

(2012) 04 AHC CK 0010

In the Allahabad High Court

Case No : Writ Petition (S/S.) No. 1862 of 2012

Vikas Kumar and Another

APPELLANT

Vs

Aryavart Gramin Bank and Another

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Citation : (2012) 6 AWC 6052

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Sanjay Kumar, for the Appellant; Lalit Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.—Notice on behalf of the opposite parties has been accepted by Mr. Lalit Shukla, advocate.

Heard Mr. Sanjay Kumar, learned counsel for petitioners as well as Mr. Lalit Shukla, learned counsel for opposite parties.

The writ petition has been filed challenging the orders dated 14.3.2012. copies of which are annexed as Annexures-1 and 2 to the writ petition, whereby the petitioners have been informed that their candidature for the post of Office Assistant stand cancelled.

2. Learned counsel for petitioners submits that by advertisement dated 29.8.2011, 85 posts of Office Assistant were advertised alongwith several other posts. Under Clause 13 of the said advertisement, it was provided that the applications could only be accepted through online on the website of the Bank. The minimum qualification required as per the said advertisement was Graduation or equivalent qualification from a recognized University and also having knowledge in Hindi and English as well as computer application.

3. It is further submitted that, however, in the said advertisement, the opposite parties had arbitrarily fixed the cut off date as 31.3.2011 for the purpose of

educational qualification of Graduation. The petitioners had acquired the qualification of Graduation on the date of advertisement as their result for Graduation was declared on 21st July, 2011 and 21st August, 2011. respectively.

4. It is also submitted that the petitioners had indicated in the application form the date of declaration of the result of Graduation examination and the opposite parties had permitted the petitioners to participate in the selection. In this regard, petitioners were declared successful in the written examination as well as interview. The final result of selection was declared on 23.2.2012 and thereafter the petitioners were asked to furnish their original certificates and mark-sheets. The petitioners had duly submitted the said documents. They were informed that the appointment letter would be issued to them shortly but surprisingly by the impugned orders dated 14.3.2012. their candidature have been cancelled on the ground that the petitioners did not possess the required qualification as on the cut off date, i.e.; 31.3.2011, hence their candidature are cancelled.

5. Contention of learned counsel for petitioners is that the cut off date, i.e., 31.3.2011 was arbitrarily fixed as the advertisement for the post in question was issued on 29.8.2011 and on the date of advertisement, the petitioners were having the qualification required for the post in question. There is no justification for fixing the cut off date as 31.3.2011 for this purpose.

6. It is also contended by learned counsel for petitioners that the opposite parties have themselves permitted the petitioners to participate in the selection and as such they cannot deny appointment to the petitioners after the petitioners have been declared successful.

7. Mr. Lalit Shukla, learned counsel for the opposite parties on the other hand submitted that" the conditions prescribed in the advertisement dated 29.8.2011 are very clear and specific. The selection was to be held as per the said conditions and according to that a candidate was required to have the educational qualification of Graduation on or before 31.3.2011. The candidates having the qualification of Graduation on the said date, i.e.. 31.3.2011 were only eligible to be selected for the post In question, Admittedly, the petitioners were not having the qualification of Graduation on the cut off date and as such, the petitioners cannot claim appointment.

8. It is further submitted that the petitioners, knowing fully well the conditions prescribed in the advertisement had applied for the post in question and participated in the selection. In case, petitioners were aggrieved by any of the conditions as provided under the advertisement, they could have challenged the same at the appropriate time but they cannot be permitted to raise their grievance with respect to fixation of cut off date after participating in the selection and after declaration of final result.

9. I have considered the submissions made by the parties" counsel.

It is to be seen as to whether the petitioners are entitled to get appointment on

the post in question or not.

The selection for the post in question was held in pursuance of the advertisement dated 29.8.2011. The said selection was held on the basis of conditions prescribed in the advertisement dated 29.8.2011. As per the conditions prescribed in the said advertisement, the candidates for the post in question were required to have the educational qualification of Graduation as on 31.3.2011.

Admittedly, the petitioners were not having the said qualification but they had applied for appointment on the post in question.

