

(2006) 04 AHC CK 0116

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20820 of 2006

Shivaji

APPELLANT

Vs

State of U.P. and Zila Karyakram Adhikari

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 6 AWC 6538

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : H.N. Tripathi and Rajesh Tripathi, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Dr. H. N. Tripathi learned Counsel for the petitioner and the learned standing counsel for the respondents.

2. The petitioner has assailed the order dated 13.3.2006 passed by the Director respondent No. 2 whereby the promotion of the petitioner as a junior clerk from the post of a class IV employee has been set aside on the ground that the petitioner did not possess the minimum speed of typing of 25 words per minute at the time of selections and that no assessment was made by the selection committee of the service records of the petitioner, which conditions were mandatory for promotion. The petitioner was promoted on 20.8.2003 on the recommendation of the selection committee and was thereafter immediately transferred on 19.9.2003.

3. A notice was issued by the Director on 26.8.2005 to the petitioner calling upon him to explain as to why his promotion may not be cancelled pointing out the deficiencies which had been ultimately referred to in the impugned order.

4. The petitioner submitted his reply on 9.9.2005 copy whereof Annexure 5 to the petition. The defence set up by the petitioner was that had the petitioner not

possessed the minimum speed of typing the selection committee would not have recommended him for appointment. It was further stated that the assessment was to be made by the selection committee which will be presumed to have been done. After receiving the reply of the petitioner a show cause notice was issued on 12.12.2005 to which the petitioner submitted a reply which is at page 36 paper book. The petitioner therein has stated that he possesses the minimum qualifications and there is no justification for cancellation of his promotion after two years of the selection. The petitioner has further stated that his 12 years of service as a class IV employee were satisfactory and, therefore, keeping in view the same the petitioner should be retained on his post to which he was promoted.

5. The impugned order clearly records that a candidate for being promoted on the post in question should be possessed of a minimum typing speed of 25 words per minute. It also records that an interview is to be held and the service record of the candidate has to be assessed. The marks allocated for written examination is 30 whereas that for interview and assessment of service record is 10 marks each. After having received the reply of the petitioner, the impugned order has been passed recording that the proceedings dated 20.6.2003 of the selection committee states that the petitioner had a speed of only 13 words per minute. It is also stated in the impugned order that no assessment of the petitioner was made and in the absence of compliance of these provisions the promotion was invalid and was accordingly cancelled.

6. There is no dispute about the fact that the promotion is on the post of clerk cum typist. There is also no dispute about the qualifications referred to herein above and also the procedure to be followed by the selection committee.

7. What the petitioner disputes is that the petitioner was assessed by the selection committee and that even assuming for the sake of argument that the petitioner did not have the minimum speed of typing, yet the same was not a mandatory prescription and therefore, the selection cannot be invalidated. The petitioner further contends that every thing was known to the selection committee and that the petitioner did have a typing speed of 25 words per minute and therefore, he was rightly selected.

8. On the other hand learned standing counsel contends that the promotion of the petitioner was in clear violation of the statutory requirements referred to in the order and, therefore, the promotion cannot be saved. It was also urged that the explanation submitted by the petitioner to the show cause notice issued to him cannot with stand the scrutiny of law stand therefore, the authority was justified in cancelling the promotion.

9. Having heard learned Counsel for the parties and examining the records the issue which arises for consideration of this Court is as to whether the promotion of the petitioner has been rightly cancelled on account of the deficiencies pointed out in the impugned order.

