[2023] 14 S.C.R. 135 : 2023 INSC 960

SUDHIR SINGH AND OTHERS
v.
STATE OF U.P. AND OTHERS

(Civil Appeal No. 7069 of 2023)

OCTOBER 30, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH*, JJ.]

Issue for consideration:

Claims of the appellants for recruitment on the posts of Village Development Officers if rightly rejected by High Court in view of lack of eligibility of being Ex-Servicemen at the time of the advertisement in question.

Service Law – Basic eligibility/qualification – To be adjudged as on the last date of submission of application forms, subject to any extension of such date:

Held: Basic question on eligibility has to be determined on the basis of the cut-off date/point of time which stands crystalized by the date of the advertisement itself, being the last date of submission of application forms, unless extended by the authority concerned – In the present case, none of the appellants can be said to have been Ex-Servicemen at the time of the advertisement in question, as, undisputedly, they were still in service – Relevant rules and even the clarification(s) to the advertisement do not indicate that the appellants can be deemed Ex-Servicemen from a prospective date, despite being in actual service on the relevant date – As such, in the case at hand, there is no concept of serving personnel being deemed Ex-Servicemen – Also, the advertisement clearly specified a Course of Computer Concept as the essential qualification however, the appellants despite opportunity to appear to show such equivalence, failed to do so – Impugned judgment upheld. [Paras 14, 15, 17-19]

Service Law – Certification given to a person indicating a prospective date till when he would be in employment, such date indicated if can be taken as the date of being finally and actually relieved from service:

* Author

Held: No – Even if a certification is given to a person indicating a prospective date till when he would be in employment, circumstances could intercede between the date of such certificate and the prospective date of retirement/resignation/relieving indicated therein – Illustratively, if for any reason there is a proceeding/ charge pending against the person(s) concerned and/or there are circumstances for which the person cannot be relieved from his post till conclusion of such proceedings or otherwise, such date indicated in the certificate cannot be taken as the date of being finally and actually relieved from service – However, in the present case, such date is also prospective and much later to the date on which the applications were invited and even till the last date of submission of the application forms – Thus, on this count alone, the appellants' claim of a right to consideration under the Ex-Servicemen category fails. [Para 15]

Rakesh Kumar Sharma v State (NCT of Delhi) **(2013) 11 SCC 58 – relied on.**

Dr M V Nair v Union of India **(1993) 2 SCC 429:** *Uttar Pradesh Public Service Commission v Alpana* **(1994) 2 SCC 723 1994 [1] SCR 131;** *Bhupinderpal Singh v State of Punjab* **(2000) 5 SCC 262:** *State of Gujarat v Arvindkumar T Tiwari* **(2012) 9 SCC 545: 2012 [7] SCR 1072;** *Rekha Chaturvedi (Smt.) v University of Rajasthan* **1993 Supp (3) SCC 168:** *State of Bihar v Madhu Kant Ranjan* **2021 SCC OnLine SC 1262 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7069 of 2023.

From the Judgment and Order dated 05.03.2022 of the High Court of Judicature at Allahabad in CMW(A) P No.4817 of 2020.

R. Balasubramanian, Sr. Adv., Santosh Kumar Pandey, Ms. Santosh Kr. Vishwakarma, Ms. Sujatha Bagadhi, Debashish Mishra, Advs. for the Appellants.

Parmanand Pandey, Utkarsh Pandey, Advs. for the respondents.

The Judgment of the Court was delivered by

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. Leave granted.

3. This appeal arises out of the Judgment and Order passed by the High Court of Judicature at Allahabad (hereinafter referred to as the "High Court") in Civil Misc. Writ (A) Petition No.4817 of 2020 dated 05.03.2022 (hereinafter referred to as the "Impugned Judgment") filed by the appellants by which their claims for recruitment on the posts of Village Development Officers have been rejected.

