

(2010) 10 AHC CK 0411

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39365 of 2008

Shamim Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4, Order 6 Rule 14, Order 6 Rule 17
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 137

Citation : (2011) 1 ADJ 672

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ali Hasan and Ishtiyag Ali, for the Appellant; Ajay Kr. Sharma, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—This writ petition has been filed for issuing a writ of certiorari quashing the order dated 16.6.2008 passed by Principal District Education and Training Institute Muzaffar Nagar (respondent No. 4) with the further prayer to issue a writ of mandamus directing the respondent No. 4 to permit the petitioner to complete Special B.T.C. Urdu training 2006 alongwith other candidates, who have secured 169.200% marks and got their selection. The facts giving rise to this case are that the petitioner applied for Special B.T.C. Urdu Training 2006, pursuant to the advertisement dated 11.9.2006 published in the daily Newspaper Amar Ujala Muzaffar Nagar, on 9.10.2006. The copy of the advertisement as well as the petitioner's application has been brought on record as Annexures 2 and 3 to the writ petition. The petitioner has attached the attested photostat copies of mark-sheets of High School, Intermediate and B.A., as required under the advertisement. The petitioner has also annexed the marks-sheet of Urdu of the year 2003 issued by U.P. Madhyamik Shikha Parishad showing that he has passed Intermediate Examination in the subject of Urdu.

2. It is stated in paragraphs 7 and 8 of the writ petition that the petitioner has

received letter from the office of respondent No. 4 on 4.4.2008 to appear before respondent No. 4 on 8.4.2008 for counselling with original documents and two photographs of passport size. After completing the entire formalities the petitioner appeared before respondent No. 4. The petitioner has also appeared in counselling held on 8.4.2008 but he has not been sent for training alongwith other candidates. The petitioner has secured 169.266% marks whereas the candidates who have secured 169.200% marks have been selected and have been sent for training but the petitioner has been ignored having secured more marks.

3. Aggrieved by this action the petitioner has filed Civil Misc. Writ Petition No. 24560 of 2008, Shamim Ahmad and others v. State of U.P. and others. This petition was disposed off on 15.5.2008 by this Court with the direction to the petitioner to file a representation alongwith certified copy of the order and photostat copy of the writ petition before respondent No. 4 within a period of 15 days and in case of filing the same, the respondent No. 4 was directed to consider the grievance of the petitioner by passing a reasoned speaking order in accordance with law within a further period of one month.

4. It appears, after the aforesaid order was passed, the petitioner has filed a representation alongwith photostat copy of the order of the writ petition and thereafter the respondent No. 4 passed the impugned order dated 16.6.2008 rejecting the claim of the petitioner on the ground that the petitioner did not file the marks-sheet of Urdu subject as required under the advertisement dated 11.9.2006. Further in the application form although the petitioner has mentioned that he has qualified in Adeeb examination in 2005 from Jamia Urdu Aligarh with Roll No. ADB/7082 but the date of issue of mark-sheet is blank whereas in the mark-sheet which was produced by the petitioner at the time of counselling the date of issue of marks-sheet is mentioned as of 6.2.2007. Whereas the requirement in the advertisement was that the applicant must possess the requisite qualification and marks-sheets etc., upto the last date for filing the application i.e., 11.10.2006. In this case the marks-sheet was issued to the petitioner on 6.2.2007 therefore, the petitioner was not eligible to fill up the application for Special B.T.C. Urdu Training 2006.

5. I have heard Sri Ishtiyak Ali learned counsel for the petitioner, learned Standing Counsel for the respondent Nos. 1, 2, 4 and 5 and Sri Manish Deo holding brief of Sri Ajay Kumar Sharma learned counsel appearing for the respondent No. 3.

6. Learned counsel for the petitioner has submitted that the impugned order passed by respondent No. 4 is unsustainable for the following reasons:

(i) The advertisement was issued in the year 2006 whereas the year of passing Adeeb examination by the petitioner happens to be 2005, therefore, even if the marks-sheet was issued in the year 2007 that could not have been made basis for non suiting the petitioner as the year of issue of marks-sheet will relate back

to the year of examination 2005.

