
(2007) 12 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44135 of 1999

Ram Pal

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 01-12-2007

Acts Referred:

Citation : (2007) 12 AHC CK 0078

Hon'ble Judges : R.K.Agrawal, J and R.K.Rastogi, J

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present petition filed under Article 226 of the Constitution of India the petitioner, Ram Pal, seeks the following reliefs :

?(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order/letter dated 2661999 (Annexure No. 7 to the writ petition), passed by the respondent No. 1, cancelling the petitioner's candidature for the post of District Commandant, Home Guards qua the 1992 examination.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to appoint the petitioner to the post of District Commandant, Home Guards immediately.

(iii) issue any other writ, order or direction to which the petitioner might be found entitled in the facts and circumstances of this case.

(iv) award the cost of this petition.

(v) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 11111999, passed by the Secretary, Home (Civil Defence) Department, Government of Uttar Pradesh, Lucknow (Annexure No. A to the affidavit accompanying the present application for amendment) rejecting the petitioner's representations.?

Briefly stated the facts giving rise to the present petition are as follows :

2. According to the petitioner, he had appeared in the Combined State/Upper Subordinate Service Examination, 1992, conducted by the Uttar Pradesh Public Service Commission, Allahabad, hereinafter referred to as 'the Commission' as an 'Other Backward Caste' candidate. He was declared successful in the preliminary test vide communication dated 14th February, 1995 sent by the Controller of Examinations. He was also declared successful in the main examination and was called for the interview held on 22nd March, 1996. As his height was only 162 cm. he indicated his 11th preference for the post of District Commandant (Home Guards). The other preferences indicated by him were in respect of those posts which did not require a minimum height of 165 cm. In the final result of the Combined State/Upper Subordinate Service Examination, 1992, declared on 5th April, 1996 he was placed at serial No. 309 of the combined merit list and was allotted the post of Assistant Account Officer on the strength of his position in the merit list and the preference for various services given by him at the time of interview. He was placed first amongst the Other Backward Caste candidates who were selected for the post of Assistant Accounts Officer on which post he joined after completing all the requisite formalities. According to the petitioner, as a large number of candidates who were declared selected for various posts visavis a particular examination year either did not join or had resigned after joining for one reason or the other, the original allocation of the candidates to various services underwent a process of reshuffling, i.e., to say a post vacated or not joined by a candidate is offered to those below him in the merit list on the basis of the options indicated before the interview. The post of Assistant Accounts Officer, which was originally allocated to the petitioner, according to him, was his 13th preference whereas the posts of Block Development Officer and District Commandant, Home Guards, were his 12th and 11th preferences respectively. Some of the original allottees to the posts of District Commandant (Home Guards) did not accept the offer of appointment on the said post and as a result of reshuffling the petitioner came to be considered for appointment to one of the posts of the District Commandant (Home Guards). The petitioner was called for medical examination/fitness for the post of District Commandant (Home Guards). In the medical examination (fitness report) given by the Chief Medical Officer, Azamgarh his height has been found to be short by 3 cm. of the prescribed minimum standard of 165 cm. The Secretary (Home), Civil Defence Department, Government of U.P., Lucknow, respondent No. 1 vide order dated 26th June, 1999 had cancelled the petitioner's candidature for the post of District Commandant (Home Guards). The petitioner made a representation on 28th April, 1999 before the respondent No. 1, which was followed by the reminders dated 24th August, 1999 and 15th September, 1999 and when the same was not being decided, the petitioner has approached this Court by means of the present writ petition. After the filing of the petition, the representation made by the petitioner has been decided vide order dated 11.11.1999. The respondent No. 1 by a reasoned order has rejected the said representation. The order dated 26th June, 1999 and 11th November, 1999 passed by the respondent No. 1 are under challenge in the present writ petition.

on the ground that the minimum prescribed standard of height which he did not meet was incorporated in the U.P. Home Guards Service Rules, 1982 for the first time only on 12th March, 1996 and, therefore, it has no application to the candidature of the petitioner which relates to Combined State/Upper Subordinate Service Examination, 1992 as the said criteria was not in existence when the post was advertised and examination for filling up the said post was held. Further, at the time of interview the petitioner was not informed about the minimum requirements of height thereby adversely affecting the indication of job preferences given by the petitioner resulting in the candidates who were lower in rank got the jobs which the petitioner ought to have got given his rank and list of preferences in the Combined State/Upper Subordinate Service Examination, 1992 and the amendment to the U.P. Home Guards Service Rules, 1982 cannot be given retrospective effect. The cancellation of the petitioner's candidature is violative of Articles 14 and 19 of the Constitution of India and the order is based on patently flawed and illegal premises.

