

A LANCE NAYAK PNO NO.980510777 RAJ BAHADUR & ORS.

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No. 4837 of 2019)

B MAY 09, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Service Law – Appellants belonging to Scheduled Caste category were posted as Constables/Head Constables in the Police Department of Uttar Pradesh – They appeared in the limited departmental examination held for filling up the posts of Sub-Inspector (Civil Police) – Conduct of examination was to be governed by 2008 Rules – Candidates were required to appear in the written examination carrying 300 marks–Written examination comprised of four subjects (2 papers of 100 marks and 2 of 50 marks each) and the candidate who failed to obtain minimum 50 marks in each subject would not be eligible for promotion – In challenge to the examination on the ground that 18 questions were set in erroneous manner, Single Judge directed the authorities to award full marks to every candidate in respect of those 18 questions– Order stayed by the Division Bench – Supreme Court issued certain directions – Select list was published thereafter – In another SLP, Supreme Court vide order dtd. 10.08.15 directed that no court shall entertain any grievance relating to this particular selection – Writ petition filed by the appellants submitting inter alia that while considering 50 per cent cut off marks, criteria must be “paper” wise and not “subject” wise– In view of the order of Supreme Court dtd. 10.08.15, the High Court dismissed the writ petition – Plea of the appellants that subject nos.3 & 4 of 50 marks each are part of the same paper and the appellants have secured 54% in the paper though may not have secured 50% in subject nos.3 & 4, thus on the strength of the aggregate from all the subjects, they would be entitled to be promoted – Held: Fact that the appellants had not obtained 50 per cent marks in each of the subjects is accepted – Present matters concern limited Departmental examination where the idea is, regardless of seniority levels, a meritorious candidate be given chance to reach higher levels – Merit is therefore the key element and there can be no compromise and dilution of the criteria – What

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is required in terms of the Rules is minimum of 50 per cent marks “in each subject” – Subjects are delineated in the Rules and there are four subjects – Irrespective whether subjects 3 and 4 form part of the same paper, the express language of the Rules does not permit any such interpretation and the construction as suggested by the appellants cannot be accepted – Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 – r.16.

Disposing of the matters, the Court

HELD : CIVIL APPEAL NO. 4837 OF 2019

1.1 The fact that the appellants had not obtained 50 per cent marks in each of the subjects is accepted. In these matters with limited Departmental examination where the idea is, regardless of seniority levels, a meritorious candidate be given chance to reach higher levels. Merit is therefore the key element and there can be no compromise and dilution of the criteria. What is required in terms of the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 is minimum of 50 per cent marks “in each subject”. The subjects are delineated in the Rules and there are four subjects. Irrespective whether subjects 3 and 4 form part of the same paper, the express language of the Rules does not permit any such interpretation and the construction suggested by the appellants cannot be accepted. The reliance placed on the order passed by Supreme Court in Writ Petition (c) No. 45 of 2016 is also completely misplaced. The order by itself did not decide any controversy and as a matter of fact it was observed that the order would not automatically operate as a precedent for other cases. Therefore, the submission is rejected. [Paras 12-15] [877-D-H; 878-A]

CIVIL APPEAL NOS.4838-4839 OF 2019; CIVIL APPEAL NOS.4840-4842 OF 2019; CIVIL APPEAL NO.4845 OF 2019

1.2 The issues involved in the matters being identical to the earlier matter where similar contentions were raised, no reason to interfere. [Para 18] [878-D]

CIVIL APPEAL NO.4844 OF 2019; CIVIL APPEAL NO.4846 OF 2019; CIVIL APPEAL NOS. 4843 OF 2019

1.3 The criteria under the Rules is minimum of 50 per cent marks in each of the subjects. It was open to the State to have

A prescribed a relaxed or a different criterion for the reserved categories candidates. However, no such relaxation was granted by the State and consequently no relief can be granted by the Court. In terms of the Rules, as they stand, the criteria of minimum of 50 per cent marks has to be met. Since the appellants do not fulfil the criteria, no exception can be made. [Para 22] [879-A-B]

