
(2009) 05 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition No. 1195 of 2008 (S/S)

Rect Devesh Kumar Dhyani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1, 2, 2(30), 30

Citation : (2009) 05 UK CK 0033

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Advocate : Rajendra Dobhal, for the Appellant; Arvind Vashistha, Learned Assistant Solicitor General of India, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bist, J.—Chapter XIV of the Regulations framed under UP. Intermediate Education Act, 1921 deals with Intermediate Examination. Regulation 1 of this Chapter makes it necessary for each candidate to pass High School Examination for taking admission in Intermediate Examination. In Regulation 2 a list of 71 examination has been given which are declared equivalent to the High School Examination of UP. Board. Sub-Regulation 30 of the Regulation 2 of Chapter XIV of the Regulations declares Adhikari Examination conducted by Gurukul University, Vrindavan as equivalent to High School of UP. Board. Thus, prior to creation of State of Uttarakhand Adhikari Examination was being treated as equivalent to High School of UP. Board. After creation of State of Uttarakhand this recognition continued till 26-08-2007 in the State of Uttarakhand as on 27-08-2007 an order was passed by the State of Uttarakhand derecognising the Adhikari Examination as equivalent to High School. Petitioner passed his Adhikari Examination in the year 2006. At that time Adhikari Examination was duly recognized by the State of Uttarakhand. On 22-10-2007 the Petitioner appeared for recruitment of Bengal Engineering Group at Roorkee Centre and qualified physical test, again on 08-11-2007 a medical test was conducted in which the

Petitioner was declared successful. Thereafter, on 25-11-2007 a written test was also conducted in which the Petitioner was declared successful. On 21-01-2008 the Petitioner was enrolled under UHQ, Roorkee and was sent for training. The basic training phase of the Petitioner commenced from 28-01-2008 and concluded on 07-06-2008 and thus he completed basic training successfully. Thereafter, the Petitioner was asked to complete his Field Engineering Training from 07-07-2008.

2. During the field training period, on 30th October, 2008, a show cause notice was served on the Petitioner stating therein that he was enrolled in the Army on 21-01-2008 by Headquarter Bengal & Centre, Roorkee on the basis of matriculation education certificate issued by Education Board, Gurukul Vishvidhyalaya Vrindavan, Mathura (UP.) and on scrutiny of education certificate it was intimated by the Headquarter's letter dated 24-10-2008 that the Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) had been derecognized for enrolment into Army as per integrated Headquarter letter No. 62533/Rig 5 (OR)(A) dated 17-11-2003. The Petitioner was informed that his enrolment becomes fraudulent and he was asked to give reasons why he should not be discharged from service under the relevant Army Rules. After receiving show cause notice the Petitioner submitted his reply to Commanding Officer stating therein that the Petitioner has not made any fraud in getting his enrolment in the Army as he submitted marksheet and certificate issued by Gurukul Vishvidhyalaya Vrindavan, Mathura (UP.) of Adhikari Education which was duly recognized by UP. Secondary Education Board and Uttarakhand School Education Board. Thereafter, on 22-11-2008 Respondent No. 3 passed an order whereby the Petitioner was discharged from service. Aggrieved by the order dated 22-11-2008 Petitioner has filed present writ petition.

3. Submissions made by the learned Counsel for the Petitioner are that the Petitioner submitted the same documents at the time of recruitment which were duly checked by the authorities at various stages and the Petitioner was permitted to appear in physical test, medical test and written examination and after passing of the examination the Petitioner was declared successful for the enrolment in the Army, therefore, it cannot be said that the Petitioner obtained enrolment in the Army by any fraudulent manner. According to learned Counsel for the Petitioner, the Respondents did not disclose at the initial stage of recruitment that the candidates who have passed Adhikari Examination from Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) are not eligible for enrolment in Indian Army. According to him the Respondents are not justified in discharging the Petitioner from service when the Petitioner has completed almost 10 months training in the Army. Learned Counsel for the Petitioner argued that the matter of recognition of examination is within the domain of Education Board or State Government and Official of Army Headquarter is no authority to derecognize any examination. He further argued that since the Adhikari Examination which was passed by the Petitioner in the year of 2006 was duly recognized in the State of Uttarakhand till 26-08-2007, the Petitioner's services could not be terminated on

the ground of invalid certificate.