(ii) The condition No. 5 of the advertisement provides that the selection shall be made on the basis of total marks obtained in High School, Intermediate and Graduate examination and the marks obtained in High School, Intermediate or B.A., in Urdu subject will not be counted for the purposes of counting of quality point marks for selection. The certificate obtained in Urdu subject will be seen only with a view to verify whether the applicant is conversant/versed in Urdu language, therefore, even if the marks-sheet of Adeeb examination was not available on the last date of submissions of application form, it could not have been made basis for non suiting the petitioner as once the petitioner has passed Intermediate examination in Urdu subject meaning thereby the petitioner has also acquired the knowledge of High School standard and in this context the condition No. 7 (x) appears to be unnecessary.

7. Refuting the submissions of learned counsel for the petitioner, learned Standing Counsel as well as Sri Manish Deo, learned counsel appearing for the respondent No. 3 have submitted that the condition No. 7 (x) of the advertisement specifically provides that each and every marks-sheets and certificates which have been mentioned in the form, the original copies of the same must be available with the petitioner on the date of filling the application/form and any certificate/marks-sheet obtained after the date of filling of the application will not be accepted. In the submissions of learned counsel for the respondents since the petitioner was not having the marks-sheet of Adeeb examination on the date of filling the form, therefore, in view of condition No. 7(x) the respondent No. 4 was right in rejecting the claim of the petitioner for the selection of the petitioner. Learned standing counsel also submitted that the qualification has to be seen on the date of the advertisement or on the last date of submissions of form in terms of the advertisement and it is well settled that any qualification acquired after the last date of submissions of form/issuance of advertisement will not be treated to be valid qualification for the purposes of said selection unless the advertisement provides such concession. In their submissions the impugned order passed by the respondent No. 4 is perfectly legal and in accordance with law and the writ petition deserves to be dismissed.

8. After hearing counsel for the parties, I find that following points will be necessary to be considered for proper adjudication of the matter:

(i) Whether the certificate of Adeeb examination issued in the year 2007, filed at the time of counselling will relate back to the year of examination i.e., 2005?.

(ii) If 1st point is answered in affirmative, whether in view of the condition No. 7(x) of the advertisement dated 11.9.2006 any relief can be granted to the petitioner.

Before dealing with the aforesaid points it would be necessary to go through the relevant conditions of the advertisement, which are reproduced below:

9. So far as point No. 1 is concerned in this regard it has not been disputed by the respondent No. 4 that the petitioner has passed Adeeb examination of the year 2005 which is equivalent to High School but what has been disputed is that the date of issuance of marks-sheet i.e., 6.2.2007, whereas in view of the advertisement this marks-sheet was to be available with the petitioner on the date of filling up the form i.e., on 10.6.2006. Learned counsel for the petitioner has submitted that as the petitioner's year of examination was 2005, therefore, the date of issuance of marks-sheet i.e. 6.2.2007 will relate back to the year of examination. In his submissions the mentioning of the date in the marks-sheet will not mean that the petitioner has acquired the qualification either after the date of issuance of advertisement or on the last date of filling up form as the year of passing Adeeb examination is 2005 and not 2007 whereas the year of advertisement is 2006.

10. For testing the argument of learned counsel for the petitioner, with respect to point No. 1, it has to be seen whether the year of issuance of mark-sheet will relate back to the year of the examination?. Here to decide this point, I feel necessary to take shelter of "doctrine of relation-back" which is a well established doctrine and has been recognised by the Courts while interpreting the various statutes. The Apex Court in the case of Sampath Kumar Vs. Ayyakannu and Another, while interpreting the provisions of Order VI Rule 17 of the CPC held that the amendment in the pleadings takes effect from the date when the original pleading was filed. This view has been reiterated in other decisions of the Apex Court including Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath Jajoo, .

