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Avinash Narain Pandey Vs U.P. Public Service Commission and Others

C.M.W.P. No. 5127 of 1996

Court: Allahabad High Court

Date of Decision: March 12, 1996

Acts Referred:
Uttar Pradesh Nyayik Sewa Niyamavali, 1951 â€" Rule 15, 18, 19

Citation: (1996) 2 UPLBEC 1249

Hon'ble Judges: S.R. Alam, J; R.A. Sharma, J

Bench: Division Bench

Advocate: Pradip Kumar and R.P. Singh, for the Appellant;

Final Decision: Allowed

Judgement

R.A. Sharma, J.
The Petitioner and the Respondent Nos. 3 and 4 alongwith various other candidates appeared in U.P. Nyayik Sewa

(Munsif) Examination, 1990 (hereinafter referred to as the Examination) conducted by the U.P. Public Service Commission (hereinafter referred to

as the Commission). The result of the examination was declared on 25.11.1994 in which Respondent Nos. 3 and 4 were declared successful but

the Petitioner''s name was not there in the list of the successful candidates. Being aggrieved by it, Petitioner has filed this writ petition for writ of

certiorari for getting the selection of Respondent Nos. 3 and 4 quashed. Further consequential relief in connection therewith has also been sought.

2. Respondents have filed counter-affidavit and the Petitioner has filed rejoinder affidavit in reply thereto. We have heard the learned counsel for

the parties.

3. Petitioner and the Respondent Nos. 3 and 4 have secured equal marks in the aggregate, as is clear from the following chart given by the

Commission in its counter-affidavit.

Sl. Roll No. Name Marks in Interview Total

No. Written Exams.

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49 234 Surendra Nath Tripathi 481 41 522

(Respondent No. 3)

50 9340 Himanshu Bhatnagar 473 49 522

(Respondent No. 4)

51 2280 Avinash Narain Pandey 462 60 522

(Petitioner)

As all the three candidates mentioned above have secured equal marks in the aggregate, the Commission has selected the Respondent Nos. 3 and

4 as they secured more marks in written test than the Petitioner. The contention of the learned counsel for the Petitioner, however, is that when two

or more candidates have secured equal marks in the aggregate, the Commission has to place their names in the list in order of merit on the basis of

the marks obtained by them in the interview and, therefore, the Petitioner, who secured more marks in the interview is entitled to be given higher

place in the merit list than the Respondent Nos. 3 and 4 who have secured less marks in the interview, although all of them have secured equal

marks in the aggregate.

4. Rule 15 of U.P. Nyayik Sewa Niyamawali (hereinafter referred to as the Rules), which prescribes the procedure for recruitment for the post of

Munsif, is reproduced below:

15. Competitive examination.--The examination may be conducted at such time and on such dates as may be notified by the Commission and shall

consist offal written examination such legal and allied subjects, including procedure, as may be included in the syllabus prescribed under Rule 18.

(b) an examination to test the knowledge of the candidates in Hindi and Urdu; and

(c) an interview to assess the all round student career of the candidates and their personality, address and general suitability.

Under Rule 19, the Commission has to prepare a list of candidates selected by it according to the aggregate marks finally awarded to each

candidate. This Rule is reproduced below:

19. List of candidates approved by the Commission.--The Commission shall prepare a list of candidates who have taken examination for

recruitment to the service in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. If two or more

candidates obtain equal marks in the aggregate, the Commission, shall arrange them in order of merit on the basis of their general suitability for the

service:

(emphasis supplied)

Provided that in making their recommendations, the Commission shall satisfy themselves that the candidate has obtained such an aggregate of

marks in the written test that he is qualified by his ability for appointment to the service.

5. Rule 19 has also laid down criteria for selection if two or more candidates obtained equal marks in the aggregate. The criteria is the general

suitability of the candidate for the service. By Rule 15 (c), interview has been prescribed for judging the general suitability of the candidate.

Appendix "E" to the Rule has prescribed the syllabus for competitive examination for the selection for written examination plus viva voce. Clause

(6) of Appendix "E", which provides for viva-voce is reproduced below:

6. Viva Voce.--The suitability of the candidate for employment in the Judicial Service will be tested with reference to his record at School, College

and University and his personality, address and physique. The questions which may be put to him may be of a general nature and will not

necessarily be of an academic or legal nature.

