
(2012) 10 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 8260 of 1997

Uma Shanker Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2013) 2 AWC 1550

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Syed Wajid Ali, Chandreshwar Prasad, D.K. Srivastava, J.K. Yadav, R.K. Srivastava and Yogesh Agrawal, for the Appellant; A.K. Nigam, Nripendra Misra, Pankaj Naqvi, Sudeep Harkauli and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Kumar, J.—When the writ petition was filed in the year 1997, the petitioners sought the following reliefs:

(i) a writ, order or direction of suitable nature commanding the respondents to consider the petitioners for appointment on the post of Dental Hygienists in pursuance to the advertisement published in the newspaper dated 6.1.1997 without any objection as to absence of registration by the State Dental Council, U.P. and/or to command the State Dental Council, U.P. to register the petitioners as Dental Hygienists as has registered the persons appearing in the Dental Hygienists Course alongwith the petitioners as detailed in the writ petition.

(ii) a writ, order or direction of suitable nature declaring Rule 8 of the notification dated 13.7.1993 to be unconstitutional and inoperative.

(iii) a writ or any other writ, order and/or to pass such other further order as this Hon"ble Court may deem fit and proper in the circumstances of the case.

(iv) to award cost of the petition to the petitioners.

By the amendment made on 21.4.2008 the following fresh reliefs have been sought which are as follows:

(v) It is, therefore, most respectfully prayed that this Hon"ble Court may kindly be pleased to issue a writ or order on direction in the nature of a writ of mandamus commanding the opposite parties to treat the petitioners as eligible for being selected and appointed as Dental Hygienists in pursuance of the selection process to be held pursuant to the advertisement dated 15.12.2007.

(vi) It is, therefore, most respectfully prayed that this Hon"ble Court may kindly be pleased to issue a writ or order or direction in the nature of a writ of mandamus directing the opposite parties to give the petitioners the age relaxation for being considered and appointed to the post of Dental Hygienists as the petitioners had been pursuing their writ petition diligently.

(vii) It is, therefore, most respectfully prayed that this Hon"ble Court may kindly be pleased to issue a writ or order or direction in the nature of a writ of mandamus commanding the opposite parties to enroll the petitioners as Dental Hygienists from U.P. State Dental Hygienists Council.

The petitioners are the Dental Hygienists Certificate holders issued by the B.R.D. Medical College, Gorakhpur. They claimed that they took admission in the dental hygienists batch in the year 1989 which was two years course and passed the same from B.R.D. Medical College, Gorakhpur which is the State recognised Medical College. In the petition, it is contended that on 12.12.1995, in a meeting conducted under the Chairmanship of Secretary, Department of Medicines and Health, a decision has been taken regarding training of para medical staff. It was decided to provide training of dental hygienists to be imparted by six Government Colleges in batches of five dental hygienists each. The decision has also been taken to increase the seats in the Dental College, Lucknow from 10 to 30 and another meeting was chaired by the Secretary, Medicines and Health on 18.9.1986. For increasing the number of seats at the Dental Colleges, a Government Order dated 31.12.1986 was issued by the State Government whereby budgetary allocations were made for imparting instructions for study of dental hygienists in six Government Medical Colleges. In pursuance of the aforesaid decision, training of dental hygienists was commenced in all the six Medical Colleges, including Allahabad Medical College and Gorakhpur Medical College from the year 1987 and the first admission was made in the year 1987. The dental hygienists course was of two years. It is stated that papers relating to three petitioners were forwarded by their respective medical colleges to the State Dental Council, U.P., Lucknow for registration. However, no action whatsoever has been taken by the State Dental Council, U.P. Thereafter, the State Government has framed a rule named as the U.P. Dental Health Science and Dental Mechanics Service Rules, 1993 (hereinafter referred to as the "Rules 1993") in exercise of the power under Article 309 of the Constitution of India and the same has been published by means of the notification dated 13.7.1993. Rule 8 of the said Rules specifies the educational qualifications required for

appointment. Under the said Rules, it is provided that the possession of a certificate/diploma in Dental Health or Dental Mechanics from a recognised institution as also registration with the State Dental Council, U.P. was a necessary precondition for being considered for appointment.

