
(2019) 03 UK CK 0134

In the Uttarakhand High Court

Case No : Writ Petition (S Of S) No. 1505, 1506, 1916 Of 2018

Raghunath Jat & Others

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0134

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Siddhartha Jain, Vinod Nautiyal, Rakesh Thapliyal

Final Decision : Allowed

Judgement

Manoj K. Tiwari, J

1. Petitioners in WPSS No. 1916 of 2018 and 1505 of 2018 belong to OBC category candidates, while petitioner in WPSS No. 1506 of 2018 belongs to General category.

2. Since common questions of fact and law are involved in these petitions, therefore, all these petitions are clubbed together and are being heard & decided by a common judgment. However, for the sake of convenience, facts of WPSS No. 1916 of 2018 are being considered.

3. All India Institute of Medical Sciences, Rishikesh (respondent No. 2) issued an advertisement on 22.07.2017 inviting applications for various posts, including 125 posts of Staff Nurse (Grade - I). As per advertisement, selection was to be made based on the performance of candidates in the written examination, however, there was no stipulation regarding minimum cut-off marks needed for qualifying in the written examination.

4. Petitioner responded to the said advertisement and he appeared in the written examination, which was held on 18.05.2018. Final result was declared vide notification dated 31.05.2018. In the said notification, it was for the first time

disclosed that cut-off marks have been fixed and anyone, who has scored less than cut-off marks, shall not be appointed. Thus, respondent No. 2 selected and appointed only 99 candidates against 125 posts of Staff Nurse (Grade-I) and no one was selected against the remaining 26 posts in view of the condition of cut-off marks.

5. It is the contention of learned counsel for the petitioners that all the petitioners scored more than 54% marks in the written examination but they have been non-suited for appointment only due to the requirement of cut-off marks, which was introduced after commencement of selection process.

6. In para 13 of the writ petition, petitioner has categorically stated that the condition regarding obtaining minimum cut-off marks in the written examination was not mentioned in the advertisement and it was disclosed for the first time in the final result, which was declared on 31.05.2018.

7. Respondent No. 2 has filed a short-counter affidavit. In para 8 whereof it is stated that petitioner participated in the examination, but was declared unsuccessful. In para 14 and 15 of the said short-counter affidavit, reference has been made of the guidelines issued by the Central Government, which provide for discontinuation of interviews at lower level posts. In para 17, it has been reiterated that the petitioner failed in the written examination and further that there is no Government Rule to give appointment to a failed candidate in permanent jobs. However, the issue raised in the writ petition that the requirement of cut-off marks was introduced, after completion of selection process, has not been answered by respondent No. 2.

8. Learned counsel for the petitioners submits that once selection process has commenced, the rule of the game cannot be changed by inserting requirement of cut-off marks in written examination. He further submits that Hon'ble Supreme Court has repeatedly held that introduction of minimum cut-off marks in interview/written examination, after completion of selection process, would amount to changing the rules of the game after the game was played, which is clearly impermissible. In support of this contention, learned counsel for the petitioner has placed reliance upon the judgment rendered by Hon'ble Supreme Court in the case of K. Manjusree Vs. State of Andhra Pradesh and another, reported in (2008) 3 SCC 512, which are extracted below:

"27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum

marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them - P. K. Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa.

33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

9. Learned counsel for the petitioners has further relied upon paragraph no. 15 of the judgment rendered by Hon'ble Supreme Court in the case of Hemani Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC 11, which is extracted below:

"15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal."

10. Admittedly in the present case, the requirement of minimum cut-off marks was introduced after commencement of selection process. The candidates had no knowledge about any such requirement and they were taken by surprise when it

was mentioned in the final result that those who scored less than cut-off marks have been declared unsuccessful. This leads to the only logical inference that rules of the game was changed after the game commenced.

11. In such view of the matter, writ petitions are allowed. Respondent No. 2 is directed to declare the result in respect of all 125 posts of Staff Nurse (Grade-I) by ignoring the requirement of cut-off marks, within two weeks from today. Consequential orders shall be issued within two weeks thereafter.