3. In the counteraffidavit filed by Sri Amar Nath Yadav, Section Officer in the office of the Commission it has been stated that while making recommendation of the candidates for various posts the Commission does not take into consideration the physical eligibility criteria. The order of cancellation has been passed by the State Government and it has nothing to do with the Commission.

4. State respondents have also filed counteraffidavit. In the affidavit of Rakesh Kumar, Under Secretary, Home Guards, Government of U.P., Lucknow, it has been stated that initially under the relevant service rules for the post of District Commandant (Home Guards) the physical eligibility/requirement was not stipulated. However, by means of the notification dated 12th March, 1996 the Uttar Pradesh Home Guards Service (Second Amendment) Rules, 1996 were framed and in these rules physical requirement/eligibility were determined. The minimum height of the incumbent was prescribed to be 165 cm. and as the petitioner's height was only 162 cm. hence his candidature has rightly been rejected. The petitioner's representations have also been rejected by a detailed order dated 11/11/1999, which calls for no interference.

5. A supplementary counteraffidavit has been filed by Sri Pradeep Kumar Srivastava, Under Secretary, Civil Defence and Home Guards, U.P., Lucknow on behalf of respondent Nos. 1, 3 and 4 in which it has been stated that while sending requisition Form, the State Government vide letter dated 31st December, 1991 had specifically mentioned that for the appointment of the candidates on the post of District Commandant (Home Guards), the criteria for physical eligibility, as prescribed for appointment on SAMOOH "KHA" posts in the Police Department, has been made applicable and fixed and, therefore, for the appointment on the post of District Commandant (Home Guards), the criteria prescribed regarding physical eligibility/measurement and requirements for appointment on SAMOOH "KHA" post in the Police Department, is applicable. It has further been stated that in respect of the appointment of candidates in

SAMOOH "KHA" in the Police Department, Government Order dated 16th November, 1978 prescribes the physical eligibility and measurements. It has been stated that in the aforesaid Government Order the minimum height has been prescribed as 165 cm.

6. In the rejoinder affidavit filed by the petitioner in reply to the counter affidavit of Sri Amar Nath Yadav it has been stated that the Commission has tried to divest itself of all the responsibilities by stating that the Commission does not take into consideration the physical eligibility criterion while making selection but as it is the examining and recommending body it is duty bound to furnish to the applicant all the relevant particulars so as to enable the candidates to indicate their job preferences and any failure on the part of the Commission to do so cannot but have disastrous consequences for the candidates.

7. In the rejoinder affidavit filed in reply to the counter affidavit filed by Rakesh Kumar, it has been stated that the amendment made in the U.P. Home Guards Service Rules, 1982 in the year 1996 is only prospective and cannot apply retrospectively and cancellation of the candidature of the petitioner on the post of District Commandant (Home Guards) is erroneous and contrary to law.

8. We have heard Sri Shyamal Narain, learned Counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel appearing for the respondents.

9. Learned Counsel for the petitioner submitted that the eligibility criteria as given in the Rules, namely, U.P. Home Guards Service Rules, 1982 as it stood when the advertisement for filling up the various posts was published in the year 1992 by the Commission, there was no requirement for candidates to possess minimum height of 165 cm. The requirement of minimum height came in statute book in the year 1996 and, therefore, it cannot be applicable to the examination and selection made pursuant to the advertisement made in the year 1992. He further submitted that the advertisement does not stipulate that the candidates for the post of District Commandant (Home Guards) should possess a minimum height of 165 cm. and, therefore, the petitioner's candidature could not have been rejected on that ground. He further submitted that the requirement of the height as 165 cm. has nothing to do with the performance of duties of District Commandant (Home Guards) and, therefore, it could not be pressed into service. In support of his various pleas he has relied upon the following decisions :

1. A.A. Calton v. Director of Education & Anr., AIR 1983 SC 1143.

2. Maharashtra State Road Tpt. Corporation & Ors. v. Rajendra Bhimrao Mandve & Ors., 2002(1) LBESR 476 (SC) : JT 2001(10) SC 191.

