
(2017) 12 AHC CK 0021
In the Allahabad High Court
Case No : 1092 of 2015

Shailendra Kumar Rai And 24 Ors

APPELLANT

Vs

State Of U.P. And 2 Ors

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 12 AHC CK 0021

Hon'ble Judges : Surya Prakash Kesarwani

Bench : Single Bench

Advocate : Deepak Singh Yadav, Ashok Khare, Ayank Mishra, Rahul Agarwal, M.M. Sahai, R. Sahai, Ram Dular, Shivam Yadav, Rajesh Kumar Tiwari, R.K. Yadav, Jaswant Rai, Siddharth Khare, Janardan Yadav, Pankaj Shukla, Pranjali Mehrotra, V.S.Mishra, Krishna Mohan, H.C. Du

Final Decision : Dismissed

Judgement

1. Heard Sri Ashok Khare, learned senior advocate assisted by Sri Deepak Singh Yadav, Jaswant Rai, Rajesh Kumar Tiwari, M.M. Sahai, learned counsels for the petitioners, Sri Mohan Ji Srivastava, learned standing counsel for State-respondent No.1 and Sri J.P. Pandey, learned counsel for respondents- Electricity Service Commission and U.P. Power Corporation.

2. These writ petitions involve common questions as stated by learned counsels for the parties, as under: (i) Whether the "Note" appended to clause-2 of the Advertisement No.4/VSC/2014 dated 06.09.2014 issued by the Secretary, Electricity Service Commission, U.P. Power Corporation Ltd. Lucknow is invalid and without authority of law?

(ii) Whether the petitioners who possess National/ State Vocational Certificate in Electrical Trade and not in Electrician Trade are eligible for the post of "Technician Grade-2 (Trainee) Electrical" in terms of the provisions of the U.P. State Electricity Board Parichalkeeya Varg Sewa Niyamawali, 1995 (hereinafter referred

to as the "Niyamwali")?

3. With the consent of the learned counsels for the parties, the Writ-A No.1092 of 2015 is treated as leading writ petition in which the petitioners have prayed for the following relief: "(i) a writ order or direction in the nature of certiorari quashing the Note appended to clause 2 of advertisement no.4/ESC/2014 Dated 06-09-2014 issued by Secretary, Electricity Service Commission, UP Power Corporation Ltd., Lucknow.

(ii) a writ, order or direction of a suitable nature commanding the respondents to treat the petitioners as fully qualified and eligible for the post of Technician Grade II (Trainee) Electrical in pursuance to advertisement no.4/ESC/2014 Dated 06-09-2104 and to hold their interview on the basis of interview letters already issued to the petitioners within a period to be specified by this Hon"ble court.

(iii) a writ, order or direction of a suitable nature commanding the respondents to declare final select list in pursuance to advertisement no.4/ESC/2014 Dated 06-09-2104 only after according consideration to the petitioners in interview for which they have already qualified the written examination treating them as fully eligible for the post in question.?

Facts:-

4. Facts in brief are that un-disputedly all the petitioners possess National/ State Vocational Certificate in Electrical Trade and not in Electrician Trade. The Advertisement No.4/VSC/2014 was issued inviting applications for recruitment of 2211 posts of "Technician Grade- 2 (Trainee) Electrical", for U.P. Power Corporation Ltd., which is engaged in distribution of electricity to consumers. Necessary eligibility was provided in clause-2 of the aforesaid advertisement as under: "VERNACULAR MATTER OMITTED"

5. In their online filled application forms, petitioners stated that they possess "Electrician Trade Certificate" as required in Advertisement No.04/VSA/2014. They also made a declaration in this regard and as such admit cards for written test for the post of Technician Grade-II (Trainee) Electrical (Post Code-31) were issued to them which contained their declaration as under: "DECLARATION

I Son/Daughter of hereby declare and solemnly affirm that I have fully understood all the details provided in the Advertisement No.04/BSA/2014 and accordingly all the particulars stated in the application form submitted by me are true to the best of my knowledge and belief. If at any stage it is found that the information furnished in the online application form is false/fake/misinterpreted/incorrect or myself does not satisfy the eligibility criteria for the post applied, my candidature may be cancelled, even after appearing in the Test in addition to any other action deemed fit. I will not claim any refund of fees or compensation or any sort of damages."