10. The petitioner, even though has stated in his reply that he possesses the

minimum typing speed of 25 words per minute, yet the same has been found to be incorrect as per the proceeding recorded by the selection committee on 20.6.2003. The impugned order clearly records that the selection committee found that the petitioner had a minimum speed of only 13 words per minute. This fact even though disputed by the petitioner, cannot be disbelieved in view of the nature of the letter of the appointment issued to the petitioner upon his promotion. The said order of promotion which is Annexure 2 to the writ petition records in Clause 2 that the promotion is subject to the condition that the next increment admissible to the petitioner would only be available if the petitioner is able to achieve the minimum typing speed limit prescribed under the rules. The aforesaid recital in the promotion order has not been disputed by the petitioner and rather the promotion has been accepted by the petitioner on the said condition. The petitioner therefore will be presumed to have accepted the promotion on the said term and conditions. The said condition clearly reflects that all the four candidates who had been promoted were not in possession of the minimum typing speed at the time of their selection. Had they been in possession of such a qualification, Clause 2 of the order of promotion would not have been a condition imposed on the petitioner and other such promoted candidates. The very necessity of the inclusion of the said condition demonstrates that the petitioner and the other candidates were not possessed of the minimum typing speed. In this view of the matter the finding recorded in the impugned order that the petitioner had only a speed of 13 words per minute at the time of selection cannot be disputed. The selection proceeding appears to have been carried out without assessing the records of the petitioner and the impugned order records that no marks were awarded in respect thereof. It is, therefore clear that the procedure prescribed in law was not followed and the promotions were made in violation thereof. The contention on behalf of the petitioner and the defence set up by him in the reply, that if that mat was not done then it is the fault of the selection committee and not of the petitioner, cannot be accepted. The default of the selection committee cannot confer an undeserved benefit on the petitioner.

11. The fulfillment of the requisite eligibility criteria is a mandatory condition. The contention on behalf of the petitioner that it is only directory and not mandatory cannot be accepted as that would violate Articles 14 and 16 of the Constitution of India. There would be many candidates who would be deprived of such benefit in case the intention is to relax a mandatory condition as suggested by the learned Counsel for the petitioner. The condition of minimum typing speed for being promoted as a clerk-cum-typist is in the opinion of the court a mandatory condition. The proof of such an eligibility may be directory and can always be verified at the time of selection. The eligibility fixed under the statute cannot be diluted and relaxed in order to provide employment in violation of rules. Even a subsequent improvement or embellishment cannot cure the inherent defect of eligibility. The contention, therefore that it is not a mandatory requirement is misconceived and deserves to be rejected. The apex court in the

case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, has clearly stated that a candidate who is deficient in qualification, if permitted to apply, will give rise to a situation which would amount to a fraud on public by resorting to an appointment of a candidate possessed with inferior qualification. It was also held that all those who had similar or even better qualifications but who were not considered for the post on account of not possessing the minimum qualification, would be deprived of an opportunity of employment. The aforesaid ratio, therefore, clearly intends to indicate that such a selection would be discriminatory and violative of Articles 14 and 16 of the Constitution of India. This amounts to giving an unfair advantage to those, like the petitioner, over and above such candidates who may have also qualified for being promoted under the relaxed condition. It has also to be noted that a mandatory condition cannot be waived and is not subject to any cure subsequently. This practice of allowing persons to enter without possessing the minimum eligibility criteria should be discouraged not only in the interest of those who have not been selected but also for the sake of those who could neither approach nor had the resources to be aware of such a proposed relaxation. In the opinion of the court the promotion order issued by the authorities in favour of the petitioner was a clear act of travelling beyond the powers of the authorities to do so. The contention on behalf of the petitioner that even today if the petitioner is put to test he would be found to be in possession of the minimum typing speed. The Director while issuing the letter of promotion to the petitioner had no authority in law to impose a condition giving an opportunity to the petitioner to improve upon his typing speed for award of future increments. The aforesaid condition is not contemplated under any rules and the said condition appears to have been included in the letter of promotion with a view to extend a lease in favour of the petitioner to which he was otherwise not entitled to.

12. It is now well settled that any subsequent acquisition of eligibility or qualification would not validate an otherwise invalid appointment. Reference may be made to Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, . The said view has been followed by the apex court in the case of State of U.P. v. Vijay Kumar Misra reported in 2002 (3) ESC 105. To the same effect is the ratio of the decision in the case of S.K. Dwivedi v. B.S.A. reported in 2003(2) UPLBEC 1216 . Again the apex court has reiterated the the said view in the case of A. A. Umarani Vs. Registrar, Cooperative Societies and Others, and followed in the case of State of U.P. v. Neeraj Awasthi reported in AIR 2006 SCW 123.

13. In view of the aforesaid facts and circumstances and the position of law explained by the apex court and this Court, I am of the considered opinion that the impugned order does not suffer from any infirmity.

14. For the reasons recorded herein above the writ petition is devoid of merits and is accordingly dismissed.