

(2012) 11 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47530 of 2005

Shiv Bahadur Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2002 — Rule 6

Citation : (2012) 11 AHC CK 0138

Hon'ble Judges : Sunita Agarwal, J

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.

Heard Sri Siddhartha Khare, learned counsel for the petitioner and the learned Standing Counsel for the respondents.

Present petition has been filed with the prayer of quashing of order dated 16.5.2005 issued by the Commanding Officer, 16th Battalion Allahabad as also the decision taken by the NCC Directorate referred to in the order dated 16.5.2005. Further prayer for mandamus is sought for commanding the respondents to grant appointment to the petitioner on the post of Driver in 16 U.P. Battalion, NCC, Allahabad on the basis of selection committee held on 16.2.2005 in pursuance of the advertisement dated 17.1.2005.

The case of the petitioner is that the post of Driver in 16th U.P. Battalion, NCC, Allahabad was advertised in the daily newspaper "Aaj" dated 18.1.2005. The petitioner fulfilled required eligibility qualification. He appeared in the interview and the driving test held on 16.2.2005. The result of selection was not informed to the petitioner so he made a representation to the Commanding Officer for giving intimation about the final result. In reply to the representation of the petitioner, the Commanding Officer by communication dated 16.5.2005 informed that in view of the decision taken by the NCC Directorate for cancellation of selection proceedings, the entire selection proceeding held on 16.2.2005 has

been cancelled.

The petition was heard on 6.7.2005 and by granting time to the learned Standing Counsel to file counter affidavit, it was directed that till 19.7.2005 no appointment on the post of Driver shall be made. The order sheet indicates that the interim order was extended from time to time and lastly by the order dated 27.9.2007 it was extended till further orders of this Court. Order sheet further indicates that the petitioner made a prayer on 30.10.2009 to the Court that he may be permitted to delete respondent no. 5 from the array of the parties. On the request made by the learned counsel for the petitioner, the prayer was allowed and the private respondent no. 5 was deleted from the array of parties. As a result of which the personal allegations against respondent no. 5 and prayer no. 3 sought in the writ petition against respondent no. 5 require no adjudication.

Learned counsel for the petitioner submitted that the respondent no.2 i.e. Deputy Director General, NCC Directorate had committed illegality in cancelling the entire selection process on the pretext that the same was not carried out as per the Government Order dated 14.10.1993. The contention of the learned counsel for the petitioner is that the Government Order dated 14.10.1993 has no application in so far as recruitment to the post of Driver in the respondent Battalion is concerned, he has drawn attention of the Court to the Uttar Pradesh Procedure for Direct Recruitment for Group "C" Posts(Outside the purview of the Uttar Pradesh Public Service Commission) Rules 2002 in order to submit that the said rules were framed in exercise of power conferred upon proviso to Article 309 of the Constitution of India and in supersession of existing rules on the subject. The post of Driver being Group "C" post, the appointment has to be made in accordance with the provisions of the rules.

He further submits that the circular letter dated 1.5.1996 issued by the NCC Directorate indicates that the Group "C" employees are appointed to Civilian posts. The copy of letter dated 1.5.1996 and the rules 2002 have been brought on record with the rejoinder affidavit. The contention of the learned counsel for the petitioner is that only ground taken in the counter affidavit filed on behalf of the respondents 1 to 4 is that the selection Board was not validly constituted as per the Government Order dated 14.10.1993 and in absence of Regional Transport Officer/Assistant Regional Transport Officer as a member of selection board affected judging and suitability of the candidates in driving test. The same being mandatory requirement, the selection board dated 16.2.2005 was abrogated by NCC Directorate vide letter dated 4.3.2005.

Learned counsel for the petitioner submits that there was no requirement of Regional Transport Officer/Assistant Regional Transport Officer as a member of the selection board in view of the fact of Government Order dated 14.10.1993 as the same was not applicable to the selection process held on 16.2.2005. The petitioner has brought on record the copy of result sheet prepared by the selection committee which met on 16.2.2005 by filing a supplementary affidavit which shows that apart from the Presiding Officer there were three members of

the selection board who constituted the selection committee for selection of drivers on 16.2.2005. A supplementary rejoinder affidavit has been filed by the petitioner wherein the reply dated 29.10.2009 received under RTI Act was annexed by the petitioner in order to submit that Sri Arjun Kumar son of Ram Gahan Yadav has been appointed and is working on the post of Driver in the respondent department. The detailed reply has been given in three supplementary counter affidavits filed on behalf of the respondents.