2. An advertisement has been published by the Director General, Medical Health, U.P. on 6.1.1997 inviting applications for filling up the post of Dental Hygienists. Under the aforesaid advertisement, there were 32 posts of dental hygienists reserved for Scheduled Caste, four posts for Scheduled Tribe and six posts for Backward Class and three posts for general category. The petitioners belong to other Backward Class. The aforesaid advertisement specifies possession of a certificate of dental hygienists from an institution recognised by the Indian Dental Council as also registration as a Dental Hygienists with the State Dental Council, U.P. as the minimum eligibility requirement for being considered. Due to the aforesaid qualifications prescribed in the advertisement, the petitioners have been precluded from applying for the post of Dental Hygienists, as they did not possess such qualification. Except petitioner No. 4, other petitioners applied for the post under the aforesaid advertisement. At this stage, the petitioners filed the present writ petition. Since the petitioners did not have requisite qualifications prescribed in the advertisement, the petitioners' applications have not been entertained.

3. It appears that a fresh advertisement has been made on 15.12.2007 for the post of Dental Hygienists. In the said advertisement, again the same qualification was provided. The petitioners applied for the said post in pursuance of the said advertisement and moved an amendment application seeking further reliefs, referred hereinabove.

4. Heard Sri Yogesh Agarwal, learned counsel for the petitioners and Ms. Suman Sirohi, learned standing counsel.

5. Learned counsel for the petitioners submitted that in pursuance of the scheme of the State Government, the petitioners have taken two years training from the State recognised Medical Colleges wherein such training course was recognised. The object to start two years training course in the recognized State Medical Colleges was to provide job to such trained dental hygienists on the post of Dental Hygienists having regard to the need of such Dental Hygienists. When the petitioners took the admission in the State Recognised Medical Colleges, it was not known to them that such Medical Colleges were not recognised by the Indian Dental Council and further registration is required from the U.P. Dental Council. Lucknow for being qualified for the appointment on the post of Dental Hygienists. He submitted that Rule 8 of the Rules, 1993 which provided the minimum qualification for the post of Dental Hygienists does not apply to those trainees who had taken training prior to 1993 and, therefore, they should be treated eligible for the post. Reliance is placed on the Full Bench decision of this Court in the case of Bhupendra Nath Tripathi and Others Vs. State of U.P. and Others, . He further submitted that King George Medical College, U.P., Lucknow is the only

College which is recognised by the Indian Dental Council and, therefore, they were eligible for the appointments on the said post and in this way the petitioners have been discriminated. He further submitted that two candidates, namely, Sri Siddharth Shankar Rai and Sri Manvendra Prasad, who appeared in the final year in Dental Hygienists course at Gorakhpur Medical College in the year 1991 have failed but subsequently appeared in the examination conducted by the Dental Medical College, Lucknow held in 1994 on being successful on such examination, they were treated eligible for the appointments under the aforesaid advertisement. In the end, he submitted that insofar as the consideration of the petitioners candidature in pursuance of the advertisement of 1997 is concerned, the claim has become infructuous. The petitioners further applied for the post in pursuance of the advertisement dated 15.12.2007. On an application moved by the petitioners by the order dated 28.3.2008, the petitioners have been permitted to appear in the selection process and four seats were directed to be kept vacant. In pursuance thereof, the petitioners appeared in the examination, however, result has not yet been declared and the petitioners' claim for appointment has not been considered.

6. Ms. Suman Sirohi, learned standing counsel submitted that it is on the employer to prescribe the minimum qualification for the recruitment. She submitted that Rule 8 of the Rules, 1993 has been enacted with the view to recruit only those certificate holders who had taken training from the institution recognised by the Dental Medical Council to get the better efficient trained Dental Hygienists as their training being monitored by the Indian Dental Council. The rule is applicable to every one. It is not discriminatory nor arbitrary. It is within exclusive domain of the employer and is a policy matter to which this Court should not interfere. Reliance is placed on the following decisions:

- (1) Dilip Kumar Garg and Another Vs. State of U.P. and Others, .
- (2) Union of India (UOI) Vs. Pushpa Rani and Others, .
- (3) State of M.P. and Others Vs. Raghuveer Singh Yadav and Others, .
- (4) V.K. Sood Vs. Secretary, Civil Aviation and others, .
- (5) Col. A.S. Sangwan Vs. Union of India (UOI) and Others, .