6. On the basis of merit list prepared in written test, the petitioners were shortlisted for interview. Accordingly, interview letters were issued to them. One

such interview letter filed along with the leading writ petition, is reproduced below: "VERNACULAR MATTER OMITTED"

7. Since the petitioners were found to be not possessing National/ State Vocational Certificate in Electrician Trade and as such they were not allowed to appear in interview. Consequently, the petitioners filed the above-noted writ petitions for the relief as aforequoted. Submissions on behalf of the petitioners

8. Learned counsel for the petitioners submits as under: (i) "Note" appended to the advertisement in question being contrary to Rules and having no approval of the State Government or the Board of Directors, cannot be sustained and, therefore, deserves to be quashed. The petitioners having National/ State Vocational Certificate in "Electrical Trade" are entitled to be permitted for interview.

(ii) Electricity Service Commission is the body created for selection of candidates on different posts in U.P. Power Corporation Ltd. and, therefore, it cannot add to the prescribed qualification. The "Note" in question appended to the Clause-2 of the Advertisement is wholly without authority of law and, therefore, deserves to be quashed.

(iii) In the earlier selection pursuant to Advertisement No.3 of 2011, similar educational qualification/ necessary eligibility was provided for recruitment of "Technician Grade-2 (Trainee) Electrical" but the "Note" as appended in the advertisement in question was not appended to the aforesaid Advertisement No.3 of 2011. Therefore, candidates having certificate in electrical trade were allowed to participate. Even subsequently on 10.09.2015, the Board of Directors have taken decision that candidates possessing Electrical Trade Certificate or Electrician Trade Certificate shall be eligible for the post of Technician Grade-2 (Trainee), Electrical. Accordingly, amendment was made in the Rules, which is clarificatory in nature and, therefore, it shall apply retrospectively. Thus, the petitioners were possessing the required necessary eligibility/ educational qualification at all relevant point of time. Therefore, they are entitled to appear for interview and the "Note" appended to the Advertisement in question deserves to be quashed.

(iv) Electrical and Electrician Trade, both are one and the same and in public employment both are understood to be one and the same. Therefore, the respondents have committed manifest error of law to deny the petitioners to appear for interview.

(v) Since in earlier selection of 2011, the candidates possessing Electrical Trade Certificate were considered, therefore, the petitioners are also entitled to be considered and they cannot be excluded.

(vi) The "Note" appended to the condition No.2 in the advertisement in question is not reflected in the Rules and, therefore, it cannot be enforced.

(vii) There is no change in the work content of Technician Grade- 2 (Trainee)

Electrical in the earlier, present and subsequent recruitment and, therefore, the amendment in the Rules subsequent to the present recruitment, is retrospective in nature.

(viii) Whenever any qualification is mentioned in the advertisement, it shall inherently include all equivalent or similar qualification. Therefore, the qualification/ eligibility for Technician Grade-2 (Trainee) Electrical, shall include their vocational certificates in Electrical Trade also.

(ix) In support of his submissions, Sri Ashok Khare, learned senior advocate has relied upon the following judgments:

(a) Abha Tripathi and 24 others; Siddh Nath Yadav; Ajay Tiwari vs. State of U.P. and 3 others, 2016 (6) AWC 6236 (Paras-34 to 40 and 44) (Single Judge)

(b) Dr. Karuna Nidhan Upadhyaya and another vs. State of U.P. and others, 2012 (5) ADJ 182 (DB) (Paras-79 to 86)

(c) Veerendra Kumar Gautam and others vs. Karuna Nidhan Upadhyay and others, (2016) 14 SCC 18 (Paras-12, 13, 28 to 32 and 65)

(d) Dr. Krushna Chandra Sahu and others vs. State of Orissa and others, (1995) 6 SCC 1 (Paras-31 to 37)

9. On a question put by the court "as to whether in the selection in question any candidate not having electrician certificate, has been given appointment?", Sri Ashok Khare replied "No". Submissions on behalf of the respondents:-

10. Sri J.P. Pandey, learned counsel for respondents, i.e. Electricity Service Commission and U.P. Power Corporation Ltd. submits as under: (i) The eligibility criteria as provided in the Rules has been mentioned in the advertisement. The "Note" has been appended as matter of abundant caution to draw attention of prospective applicants to apply only if they possess National/ State Vocational Certificate in Electrician Trade. Thus, the eligibility as provided in the advertisement in question is not in conflict with the eligibility provided under the Rules. Therefore, the entire arguments of the petitioners is without substance and, therefore, the writ petitions deserve to be dismissed.

