

Shivendra Kumar Singh And 5 Others vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 30 April, 2025

Author: Karunesh Singh Pawar

Bench: Karunesh Singh Pawar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:24710

Court No. - 18

Case :- WRIT - A No. - 4745 of 2025

Petitioner :- Shivendra Kumar Singh And 5 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Petitioner :- Sarjoo Ram,Aklavya,Chandan Prasad,Prashant Shekhar

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra

Hon'ble Karunesh Singh Pawar,J.

1. Vakalatnama filed by Shri Utsav Misra, Advocate on behalf of respondent nos.3 and 4 is taken on record.
2. Heard learned counsel for the petitioners, learned Standing counsel for the respondent nos. 1 and 2 and Shri Utsav Misra, learned counsel for respondent nos.3 and 4.
3. Through this petition, the petitioner has prayed for the following reliefs:-

"I. To issue writ order or direction in the nature of Certiorari to quash the impugned notification bearing 191/06 3(Pari.-1)/2025/Khand -2 dated 05.03.2025 notified by opposite party No-3. (Contained Annexure No-3)is the interest of justice II. To issue a order or direction in the nature of mandamus commanding and directing to the opposite party No-3 and 4 to complete the recruitment according to advertisement No-23-Pariksha/2016 on dated 04.11.2016 within stipulated time (Contained

Annexure No-1)in the interest of justice."

4. Learned counsel for the respondent nos.3 and 4 has submitted that the similar controversy involved in this petition has already been adjudicated by this Court in the case of Alok Kumar Shukla and 14 others vs. State of U.P. and another passed in Writ -A No.3083 of 2025 vide the judgment and order dated 21.3.2025 where it has been held that the notification, impugned has been issued in consonance with the Rules of 1982 read with 2016 advertisement. Therefore, it cannot be said that the terms of the advisement have been changed during selection process. The judgment and order dated 21.3.2025 passed by this Court is extracted below:-

"1. Heard learned counsel for the petitioners and Sri Utsav Mishra, learned counsel for U.P. Subordinate Service Selection Commission, respondent No.2.

2. The petitioners have prayed for issuance of a writ in the nature of certiorari quashing impugned notification dated 5.3.2025 (Annexure No.1).

A further prayer for issuance of a writ of mandamus directing respondent No.2 to complete selection process by simplifying physical test in accordance with the original advertisement No.23 Pariksha-2016 ignoring the notification dated 5.3.2025 (supra) which has been issued after completion of written test and document verification, has also been made.

3.The facts of the case, in brief, are that in the year 2016, Advertisement No.23 Examination/2016 was issued for combined subordinate services selection by which, large number of vacancies of different departments were advertised. Under the said advertisement, vacancy for the post of Hawaldar Instructor along with other posts was advertised. For the said post, selection process included written and interview tests and further, physical efficiency test as well as physical measurements. The physical measurements were prescribed in the advertisement. In Column 12(2) of the advertisement of 2016, it has been provided that the physical efficiency test shall be conducted for the post of Hawaldar Instructor but no details of the physical test have been prescribed in the advertisement. The petitioners appeared in the written examination and were declared successful as per result dated 11.3.2024. The document verification was also done and final result was declared on 23.1.2025, in which the petitioners were shown as successful. Now, the petitioners along with others have to undergo physical test/physical efficiency test, for which the impugned notification dated 5.3.2025 has been issued.

4. Learned counsel for the petitioners submits that by the impugned notification, very hard conditions for physical test have been made. He submits that the notification impugned has been issued post nine years of the advertisement, in which no detail to specify the type of physical test was given and now after a long period of around a decade, stringent conditions have been imposed for the physical test in an arbitrary and illegal manner and such hard conditions cannot be issued during the selection

process which started as per the advertisement issued in the year 2016. It is further submitted that had the type of physical test been given in the advertisement, the petitioners could have chosen the post as per their ability.

It is further submitted that during the course of selection, the terms of advertisement cannot be changed while making recruitment. In this context, learned counsel has relied on a judgment of Supreme Court in *Tej Prakash Pathak and others versus Rajasthan High Court and others* Civil Appeal No.2634 of 2013. It is submitted that the petitioners should be permitted to participate strictly in accordance with the advertisement issued in the year 2016, in which the stringent condition as given in the impugned notification was not provided. Feeling aggrieved of so stated hard and tough conditions provided in the impugned notification, the petitioners have preferred a representation dated 11.3.2025 which is pending disposal before the Commission.

5. Learned counsel appearing for respondent No.2 while opposing the petition has submitted that Clause 12(2) read with clause 12(1) of advertisement No.23-Pariksha/2016 contained in Annexure No.2 to the petition provides for physical efficiency test and physical measurement besides written examination and interview. It is submitted that the advertisement was published in the year 2016 and the petitioners have participated in pursuance to the advertisement. Once they have participated in the selection process consequent to the advertisement, they cannot challenge the condition of that advertisement, which has been detailed in the impugned notification. In this context, learned counsel has relied on judgments in *Ramesh Chandra Shah and others versus Anil Joshi and others* (2013)11 SCC 309, *Dhananjay Malik and others versus State of Uttaranchal and others* (2008) 4 SCC 171, *Sankar Mondal versus State of West Bengal and others* Civil Appeal No.1924 of 2010, decided on 15.2.2022 and *Smt. Vijay Laxmi and others versus State of U.P. and others* : Writ-A No.2460 of 2023, decided on 29.4.2022.