10. It is to be noted that the results of graduation examination of the petitioners were declared on 21.7.2011 and 21.8.2011. Petitioners had applied for the post in question treating themselves to be eligible. However, as per conditions prescribed in the said advertisement, the requirement was that a candidate must possess the qualification of Graduation as on 31.3.2011. The petitioners did not challenge the condition of cut off date, i.e., 31.3.2011 when the advertisement was issued or on applying for the post in question. They appeared in the said selection knowing fully well the conditions prescribed under the advertisement.

11. So far as the contention of learned counsel for petitioner that at the time of advertisement dated 29.8.2011, petitioners were having the required qualification is concerned, suffice is to mention that the selection was to be held as per the terms and conditions prescribed in the advertisement and a candidate was required to have the educational qualification of Graduation as on 31.3.2011. The contention of the petitioners as such having no force is rejected.

12. The legal proposition is very well-settled In this regard that the selection shall be held as per the conditions prescribed in the advertisement. In case anyone is aggrieved by any of the conditions prescribed therein, he is at liberty to challenge the same at the appropriate time. However, in the present case, petitioners did not challenge the said conditions and willfully participated in the selection. Now, after participating in the selection, they cannot turn around and challenge the same. The Apex Court has very categorically held that a candidate shall not be permitted to challenge the conditions prescribed for selection after willfully participating in the same.

13. In the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , the Apex Court has held that petitioners as well as contesting respondents who took a chance and appeared to get themselves selected at the oral Interview and then only because the result of the interview is not palatable to them, they being declared unsuccessful candidates cannot turn around and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted.

(...Emphasis supplied)

14. Further, In the case of Chandra Prakash Tiwari and Others Vs. Shakuntala

Shukla and Others, . the doctrine of estoppel was considered and it was held that three basic elements are required for the application of doctrine of estoppel ; firstly, where a man makes a misrepresentation and another man acts upon it to its true detriment : secondly, where the man makes a false statement negligently though without fraud and another person acts upon it and : thirdly, there may be circumstances under which a misrepresentation is made without fraud and without negligence, there may be an estoppel.

(... Emphasis supplied)

15. In the case of K.H. Siraj Vs. High Court of Kerala and Others, , it was held that where the appellants-petitioners have participated in the interview, it is not open for them to turn around thereafter when they failed at the interview and contend that the provisions of a minimum mark for the interview was not proper. It was so held that the writ petitions filed by the appellants-petitioners should be dismissed on the ground of doctrine of estoppel.

(... Emphasis supplied)

16. This Court in the case of Mithlesh Kumari Vs. State of U.P. and Others, , has held that if the candidates appear in the examination as per the terms of the advertisement, later on when they are not selected, cannot challenge the same as even the selected candidates have no vested right in this regard as held by the Apex Court in the case of Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others, .

(... Emphasis supplied)

17. In the case of G.N. Nayak Vs. Goa University and Others, , it was observed that a person after having knowledge that there was change in the eligibility criteria yet had applied for the post and appeared at the interview without protest, now cannot be allowed to contend that the eligibility criteria was wrongly framed.

(... Emphasis supplied)

18. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , the Apex Court has observed that the petitioner had appeared in the examination without protest. He had filed the petition only after he had perhaps realized that he would not succeed in the examination. He has no right to challenge the same after being unsuccessful and he was not entitled for any relief.

(... Emphasis supplied)

19. In the present case, although the petitioners have been declared successful but they were fully aware about the conditions prescribed by the advertisement regarding the selection for the post in question and knowing fully well that at the relevant time. i.e.. 31.3.2011, they were not having the required educational qualification, had participated in the selection without challenging the cut off date fixed in this regard. Now, after participating in the selection, they cannot be

permitted to raise their grievance regarding fixation of the said cut off date.

20. Even if, the opposite parties had allowed the petitioners to participate in the selection and the petitioners were declared successful in the written examination and interview, it will not confer any right on the petitioners to claim appointment, as it is the admitted position that they were not having the required educational qualification as per the conditions prescribed in the advertisement. Hence, for the facts and reasons aforesaid, the writ petition being devoid of merit is liable to be dismissed. it is accordingly dismissed.