11. Likewise while interpreting the provisions under Order III Rule 4 of the C.P.C. the Apex Court in the case of Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another, , has held that the vakalatnama filed at later stage of the proceeding will relate back to the date of filing of appeal/application. In the same manner the provision of Order VI Rule 14 C.P.C. which requires that every pleading shall be signed by the party and his pleader, if any, the Court has taken the view that even if a plaint has not been signed due to any bona fide error, the defect can be permitted to be rectified either by the trial Court at any time before judgment, or even by the appellate Court by permitting appropriate amendment when such defect comes to its notice during hearing. Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made to a tool to deny justice or perpetuate injustice, by any oppressive or punitive use, In view of the observation made by the Apex Court while interpreting the provisions of Order VI Rule 14 of C.P.C., it is clear that signing of plaint or appeal by the plaintiff or appellant at later stage will relate back to the date of its filing. Earlier also the same view has been taken by

the Supreme Court in the cases of Kailash Vs. Nanhku and Others, , Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others, . Further in the case of Dove Investments Pvt. Ltd. and Others Vs. Gujarat Industrial Inv. Corporation Ltd. and Another, , the Apex Court has reiterated the principle laid down in the cases cited above.

12. Likewise while interpreting the provision of Hindu Adoptions and Maintenance Act, 1956, the Apex Court has applied the doctrine of relation back in Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, ; Shripad Gajanan Suthankar Vs. Dattaram Kashinath Suthankar and Others, .

13. Again while interpreting Sections 134 and 137 of U.P. Zamindari Abolition and Land Reforms Act, 1950 in the case of Deo Nandan and Another Vs. Ram Saran and Others, , the Apex Court held that certificate declaring bhumidhari rights u/s 137 has retrospective effect and relate back to the date of the application seeking such rights and the payment of land revenue alongwith it u/s 134.

14. This doctrine has also been adopted in the case of partition etc.

15. In departmental inquiry with respect to an employee this doctrine has been adopted in number of cases by holding that an order of exoneration passed in departmental proceedings will relate back to the date of framing of charge sheet. Reference may be given to Delhi Jal Board Vs. Mahinder Singh, .

16. Although the principles applicable for interpretation of a statute may not apply in the case of interpretation of an advertisement meant for holding a selection as an advertisement cannot be put at par with a statute and that has to be read and understood as it is worded. But here in this case looking into the fact that the petitioner has appeared in the examination of Adeeb of the year 2005 conducted by Jamia Urdu Aligarh and the marks-sheet or the certificates obtained by him will be treated as of the year 2005 and not of the year 2007 (the year in which the marks-sheet was issued). It is settled principle that the year of selection is taken into consideration while determining the seniority etc. of the candidates who have been selected in a particular year. For example if in an examination of a particular year conducted by the U.P. Public Service Commission or any recruiting body certain selected candidates join and the cases of few candidates fall under litigation, then after the final decision in favour of the candidates appeared in that year, the candidates will be provided the seniority of their batch mates, even if any new recruitment is held and candidates joined during the intervening period of litigation unless there are any rule contrary to this. Therefore, I am of the view that the marks-sheet of Adeeb examination issued to the petitioner in the year 2007 will relate back to the year of examination i.e., 2005.

17. In view of the observation made above the point No. 1 is answered as "Yes".

Point No. 2.

18. For deciding this point it is necessary to read conditions No. 1, 5 and 7 (x) of

the advertisement together. If the conditions No. 1 and 5 of the advertisement are read together then it will transpire that if a candidate has passed any of the two examinations from amongst High School, Intermediate, and B.A. with Urdu subject then marks obtained in Urdu subject will be counted while determining the quality point marks, but if the candidate has not passed the above examinations alongwith Urdu subject and acquired the qualification separately by passing any of the two examinations taking Urdu as separate subject then the marks obtained in Urdu will not be counted for the purposes of determining the merit for selection, meaning thereby, in substance the marks obtained in the Urdu subject are not relevant for the purposes of determination of merit for selection, but it is only meaningful with respect to the ascertainment of the proficiency (Praveenta) of a candidate in Urdu subject.