B M.A. No.732 of 2019 in TC (C) No.287 of 2017

1.4 It is now submitted that the grievance raised by the applicants in the Writ Petition was in respect of selection through limited departmental examination for promotion to the post of UP Sub-Inspector (Civil Police) Rankers Examination and was not by way of direct recruitment and that the matter was wrongly clubbed with Civil Appeal No.11370 of 2018. The Judgment and order dated 27.11.2018 is recalled to the extent it disposed of Transfer Case (Civil) No.287 of 2017. The principal prayer in the writ petition is to the effect that the respondent be directed to give reservation and relaxation to the writ petitioners as SC/ST candidates. The submission in that behalf has already been considered in the matters dealt with above. No reason to interfere in the matter. Transferred Case No.287 of 2017, therefore, dismissed. [Paras 25, 26] [879-E-G]

E M.A. No.643 of 2019 in TC (C) No.297 of 2017

1.5 It is now submitted that the grievance raised by the applicants in the Writ Petition was in respect of selection through limited departmental examination for promotion to the post of UP Sub-Inspector (Civil Police) Rankers Examination and was not by way of direct recruitment and that the matter was wrongly clubbed with Civil Appeal No.11370 of 2018. We, therefore, recall the aforesaid Judgment and order dated 27.11.2018 to the extent it disposed of Transfer Case (Civil) No.297 of 2017. [Paras 27-29] [879-E-F]

G 1.6 The principal prayer in the writ petition is to the effect that the respondent be directed to give reservation and relaxation to the writ petitioners as SC/ST candidates. The submission in that behalf has already been considered in the matters dealt with above. No reason to interfere in the matter. Transferred Case No.297 of 2017, therefore, stands dismissed. [Para 30][879-F-G]

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LANCE NAYAK PNO NO.980510777 RAJ BAHADUR v. STATE OF UTTAR PRADESH 871

Qamar Hasan Khan & others v. State of U.P. & Ors. A
Decision of Supreme Court dated 10.08.2015 in SLP(C) No. 25377-78 of 2014 ; Alok Kumar Singh and others v. State of U.P. and others 2018 (15) SCALE 189 – referred to.

Case Law Reference B

2018 (15) SCALE 189 referred to Para 23

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4837 of 2019.

From the Judgment and Order dated 20.04.2018 of the High Court of Judicature at Allahabad in Writ-A No. 10308 of 2018. C

With

Civil Appeal Nos. 4838, 4839, 4840-4842, 4844, 4845, 4843 and 4846 of 2019

M.A. No 643 of 2019 in T.C. (C) No. 297 of 2017 D

M.A. No. 732 of 2019 in T.C. (C) No. 287 of 2017.

Pallav Shishodia, Ms. Vibha Dutta Makhija, Sr. Advs., Pawan Kumar Shukla, Pankaj Kr. Singh, Vivek Vishnoi, Maninder Dubey, Makrand Pratap Singh, Raj Singh Rana, Pankaj Kumar Singh Mukesh Verma, Anupam Dwivedi, Kamal Kumar Pandey, Yash Pal Dhingra, P. N. Puri, Abhishek Puri, M. Reeta Dewan Puri, J. S. Marahatta, Manoj Gorkela, Arpit Bisht, M/s. Gorkela Law Office, Ram Anugrah Singh, Rabin Majumder, Mrs. Swarupama Chaturvedi, Pramod Kr. Singh, Advs. for the Counsel for the parties. E

The Judgment of the Court was delivered by F

UDAY UMESH LALIT, J.

