

(2013) 08 AHC CK 0208

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 36163 of 2013

Pankaj Singh

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Aug. 12, 2013

Citation: (2013) 7 ADJ 589 : (2013) 100 ALR 831 : (2013) 6 AWC 6009 : (2013) 4 UPLBEC 2852

Hon'ble Judges: Rajes Kumar, J; Manoj Misra, J

Bench: Division Bench

Advocate: Sunil Kumar Srivastava, for the Appellant; V.P. Varshneya and V.P. Mathur, for the Respondent

Final Decision: Allowed

Judgement

1. We have heard Sri Ashok Khare, learned senior counsel, assisted by Sri Sunil Kumar Srivastava, learned counsel for the petitioner, Sri V.P. Varshneya appearing for the respondent No. 3 (the Public Service Commission, U.P., hereinafter referred to as the Commission) and the learned Standing Counsel appearing for the respondent Nos. 1 and 2. With the consent of the learned counsel for the parties, this writ petition is being decided finally, at the admission stage itself. Facts giving rise to the instant petition are that the petitioner, pursuant to an Advertisement No. 6/2011-12 dated 17.3.2012, inviting applications for filling up several categories of posts in different departments of the State as well as posts of Lecturer in Government Polytechnics, applied for consideration for the post of Lecturer in Mechanical Engineering, under the category of Other Backward Classes. On screening, the petitioner was found successful and was called for interview before the Commission on 20.11.2012. On the date of the interview, an undertaking was obtained from the petitioner that he would submit certificate of his belonging to Other Backward Class on, or before, 11.12.2012. This undertaking was required as there was an objection with regards to Other Backward Class Certificate earlier provided by the petitioner. The petitioner, consequently, obtained a fresh certificate of his belonging to

Other Backward Class and submitted the same before the Commission within the stipulated period. However, again objection was raised with regards to the certificate on the ground that it was not in consonance with a Government Order dated 2.7.1997. As a result, the petitioner obtained yet another certificate dated 11.1.2013. In the meantime, the result of the selection was published by the Commission on 4.1.2013 and the petitioner was placed at Sl. No. 4 in the select list. However, against the name of the petitioner, in the select list, it was marked "provisional". To delete the entry of "provisional" against his name, the petitioner represented to the Commission vide representation dated 13.5.2013. The petitioner, thereafter, obtained certain information from the Commission under the Right to Information Act, which was supplied to the petitioner under office order dated 3.6.2013. The information reveals that as the petitioner had not deposited the certificate of his belonging to Other Backward Class, within 21 days from the date of the interview, his candidature has been canceled by the Commission.

2. Aggrieved by the cancellation of his candidature, the petitioner has filed the present writ petition on the ground that from the information received under the Right to Information Act it is clear that the petitioner was placed in the select list by treating him to be a candidate belonging to the unreserved category, therefore, even if the petitioner had failed to provide the certificate of his belonging to Other Backward Class, within the period provided in the undertaking, the Commission could not have canceled his candidature and, in fact, ought to have considered his candidature under the unreserved category.

3. During the course of the argument, the learned counsel for the petitioner drew attention of the Court to the General Instruction No. 11 contained in the advertisement, which formed basis of the recruitment process. General Instruction No. 11, as contained in the advertisement, reads as follows:

The candidate coming under the reserved category, desiring benefit of the reservation, must indicate in the prescribed column of the on-line application the category/sub-category (one or more than one) whatever may be, and if they fail to do so, they will be treated like a general candidate and the benefit of reservation will not be admissible to them.

4. Relying on the General Instruction No. 11, the learned counsel for the petitioner submitted that there was no occasion to cancel the candidature of the petitioner on the ground of his having not provided the certificate of his belonging to Other Backward Class within the period provided in the undertaking but, instead, the Commission ought to have taken the candidature of the petitioner as that of an unreserved category and proceeded to draw select list accordingly. It was further submitted that since the candidature of the petitioner, while drawing the select list dated 4.1.2013 was, admittedly, taken in the unreserved category, there was no justification to cancel his candidature subsequently, on the ground that he failed to provide the certificate of his belonging to Other Backward Class. The learned counsel for the petitioner also drew attention of the Court to

paragraph No. 20 of the writ petition where it has been specifically stated by the petitioner that he had secured marks higher than the marks secured by the last candidate selected under the unreserved category. The learned counsel for the petitioner further drew attention of the Court to paragraph No. 22 of the writ petition where it has been stated that the petitioner is even otherwise within the permissible age limit and has not claimed any relaxation in the upper age on account of belonging to Other Backward Class. Referring to paragraph No. 8 of the counter affidavit the learned counsel for the petitioner submitted that there is no specific denial to the averment of the petitioner that he was placed in the select list as an unreserved category candidate. It has thus been submitted that cancellation of the candidature of the petitioner and consequential deletion from the select list is wholly arbitrary and, as such, liable to be quashed.