4. Learned Counsel for the Respondents, on the other hand, submitted that in due course of time on scrutiny of educational certificates of the Petitioner, issued by the Board of Gurukul Vishvidhyalaya Vrindavan, Mathura (UP.) a clarification was asked from integrated Headquarters of Ministry of Defence, Army Engineer-in-Chief's Branch which vide letter No. 39560/Gen/5/67/E1 A dated 07-10-2008 confirmed that necessary action should be taken as per Integrated Headquarters of Ministry of Defence, Adjutant General Branch letter 62510/Rtg 5(OR)(A) dated 09-07-2004. Thereafter, show cause notice was served on the Petitioner. Petitioner replied the same but his reply was found unsatisfactory as Petitioner did not clarify the observation of the show cause notice and Petitioner was discharged from service on 22-11-2008 under Army Rule 13(3)(IV). According to learned Counsel for the Respondents as per additional Directorate General of Recruiting/Adjutant General Branch, integrated Headquarters of Ministry of Defence (Army) letter No. 62533/Rtg 5(OR)(A) dated 17-11-2003, Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) is not recognized for the purpose of employment of Defence Services. Since the Petitioner was enrolled on the basis of certificate issued by Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) which was not recognised for the purpose of employment in the service, the Petitioner was discharged from service. He argued that Petitioner is not entitled to get service in Army on the basis of certificate possessed by him as the same is not recognised. He relied upon the judgment reported in V.K. Sood Vs. Secretary, Civil Aviation and others, wherein the Hon'ble Apex Court has propounded that it is for rule making authority to prescribe qualification etc. He argued that it is for employer to fix minimum qualification for a post. He further argued that since the Respondents have not accepted the certificate issued by Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) as qualifying certificate, the Petitioner cannot be enrolled in army and writ petition deserves to be dismissed.

5. On 03-12-2008 this Court directed the Respondent to file counter affidavit. This Court further directed the Respondents to clarify in their counter affidavit that whether, after issuance of circular/letter dated 17-11-2003, any public notice was issued in the newspapers and whether the concerned State Government or the Boards were informed about the circular/letter dated 17-11-2003. The Respondents were further directed to clarify about the method by which the general public was informed that Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) is not recognized. The Respondents were further directed to inform the Court about the recruitment process in pursuance of which the Petitioner was selected. The Respondent filed their counter affidavit but queries made by Court were not replied. They simply stated in the counter affidavit that since vide order dated 17-11-2003, issued by the Army Headquarters, Gurukul Vishvidhyalaya Vrindavan, Mathura (U.P.) was mentioned under the heading of non-recognised Board, the Petitioner was rightly discharged from service.

6. As far as argument of Shri Arvind Vashistha to the effect that it is for employer

to fix minimum qualification of recruitment is concerned, the same is correct. It is true that employer has safe right to fix qualification for appointment on particular post and in the present case qualification fixed by the Respondents for enrolment in Army is High School. It is not in the case of the Petitioner that the Respondent have incorrectly fixed the qualification for employment. The case of the Petitioner is that the certificate submitted by the Petitioner i.e. Adhikari Examination is equivalent to the High School Examination. Admittedly, Adhikari Examination was recognized as equivalent to High School Examination by U.P. Board under Chapter XIV Regulation 2(30) and State of Uttarakhand also till 26th August, 2007. Therefore, the Petitioner was bonafidly pursuing his studies for Adhikari Examination from Gurukul Vishvidhyalaya. Since queries made by the Court were not replied by the Respondents, therefore, it is assumed that no information was given by the Respondents to general public about the letter/circular dated 17-11-2003 and Petitioner had no knowledge about the same, otherwise he would not have gone for Adhikari Examination and would have gone to other High School Examination as he was intended to go for Army job. He bonafidly appeared in the recruitment test and was selected. It is also an undisputed fact that Petitioner did not conceal anything before the Respondents by submitting his certificate at the time of recruitment. It was open for the Respondents to reject the candidature of the Petitioner at initial stage. In fact they found him fit for job on the basis of certificate submitted by him and now it is not open for them to discharge him from service after a period of 10 months. Since Adhikari Examination of Gurukul Vishvidhyalaya Vrindavan, Mathura (UP.) was recognized by the State of Uttarakhand in the year 2006, when Petitioner passed Adhikari Examination, the Respondents acted illegally by discharging him on the basis of his certificate. The Petitioner belongs to the State of Uttarakhand and he rightly pursued his studies for Adhikari Examination which was duly recognised by the State of Uttarakhand.

7. Undoubtedly the State Board/Central Board/State Government/Universities have power to grant equivalence to courses/examinations. The employer does not have power to derecognise any examination by its own which is duly recognised by the Boards/Governments. In the present case the Respondents should have taken up the matter with those State Government/Boards (including State of Uttarakhand) who had recognised Adhikari Examination as equivalent to High School and should have requested them to derecognise Adhikari Examination. But this was not done. Therefore, the Respondents acted illegally in issuing letter dated 17-11-2003. This action is without authority. Since State of Uttarakhand has already derecognized the Adhikari Examination, this issue is not being dealt further.

8. In view of the aforesaid discussion, the writ petition is allowed, order/discharge certificate dated 22-11-2008 Annexure 9 to the writ petition is quashed.

9. No orders as to costs.