

(2014) 12 AHC CK 0097

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 54713 of 2014

Sanjeev Kumar Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2015) 1 ADJ 646 : (2015) 110 ALR 718

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : S.K. Shukla, Advocates for the Appellant

Judgement

B. Amit Sthalekar, J.—Heard Sri S.K. Shukla, learned counsel for the petitioner and Sri Piyush Shukla, learned Standing Counsel for the respondents. Counter affidavit sworn by the Under Secretary, Uttar Pradesh, Police Recruitment & Promotional Board, Lucknow has been filed today and a rejoinder affidavit has also been filed by the petitioner and the same are taken on record.

2. The petitioner is seeking a direction to the respondents to allow him to appear in the written test for the post of Sub-Inspector, Civil Police/Platoon Commander, PAC for the Direct Recruitment Examination-2011.

3. According to the petitioner an Advertisement for the post of Sub-Inspector was issued on 19.5.2011. In terms thereof he submitted his application. Physical Standard Test was held on 20.10.2011 and the Preliminary Examination was held on 11.12.2011. Thereafter the Physical Endurance Test was held on 13.2.2013. The petitioner cleared all these Tests as well as Preliminary Examination but he was not called to appear in the Main Examination held on 14.9.2014.

4. The petitioner had applied under the dependant of freedom fighter quota. His grievance is that a Government Order was issued on 17.7.2013 followed by a Press Note dated 15.7.2014 withdrawing the benefit of age relaxation to the dependant of freedom fighter under that quota. The submission is that this Government Order which makes changes in the Advertisement to the detriment

of the candidates appearing in the selection after the commencement of the selection process was not permissible and was bad in law.

5. The respondents on the other hand stated that a Government Note in the form of order was issued on 17.7.2013 stating very clearly that the benefit of age relaxation to the dependant of freedom fighter was initially provided under the Government Order dated 3.9.1992 and the same was available only upto 31.12.1997 and thereafter there is no other Government Order or Rule or Circular providing for age relaxation under the dependant of freedom fighter quota and because the concession provided under the Government Order of 3.9.1992 was valid only upto 31.12.1997 therefore the provision of age relaxation to the dependant of freedom fighter in the Advertisement itself was bad in the absence of any existing Government Order to that effect and therefore the said benefit has been withdrawn and withdrawal of the said benefit by the subsequent order dated 17.7.2013 which was also notified in the Press Note dated 15.7.2014 would not amount to alteration of any conditions in the Advertisement, so as to render this condition invalid after the commencement of the selection process.

6. Learned counsel for the petitioner on the other hand submitted that conditions providing for age relaxation for dependant of freedom fighter was mentioned in the instruction handbook issued by the Uttar Pradesh, Police Recruitment and Promotional Board, Lucknow (hereinafter referred to as the Board) and it is in pursuance thereof that the Advertisement dated 19.5.2011 has been issued, therefore, it cannot be said that there was an error in the Advertisement.

7. Learned Counsel for the petitioner has referred to the judgment of the Supreme Court in the case of State of Orissa and Another Vs. Mamata Mohanty, in support of his contention and submits that terms and conditions of an Advertisement cannot be changed after the selection process has already commenced.

8. There is no quarrel so far as the legal position is concerned but if the Advertisement itself has been issued ignoring a particular legal position contained in a Government Order or has been issued in contravention of or in ignorance of a Government Order or wrong assumption of a Government Order, such Advertisement cannot be said to be valid as it would vitiate the entire selection and it would therefore be open to the Government to make necessary correction to bring the selection in consonance with the existing legal position.

9. It is not in dispute between the parties that initially the Government Order dated 3.9.1992 provided for age relaxation for dependant of freedom fighter but the said provision was only available upto 31.12.1997. There is no other Government Order or Rule or Circular which provides for such benefit of age relaxation to the dependant of freedom fighter after 31.12.1997. Merely because this concession of age relaxation was mentioned in the instruction handbook issued by the Board would not create a right in favour of any candidate, so long

such concession did not have the sanction of law by way of executive instruction or Rule having the nature and characteristic of subordinate legislation. Any selection held providing for giving such concession to a candidate applying under the dependant of freedom fighter quota would stand vitiate for want of legislative sanction and therefore if the illegal concession come to the knowledge of the Government and the Government withdrew the same, it cannot be said that it has altered the terms and conditions of the Advertisement which would be detrimental for the candidates after the commencement of the selection process. The order dated 17.7.2013 is not a fresh Government Order but only refers to the legal position regarding the Government order of 3.9.1992 and it neither takes away any vested right nor does not itself confer any right upon a candidate. The Press Note of 15.7.2014 is also to the same effect.

10. This Court also cannot overlook the fact that the Main Examination was held on 14.9.2014 and the order dated 17.7.2013 as well as the Press Note of 15.7.2014 was already in existence on the said dates when the Main Examination was held but no challenge to these was given by the petitioner at that point of time and it is only after the Main Examination has been over that he has chosen to file the present writ petition in October, 2014.

11. Be that as it may, in view of the legal position that there was no legislative sanction by way of any Government Order or Circular or Rule providing for age relaxation to the dependant of freedom fighter after 31.12.1997, such a concession could neither have been included in the instruction handbook nor could have been mentioned in the Advertisement of 19.5.2011. The respondents have in fact taken a corrective measure by the Government Order dated 17.7.2013 or Press Note dated 15.7.2014. The judgment in the case of Mamta Mohanty (*supra*) is on its own facts and is not applicable to the facts of the present case.

12. In this view of the matter, I do not find any merit in the writ petition and the same is accordingly dismissed. Sri Amitabh Yash, Member Secretary presently holding the charge of Secretary, Uttar Pradesh, Police Recruitment and Promotional Board, Lucknow is present in the Court. His presence is dispensed with for future unless specifically required by this Court.