3. Judgment dated 28/5/1997 given in Civil Misc. Writ Petition No. 36264 of 1995 connected with

Civil Misc. Writ Petition No. 32014 of 1996, [Since reported in 1997(2) LBESR 428 (All)] Krishna Kumar Sharma v. State of U.P. & Ors..

10. Learned Standing Counsel on the other hand submitted that the State Government while sending requisition for filling up the vacant posts of District Commandant (Home Guards) had specifically mentioned that for appointment of candidates on these posts criteria of physical eligibility as prescribed for SAMOOH "KHA" in the Police Department shall be applicable. According to him vide Government Order dated 16111978 for appointment of candidates on SAMOOH "KHA" posts in the police Department minimum height has been fixed as 165 cm. and, therefore, the same was made applicable for the appointment on the post of District Commandant (Home Guards). According to him, in the past also in respect of appointment on the post of District Commandant (Home Guards), this minimum height requirement has been taken into consideration and applied. The duties performed by the candidates in SAMOOH "KHA" post of the Police Department and that by the District Commandant (Home Guards) are of similar nature and this requirement has rightly been applied for cancelling the candidature of the petitioner on the post of District Commandant (Home Guards). The decisions relied upon by the learned Counsel for the petitioner have been distinguished on the ground that they are not applicable in the present case.

11. We have given our anxious consideration to the various plea raised by the learned Counsel for the parties. We find that the State Government while sending requisition to the Commission on 31121991 for filling up the posts of District Commandant (Home Guards) had specifically mentioned that the criteria for physical eligibility as prescribed for appointment on SAMOOH "KHA" posts in Police Department shall be applicable. In the Government Order dated 16111978 the minimum eligibility requirement so far as the height is concerned has been fixed as 165 cm. in respect of the candidates in SAMOOH "KHA" posts in the Police Department. The petitioner is short by 3 cm. in height. Even though the said requirement was not published in the advertisement and was specifically brought in the statute book by amendment in the U.P. Home Guards Service Rules, 1982 in the year 1996 yet it would not make any difference. The requirement of candidates possessing a minimum height is particular to the nature of the job to be performed by the persons appointed on a particular post and specifically in the Police Department and Home Guards Department minimum height required to be possessed is a valid consideration.

12. In the case of A.A. Calton (supra), the Apex Court has held that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect.

13. In the case of Maharashtra State Road Tpt. Corporation (supra), the Apex Court has held that in the absence of statutory rules and regulations, selection is governed by the circular orders issued by the authorities.

14. In the case of Krishna Kumar Sharma (supra), this Court has held that the main requirement of the Excise Inspector is that he should be honest and hard working and a man should not suffer for no fault of his unless the physical

requirement is absolutely necessary for the duties which he performs. This Court has held that imposition of minimum height of 162 cm. for Excise Inspector is wholly arbitrary and violative of the Article 14 of the Constitution of India.

15. The petitioner cannot take any advantage of the decisions referred to above. It is wellsettled that any amendment which has not been given retrospective effect cannot be applied retrospectively so as to impair or take away an existing right. Further in the absence of service rules the selection and appointment are governed by the Circular Orders issued by the authorities. However, in the present case we find that the U.P. Home Guards Service Rules, 1982 prior to its amendment in the year 1996 were silent regarding requirement of physical height and chest measurements. The State Government had made rules regarding physical and other requirement applicable to the appointment in SAMOOH "KHA" post in the Police Department which prescribed the minimum height requirement of 165 cm. When the same has been made applicable for appointment on the post of District Commandant (Home Guards) at the time of sending the requisition to the Commission, the same cannot be said to be contrary to the service rules. Thus, the petitioner ought to have fulfilled the minimum height requirement of 165 cm. for being appointed on the post of District Commandant (Home Guards). Looking into the nature of duties performed by the Home Guards, decision of this Court in Krishna Kumar Sharma's case, which related to the Excise Inspector, would not be applicable.

16. No other point has been raised.

17. In view of the foregoing discussion, we do not find any merit in the writ petition. It is dismissed accordingly. However, the parties shall bear their own costs.