(ii) Petitioners were well aware of the fact that they did not possess certificate in Electrician Trade and yet they filed applications, suppressing material facts and making a false declaration. If correct information would have been disclosed by them in their application forms, then their applications itself would have been rejected at the initial stage. They have also made a false averment in paragraph-20 of the writ petition that they possess the Vocational Certificate and no objection of any kind was undertaken by the authorities and they were permitted to participate in the written examination. Since false statement has been made in the affidavit and as such for this reason also writ petitions deserve to be dismissed on this ground alone.

(iii) Since the petitioners were well aware of the eligibility criteria mentioned in

the advertisement and the Rules, and, yet they applied and participated in the selection process. Therefore, they cannot be allowed to challenge the conditions of advertisement.

(iv) There is no conflict in eligibility provided in the Rules and the advertisement.

(v) Recruitment has been made as per Rules existing on the date of advertisement. Therefore, even if any candidate in selection process pursuant to earlier Advertisement No.3 of 2011, has been given appointment on the post of Technician Grade-2 (Trainee) Electrical who possessed certificate in electrical trade, cannot be made basis to issue a writ under Article 226 of the Constitution of India to perpetuate error or to proceed making appointment in conflict with Rules nor the subsequent amendment in the Rules in September, 2015 would apply retrospectively to the recruitments made pursuant to the advertisement in question i.e. Advertisement No.4/VSA/2014.

Relied: Yogesh Kumar and others vs. Government of NCT Delhi and others, (2003) 3 SCC 548 (Para-8)

(vi) Electrical Trade and Electrician Trade Certificates are not same. Both are different courses.

(vi) There is no conflict between the advertisement and the Rules. It is settled law that even in case of conflict, the Rule shall prevail, vide the Malik Mazhar Sultan & Anr vs. U.P. Public Service Commission and others, (2006) 9 SCC 507 (para-21).

(vii) He also referred to pages-57, 60, 63, 65, 67 and 69 of the leading writ petition and pages 24, 25 and 26 of the Writ-A No. 1847 of 2015.

(viii) Similar submissions as are being made by the learned counsel for the petitioners, were rejected by this Court in the case of Manoj Kumar Singh and others vs. State of U.P. and others, 2014 (9) ADJ 659 (DB) (LB) (Paras-5, 25, 26, 36, 38, 39, 40, 47 and 48).

(ix) To prescribe qualification for a post is a function of appointing authority and, therefore, the qualification/ eligibility as provided in the Rules cannot not be changed.

Relied: Randhir Singh vs. State of U.P. and others, 2015 (6) ADJ 411 (DB) (paras-2 and 3).

(x) The Electricity Service Commission being a statutory authority is entitled to lay down service conditions and qualifications.

Relied: Sanjay Kumar Manjul vs. Chairman, UPSC and others (2006) 8 SCC 42 (paras-23, 25, 26 and 27).

(xi) Recruitment to public services has to be held as per Advertisement and the Rules. Even if there was some deviation in the past, although not admitted; cannot be made basis to perpetuate illegality.

Relied: Yogesh Kumar and others (supra) (paras-5 and 8).

(xii) Norms of selection cannot be altered after start of selection process. Therefore, the Electrical Trade Certificate cannot be allowed to be included for the purposes of recruitment on the post of Technician Grade-2 (Trainee) Electrical, for the advertisement in question.

Relied: Mohd. Shohrab Khan vs. Aligarh Muslim University, (2009) 4 SCC 555 (Paras- 23, 26 and 28).

(xiii) In matters of qualification in a recruitment, equity cannot override the written policy or settled law.

Relied: P.M. Latha and another vs. State of Kerla and others, (2003) 3 SCC 541 (Paras 10 and 13)

(xiv) Misrepresentation of facts by the petitioners as stated above, cannot attract principles of promissory estoppel.

Relied: Central Airmen Selection Board and another vs. Surender Kumar Das, (2003) 1 SCC 152 (paras 7 and 8)

(xv) A candidate not possessing the required qualification in terms of the advertisement cannot be given appointment.

Relied: District Collector and Chairman, Vizianagaram Social Welfare Residential School Society and another vs. M. Tripura Sundari Devi, (1990) 3 SCC 655 (para-4).

(xvi) The petitioners being unsuccessful candidates are estopped to challenge the selection process.

