

(2015) 11 AHC CK 0011
In the Allahabad High Court
Case No : Special Appeal No. 829 of 2015

Sanjay Kumar Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 ADJ 407 : (2016) 114 ALR 424 : (2016) 1 AWC 493 :
(2015) 4 UPLBEC 3266

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Siddharth Khare, for the Appellant; Ajay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. The special appeal has arisen from a judgment and order of the learned Single Judge dated 9 October 2015.

2. The Public Service Commission of the State of Uttar Pradesh Commission issued an advertisement on 25 December 2010 for recruitment of Additional Private Secretaries. The examination was held in two stages: the first stage included a paper in General Knowledge and General Hindi, while the second stage included a paper in Hindi shorthand and Hindi typewriting. The Commission declared a list of 1244 candidates who have obtained at least 33% marks in General Knowledge and General Hindi and a minimum speed of 80 words per minute in Hindi shorthand and a minimum speed of 25 words per minute in Hindi typewriting. The third stage consists of an examination to test computer knowledge. Upon scrutinizing the applications of the candidates, the Commission found that 385 out of 1244 candidates have produced certificates regarding computer qualifications awarded by the private institutions, which according to the Commission were not in accordance with the advertisement. Accordingly, the Commission issued a notice on 29 July 2015, furnishing an opportunity to such candidates, to prove that they hold qualifications in accordance with the norms

prescribed by the advertisement and the service rules.

3. The appellants before the Court filed a writ petition under Article 226 of the Constitution, seeking to challenge the notice dated 29 July 2015 and prayed for a mandamus to allow them to participate in the third and final stage of the examination comprising of the computer test, without any objection pertaining to their eligibility with reference to computer knowledge. The appellants also sought a mandamus to treat them as fully eligible and qualified for the post of Additional Private Secretary. For convenience of reference, the reliefs are extracted hereinbelow:

"(a) a writ, order or direction in the nature of certiorari quashing the notification dated 29.7.15 (Annexure No. 5) in so far as it pertains to the petitioners;

(b) a writ, order or direction of a suitable nature commanding the respondents to permit the petitioners to participate in the third and final stage of selection comprising of Computer Test for recruitment as Additional Private Secretary (U.P. Secretariat) in pursuance to the advertisement dated 25.12.10 without taking any objection pertaining to the eligibility of the petitioners with reference to Computer knowledge;

(c) a writ, order or direction of a suitable nature commanding the respondents to treat the petitioners as fully eligible and qualified for the post of Additional Private Secretary (U.P. Secretariat) and not to take any objection on such basis;

(d) any other writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstances of the case; and

(e) award cost of the petition to be paid to the petitioners."

4. At this stage, it would be material to note that before conducting the first and second stage of the examination, notices were issued by the Commission on 3 September 2013 and 6 March 2014 in which, it was mentioned that candidates were provisionally allowed to appear in the examination subject to the condition that they must possess the required qualifications as prescribed in the advertisement failing which their candidature would be cancelled.

5. The Uttar Pradesh Secretariat Personal Assistant Service (First Amendment) Rules, 2005 provide for academic qualifications in Rule 8. Rule 8 in Hindi and the corresponding English version are extracted hereinbelow:

6. Briefly stated, the submission of the appellants is that the requirement as prescribed in Rule 8 (iii) cannot be read to mean that candidates should have passed the course mentioned in clauses (a) and (b) of Rule 8 (iii) and it would be sufficient if the courses, which candidates have passed, have a content equivalent to what is prescribed namely, the Certificate Course in Computing offered by DOEACC Society or the course conducted by the Board of High School and Intermediate Education.

