hold their candidature to be invalid. Reliance in support being sought to be placed upon the judgment of the Supreme Court in *Shri Krishan v. The Kurushetra, University, Kurushetra*, AIR 1976 SC 376, which was the case of a student who, though ineligible to take the examination, was allowed to do so. In dealing with this matter it was observed :

".....Once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear,"

Counsel argued that on a parity of reasoning, once the respondents had been allowed to appear in the written, test the Commission could not be permitted to turn round and say that they were not eligible to apply for appointment.

7. A complete answer to this is, however, provided by the recent judgement of the Supreme Court in *U. P. Public Service Commission Uttar Pradesh, Allahabad and another v. Alpana*, JT 1994 (1) 94. The matter there concerned eligibility of a candidate for appointment to the post of Munsif. According to the advertisement, the candidate must have possessed the Law Degree on the last date for the receipt of such applications. This last date being August 20, 1988. The result of the respondent candidate was, however, not declared till October, 1988. He was, therefore, clearly not qualified to apply. The High Court, however, directed the Commission to interview him and if found successful to forward his name for appointment. He was subsequently appointed too. The Supreme Court held that this approach of the High Court could not be supported by any rule, practice or equitable considerations and went on to observe :

"If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, there by causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells to time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal."

The appeal was disposed of with the direction that "if the respondent has been appointed she would not be entitled to appointment on the basis of the decision of the High Court."

8. Such, thus being the circumstances of the case and the law being as laid down by the Supreme Court in Alpana and case (supra), there can be no escape from the conclusion that Shanker Charan Tripathi and Jagdish Sharma, were not eligible for appointment to any post under the advertisement of the Commission of July 22, 1989 and their appointments made in pursuance thereof cannot, therefore, be sustained. They are consequently quashed,

9. In the result, the judgment of the learned Single Judge is hereby set aside and the Special Appeal is accepted. In the circumstances, however, there will be no order as to costs.