CIVIL APPEAL NO.4837 OF 2019

(Arising out of SLP(C) No.15699 of 2018) G

1. Leave granted.

2. This appeal challenges the correctness of the final judgment and order dated 20.04.2018 passed by the High Court of Judicature at Allahabad in Writ appeal No.10308 of 2018. This appeal was taken as the lead matter. H

A 3. The appellants belong to Scheduled Caste category and are posted as Constables/Head Constables in the Police Department of Uttar Pradesh. They appeared in the limited departmental examination held for filling up the posts of Sub-Inspector (Civil Police), pursuant to an advertisement issued by UP Police Recruitment and Promotion Board on 12.06.2010 for filling up 5389 posts. The conduct of examination was to be governed by Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008. Said Rule 16 is to the following effect:

C “16. Procedure for recruitment by promotion to the post of Sub-Inspector – For the purpose of recruitment by promotion on the basis of departmental examination to the post of Sub Inspector, the Board shall conduct a written examination in the following manner:

D (a) Written Examination - (I) The eligible candidates shall be required to appear in the written examination which shall carry 300 marks. The details of the subjects included in the written examination and the marks shall allotted for each subjects are as follows:

S.No.	Subject	Maximum marks
1	Hindi Essay (based on Law and Order case study and police functioning)	100 marks
2	Basic Law, Constitution and Police Procedure (Indian Penal Code, Criminal Procedure Code, Evidence Act and Police Manual etc.)	100 marks (objective type)
3	Numerical and Mental Ability Test	50 marks (objective type)
4	Mental Aptitude Test/I.Q. Test/Reasoning	50marks (objective type)

Note- The question papers shall be set up keeping in mind the job profile of the post of Sub-Inspector and commensurate with the job responsibility.

H Note 2- The candidates who fail to obtain minimum fifty percent marks in each subject shall not be eligible for promotion.

(ii) The Selection Committee shall, have regard to the provision of reservation referred to in Rule 6, prepare a list of successful candidates on the basis of marks obtained by them in the written examination under sub-clause (I) of Clause (a). A

(b) Physical Efficiency Test – The candidates selected under clause (a) shall be required to appear in a Physical Efficiency Test of qualifying nature. The male candidates shall be required to complete a run of 10 kilometers in 75 minutes and female candidates a run of 5 kilometers in 45 minutes. B

(c) Service Records – marks on the basis of Service Records shall be awarded to each candidate selected under sub-clause (ii) of clause (a). the maximum marks for the length of service shall be 20(01 marks for each year), for the educational qualification of Graduation and above degree 10 marks. Training Course 30 marks out of which 10 marks, Training Course 30 marks out of which 10 marks each for every substantive training subject to a maximum of 20 and 02 marks each for every non-substantive training subject to a maximum of 10 marks and 30 marks for annual entry. For every medal of National level 03 marks, every medal of state level 02 marks subject to maximum of 10 marks and no marks will be given for cash reward. Thus, there shall be maximum 100 marks as above. The Training Director of Police organization is authorised to 4 notify any training as substantive and non-substantive subject to the condition that no training which is less than one month's during shall be notified as substantive training. For every major punishment 30 marks, for every minor punishment 02 marks and for every adverse entry, petty punishment 01 marks shall be deducted. The Service Records shall also be examined keeping in view whether the candidate has been awarded some kind of punishment which renders him unsustainable for promotion. Any candidate whose integrity was withheld ever within the last five years shall not be eligible for promotion. C
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(d) Subject to the provision of clauses (a) and (c)- The marks obtained by each candidate shall sub-clause (ii) of clause (a) shall be added to marks obtained by him under sub-rule (v). the Selection Committee shall prepare a list of candidates on the basis of aggregate of marks so arrived. G

