

(2006) 03 AHC CK 0171

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 2246 and 60077 of 2005 and 2175 of 2006

Satish Kumar Yadav, Ashok Kumar and Kamlesh Kumar Singh APPELLANT
Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 — Rule 15
Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2002 — Rule 3(3)

Citation : (2006) 6 AWC 5930 : (2006) 2 UPLBEC 1936

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare, D.S. Mishra and Rajeev Mishra, for the Appellant; C.B. Yadav, Surendra Kumar Singh and H.S. Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, Senior Advocate, Sri D.S. Mishra Advocate, Rajeev Mishra Advocate along with the assisting counsels on behalf of the petitioners and Chief Standing Counsel on behalf of the State Respondents.

2. Pleadings have been exchanged between the parties in the connected matters, there being no dispute on facts, parties agree that all the writ petitions may be decided finally at this stage itself.

3. These writ petitions are directed against the selections held for the post of Livestock Extension Officer (Pashudhan Prasar Adhikari) in the Animal Husbandry Department of State of U.P. with reference to the advertisement published by the Department on 29.12.2004. The post of Livestock Extension Officer is a Class-III post within the Animal Husbandry Department of the State of U.P. Appointment on the aforesaid post was earlier regulated under a Government Order dated

21.3.1996.

The Dispute:

4. An advertisement dated 10th August, 1998 was published by the Director, Animal Husbandry Department U.P. inviting applications for appointment against 180 posts of Livestock Extension Officer. Petitioner No. 1 of Writ Petition No. 6175 of 2006, along with other candidates, applied in pursuance to the said advertisement, as according to the petitioner he fulfilled all the qualifications prescribed. The petitioner was not permitted to participate in the said selection. He, therefore, filed Writ Petition No. 29891 of 1998, wherein an interim order was granted on 18th September, 1998 directing the Department to provisionally permit the petitioner to appear in the examination test. The petitioner accordingly appeared in the written test so held. However, the result of the same was not declared.

5. The State Government vide Government Order dated 26.8.1999 cancelled the selections so held. The order of the State Government cancelling selections of the year, 1998 is under challenge in Writ Petition No. 4247(SS) of 1999; Satish Kumar Rai v. State of U.P. which is pending consideration before the Lucknow Bench of this Court.

6. Thereafter fresh advertisements were published between 11.4.2003 to 23.5.2003 for filling up 129 post of Livestock Extension Officer by different Deputy Directors of different division of the Animal Husbandry Department. Written examinations were held at divisional level on 21.5.2003. The results of the written examinations were declared on 24.5.2003. However, the said selections were challenged by means of Writ Petition No. 23956 of 2003 before this Court wherein an interim order was passed on 15.7.2003. Under the said interim order the entire selection process initiated in pursuance of the advertisement of the year 2003 was stayed. It was further provided that if any selections have been held, respondents shall not make any appointments unless directed by this Court. This interim order of the Hon"ble Single Judge was modified by a Divisional Bench of this Court in Special Appeal No. 258 of 2003 vide order dated 25.8.2003 to the extent that selections were directed to be completed, however, respondents were restrained from issuing any appointment letter to the selected candidates. This petition is also being decided by this Court separately.

7. On 29th December, 2004 an other advertisement was published by the Director, Animal Husbandry Department inviting applications against 489 posts of Livestock Extension Officer throughout the State of U.P. (Petitioners of Writ Petition No. 2175 of 2006 applied in pursuance of the said advertisement and were issued Admit Cards bearing Roll Nos. 806 and 94 respectively).

8. The advertisement itself was challenged by means of connected Writ Petition No. 2246 of 2005 by the petitioners therein. In the said writ petition an interim order was passed by this Court on 27.1.2005 and it was provided that the

selections may proceed, however, no one shall be sent for training or issued appointment letter.

9. Subsequent to the interim order of this Court, the Director issued a letter dated 21st June, 2005 whereby he intimated the Deputy Directors of the Department that written examination in pursuance to the advertisement dated 29th December, 2004 shall take place on one day i.e. 10th July, 2005. For the said purpose a meeting is to take place on 26th June, 2005. This order of the Director was again challenged by means of Writ Petition No. 47276 of 2005. The writ petition was dismissed with the observation that the petitioner may challenge the process of selection as well as the select list by way of amendment in the earlier Writ Petition No. 2246 of 2005.