Relied: D. Sarojakumari vs. R. Helen Thilakom and others, (2017) 9 SCC 478

(xvii) Providing for a qualification is a matter of recruitment policy which cannot be interfered in writ jurisdiction under Article 226 of the Constitution of India.

Relied: judgment dated 02.05.2016 in Service Single No.6655 of 2016 (Alok Kumar Mishra vs. State of U.P. through Principal Secretary, Appointment and Personnel and others) and other connected writ petitions.

11. I have carefully considered the submissions of the learned counsel for the parties and perused the records before me. Discussion and Findings:-

12. There is no dispute that no candidate possessing Electrical Trade Certificate has been permitted for interview or has been appointed pursuant to the advertisement in question. There is no allegation of any malafide or any extraneous consideration in recruitment process. There is also no dispute that the petitioners do not possess certificate in Electrician Trade. Relevant Provisions of The Rules:-

13. Rule 9 of the rules, Relevant Entry No.23 Parishisht-1(ka) and duties of

Technician Grade-2 (Trainee) (Electrical) as provided in para-4 of the Rules appended to the table are reproduced below:- "VERNACULAR MATTER OMITTED"

14. Bare perusal of the necessary qualification/ eligibility for Technician Grade-2 (Electrical) as provided in the Rules afore-quoted and the advertisement in question providing for qualification/ eligibility as quoted above under the heading "Facts" would reveal that there is no conflict between the Rules and the advertisement providing for academic qualification of Electrician Trade Certificate. The "Note" in the advertisement appears to have been appended as a matter of abundant caution so as to specifically bring to the notice of prospective applicants that they should apply only if they possess the required qualification/ eligibility. The "Note" contains nothing beyond the eligibility provided in the Rules. Under the circumstances, the eligibility provided in the advertisement in question being not in conflict with the Rules rather the same being in consonance with the Rules, suffers from no illegality or invalidity. Therefore, the entire submission of learned counsel for the petitioners questioning the "Note" appended in the advertisement in question, deserves rejection and is hereby rejected.

15. The petitioners were well aware of the fact that they did not possess Electrician Trade Certificate. Yet they moved applications pursuant to advertisement in question, suppressing the fact of their not possessing the Electrician Trade Certificate. Even the conditions as mentioned in the admit card and interview letter also re-communicated to the candidates that only Electrician Trade Certificate shall be acceptable, yet the petitioners, by suppressing material facts; filed applications and appeared in written test for the reasons best known to them. If they were having any grievance for any reason against the eligibility criteria mentioned in the advertisement or "Note" appended thereto, then they could have approached this court before submission of their Application Forms but they have approached this Court through these writ petitions only after it was detected during checking of papers at the time of interview that they do not possess Electrician Trade Certificate which is the essential qualification under the Rules for the post of Technician Grade-2 (Electrical).

16. So far as the retrospective operation of the amended Rules is concerned, it would be relevant to reproduce the relevant portion of the 118th minutes of the meeting of the Board of Directors of U.P. Power Corporation Ltd. dated 08.09.2015 proposing to amend the Rules, as under: "VERNACULAR MATTER OMITTED"

17. Perusal of the afore-quoted amendment would reveal that the provisions providing for educational qualification/ eligibility for the post of Technician Grade-2 (Electrical) by direct recruitment and qualification for promotion to the post of Junior Engineer by promotion, were materially altered. For the first time, the amended Rules provided for electrician/ electrical/ electrical (kaushal vikas ke antargat vidut vitaran) Trade Certificates along with High School or equivalent pass certificate in science and maths to be the qualification/ eligibility for the

post of Technician Grade-2 (Electrical). That apart, several amendments were made in the process of selection as reflected from paras-2 and 5 of the amended provisions. The requirement of Interview was abolished for the first time. Thus, not only the required qualification/ eligibility was amended but also material amendments were made in the process of selection. The examination pattern was also changed. The amendment so made is clearly prospective in nature. By no stretch of imagination, it could be said to be retrospective. If the submission of the learned counsel for the petitioners is accepted, then all the selections which took place under the un-amended Rules would become invalid inasmuch as the selections earlier were made on preparation of merit list which included the marks obtained by candidates in interview. There is nothing in the amended provisions that either it was amended retrospectively or it was intended to be applied retrospectively. Therefore, the submission of learned counsel for the petitioners that the amended provisions are retrospective, deserves rejection and is hereby rejected.