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- A (e) Group discussion – The candidates selected under the rule 17(a) shall be required to appear in a Group Discussion for which separate groups of then candidates each shall be formed. The process of Group discussion shall be carried out under the supervision of a panel comprising Managing Expert, Psychologist and Criminologist in the presence of Chairman of the Board of his nominee, one Additional Director General Police nominated by Director General of Police, (Uttar Pradesh) or Inspector General of Police/Deputy Inspector General of Police nominated by him. In the said Group Discussion, Police case study shall be presented for discussion and the entire Group discussion shall be completed within the stipulated timeframe. The group discussion shall carry 20 marks and it will include the evaluation of candidates Management Skill (5 marks), Presentation (5 marks), Attitude (5 marks) and Personality (5-marks). The marks shall also be uploaded in the Board website.
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- D Note-1 The entire process of Group Discussion shall be video graphed and a Compact Form thereof shall be prepared.
Note 2-Nomination of officers for giving representation to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of Citizens in the Selection Committee shall be made in accordance with Section 7 of the Act, as amended from time to time.
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- F (f) Election and merit list – The Board shall, having regard to the provisions of reservation referred in Rule 6, prepare a final select list of candidates in order or merit as disclosed by aggregate of marks obtained by them under sub-clause (d) and sub-clause (e) if two or more 5 candidates obtain equal marks, the candidate obtaining higher marks under rule-rule(c) shall be placed higher in the list. The selection committee shall forward the list of the Board which shall forward it to the Head of the Department.”
- G 4. The candidates were thus required to appear in the written examination which was to carry 300 marks. The written examination comprised of four subjects as enumerated in Rule 16(a)(i) and the candidate who failed to obtain minimum 50 marks in each subject would not be eligible for promotion.

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5. It appears that 18 questions in the written examination were found to be set in an erroneous manner which mistake was accepted by the Department in a challenge raised in Writ Petition (Service Single) No.3918 of 2011 (Aarakshi Vimal Kumar Singh and others v. State of U.P. and others) before the High Court of Judicature at Allahabad, Lucknow Bench. The Single Judge by his order dated 03.08.2011 directed the authorities to award full marks to every candidate in respect of those 18 questions. The order passed by the Single Judge was stayed by the Division Bench in Special Appeal arising therefrom. The matter finally reached this Court and by an order dated 18.07.2014 following directions were issued by this Court in Civil Appeal No.6547 of 2014:

“Having heard learned counsel for the parties, we are of the convinced opinion, the controversy should be put to rest from all spectrums and accordingly we issue the following directions:-

(a) The posts that have been filled up by successful candidates, as has been apprised to us at the Bar, are 3358 and the candidates who have joined in the said posts and presently working shall not be disturbed.

(b) The U.P. Police Recruitment & Promotion Board, Lucknow shall scrutinise the papers of all the candidates, namely, the persons who had approached the writ court and the candidates who had not approached the writ court and if they have attempted and answered the 18 questions, which were wrongly set out, they will be awarded full marks for said 18 questions.

(c) If a candidate has not answered any erroneous question, the same shall be proportionately reduced. To clarify, the candidate shall only get full marks for the questions answered.

(d) A fresh select list shall be drawn up taking into account the aforesaid marks in respect of 2031 posts which are available in present pertaining to the year 2008.

(e) The aforesaid exercise shall complete within a period of three months hence and the successful candidates shall be duly intimated and subsequent action shall be taken by the State.

By virtue of our order, any matter pending in the Writ Court or before the Division Bench shall be deemed to have been disposed of.”

A 6. The select list was thereafter published on 27.11.2014.

7. In SLP(C) No.25377-78 of 2014 (Qamar Hasan Khan & others v. State of U.P. & Ors.) an order was passed on 10.08.2015 by this Court as under:

B “It is hereby made clear that no court shall entertain any grievance relating to this particular selection. Our present order would not dislodge, if any candidate, who has already been selected or sent for training. Needless to emphasize, the present order has been passed regard being had to the special features of the case.”

C 8. In April 2018 a writ petition being Writ A-No.10308 of 2018 was preferred by the appellants submitting *inter alia* that the selection process was undertaken without applying Reservation Policy and that while considering 50 per cent cut off marks criteria must be “paper” wise and not “subject” wise.