10. Written examination, however, did not take place on 10.7.2005. The Special Secretary, Animal Husbandry Department UP., Lucknow issued a letter dated 12.8.2005 intimating therein that the written examination for selections on the post in question shall take place on 11th September, 2005 and necessary information with regards to eligible candidates was called for. For the said purpose further directions were issued vide letter dated 16.8.2005.

11. The advertisement dated 29th December, 2004 as well as corrigendum dated 24.2.2005 along with letter of the Director dated 16.8.2005 were challenged by means of Writ Petition No. 66007 of 2005 wherein an order was passed on 9.9.2005 stating therein that in view of the order passed in Writ Petition No. 2246 of 2005 dated 27.1.2005 no further interim orders are required to be passed.

12. In the meantime on 16th July, 2005, U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002, framed in exercise of power under Article 309 of the Constitution of India, were published in Official Gazette. Rule 15 of the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 providing a detail procedure for appointment on the post of Livestock Extension Officer by direct recruitment.

13. The petitioners of Writ Petition No. 2175 of 2006 appeared in the written examination held at Allahabad Division for the post of Livestock Extension Officer on 11.9.2005, However, before the list of selected candidates to be called for interview could be acted upon and interview could take place for the purposes of completing the process of selections, the petitioners have approached this Court by means of Writ Petition No. 2175 of 2006 for cancelling the entire selections and for consequential directions.

14. Thus these writ petitions question the advertisement dated 29.12.2004, the process of selection by some petitioners before written test was held, and by some after the written test was held on 11.9.2005,

15. The counsel for the petitioners have confined their arguments to the legality

of the procedure adopted for the selection in pursuance to the advertisement dated 29.12.2004 and therefore the legality or otherwise of the advertisement dated 29.12.2004 itself is not being gone into by the Court.

Petitioners' Case:

16. On behalf of the petitioners, the written examination held in pursuance to the advertisement dated 29.12.2004 held on 11.9.2005 has been challenged amongst other on the ground that the procedure adopted for the written examination with reference to the advertisement dated 9.12.2004 runs contrary to the provisions of U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002, which were the rules applicable on the date of the issuance of the advertisement as well as on last date of submission of application inasmuch as the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 have been notified only on 16th July, 2005 and therefore the entire written examination held by the respondents is patently illegal.

17. In the alternative even if the selections could be conducted under U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002; notified on 16th July, 2005 there are following infirmity in the process of selections so held:

(a) Under the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 the power to determine the syllabus for the written examination is vested with the State Government alone in view of the Rule 15 (proviso), which was not complied.

(b) The Selection Committee to be constituted under Rule 15 alone is competent to analyse and process the applications and determine the number of candidates to be called for interview. In the facts of the case no such Selection Committee was constituted before interview,

(c) The District Magistrate Allahabad had not nominated his nominee for participation in the process of selection till date of interview, therefore the entire selection is vitiated being hit by Rule 15 of U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002.

(d) The Manak in respect of the reserved category candidates to be called for interview was also not fixed in accordance with the Rule 15.

State's Reply:

18. On behalf of the State Respondents it has been admitted by Sri C.B. Yadav, Chief Standing Counsel that the written examination for the post of Livestock Extension Officer has been held in accordance with U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 as published in the official gazette on 16th July, 2005. According to Mr. Yadav, the aforesaid rules of Animal Husbandry Department are special rules framed

subsequent to the U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002 and therefore necessarily exclude the said general rules in view of Rule 3(3)(iii) of the general rules for recruitment on Group "C" employees.

19. With reference to the letter of the Director, Animal Husbandry Department U.P. dated 20.3.2006 he submits that a decision with regards to syllabus of the written examination was finalized by the Director, who at the relevant point of time was also holding the charge of the Secretary, Animal Husbandry Department. Therefore the contention raised on behalf of the respondents to the contrary is legally not justified.