He has also placed reliance on Rule 15 of U.P. Home Guards Department Subordinate Service Rules, 1982 (in short, 1982 Rules) and submits that Rule 15(2) of 1982 Rules provides that the syllabus and selection procedure of the examination shall be such as shall be provided by the Commandant General, Home Guards, from time to time.

6. I have considered the rival contention of learned counsel for the parties and perused the record.

7. Before advertizing to the facts of the present case, it would be appropriate to refer to the procedure and manner in which the selection is to be conducted as also necessary requirement for selection for the post of Hawaldar Instructor.

Clause 12(1) of the Advertisement, Annexure-2 provides that the selection shall be made on the basis of written examination and interview and the manner, syllabus

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Rule 15 of 1982 Rules provides for physical efficiency test also. The Note to Rule 15(2) provides that course and procedure of the competitive examination shall be such as is prescribed by the Commandant General, Home Guards. Rule 15(3) provides that the Selection Committee shall take written and physical efficiency test of the candidates and on the basis of marks obtained in the same, call the appropriate number of candidates for interview. The marks obtained by a candidate in interview shall be added in the marks obtained in the written and physical competitive test of the candidates. Thus, 1982 Rules themselves provide that there shall be a written as well as physical competitive test and also an interview. The result of the selection shall be declared on the basis of combined marks obtained in these examinations.

8. In the present case, the recruitment is to be made on the post of Hawaldar Instructor. As per impugned notification, Annexure-1 the physical measurement and physical efficiency test in question is only qualifying which means that it is not competitive. Relevant part of the impugned notification is extracted below : "

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9. If the physical efficiency test of Sub Inspector and Constable with the Hawaldar Instructor is compared, this Court finds that the physical efficiency test for Sub Inspector and Constable are more stringent and are more competitive in nature, as a Sub Inspector is required to run 4.8 kilometers in 28 minutes and a candidate for the post of Constable is required to run 2.4 kilometers in 16 minutes whereas for the post of Hawaldar Instructor, the candidate is only required to run 1500 meters in six minutes. Therefore, the time provided for the physical efficiency test for the post of Hawaldar Instructor is not stringent as compared to Sub Inspector or Constable. They are, as said above,

required to run only 1500 meters in six minutes which cannot be said to be harsh.

10. The submission of learned counsel for the petitioners that the petitioners were not aware that they will have to pass physical efficiency test and it has been introduced at the fag end of the selection which is contrary to 1982 Rules.

However, this Court finds that Rule 15(3) of 1982 Rules provides physical test also. Comments provided under Rule 15(2) provide that the syllabus and selection procedure of the examination shall be such as shall be provided by the Commandant General, Home Guards, from time to time. On the basis of 1982 Rules and the advertisement, Annexure No.2, the impugned notification has been issued providing physical measurement and physical efficiency of a candidate. Rule 15 itself gives power to the Commandant General, Home Guards to take a decision in regard to selection procedure from time to time as has been done in the present case. Thus, I find no illegality in the notification impugned.

Besides, consequent to the advertisement, the petitioners have participated in the written test, result whereof has already been declared on 11.3.2024, document verification has been done and final result has been declared on 23.1.2025 and at this stage of selection process, the petitioners cannot be permitted to raise a grievance in regard to physical efficiency test which has been given in the advertisement of 2016 itself and details of the physical efficiency test have been provided in the notification, Annexure No.1 as per Rule 15(2) of 1982 Rules.

11. As regards the case of Tej Prakash Pathak (supra) relied upon by petitioners' counsel, the said case is not applicable in the present case for the discussion made herein above and also for the reason that in this case, Rule 15(3) of 1982 Rules read with Clause 12 of the Advertisement of 2016 permit prescription of procedure for physical efficiency test. The notification, impugned has been issued in consonance with the Rules of 1982 read with 2016 advertisement. Therefore, it cannot be said that the terms of the advisement have been changed during selection process. In the impugned notification, the physical measurement and the physical efficiency have been provided as qualifying, and not competitive. Thus, the selection process by means of the notification has been made more seamless and easy for the candidates and the contention that the examination process has been made more stringent is beyond record.

12. From the above discussion, this Court finds no illegality in the impugned notification. The petition, being devoid of merit, is dismissed."

5. On due consideration to the submissions advanced and perusal of the record it appears that the prayer made in this petition has already been adjudicated by this Court vide the aforesaid judgment passed in the case of Alok Kumar Shukla (Supra).

6. Since, the issue involved in this petition has already been adjudicated by this Court in the case of Alok Kumar Shukla (Supra), therefore, for the reasons assigned in paragraph 11 (quoted above) of the judgment of Alok Kumar Shukla (Supra), the present writ petition is also dismissed, being devoid of merit.

Order Date :- 30.4.2025 Saurabh Yadav/-