7. The learned Single Judge rejected the submission. The judgment of the

learned Single Judge contains a reference to the nature, position and standing of DOEACC Society. This aspect of the finding is not questioned in the course of the special appeal and is hence, extracted hereinbelow:

"The DOEACC Society is an Autonomous Scientific Society of the Department of Information Technology, under the Ministry of Communications and Information Technology, Government of India. It has prescribed the courses for the different levels of computer concept. The examination in question is "CCC" examination. For the said course, the candidates are sponsored by the private societies/centers at different places of the country. A candidate who passes the examination conducted by the DOEACC Society is issued "CCC" Certificate. The certificate also contains the name of the institution which sponsors the candidate. A candidate, according to his/her performance, is awarded different grades like Grade "A", "B", "C" & "D"."

8. The contention of the appellants is that Rule 8(iii) should be construed to mean that the course which the appellants have completed from private institutions should have the same content as the course which is prescribed by DOEACC Society or, as the case may be, the course conducted by the Board of High School and Intermediate Education. This submission cannot be accepted having regard to the plain meaning of the Rule.

9. We have carefully perused both the Hindi and English versions of the Rule and both of them are consistent. Rule 8(i) requires that a candidate should have possessed a Bachelor's degree from a University established by law in India or a qualification recognized by the Government as equivalent thereto. Rule 8(ii) requires that a candidate should have a minimum speed of eighty words per minute and twenty five words per minute in Hindi shorthand and Hindi typewriting respectively. Then comes Rule 8(iii) which stipulates that a candidate must possess knowledge of computers in accordance with what is prescribed thereafter. Clause (a) of Rule 8(iii) refers to the course prescribed for the Certificate Course in Computing (CCC) conducted by DOEACC Society. Clause (b) of Rule 8 (iii), which is in the alternate, refers to the course conducted by the Board of High School and Intermediate Education or a course recognized by the Government as equivalent thereto. The plain meaning of both the English and Hindi versions of Rule 8, with respect to the knowledge of computers, is that a candidate should have passed either the Certificate Course in Computing conducted by DOEACC Society or the course conducted by the Board of High School and Intermediate or any course equivalent thereto recognized by the Government.

10. To accept the contention of the appellants would render the rule unworkable. The Commission would have to determine with regard to each individual private institution in the State (such institutions may be thousands across the State) as to whether the course content is equivalent to the two certificate courses referred to in clauses (a) and (b) of Rule 8(iii). This would lead to a complete breakdown to the selection process. In fact, it is not even the contention of the

appellants in the special appeal that the course content of the courses which they have completed is equivalent to what is prescribed in clauses (a) and (b) of Rule 8(iii). The submission is slightly different because what is urged is that since a computer test is being conducted by the Commission, the holding of a particular certificate becomes redundant. We cannot accept this submission. To say that the holding of a proficiency certificate in computers or for that matter, in any other prescribed skill from a specific institution is not mandatory because the selecting body is also going to hold an examination in computers is unacceptable. It is perfectly open to the Commission which conducts a selection to mandate both the holding of a qualification and the passing of an examination conducted by the Commission. One is not a substitute for the other. The view which has been taken by the learned Single Judge eminently commends itself for acceptance. The learned Single Judge has held that there is no other institution in the name and style of DOEACC Society. When Rule 8(iii) requires a course prescribed for the Certificate Course in Computing conducted by DOEACC Society, the said certificate is an essential qualification.

11. The alternate submission which is urged on behalf of the appellants was that since the appellants, except for appellant Nos. 1, 19 and 26, have completed the Certificate Course in Computing from DOEACC Society, though after the last date prescribed for receipt of applications, their candidature should be considered. This submission cannot be accepted having regard to the provisions of clause 11(14) of the advertisement which clearly provide that candidates must have the eligibility qualification upto the last date of receipt of applications. Moreover, the learned Single Judge has followed a judgment of the Supreme Court in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, . where it was held that it is a well established principle of law that where applications are called prescribing a last date, the eligibility of candidates has to be judged with reference to that date alone. A person, who acquires the qualification prescribed subsequent to the last date specified, cannot be considered at all.

12. In this view of the matter and having considered the submissions, we find no merit in the special appeal. The special appeal shall, accordingly, stand dismissed.

13. There shall be no order as to costs.