18. In the case of *Zile Singh vs State Of Haryana & Ors*, (2004) 8 SCC 1 (paras 13, 14 and 15), Hon"ble Supreme Court considered the question of retrospective operation of a statute and held as under: "13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only "*nova constitutio futuris formam imponere debet non praeteritis*" -- a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, Ninth Edn., 2004 at p.438) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440)

14. The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).

15. Though retrospectivity is not to be presumed and rather there is presumption

against retrospectivity, according to Craies (Statute Law, Seventh Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392). " (Emphasis supplied by me)

19. The facts and reasons as advanced above to reject the submission of the learned counsel for the petitioners regarding retrospectivity of the amended provisions are consistent with the law laid down by Hon"ble Supreme Court in the afore-quoted judgment. The amended provisions do not expressly provide or clearly imply retrospective operation. No circumstances as indicated in para-13 and 14 of the judgment in the case of Zile Singh (supra) exist in the amendment made in the Rules in September, 2015 which was enacted much subsequent to the completion of the recruitment process pursuant to the advertisement in question, i.e. Advertisement No.4/VSA/2014. Thus, for this reason also, the submission regarding retrospectivity to the aforesaid amended provisions as argued by learned counsel for the petitioners is rejected.

20. In Writ-A No.50658 of 2012 (Munesh Kumar and others vs. State of U.P. and others) decided on 28.09.2012, the question of eligibility of certain candidates possessing Proficiency Certificate of NAC Electrician was considered by this Court and it was held that "certificates issued in favour of the petitioner are not accepted to be certificate as is required in the advertisement then this Court cannot proceed to exercise its authority of judicial review to accord any relief, as equivalence is to be determined by the authorities, and that too when there is any room for the said purpose."

21. It is settled law that only the statutory authority is entitled to frame statutory rules, terms and conditions of the services and also the qualifications essential for holding a particular post. It is only and only the concerned authority, which can take an ultimate decision in this regard. No direction can be issued to the employer to prescribe a qualification for holding a particular post as also held by Hon"ble Supreme Court in case of Sanjay Kumar Manjul (supra) (paras-25, 26 and 27) as under: "25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefor.

26. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

27. It is well-settled that the superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post. "

22. Similar view has also been taken by this Court in the case of Manoj Kumar Singh and others (supra) (vide paragraphs-36, 37, 38, 40, 47 and 48). The Division Bench in the case of Manoj Kumar Singh (supra) while coming to the aforesaid conclusion also relied upon the judgment of Hon'ble Supreme Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society and another (supra), P.M. Latha (supra) and Mohd. Shohrab Khan (supra).

23. In the case of Yogesh Kumar and others (supra), Hon'ble Supreme Court held that recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because of some deviation or departure in the past, a patent illegality cannot be allowed to continue.

24. In the case of P.M. Latha (supra), Hon'ble Supreme Court held that providing for qualification is a matter of recruitment policy. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law.

25. In the case of Central Airmen Selection Board and another vs. Surender Kumar Das (supra) (paras 7 and 8), Hon'ble Supreme Court held that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The facts of the present case shows that on account of false declaration in their application forms, the petitioners were permitted to appear in the written examination on the belief that they possess Electrician Trade Certificate and on being successful in written examination, they were called for interview. However, when papers were checked at the time of interview, it was found that they do not possess the required eligibility i.e. Electrician Trade Certificate. Consequently, they were not allowed for interview. Thus, there is no illegality in not permitting the petitioners for interview. They cannot take any advantage of their own misleading act of participation in the written examination.

26. In the case of D. Sarojakumari (supra) (paras 4 to 8), Hon'ble Supreme Court referred to its earlier judgments in the case of Dr. G. Sarna vs. University of Lucknow & Ors (1976) 3 SCC 585 (para-15), Madan Lal & Ors. vs. State of J&K & Ors, (1995) 3 SCC 486, (para-9), Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576, (para-16), Ramesh Chandra Shah and others vs. Anil Joshi

and others, (2013) 11 SCC 309 (para-24) and held that once a person takes part in process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

27. The judgments relied by learned counsel for the petitioners are of no help to the petitioners on the facts of the present case.

28. In view of the discussions made above, I do not find any illegality in the "Note" appended in the impugned advertisement. The petitioners do not possess the required qualification/ eligibility in terms of the relevant Rules and the advertisement and as such they are not entitled for any of the reliefs sought by them. The writ petitions are wholly devoid of merit and therefore deserve to be dismissed.

29. In result, all the writ petitions fail and are hereby dismissed.