THE FACTUAL PRISM:

4. The appellants were serving in the Armed Forces in various capacities, at the relevant time, when an advertisement was issued by the Uttar Pradesh Subordinate Service Selection Commission (hereinafter referred to as the "Commission") for recruitment to the post of Village Development Officer. The registration for applications commenced on 18.01.2016 and the last date of submission of the application forms was 10.02.2016. The appellants applied in the category of Ex-Servicemen after obtaining No-Objection Certificate(s) (hereinafter referred to as "NOC") from the employer(s). Initially, their result was withheld for various reasons but ultimately, they were issued appointment letters on 29.05.2019 (appellants no.1 & 2) & on 27.05.2019 (appellant no.3) respectively, on temporary basis. Worthwhile to note is that this was after the appellants were asked to appear before the Commission on 26.12.2018 with necessary documents pertaining to their qualification and more so with regard having equivalence to the Course of Computer Concept (hereinafter referred to as the "C.C.C. Certificate"). However, Show-Cause Notice was issued by the respondent no.3/District Development Officer, Badaun to the appellants no.1 and 2 on 19.02.2020 and to appellant no.3 on 12.02.2020, as to why, their appointment be not held to be a nullity as on the last date of submission of application form, they

were employed with the Armed Forces and could not be treated as Ex-Servicemen and further that they did not possess the C.C.C. Certificate issued by the DOEACC[1], now NIELIT[2].

5. Subsequently, on 05.05.2020 (appellants no.1 & 2) and 28.04.2020 (appellant no.3) respectively, orders declaring the appellants' appointments to be null and void were issued for the afore-mentioned reasons, as indicated in the Show-Cause Notice.

SUBMISSIONS BY THE APPELLANTS:

6. Learned counsel for the appellants submitted that on both the grounds, the Show-Cause Notice was erroneous. It was submitted that the conduct of the authorities, while giving them time to produce documents and the same having been accepted, shows that they possessed the basic and relevant qualification for appointment to the concerned posts.

7. Learned counsel submitted that the date on which the appellants can be deemed to be appointed is the date on which the appointment letters were issued and taking that into consideration in the present case, when the appointment letters were actually issued in May, 2019, prior thereto, the appellant no.1 stood released on 31.07.2016, the appellant no.2 stood released on 30.11.2016 and the appellant no.3 also stood released on 29.02.2016, from the Armed Forces. As far as non-possession of the C.C.C. Certificate is concerned, the stand taken was that the appellants having higher qualification than what was required as also already having an equivalent qualification, their case(s) were recommended by the Commission for appointment.

SUBMISSIONS BY THE STATE & ITS FUNCTIONARIES:

8. *Per contra*, learned counsel for the State has taken the stand of the appellants being ineligible for appointment as they did not possess the requisite qualification, the reason being that they were not Ex-Servicemen as on the relevant date, when the post was advertised.

1 Department of Electronics and Accreditation of Computer Courses.
2 National Institute of Electronics & Information Technology.

9. Further, it was contended that none of the appellants had the C.C.C. Certificate on the date of the advertisement, which they had concealed, and which was an essential qualification for being appointed to the post advertised.

10. Learned counsel submitted that not having disclosed the factual position at the time of filling up the form amounted to grave misconduct. Moreover, it was contended that even when the appellants were directed to produce the educational testimonials and documents on 26.12.2018 to demonstrate that they possessed equivalent qualification to the C.C.C. Certificate, they could not produce the same as admittedly, the certificates produced by them were not equivalent to C.C.C. Certificate.

11. It was further urged that the stance of the appellants for consideration as Ex-Servicemen on the date of appointment is clearly in teeth of the settled principle of law where the advertisement itself was very clear that only Ex-Servicemen were eligible to even apply.

12. Learned counsel indicated that even in the NOC issued to the appellant no.1, it was mentioned that he was eligible to civil appointment after the particular date specified which was beyond the last date for submission of application forms, and further that the NOC also mentioned that the Office/Employer had no objection to the registration of the appellant's name with the Employment Exchange, which, in no way, could confer on him a right to be considered under the category of Ex-Servicemen. Thus, learned counsel contended that the appellants, in any view of the matter, could not have taken any civil employment unless they were actually relieved, superannuated or retired, which ultimately would be a decision to be taken by the employer and mere indication in the certificate *ipso facto* would not mean that on the date indicated they would automatically come within the category of Ex-Servicemen.

13. Learned counsel went to the extent of arguing that the appellants' conduct indicates a fraud committed by them. It was advanced that the appellants had, in fact, attempted to take posts which were meant for Ex-Servicemen who were actually without employment, and not for persons who were still employed in the Armed Forces.