D 9. In view of the order passed by this Court on 10.08.2015 in (Qamar Hasan Khan & others v. State of U.P. & Ors.) the High Court refused to entertain the writ petition and dismissed the same by its order dated 20.04.2018, which order is now under challenge.

E 10. When the matters were taken up on 15.04.2019 Mr. Pallav Shishodia, learned Senior Advocate appearing for the appellants relied upon Order dated 30.01.2017 passed by this Court in Writ Petition (C) No.45 of 2016 whereunder the concerned petitioners having secured more than cut off marks were directed to be sent for training. It was submitted that similar benefits be given to the appellants. Submissions advanced by Mr. Pallav Shishodia, learned Senior Advocate were noted in the order dated 15.04.2019 as under:

F “According to the Rule, the eligible candidates are to appear in the written examination which is to carry 300 marks and the details of the subjects are given in Rule 16(A). The subjects so specified are 1 to 4 (subjects 3 & 4 carry 50 marks each).

G According to the petition, the requirement to secure 50% marks is not to be reckoned subject-wise but ought to reckon paper-wise. And since there is common paper for subjects 3&4, the minimum marks which ought to be insisted upon must be in terms of the entire paper and not per subject i.e., subjects 3&4.

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Mr. Shishodia submits that his clients have secured 54% in the paper though the clients may not have secured 50% minimum in subjects 3&4. A

According to Mr. Shishodia, if this submission is accepted, the petitioners would be entitled to the benefit of Order dated 30.01.2017 passed by this Court as the aggregate marks secured by them are more than 50%.” B

11. The stand of the State Government is:

(a) That the candidates were awarded full marks in the manner prescribed by this Court; C

(b) That even then, none of the appellants in all these matters were fulfilling the criteria of having obtained 50 per cent marks in all the subjects; D

12. The fact that the appellants had not obtained 50 per cent marks in each of the subjects is accepted and what is submitted by the appellants is that Subject Nos.3 and 4, namely, “Numerical and Mental Ability Test” and “Mental Aptitude Test/I.Q. Test/Reasoning” carrying 50 marks each, were part of the same paper. The further submission is that on the strength of the aggregate from all the subjects, the appellants would be entitled to be promoted. E

13. We have given anxious consideration to the submissions as advanced. We are concerned in these matters with limited Departmental examination where the idea is, regardless of seniority levels, a meritorious candidate be given chance to reach higher levels. Merit is therefore the key element and there can be no compromise and dilution of the criteria. What is required in terms of the Rules is minimum of 50 per cent marks “in each subject”. The subjects are delineated in the Rules and there are four subjects. Irrespective whether subjects 3 and 4 form part of the same paper, the express language of the Rules does not permit any such interpretation and the construction suggested by Mr. Shishodia cannot be accepted. F G

14. The reliance placed on the order dated 30.01.2007 is also completely misplaced. The order by itself did not decide any controversy and as a matter of fact it was observed that the order would not automatically operate as a precedent for other cases. H

- A 15. We, therefore, reject the submission and dismiss the appeal.
No costs.

CIVIL APPEAL Nos. 4838 and 4839 OF 2019

(Arising out of SLP(C) No.10674 and 10675 of 2018)

- B **CIVIL APPEAL Nos.4840-4842 OF 2019**

(Arising out of SLP(C) No.12891-12893 of 2018)

and

CIVIL APPEAL NO.4845 OF 2019

- C (Arising out of SLP(C) No.12248 of 2019)

[D.No.42625 of 2018]

16. Delay condoned.

17. Leave granted.

- D 18. The issues involved in the matters being identical to the earlier matter where similar contentions were raised, we see no reason to interfere. These appeals are, therefore, dismissed. No costs.