6. A learned Single Judge in Vinay Khare v. State of U.P. 1993 (21) ALR 1, has held that If two or more candidates have secured equal marks in

the aggregate, the candidate, who secured more marks in written test is to be given higher place in the merit list. The above decision of the learned

Judge has been over-ruled by the Division Bench in Km. Manju Trivedi v. State of U.P. (Writ Petition No. 1247 (SB) of 1992, decided on

19.1.1994 (LKO) relevant extract from which is reproduced below:

We are not In agreement with the contention raised on behalf of the Petitioner that in Judicial service, academic knowledge of law is the most

important equipment and. therefore, the written test should have a primacy in determining the merit of two candidates who secure equal marks in

the aggregate, firstly, because this statement does not accurately assess the requirement of the judicial officer and, secondly, it is not for this Court

to determine as to which would be the better alternative. It has only to construe Rule 19 as it exists.

For performing as a judicial officer, knowledge of law is necessary; but more necessary is the skill to use it and the attitude of the officer

concerned. It is this skill and attitude which goes to constitute the personality of a Judge and which are more important for his effectively dispensing

justice than mere knowledge of law.

The ultimate guarantee of Justice in a Court of law is the personality of the Judge"" was said by Eugen Ehrlish (Freedom of Decision, in Science of

Legal Method, 9 Mod. Leg. Philes, Ser. 65 (1917 Trans, by Eruncken). In the opinion of Rescoe Pound also.

Men count more than machinery in administration of justice.

What goes to constitute the personality of the men who administer justice is their attitude including their sensitivity to the problems of the letigants,

and zeal to dispense justice and the skills necessary in the administration of justice. The skill in the interpretation and application of laws, in dealing

with men effectively and conceptual skills of being able to visualise effect of a decision comprehensively and the very attitude of a person are more

determinative of his effectiveness as a judicial officer. Without these qualities, knowledge of law would be a mere surplus baggage. It was for these

reasons that Lord Chancellor Lyndhurst stated that when trying to select a person for being appointed as a Judge, ""I look out for a gentleman, and

if he knows a little law as much the better. [See Ballantine, Some Experiences of a Barrister''s Life 148 (2nd Ed. 1882). Even Haynes in the

Selection and Tenure of Judges (Newyark National Conference of Judicial Councils, 1944) stated:

It is truism that the quality of justice depends more on quality of men who administer the law than the contents of the law they administer.

All this goes to show that the personality of a person is equally, if not more, important in his being selected to perform the task of a Judge than

mere knowledge of law.

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Reliance was placed by the learned counsel for the Petitioners on a judgment in Writ Petition No. 24584 of 1989 Vinay Khare v. State of U.P.

and Ors. decided by learned Single Judge at Allahabad. We are in respectful disagreement with the opinion expressed by the learned Single Judge.

In this case, the learned Single Judge found that the marks in the written examination should determine the order of merit because Clause (6)

cannot be read in interpreting Rule 19 and that laghav axiom of Mimansa principles of interpretation leads to that conclusion and also that the other

alternative of the interview marks being considered would render the selection arbitrary.

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Rule 19 provides for general suitability to be the determinative factor while Clause (6) of Appendix E provides the manner of determining suitability

of the candidates. There is no reason not to consider the provision of Clause (6) in interpreting Rule 19. We are, therefore, not in agreement with

the view of the learned Single Judge. The rule of simpler and shorter interpretation has no application in this case. Whether the written test or

interview constitutes test of general suitability, is the question to be decided. They cannot be compared for being shorter and simpler. There is no

objective test to determine it and in absence of any reason to say that either of them in shorter or simpler, the test appears to be totally inapplicable

and artificial.

7. In paragraph 6 of its counter-affidavit, the Commission has stated that earlier when two or more candidates secured equal marks in the

aggregate, it used to give higher place in the merit list to a candidate, who secured more marks in the interview, but after the decision of the learned

Single Judge in the case of Vinay Khare v. State of U.P. (supra), it: abandoned its earlier policy and has accordingly arranged the names of the

Respondent Nos. 3 and 4 and the Petitioner in the merit list at serial Nos. 49, 50 and 51 respectively on the basis of the marks obtained by them in

the written test. It has further been mentioned by the Commission in the said counter-affidavit that the judgment of the Division Bench in the case of