Learned Standing Counsel placing reliance upon the assertions made in the three supplementary counter affidavits, submits that in the case of selection of the petitioner, the U.P. Government Departments Drivers Service Rules, 1993 would be applicable and in pursuance of Rule 17, the constituted selection committee should comprise four members including the Chairman and the fourth member should be Regional Transport Officer of the concerned region or his nominee not below the ranks of Assistant Regional Transport Officer. The mandatory requirement of one member from the office of Regional Transport Officer has not been fulfilled in the interview held on 16.2.2005. As such the entire selection was abrogated by the Deputy Director General, NCC Directorate, U.P., Lucknow.

He further submits that advertisement was published on 9.3.2006 in "Hindustan" newspaper for the 57th U.P. Battalion, NCC, Unnao for making appointment for one post of Driver. In pursuance of the said advertisement, regular selection proceeding was conducted by the 57th U.P. Battalion, NCC and Arjun Kumar son of Ram Gahan Yadav was selected as Driver in the said selection proceedings held on 10.5.2006. There is no illegality in making selection for 57th U.P. Battalion, NCC, Unnao wherein the then respondent no. 5 had been selected and is continuing. The copy of the proceedings for selection of the then respondent no. 5 has been brought on record.

In rejoinder, learned counsel for the petitioner further submits that reliance was placed upon the U.P. Government Department Drivers Service Rules, 1993 by the respondents in order to substantiate their plea that the Regional Transport Officer or his nominee i.e. Assistant Regional Transport Officer was not member of the selection committee and therefore recommendation of the entire selection proceeding dated 16.2.2005 had rightly been cancelled, is misplaced and the Rules, 1993 are not applicable at all. Rules for direct recruitment of Group "C" posts of 2002 will have an overriding effect and the selection can only be made in accordance with said rules.

Having heard learned counsel for the parties and perused the record, it is evident that the procedure as prescribed in rules, 2002 is for direct recruitment for Group "C" posts which are outside the purview of the U.P. Public Service Commission. The said rules are framed in exercise of power conferred by proviso to Article 309 of the Constitution of India in supersession of existing rules and orders on the subject. Considering the procedure in the said rule, the Court finds that the rule itself is relevant for the purpose of controversy in the present petition. The same is quoted below:

"6. Direct recruitment shall be made by a Selection Committee comprising :

(i) Appointing Authority Chairman

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

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

(iv) An officer having adequate knowledge in the related field according to the requirements of the post for which recruitment is to be made shall be nominated by the Chairman.

(v) An officer nominated by the District Magistrate of the concerned district.

Note:(i) If the appointing authority is the Head of the Department then in such all the member of the Selection Committee shall be nominated by him. He may, on his behalf nominate an officer senior to other members as Chairman of the Selection Committee. Such Head of the Department may Constitute more than one Selection Committee for holding interview only.

Note: (2) If the jurisdiction of an appointing authority extends to more than one district then in such case the recruitment process shall be done in that district in which the Head Quarters of the appointing authority is situated."

From perusal of Rule 6 it is evident that the selection committee consists of five members including the Chairman. Out of four members, one has to be an officer having adequate knowledge in the related field according to requirement of the post for which the recruitment is to be made. Whereas the result sheet appended with the supplementary affidavit filed by the petitioner dated 16.2.2005 indicates that there were only four members in the selection committee including the Chairman. The expert i.e. an officer having adequate knowledge in the related field according to the requirement of the post is missing. In view thereof it is apparent that the selection committee was not constituted as per the rules.

As the selection is for the post of Driver, therefore the Regional Transport Officer/ Assistant Regional Transport Officer having adequate knowledge in the field was necessary member of the selection board in order to judge the suitability of the candidate in driving test which is a mandatory requirement for the post.

Thus from the case set up by the petitioner himself that Rules 2002 would be applicable, the selection committee constituted for the interview held on

16.2.2005 cannot be sustained. There is no illegality in the order passed by the NCC Directorate cancelling the entire selection process and the reason given by the respondent no. 4 vide letter dated 16.5.2005 which is under challenge in the present petition requires no interference.

The writ petition is dismissed accordingly.

No order as to costs.