20. With reference to issue No. 2 it is submitted that in view of the Government Order dated 15th April, 1993, if one of the nominee to the Selection Committee does not participate in the process of selection, the selection shall not be vitiated if the majority of members are present, Lastly It is submitted that the number of candidates called for interview was determined by the Selection Committee and in that regard reliance has been placed upon the letter of the Selection Committee dated 21.11.2005 (Annexure-CA-2 to the supplementary counter affidavit filed today). He has not been able to refer to any document for establishing that Manak for the reserved category candidates was fixed by the Selection Committee.

The Findings:

From the facts which have been noticed herein above, it is not in dispute that the advertisement for making appointment on the post of Livestock Extension Officer was published on 29th December, 2004. On the date the advertisement was published, the only rules enforce for regulating the appointments on Group "C" posts in the State of U.P. were the U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002.

21. It is settled law that the process of selection commence with the issuance of advertisement inviting applications for appointment. The date so notified is the crucial date for determining the procedure and the rules, which are to be applied for the said selections. Any new set of rules or any subsequent amendments to the existing rules will have prospective application only and can not be applied for the purposes of making selections in pursuance of the advertisement which was published earlier. The legal position in that regard has been settled by the Hon'ble Supreme Court of India in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , wherein it has been held as follows:

Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement,

he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

22. The said judgment of the Hon"ble Supreme Court has been referred to in the recent judgment of the Hon"ble Supreme Court in the case of Milk Production Association v. State of Orisa AIR 2006 SC 933 (paragraph 10).

23. It may be pointed out that although the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 were framed in the year 2002 in exercise of power under Article 309 of the Constitution of India, the same in fact were published in the official gazette on 16th July, 2005 only. Therefore, they became enforceable only from the date they were published in the official gazette i.e. 16th July, 2005. No other date or record for establishing the publication of the rules has been brought on record by the respondents.

24. In view of the aforesaid settled legal position, U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002, which have been enforced after publication in official gazette only on 16th July, 2005, will have no application so far as the process of selections qua the advertisement dated 29th December, 2004 is concerned. Therefore the entire written examination conducted by the respondents in alleged compliance of Rule 15 of U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 (notified on 16th July, 2005) is patently illegal and unsustainable in the eyes of law. The respondents were under legal obligation to complete the process of selections initiated under the advertisement dated 29th December, 2004 in accordance with the rules applicable i.e. U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002 and in strict adherence thereto.

25. Even, if it is assumed that the selections could have been held on the basis of U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 as notified in the official gazette on 16th July, 2005, the contention raised on behalf of the petitioner to the effect that there has been violation of the said statutory rules also may be considered by the Court.

26. For the purposes of these bunch of petitions relevant rule would be Rule 15 of U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002, which reads as follows:

15. Procedure for direct recruitment for the post of Livestock Extension Officer--
(1) For making direct recruitment to the post of Livestock Extension Officer there shall be constituted a Selection Committee comprising :

(i) Appointing Authority....Chairman

(ii) An Officer belonging to the Scheduled Caste or Scheduled Tribes, nominated

by the appointing authority, if the appointing authority does not belong Scheduled Castes or Scheduled Tribes. If the appointing authority belong to the Scheduled Caste or Scheduled Tribes an officer other than belonging to the Scheduled Castes or Scheduled Tribes or other Backward Classes shall be nominated by the appointing authority.... Member

(iii) An officer belonging to the other Backward Classes, shall be nominated by the appointing authority, if the appointing authority does not belong to the other Backward Classes. If the appointing authority belong to the other Backward Classes, an officer other than other Backward Classes or Scheduled Castes or Scheduled Tribes shall be nominated by the appointing authority. ... Member

(iv) An Officer nominated by the District Magistrate of the concerned district....Member

(2) The Selection Committee shall Scrutinize the application and require the eligible candidates to appear in a competitive examination.

Note : The syllabus for competitive examination shall be such as is prescribed by the Government from time to time.

(3) After the marks obtained by the candidates in the writing test have been tabulated, the Selection Committee shall, having regard to the need for securing due representation of the candidates belonging to Scheduled Caste, Schedule Tribes and other categories in accordance with Rule 6. call for interview such number of candidates as on the result of the written examination, have come up to the standard fixed by the committee In the respect. The marks awarded to each candidate In the Interview shall be added to the marks obtained by him in the written test.

