
(2015) 11 AHC CK 0105
In the Allahabad High Court
Case No : Service Single No. 5793 of 2015

Rajendra Kumar Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Citation : (2015) 10 ADJ 661 : (2016) 1 AWC 133

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Sharad Pathak, for the Appellant; J.B.S. Rathour, for the Respondent

Final Decision : Disposed Off

Judgement

Rajan Roy, J.

1. Heard learned counsel for the petitioner, Learned Additional Chief Standing Counsel for the State and Shri J.B.S. Rathour, learned counsel for the opposite party No. 2 and 3.

2. This writ petition has been filed seeking an appropriate writ declaring impugned condition No. 6(d) of Government Order dated 11.07.2013 as ultra vires and the second relief is for issuance of a writ of mandamus commanding the opposite parties No. 2 to allow the petitioner to make appropriate correction in his online application form with regard to roll number mentioned therein.

3. The petitioner herein applied for being considered for selection and appointment as Assistant Teacher (Maths/Science) online pursuant to an advertisement issued in this regard.

4. Admittedly while filling up the online application form in the Cyber Cafe with the help of personnel available there, the roll number of UPTET with regard to Upper Primary Level got wrongly mentioned instead of the roll number of Uttar Pradesh Teacher Eligibility Test- 2011 for Primary Level and consequently the marks obtained also got wrongly mentioned.

5. After scrutiny of applications, the name of the petitioner was mentioned in the list of candidates called for counselling. Subsequently, it was noticed by the opposite parties that the marks pertaining to UPTET Upper Primary Level as fed in the online application form by the petitioner was mentioned as 86 whereas he had obtained 87 marks. The petitioner was called. It was only then it was revealed that on account of wrong mentioning of roll number the marks of UPTET Primary Level got fed instead of the marks obtained in respect of the UPTET Upper Primary Level. Thus instead of 87 only 86 marks were mentioned.

6. The petitioner requested to the opposite parties for being allowed to correct the online application form. The matter was referred to higher authority but nothing happened.

7. The contention of the learned counsel for the petitioner is that his appointment letter was not issued on account of the aforesaid error. The petitioner had not committed any fraud nor he had tried to derive undue advantage from the error committed, in fact, had the details been correctly fed in the online application form, he would have been considered with 87 marks in the UPTET Upper Primary Level i.e. one mark more, however, inspite of it, in either eventuality, the petitioner falls within the cut off 82 marks, therefore, he has approached this Court for being allowed to correct the application form and for issuance of appointment letter to him.

8. Learned Additional Chief Standing Counsel has opposed the writ petition on the ground firstly that once the error has been committed then in view of condition 6(d) of Government Order dated 11.07.2013, application of the petitioner was liable to be rejected and the fact that the name figured in the list of counselling is in consequential. It is not open for the petitioner to challenge the said condition now. The selection process is over and any interference at this stage will jeopardize the entire process of appointment.

9. The conditions of recruitment are the same for all the candidates. The conditions are known to all the candidates prior to the actual selection process taking place. The petitioner should have been more carefully and cautious while filling up the online application form though the Court is of the view that considering the "Indian Context" where the students are not computer savvy even as of now, one opportunity should normally be provided prior to the scrutiny of the forms and prior to start of the actual selection process for correction of error in the online application form so that the valuable right of the candidates of consideration for employment and livelihood be not frustrated merely on account of some inadvertent bonafide error, specially, where no prejudice is caused to others, but, considering the fact that there may be several others who may have committed the same error and the conditions of recruitment were the same for all it would not be proper to treat the petitioner's differentially vis-a-vis others by allowing him to correct the application form or to treat is as corrected, at this stage when the appointment letters are to be issued. The rules of the game can not be changed at this stage to suit the petitioner. The

very purpose of prescribing conditions of recruitment is there should be certainty and uniformity in the matter so as to avoid arbitrariness and discrimination. If any relaxation or opportunity is to be provided then it has to be given to all such candidates and not on individual basis, but this can not be done at this belated stage. The petitioner having appeared in the selection based on the conditions mentioned in the Government Order dated 11.07.2013, can not turn around and challenge the aforesaid conditions in these proceedings at this stage. He could have done so prior to his participation in the selection process. For the aforesaid reasons none of the judgments cited by Shri Pathak, learned counsel for the petitioner reported in *Dolly Chhanda Vs. Chairman, JEE and Others*, ; *Archana Rastogi (Km.) Vs. State of U.P. and Others*, ; *Satya Prakash Vs. State of U.P. and Others*--> ; , (2009) 10 ADJ 310, *Ms. Nikita Navlani v. Aligarh Muslim University Aligarh and others* ; Special Appeal No. 75 of 2013, *Puspraj Singh v. State of U.P. And others* (unreported); Writ Petition No. 896(MS) of 2013, *Gul Bahar v. State of U.P. And others* (unreported); , (1975) ALR of 273, *Km. Neelam Sharma v. Board of H.S. And I.E. and Ors.* help the petitioner's cause.

10. In the facts and circumstances of the case, it is not possible for this Court to issue a writ of mandamus to the opposite parties for allowing the petitioner to make the necessary correction in the online application form nor does this Court find any reason to interfere with the impugned Condition 6(d) contained in the Government Order dated 11.07.2013 at this belated stage. However, if others have been allowed to make correction in their online application form and the posts advertised are still vacant, the petitioner falls within the cut off mark, the opposite parties will be at liberty to consider the case of the petitioner but without adversely affecting any candidate already selected and appointed. Thus, if the petitioner can be accommodated subject to the conditions aforesaid, it shall be open for the opposite parties to do so.

11. The writ petition is disposed of with the aforesaid observations.