

(2014) 11 UK CK 0023

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 899 of 2014

Sanjay Batra

APPELLANT

Vs

Uttarakhand Public Service Commission

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2015) LabIC 626

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sandeep Tiwari, Advocates for the Appellant; B.D. Kandpal, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Sandeep Tiwari, learned counsel for the petitioners, Mr. B.D. Kandpal, learned counsel for the Commission and perused the record. The petitioners were candidates for the post of Assistant Review Officer in the State Secretariat, for which an examination was conducted by the respondent - Uttarakhand Public Service Commission (hereinafter referred to as "Commission"). The case of the petitioners evidently is that they have not been selected in the said selection process. They have challenged the examination and the process therein on the grounds that the Commission has wrongly fixed the benchmark of 45% of minimum marks in the written examination, though this provision was not there in the Rules. Therefore, the entire selection process, in fact, the rejection of the candidatures of the petitioners on the ground that they have not procured minimum marks, is wrong.

2. This argument is rebutted by Mr. B.D. Kandpal, counsel for the Commission.

3. The Commission had advertised 21 posts of Assistant Review Officer (in short "ARO") for the State Secretariat. The advertisement was published on 09.08.2012. At the relevant time, the Rules, which were applicable for the said selection, was Uttarakhand Public Service Commission Procedure for Preparation of Result Rules, 2012 (hereinafter referred to as "Rules of 2012"). As per Rule

4.3.1 of Rules of 2012 there was a provision that in the select list name of candidates will be given in terms of their merit, provided each of the candidates has secured the minimum marks, as prescribed by the Commission. In case, the candidate has procured less than minimum prescribed marks, their candidature will be rejected.

4. The counsel for the petitioners, on the other hand, relies upon another provision of the said Rules 4.2.2(c) of Rules of 2012, which relates to selection where in the written examination has to be done. The case of the petitioners is the Rules of 2012, there is no mention of "minimum marks", where the selection has to be done only by way of written examination.

5. However, after the advertisement was made, the Rules were amended on 01.07.2013 whereby a provision was made that for direct examination, which is to be conducted only on the basis of written examination as well as for the examination which is to be determined on the basis of written examination and interview. The general candidates must have a minimum 45% of marks. According to the petitioners, since this amendment has been brought subsequent to the advertisement, it will not be applicable in case of the petitioners, as admittedly in the case of the petitioners, the selection has to be done only by way of written examination where there was no provision of interview.

6. The learned counsel for the respondents/Commission, on the other hand, submits that the provision of minimum percentage of marks was applicable irrespective of whether the examination was to be conducted on the basis of written examination alone or on the basis of written examination and interview. Irrespective of the mode of examination a candidate must have a minimum cut-off-marks only than he will be liable to be selected. He relies upon a meeting of the Commission 06.01.2011 wherein it was prescribed that 45% minimum marks will be necessary for the general candidates and 35% minimum marks will be prescribed for the category candidates to qualify the written examination. Even otherwise this Court is also of opinion that the minimum cutoff-marks have to be prescribed by the Commission. If they have to evaluate candidates and thereafter select or reject a candidate minimum cut-off-marks must be there. That sets a standard, without which a selection process has no meaning. Therefore the contention of the petitioners that the prescription of a minimum percentage of marks is arbitrary is rejected. Even otherwise the petitioners do not have a vested right on the posts for which they appeared in the examination. Till any kind of finality had occurred in the selection process the UPSC could always change the procedure. It is an admitted fact that the petitioners have failed to qualify the minimum marks in the written examination, which was prescribed by UPSC. Their challenge fails, the writ petitions are hereby dismissed. No order as to costs.