Km. Manju Trivedi v. State of U.P. (supra) was received in its office after the result, which was prepared on the basis of the law laid down by the

learned Single Judge in Vinay Khare''s case, has already been declared. Be that as it may, the fact remains that the Commission has declared the

result of the examination of Respondent Nos. 3 and 4 and the Petitioner on 25.11.1994 on the basis of the law laid down by the learned single

Judge, which had already been overruled by the Division Bench in April, 1994. Therefore, the order rejecting the candidature of the Petitioner and

selecting the Respondent No. 3, Surendra Nath Tripathi, cannot be sustained. As the Petitioner and Respondent Nos. 3 and 4 have obtained equal

marks in the aggregate, their names have to be placed in the merit list on the basis of the marks obtained by them in the interview. Out of the three

candidates, the Petitioner (Avinash Narain Pandey) has secured 60 marks in the interview, which is highest. Next comes Sri Himanshu Bhatnagar,

Respondent No. 4, who has secured 49 marks. The Respondent No. 3 (Surendra Nath Tripathi) has secured 41 marks in the interview, which is

the lowest. Therefore, Avinash Narain Pandey (Petitioner) and Himanshu Bhatnagar, Respondent No. 4 are liable to be placed at serial Nos. 49

and 50 respectively in the merit list. The result is that the name of Sri Surendra Nath Tripathi, the Respondent No. 3 has to be placed at serial No.

51 in the list of the general candidates. As the quota of the general candidates is only 50, the Respondent No. 3 cannot be selected.

8. Dr. R. G. Padiya, learned counsel for Respondent No. 3 has, in this connection, made two submissions, namely, (i) Petitioner should have

challenged the rejection of his candidature on the ground of reservation of seats being in excess of 50 per cent of the vacancies and as he has failed

to do so, it is not open to him to challenge the selection of Respondent No. 3, and (ii) the decision of the Division Bench in Km. Manju Trivedi v.

State of U.P. (supra) is per incuriam Both these contentions are devoid of merit.

9. It is for the Petitioner to decide as to on what grounds he should challenge the order impugned in the writ petition. It may be that, if an order is

challenged on more than one ground, the Court may allow the writ petition on a ground, which may least affect the Respondents; but the writ

petition cannot be dismissed on the ground that the plea which is more suitable to the Respondents has not been taken in the petition. As the

Petitioner has not challenged the impugned order on the ground of excessive reservation, this Court cannot go into this question. If the Respondent

No. 3 is aggrieved by the reservation, it is open to him to challenge it but this writ petition cannot be dismissed on the said ground.

10. The decision of the Division Bench in Km. Manju Trivedi''s case is also not per incuriam. A judgment can be said to be per incuriam when it

has been delivered by the court in ignorance of the relevant statutory provisions and/or the binding decision of a Court of co-ordinate Jurisdiction

or that of a higher Court. In this connection the Full Bench of this Court in Rana Pratap Singh v. State of Uttar Pradesh and Ors. 1995 (1) ACJ

200, has laid down as under:

This is what now brings us to what constitute the parameters of the per incuriam rule. As the Supreme Court in Punjab Land Development and

Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, explained. ""The Latin expression per

incuriam means through inadvertance. A decision can be said generally to be given per incuriam when this court has acted in ignorance of a

previous decision of this Court."" Further ""in England a decision is said to be given per incuriam when the court has acted in ignorance of a previous

decision of its own or of a court of co-ordinate Jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the

House of Lords.

A similar exposition of the per Incuriam rule is to be found in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , namely,

that ""lncuria"" literally means ""carelessness". In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in

relaxation of the rule of stare decisis. The ''quotable in law'' is avoided and ignored if it is rendered, ''In ignoratium of a statute or other binding

authority"". Young v. Bristol Aeroplace Co. Ltd. (1944) 1 KB 718 : (1944) 2 All ER 293.

11. In the instant case, that is not the position. The Division Bench in Km. Manju Trivedi''s case, while holding that the decision of the learned

Single Judge in Vinay Khare''s case does not lay down correct law, has considered both relevant case law and the statutory provisions and has

also dealt with the relevant aspects on the basis of which the learned Judge has given his judgment.

12. The contention of the learned Standing counsel and the learned counsel for the Commission, however, is that as the decision of the learned

Single Judge in Vinay Khare''s case has been approved by the Division Bench in Special Appeal No. 229 of 1992 U.P. Public Service

Commission v. Vinay Khare, decided on 14.7.1994, the matter requires to be referred to the larger Bench for resolving the conflict between the

two Division Benches, i.e., one which decided the Km Manju Trivedi''s case and the other which decided the special appeal of the Commission

filed against the judgment of the learned Single Judge in the Vinay Khare''s case. This submission also lacks merit.