7. She submitted that admittedly the petitioners did not possess the requisite qualifications mentioned in the advertisement and, therefore, the petitioners were not qualified and eligible to apply and to be considered for such post. She submitted that the decision of the Full Bench relied upon by the learned counsel for the petitioners is not applicable as it relates to the admission for the B.T.C. course and does not relate to the recruitment.

8. I have considered the rival submissions of the learned counsel for the petitioners and learned standing counsel and perused the records.

9. Rule, 1993 was enacted in exercise of the power under Article 309 of the

Constitution of India. It is not the case of the petitioners that State was not competent to enact such rule. Rule 8 of the Rules, 1993 prescribed the minimum qualification for the recruitment. It is applicable to all. It cannot be said to be discriminatory or arbitrary. The State is competent to prescribe the minimum qualification for the recruitment. Therefore, in my view, Rule 8 of the Rules, 1993 is valid.

10. In the case of *Tata Cellular Vs. Union of India*, , the Apex Court has held that there should be judicial restraint in administrative decision. This principle will apply all the more to a Rule under Article 309 of the Constitution of India.

11. In the case of *Dilip Kumar Garg and another v. State of U.P. and others* (supra), the Apex Court has held that Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer and it is not for this Court to sit over their decision like a Court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions.

12. In the case of *Union of India v. Pushpa Rani and others* (supra), the Apex Court has held as follows:

Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if It is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.

13. In the case of *State of M.P. and others v. Raghuveer Singh Yadav and others* (supra), the Apex Court has held as follows:

It is not in dispute that Statutory Rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualifications for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to amend Rules, the Government has withdrawn the earlier notification

and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.

14. In the case of *V.K. Sood v. Secretary, Civil Aviation and others* (supra), the Apex Court has held as follows:

Thus, it would be clear that, in the exercise of the rule making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated Individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The Rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.

It is next contended that several persons whose names have been copiously mentioned in the appeal were not qualified to hold the post of examiner and they were not capable even to set the test papers to the examinees nor capable to evaluate the papers. We are not called upon to decide the legality of their appointments nor their credentials in this appeal as that question does not arise nor are they before the Court. It is next mentioned by Mr. Yogeshwar Prasad, the learned senior counsel that on account of inefficiency in the posts operational capability repeatedly air accidents have been occurring endangering the lives of innocent travelers and this Court should regulate the prescription of higher qualifications and strict standards to the navigators or to the pilots be insisted on. We are afraid that we cannot enter into nor undertake the responsibility in that behalf. It is for the expert body and this Court does not have the assistance of experts. Moreover it is for the rule making authority or for the Legislature to regulate the method of recruitment, prescribed qualifications etc. It is open to the President or the authorised person to undertake such exercise and that necessary tests should be conducted by U.P.S.C. before giving the certificates to them. This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature. It is stated in the counter-affidavit that due to advancement of technology of the flight aviations the navigators are no longer required and, therefore, they are not

coming in large number. Despite the repeated advertisements no suitable candidate is coming forward. We do not go into that aspect also and it is not necessary for the purpose of this case. Suffice to state that pursuant to another advancement made in July, 1992, the appellant is stated to have admittedly applied for and appeared before the U.P.S.C. for selection and that he is awaiting the result thereof. Under these circumstances, we do not find any substance in this appeal. The appeal is accordingly dismissed. No costs.

15. In the case of Col. A.S. Sangwan v. Union of India and others (supra), the Apex Court has held as follows:

...A policy once formulated is not good for ever: it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated in 1964 if these are good and weighty reasons for doing so.....It must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily.....So, whatever policy is made should be done fairly and made known to those concerned....

In view of the above law laid down by the Apex Court, I do not see any reason to interfere in the matter. The Full Bench decision relied upon by the learned counsel for the petitioners in the case of Bhupendra Nath Tripathi and others v. State of U.P. and others (supra) is not applicable to the present case. It relates to the admission in B.T.C. course and does not relate to recruitment.

In view of the foregoing discussions, the writ petition is devoid of merit and is accordingly dismissed.