(4) The Selection Committee shall prepare a list of candidates in order of merit as disclosed by aggregate of marks obtained by them in the written test and interview. If two or more candidates obtained equal marks, the candidates obtaining higher marks in the written test shall be placed higher. The Selection Committee shall forward the list to the appointing authority.

27. From the aforesaid rules it is apparently clear that the process of written examination is to be initiated only after the constitution of the Selection Committee. The Selection Committee has to comprise of following four members:

- (a) Appointing Authority;
- (b) Nominee of the Appointing Authority;
- (c) Nominee of the Appointing Authority belonging to the reserved category;
- (d) Nominee of the District Magistrate of the concerned district.

28. It is not in dispute that nominee of the District Magistrate is one of the member to be nominated for the constitution of the Selection Committee under the aforesaid rules. It is also not in dispute that the District Magistrate did not

nominate an officer as his nominee for constituting the Selection Committee under the statutory rules till 28.11.2005 (Reference CA-12 to the counter affidavit filed on behalf of the respondents). Thus the non-compliance of the Rule 15, in so far as it pertains to constitution of the Selection Committee under the rule, is established from record. It is further apparent from the record that the constitution of the Selection Committee, which is a condition sine qua for the initiation of process of selection itself was not constituted in its entirety inasmuch as the District Magistrate had not nominated any nominee on his behalf in the said Selection Committee up to 28th November, 2005. Reference to the Government Order dated 15th April, 1993 by the Chief Standing Counsel is totally out of context Inasmuch as the aforesaid Government Order will have no application where the nomination itself has not been made by the authority concerned for constituting the Selection Committee as required by law. Government Order dated 15th April, 1993 would apply only where a valid Selection Committee has been constituted and thereafter one or more member, who only constitute a minority, did not participate in the selection. The said Government Order cannot be taken as an aid for the Selection Committee itself being not constituted at the first instance in accordance with the statutory rules. If law requires an act to be done in a particular manner, it has to be done in the said manner and not otherwise. The legal position in that regard has been settled by the Privy Council in its judgment reported in AIR 1936 253 (Privy Council) It is worthwhile to reproduce the legal proposition laid down by the Privy Council in following terms:

where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

29. The law laid down by the Privy Council has repeatedly been followed by the Hon'ble Supreme Court as well as by this Court.

30. Under the note to Rule 15 State Government alone is competent authority to prescribe the syllabus for written examination to be conducted for the post of Livestock Extension Officer.

31. From the record of the present writ petition except from the letter of the Director dated 20th March, 2006 there is nothing on record to establish that the State Government ever prescribed the syllabus in respect of the written examination to be held for selection on the post of Livestock Extension Officer. Relevant portion of the letter of the Director dated 20.3.2006 reads as follows:

^^ mijksDr fopkj foe"KZ ds mijkUr rRdkyhu funs"kd] i"KqikyU tks lfpo] i"Kq/ku] mRrj izns"K "kklu Hkh gSa us dk;kZy; Kki la[k 38@,l?Vh?@Mh?,?,p?@2005 fnukad 12&8&05 }kjk Jh ,l?ih? flag] la;qDr funs"kd ?iz"kklu? dks i"Kq/ku izlkj vf/ kdkfj;ksa ds p;u ds lEcU/k esa fyf[kr ijh{kk rFkk lk{kkRdkj ds fu;kstu] vuqJo.k ,oa ldq"ky lEiUu djkus ds fy, izHkkjh ukfer djrs gq, mUgSa mfYyf[kr ijh{kk ds iz"ui= cuokus] Niokus rFkk mUgSa ijh{kk dsUnzksa rd igqapkus ds fy,

iw.kZ:i ls mRrjnk;h cuk;s tkus ds funsZ"k izlkfjr fd;s x;s ftlds vuqikyu esa l;qDr funs"kd ?iz"kklu? }kjk mDr inksa ij p;u gsrq fyf[kr ijh{kk esa fu/kkZfjr "kSf{kd vgZrk dks n`f"Vxr j[krs gq, b.Vj ehfM,V Lrj ds HkkSfrd foKku] tho foKku] jlk;u foHkkx rFkk d`f"k fo"k; ds lkFk lkekU; Kku lfgr dqy 50 vadksa dh fyf[kr ijh{kk gsrq iz"ui= ikB~;dze ?Syllabus? LrS;kj djkdj fyf[kr ijh{kk lEIUu djk;h x;h A**