13. It is true that the Commission filed Special Appeal No. 229 of 1992 against the decision of the learned Single Judge in Vinay Khare''s case;

but the Division Bench while disposing of the appeal did not decide the controversy involved therein. This is clear from the order passed in the

special appeal, which is reproduced below:

Alter hearing counsel for the parties, Sri V.M. Sahai for the Appellant and Sri Ashok Khare for Respondent No. 1, and keeping in view the fact

that in the present case, the general suitability of candidates having equal marks has been assessed by the learned Single Judge on the basis of the

marks obtained in the written test and further that this rule has since been amended and the only person affected by the unamended rule, namely,

Vinay Khare has already been appointed as Munsif, and that too over two years ago, we do not consider this a fit case for interference.

It may be mentioned that the other person concerned namely, Sanjay Shankar Pandey, has already been appointed as Munsif, while the other two

candidates who had obtained equal marks, namely, Zameer Ahmad and Km. Manju Trivedi, did not care to challenge their non-selection.

Such being the situation, the Special Appeals are hereby disposed of accordingly.

14. From the perusal of the above order, it is apparent that the Bench without deciding the controversy involved in the appeal has disposed it of on

the basis of the following assumptions:

(1) Rule, which has prescribed the criteria for selection on the basis of the marks obtained in the interview when two or more candidates have

secured equal marks in the aggregate, has been amended;

(2) The only person, who is affected by the unamended rule is Vinay Khare, who has already been appointed as Munsif about two years ago; and

(3) The other affected persons, namely, Zameer Ahmad and Km. Manju Trivedi have not challenged their non-selection.

All these assumptions were unwarranted being contrary to the reality. This is clear from the following admitted facts:

(1) The Commission in its counter affidavit in the present case has admitted that there was a proposal to amend the Rule, which is still pending

before the State Government and the rule has not been amended so far.

(2) Apart from Sri Vinay Khare, Sri Zameer Ahmad and Km. Manju Trivedi were also the affected persons by the same decision of the

Commission, which was challenged by Vinay Khare and they have also challenged their non-selection before the Lucknow Bench of this Court by

means of two Writ Petitions Nos. 1247 (SB) of 1992 and 1289 (SB) of 1993 and both these writ petitions were allowed by a Division Bench

(LKO) on 19.4.1994 holding that in a case where equal marks are secured by two or more candidates, their names are to be placed In the list in

order of merit on the basis of the marks obtained by them in the interview. The decision of the learned Single Judge in Vinay Khare"s case was

also overruled by the Bench.

(3) Athough judgment of the Division Bench (LKO) in Km. Manju Trivedi"s case was delivered on 19.4.1994 but it was not brought to the notice

of the Bench hearing the appeal, filed by the Commission against the order of the learned Single Judge in Vinay Khare"s case, although the appeal

was decided on 14.7.1994. judgment of the Special Appeal Bench was thus given in ignorance of the decision of the Division Bench in Km. Manju

Trivedi"s case.

15. The decision of the Division Bench in special appeal, therefore, cannot be used as a precedent for three reasons, namely (i) it is based on

unwarranted assumptions; (ii) the Special Appeal Bench has not decided the controversy on merit; and (iii) even if it is presumed that the Special

Appeal Bench has decided, by implication, the controversy on merit, its decision is to be treated in per incuriam, because it was given in ignorance

of the binding decision of the Bench of co-equal Jurisdiction in Km. Manju Trivedi"s case. A decision given in ignorance of a judgment of a Bench

of co-equal jurisdiction or that of a higher Court is a judgment per incuriam and is not binding. Reference in this connection may again to made to

the decision of the Full Bench in Rana Pratap Singh v. State of U.P. and Ors. (supra).

16. This writ petition is accordingly allowed with costs. Selection of the Respondent No. 3 (Surendra Nath Tripathi) for the post of Munsif are

quashed. The Respondents are directed to place the name of the Petitioner at serial No. 49 in the merit list in place of the Respondent No. 3

(Surendra Nath Tripathi) and the name of Respondent No. 3 will be placed at serial No. 51 of the list of general candidates. It may, however, be

observed that if any vacancy out of the vacancies of the general candidates for which the examination was held is till available, the Respondent No.

3 may be accommodated against it.