5. Per contra, Sri V.P. Varshneya, learned counsel for the respondent No. 3, submitted that as the petitioner had given an undertaking, on 20.11.2012, that if he fails to provide certificate by 11.12.2012 that he belongs to "Other Backward Class" then his candidature may be treated as canceled, the petitioner cannot have any grievance if his candidature has been canceled on the ground that he failed to provide certificate of his belonging to Other Backward Class. Sri Varshneya further placed reliance on paragraph 6 of the advertisement, which provided as follows:

If the claims of the candidates given in their applications are not found true, they can be debarred from all the future examinations and selections made by the Commission including other appropriate penalties.

6. Relying on the aforesaid clause Sri Varshneya submitted that as the statement of the petitioner that he belonged to Other Backward Class was not substantiated by the certificate it should be treated as a false statement and on this ground itself, the petition deserves to be thrown out.

7. Having considered the rival submissions of the learned counsel for the parties as also from the record, we find that by virtue of General Instruction No. 11, as contained in the advertisement, the candidature of the petitioner could not have been canceled merely on his failure to provide a certificate of his belonging to Other Backward Class. By virtue of the said instruction, the Commission ought to have treated the petitioner as an unreserved category candidate. The undertaking given by the petitioner would not enable the Commission to cancel the candidature of the petitioner as an unreserved category candidate, particularly, when the Commission is bound by its own terms and conditions laid in the advertisement. No doubt, the Commission is at liberty to cancel the candidature of the petitioner as a candidate belonging to Other Backward Class. But cancellation of his candidature altogether even in the unreserved category is arbitrary and against the own terms laid by the Commission in the advertisement i.e. General Instruction No. 11.

8. The argument on behalf of Commission that the candidature of the petitioner could be canceled under paragraph No. 6 of the advertisement does not appeal to us. Paragraph 6

of the advertisement relates to the consequences that befall on a candidate when any declaration made by him is not found to be true. Mere inability to file a proper certificate in support of his claim that he belongs to OBC category, without anything further, should not be taken that the statement that he belong to the Other Backward Class was not true, particularly, when there is nothing to indicate that the said statement was false. From the counter affidavit we do not find that the Commission found the claim of the petitioner in this regard to be not true. The stand in paragraph 8 of the counter affidavit is to the effect that as the petitioner did not submit the required OBC certificate, in support of his application, his candidature stood canceled. In such circumstances, we are of the view that the Commission cannot take recourse to paragraph 6 of the advertisement to justify its action.

9. For the reasons recorded above, we find that the Commission was not legally justified in canceling the candidature of the petitioner altogether. The proper course for the Commission was to treat the petitioner as an unreserved category candidate and to place him in the select list subject to his having qualified as an unreserved category candidate.

10. Before parting, we may observe that from the record it appears that the statement of the petitioner, made in paragraph No. 20 of the writ petition, that he secured marks higher than the marks secured by the last candidate under the unreserved category and, as such, was shown as selected under the unreserved category in the result dated 4.1.2013 has not been specifically denied in paragraph No. 8 of the counter affidavit filed by the Commission, which deals with the reply to the averments made in paragraph Nos. 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the writ petition. However, we refrain ourselves from expressing any conclusive opinion in this regard, inasmuch as, against the name of the petitioner "provisional" was mentioned in the select list dated 4.1.2013. Therefore, we leave this issue to be considered by the Commission.

11. For the reasons detailed above, the writ petition deserves to be allowed and is, accordingly, allowed. The cancellation of the candidature of the petitioner by the Public Service Commission, U.P. for the post of Lecturer in Mechanical Engineering, in relation to the Advertisement No. 6 of 2011-2012 dated 17.3.2012, is hereby quashed. The Commission is directed to consider the case of the petitioner as a candidate belonging to the unreserved category and if the petitioner is found to have succeeded as an unreserved category candidate he would be provided all consequential benefits.

12. The aforesaid exercise will be completed by the respondents within a period of three weeks from the date of production of a certified copy of this order before the respondent No. 3. There is no order as to costs.