32. In the opinion of the Court the same cannot be read as a prescription of the syllabus by the State Government for the reasons that the letter does not record that the Secretary of the Department took a decision that the syllabus for the written examination shall be as per the curriculum fixed for Intermediate Examination. The letter only records that the Joint Director (Administration), who was appointed as the Controller for the selections on his own took a decisions to get a question paper prepared on the basis of the curriculum of the Intermediate Examination qua the subjects of Physics, Biology, Chemistry and Agriculture Science along with General Knowledge. The total marks of written test was fixed as 50. Such printing of question paper by the Joint Director (Administration) cannot be said to be a prescription of the syllabus by the State Government as required under the statutory rules. It is needless of highlight that it no point of time the State Government took a decision for determining the syllabus for the competitive examination nor the maximum marks prescribed for the written test were ever notified by the State Government. The distribution of marks for various categories of question under different subjects was ever determined by the State Government, as was necessary under the Rule.

33. In the opinion of the Court, the letter does not amount to prescription of syllabus by the State Government for the written examination, as required under note to Rule 15.

34. The aforesaid conclusion is further supported from the letter of the Director dated 12th August, 2005 (enclosed as Annexure-CA-3 to the counter affidavit filed by Sri H.S. Rai on behalf of the respondents), wherein, after referring to the appointment of the Controller for the examination, absolutely no details with regards to the curriculum for written examination has been disclosed.

35. Even otherwise Standing Counsel has not been able to demonstrate that at any point of time the curriculum for the written examination was ever notified to the candidates at large who had applied in pursuance to the advertisement. Although the word "Prescribed" as used in the note does not provide the manner in which the prescription is to be notified nor the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 prescribed the mode and manner of the information of the syllabus prescribed by the State Government for the written examination. However, since the prescription of the syllabus by the State Government is for the purposes of information to the candidates at large, who have applied in pursuance to the advertisement, for being made aware of the curriculum for which they shall be tested in the written examination to be held for the selection to the post, it necessarily follows that such syllabus must be brought to the knowledge of the

candidates before the written examination is held by some reasonable method. The prescription by the State of the syllabus in its own record without the same being disclosed to the candidates at large by some known method of publication cannot, In the opinion of the Court, be the sufficient compliance of the note appended to rule 15.

36. Under the Rule 15 with regards to reserved category candidates a Manak (minimum marks) has to be fixed by the Selection Committee and only such member of reserved category of candidates can be called for the interview by the Selection Committee who have achieved the Manak (minimum marks) in the written examination. As already recorded above, no document could be produced by the department for establishing that any such Manak was fixed by the Selection Committee for reserved category of candidates at the time the written examination was held on 11.9.2005.

37. In the totality of the circumstances, as have been noticed herein above, this Court is satisfied that there has been deliberate non-compliance of the statutory provisions of the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 in respect of the written examination held on 11.9.2005

38. In view of the conclusion that the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 have been enforced in the year, 2005, the contention raised on behalf of the State Respondents by Sri C.B. Yadav to the effect that the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 are special and therefore exclude the applicability of U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002 in view of Rule 3(3)(iii) is totally misplaced inasmuch as on the date of advertisement the aforesaid U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 had not been enforced and therefore Rule 3(3)(iii) was not attracted. No other Government Order has been brought on record by the State Respondents for suggesting the exclusion of U.P. Procedure for Direct Recruitment for Group "C" Posts (Out Side the Purview of U.P. Public Service Commission) Rules, 2002.

39. In view of the aforesaid, this Court has no hesitation to record that the written examination which have taken place on 11.9.2005 pursuant to the advertisement dated 29th December, 2004 cannot be legally sustained and the same is accordingly quashed. Respondents are directed to complete the process of selection with reference to the advertisement dated 29th December, 2004 in accordance with law as applicable on the date the advertisement was published, at the earliest possible.

40. Writ petitions are allowed subject to the observations made herein above.