19. Here in this case the petitioner has passed Intermediate examination taking Urdu as a separate subject in the year 2003 and passed Adeeb examination conducted by Jamia Urdu Aligarh in the year 2005, which is equivalent to High School; the marks-sheet of which was issued in the year 2007, since I have held that the issuance of marks-sheet will relate back to the year of examination of Adeeb i.e., 2005, therefore, the condition No. 7 (x) which mandate the availability of the certificate & marks-sheet on the date of filling up the form will not be fatal if the petitioner has not filed the marks-sheet of Adeeb at the time of filling up the form.

20. The matter may be examined from another angle also by reading conditions No. 5 and 7(x) of the advertisement dated 11.9.2006 together. Condition No. 5 provides that if a candidate has passed any of the two examinations i.e., High School and Intermediate or Intermediate and B.A., or High School & B.A., the marks obtained in Urdu subject will not be meaningful for the purpose of the consideration of the merit for selection but this will be relevant only with regard to the testing the proficiency (Praveenta) of a candidate in Urdu subject. Whereas the condition No. 7 (x) requires that the original marks-sheet of the above said examinations be available on the last date for filling up the forms. These conditions appears to be contradictory to each other Assuming a candidate had passed B.A., examination in Urdu subject separately, will it not mean, looking into the condition No. 5 of the advertisement that he has acquired proficiency in Urdu subject, even if he has not passed High School or Intermediate examination with Urdu subject, as for appearing in the examination of B.A. there is no requirement that person must have passed High School or Intermediate with Urdu subject. If the candidate has passed B.A., examination, he can appear in any of the subjects separately in the subsequent examination of B.A. Here in this case the petitioner has passed Intermediate Examination with separate Urdu subject in 2003, meaning thereby he has also acquired the knowledge of High School standard, even if he has not passed High School with Urdu subject. It is well settled that higher qualification includes the lower qualification also for the academic purpose. Here it is not a case, with respect to some training for teaching like B.Ed., L.T., B.T.C., etc. So far as the required

training of B.Ed., B.T.C., etc., are concerned they are meant with respect to teach the students of a particular standard. There may be distinction that if the qualification is prescribed as B.T.C. etc., which is meant for junior sections, a person having B.Ed., may not be treated to be qualified because these two are the separate qualifications but here in this case this is only with respect to ascertaining proficiency of a candidate in particular subject, here the interpretation would be different. In the present case the petitioner has appeared in the Adeeb examination (which is equivalent to the High School) of the year 2005 before the date of advertisement. However, according to the respondents the marks-sheet was issued in the year 2007, if the intention of requirement of passing two separate examinations with Urdu subject was there then there was no need to mention under Condition No. 5 of the advertisement, that the marks obtained in the examination be only relevant for the purpose of testing proficiency in Urdu subject. Assuming a candidate has passed High School and Intermediate examination in Urdu subject separately by obtaining 33% marks and a candidate has passed Intermediate examination with 90% marks, will it mean that a person who has passed High School and Intermediate both is more proficient than a person who has secured 90% marks in the Intermediate examination. Perhaps no sane person can come to this conclusion that a person having 33% marks in both the examinations and obtained minimum pass marks is more efficient in particular subject than a person who has secured 90% marks in the higher examination. The using of the word Proficiency (Praveenta) only mean here that the candidate is conversant in Urdu subject. Here, as the petitioner has already acquired the higher qualification in the year 2003 prior to the date of advertisement, therefore, even if he did not possess the marks-sheet of Adeeb examination at the time of filling up the form, as required under condition No. 7(x) of the advertisement, will not mean that the petitioner do not fulfill the conditions of the advertisement and on this basis he could not have been precluded from the zone of consideration for the purposes of Special B.T.C. Training. In the result the writ petition succeeds and is allowed and the order dated 16.6.2008 passed by respondent No. 4 is hereby quashed. The respondent No. 4 is directed to pass a fresh order in accordance with the observation made hereinabove within a period of one month from the date of receipt of a certified copy of the order of this Court.