ANALYSIS, REASONING AND CONCLUSION:

14. Having bestowed anxious thought and consideration to the rival submissions at the Bar combined with a careful perusal of the record, we are unable to find any error in the Impugned Judgment passed by the High Court, much less any illegality, warranting our interference. It is well-settled that the basic question on eligibility has to be determined on the basis of the cut-off date/point of time which stands crystalized by the date of the advertisement itself, being the last date of submission of application forms, unless extended by the authority concerned. In the present scenario, none of the appellants can be said to have been Ex-Servicemen at the time of the advertisement in question, as, undisputedly, they were still in service. This Court has also examined the relevant rules and even the clarification(s) to the advertisement. We are afraid that they do not indicate that the appellants can be deemed Ex-Servicemen from a prospective date, despite being in actual service on the relevant date. As such, in the case at hand at least, there is no concept of serving personnel being deemed Ex-Servicemen. It would not be proper for this Court to hold or interpret otherwise. *Arguendo,* if we were to venture down such a path, it would be unjust to a large number of others similarly placed as the appellants, who were not Ex-Servicemen as on the date of advertisement but came under the category later, but did not apply at the relevant time. This concern has not emanated for the first time. In ***Rakesh Kumar Sharma v State (NCT of Delhi),*** **(2013) 11 SCC 58,** this Court observed:

'***22.*** *It also needs to be noted that* ***like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality,*** *a backbone of the fundamental rights under our Constitution.* ***A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.'***

(emphasis supplied)

15. This Court would pause to state that the position discussed in the preceding paragraph is logical on the simple premise that even if a certification is given to a person indicating a prospective date till when he would be in employment, circumstances could intercede between the date of such certificate and the prospective date of retirement/resignation/relieving indicated therein. Illustratively, if for any reason there is a proceeding/charge pending against the person(s) concerned and/or there are circumstances for which the person cannot be relieved from his post till conclusion of such proceedings or otherwise, such date indicated in the certificate cannot be taken as the date of being finally and actually relieved from service. However, in the instant situation, such date is also prospective and much later to the date on which the applications were invited and even till the last date of submission of the application forms. Thus, on this count alone, the appellants' claim of a right to consideration under the Ex-Servicemen category fails.

16. In ***Rakesh Kumar Sharma*** (*supra*), this Court, after noticing, *inter alia*, ***Dr M V Nair v Union of India,*** **(1993) 2 SCC 429;** ***Uttar Pradesh Public Service Commission v Alpana,*** **(1994) 2 SCC 723;** ***Bhupinderpal Singh v State of Punjab,*** **(2000) 5 SCC 262,** and; ***State of Gujarat v Arvindkumar T Tiwari,*** **(2012) 9 SCC 545** reiterated that basic qualification is to be adjudged as on the last date of submission of application forms, subject to any extension of such date by the concerned authority. In ***Rekha Chaturvedi (Smt.) v University of Rajasthan,*** **1993 Supp (3) SCC 168[3],** the proposition was enunciated as under:

'10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in

3 The Court though, opted not to disturb the appointments therein, on the ground that over 8 years of service had been put in by the concerned appointees.

question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. *But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. …'*

(emphasis supplied)

17. The Court, vide its judgment in ***State of Bihar v Madhu Kant Ranjan, 2021 SCC OnLine SC 1262,*** also took the view that ' As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority.

18. In the above analysis, though the Court is not required to go into the question of equivalence apropos the C.C.C. Certificate, but since contentions thereon were argued, we may reiterate that the advertisement clearly specified the essential qualification was a C.C.C. Certificate. The appellants despite opportunity to appear to show such equivalence, having failed to do so, nothing survives on this count.

19. Having considered the matter *in toto,* the appeal, being devoid of merit, stands dismissed. The Impugned Judgment is upheld.

20. However, any payments made to the appellants for the period they have actually worked as Village Development Officers, shall not be recovered. If any such recoveries have already been effected, the same be returned to the appellants forthwith.

21. No order as to costs.

Headnotes prepared by: Divya Pandey *Result of the Case:* Appeal dismissed.