CIVIL APPEAL NO.4844 OF 2019

- E (Arising out of SLP(C) No.12247 of 2019) [**D.No.31847 of 2018**]

And

CIVIL APPEAL NO.4846 OF 2019

(Arising out of SLP(C) No.12250 of 2019) [**D.No.46457 of 2018**]

- F **And**

CIVIL APPEAL Nos.4843 OF 2019

(Arising out of SLP(C) No.7168 of 2018)

19. Delay condoned.

- G 20. Leave granted.

21. It is additionally submitted that the appellants belong to reserved categories and as such are entitled, *inter alia*, to relaxation in qualifying marks.

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22. The criteria under the Rules is minimum of 50 per cent marks in each of the subjects. It was open to the State to have prescribed a relaxed or a different criterion for the reserved categories candidates. However, no such relaxation was granted by the State and consequently no relief can be granted by the Court. In terms of the Rules, as they stand, the criteria of minimum of 50 per cent marks has to be met. Since the appellants do not fulfil the criteria, no exception can be made. These appeals are, therefore, dismissed. No costs.

M.A. No.732 of 2019 in TC (C) No.287 of 2017

23. Selection undertaken pursuant to an advertisement dated 19.05.2011 for recruiting 4010 posts of Sub-Inspectors (Civil Police) and 312 posts of Platoon Commanders (Provincial Armed Constabulary – PAC) in the State of UP by direct recruitment was the subject matter of decision by this Court in Alok Kumar Singh and others v. State of U.P. and others Civil Appeal No.11370 of 2018 and other connected matters.

24. Writ Petition No.2604 of 2015 preferred by the present applicants in the High Court, was transferred to this Court and was numbered as TC(Civil) No.287 of 2017. It was disposed of along with aforesaid Civil Appeal No.11370 of 2018 etc.

25. It is now submitted that the grievance raised by the applicants in the Writ Petition was in respect of selection through limited departmental examination for promotion to the post of UP Sub-Inspector (Civil Police) Rankers Examination and was not by way of direct recruitment and that the matter was wrongly clubbed with Civil Appeal No.11370 of 2018. We, therefore, recall the aforesaid Judgment and order dated 27.11.2018 to the extent it disposed of Transfer Case (Civil) No.287 of 2017.

26. Said Transferred Case is now taken up for consideration. The principal prayer in the writ petition is to the effect that the respondent be directed to give reservation and relaxation to the writ petitioners as SC/ ST candidates. The submission in that behalf has already been considered in the matters dealt with above. We see no reason to interfere in the matter. Transferred Case No.287 of 2017, therefore, stands dismissed.

M.A. No.643 of 2019 in TC (C) No.297 of 2017

27. Selection undertaken pursuant to an advertisement dated 19.05.2011 for recruiting 4010 posts of Sub-Inspectors (Civil Police)

A and 312 posts of Platoon Commanders (Provincial Armed Constabulary – PAC) in the State of UP by direct recruitment was the subject matter of decision by this Court in Alok Kumar Singh and others v. State of U.P. and others Civil Appeal No.11370 of 2018 and other connected matters.

B 28. Writ Petition No.18788 of 2017 preferred by the present applicants in the High Court, was transferred to this Court and was numbered as TC(Civil) No.297 of 2017. It was disposed of along with aforesaid Civil Appeal No.11370 of 2018 etc.

C 29. It is now submitted that the grievance raised by the applicants in the Writ Petition was in respect of selection through limited departmental examination for promotion to the post of UP Sub-Inspector (Civil Police) Rankers Examination and was not by way of direct recruitment and that the matter was wrongly clubbed with Civil Appeal No.11370 of 2018. We, therefore, recall the aforesaid Judgment and order dated 27.11.2018 to the extent it disposed of Transfer Case (Civil) D No.297 of 2017.

E 30. Said Transferred Case is now taken up for consideration. The principal prayer in the writ petition is to the effect that the respondent be directed to give reservation and relaxation to the writ petitioners as SC/ST candidates. The submission in that behalf has already been considered in the matters dealt with above. We see no reason to interfere in the matter. Transferred Case No.297 of 2017, therefore, stands dismissed.