Supreme Court of India
U.P. Public Service Commission vs Alpana on 17 January, 1994
Equivalent citations: 1994 SCR (1) 131, 1994 SCC (2) 723
Author: Ahmadi
Bench: Ahmadi, A.M. (J)

PETITIONER:
U.P. PUBLIC SERVICE COMMISSION

Vs.

RESPONDENT:
ALPANA

DATE OF JUDGMENT17/01/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
VENKATACHALA N. (J)

CITATION:
1994 SCR (1) 131 1994 SCC (2) 723
JT 1994 (1) 94 1994 SCALE (1)98

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by AHMADI, J.- Special leave granted.

2. The Uttar Pradesh Public Service Commission issued an Advertisement No. A-1/E-2/88-89 inviting applications for appearing at a competitive examination called 'the U.P. Nyayik Seva (Munsif) Examination, 1988' for selection of candidates for appointment to the said post. The total number of vacancies available at that date was 50. The qualification for appearing at the examination was that the candidate must possess on the last date fixed for receipt of applications a degree of Bachelor of Laws of a University established by law in Uttar Pradesh or any other University of India recognised for this purpose by the Governor which entitles him to practice in courts of law or be an Advocate, Vakil or Pleader on the roll of or be entitled to practice in the High Court of Judicature at Allahabad or Courts Subordinate thereto, etc. It was further required that the application shall be accompanied by an attested copy of High School and Intermediate Certificates, Bachelor Degree and Law Degree Examination Certificates and mark sheets of each examination.

The last date for receipt of the applications was stated in para 2 of the advertisement to be August 20, 1988. On a plain reading of the advertisement it becomes clear that the candidate applying in pursuance of the advertisement had to possess a Degree of Bachelor of Laws on the last date fixed for receipt of applications, such date in the instant case being August 20, 1988. Not only that, but it was further provided that the applications shall be accompanied by an attested copy, inter alia of the Law Degree Examination Certificate and mark sheet of such examination. This requirement could never have been fulfilled by those who had not passed the examination by August 20, 1988. Admittedly, the respondent herein had appeared at the law degree examination, the result whereof had not been declared till August 20, 1988. As per the advertisement, her application was, therefore, liable to be rejected. It is an undisputed fact that she had applied in pursuance of the advertisement even though she had not passed the law degree examination till August 20, 1988. She had mentioned in the application that she had appeared for the law degree examination and was awaiting her result. In the meantime, she successfully cleared the law degree examination, the result whereof was declared some time thereafter in October 1988. Aware of this position, the Public Service Commission allowed her to appear at the examination held on 3rd, 4th and 5th May 1990 and on her successfully clearing the written examination she expected a call for the interview. As she did not receive the call she made inquiries and learnt that Public Service Commission have taken the view that since she had not passed the law degree examination on or before August 20, 1988 she was not eligible to be selected for appointment to the post in question. Thereupon, she approached the High Court by way of a Writ Petition No. 18918 of 1991 which was allowed by the order dated July 12, 1991 whereby the Public Service Commission was directed to call her for interview to be held on 15th and 16th of July, 1991. The Court, however, stated that the Public Service Commission should withhold the result until further orders. Pursuant to the said order she was interviewed and the result was kept in abeyance. Thereafter, on March 17, 1993 the High Court finally disposed of the matter by directing the Public Service Commission to declare her result and if successful to forward her name to the State Government for appointment within a month from the date of presentation of the certified copy of the High Court order. A further direction was given that in the event there was no post available a supernumerary post should be created for her and appointment made thereon. It is this order of the High Court which is challenged in this appeal by special leave.

3. As already pointed out, on a plain reading of the advertisement pursuant to which she had made the application, it is obvious that she was required to possess the degree of Bachelor of Laws on the last date fixed for receipt of applications which was August 20, 1988. This becomes clear from the requirement of production of an attested copy of the law degree examination certificate and mark sheet thereof. A candidate who had not passed the law degree examination before August 20, 1988 would obviously not be in a position to comply with this requirement. Admittedly, she did not comply with this requirement and had stated in her application that on the last date fixed for receipt of the applications, i.e. August 20, 1988, she did not possess the degree of Bachelor of Laws, but that she had appeared at such examination and was awaiting the result. The result was declared sometime in October 1988. She was also permitted to appear at the written test held by the Public Service Commission but as she did not receive any intimation in regard to the oral test she moved the High Court by way of writ petition and obtained an interim order directing the Public Service Commission to interview her at the interviews to be held on 15th and 16th of July 1991. In obedience to that order the Public Service Commission interviewed her, but kept her result in abeyance, which

was declared after the writ petition was finally disposed of by the impugned order of March 17, 1993. By the final order the High Court not only directed the Public Service Commission to declare the result but further directed that her name should be forwarded to the Government for appointment and the Government should, if necessary, create a supernumerary post and appoint her thereon. In taking this view, the High Court placed reliance on two of its earlier judgments as well as the judgment of this Court in Ashok Kumar Sharma v. Chander Shekher dated December 18, 1992. Therefore, in order to examine the correctness or otherwise of the conclusion reached by the High Court we deem it necessary to briefly refer to this Court's decision in the case of Ashok Kumar Sharma1.

1 1993 Supp (2) SCC 611 :1993 SCC (L&S) 857: (1993) 24 ATC 798: (1993) 1 SLR 379

4. The factual background of that decision was that pursuant to an advertisement issued by the State Government, applications were invited for appointment to the post of Junior Engineers. The last date for submission of applications was July 15, 1982. Both the appellants as well as the contesting respondents had, admittedly, submitted their applications before the last date. The appellants had appeared for the B.E. (Civil) Examination and were awaiting the result which was published on August 20, 1982.

5. Interviews were thereafter held and the appellants were declared selected on April 21, 1983 and they were duly appointed as Junior Engineers. On merits they were placed senior to the respondents whereupon the respondents challenged their appointments on the plea that they were not qualified to apply. The challenge came to be spurned by two separate judgments rendered by Single Judges of the High Court on the ground that the same was barred by laches and in any event what had happened was that the selection process was made broad-based. The Division Bench of the High Court, however, reversed the decisions. On appeal this Court after examining the legal position and in particular Rule 37 of the Public Service Commission Rules which, inter alia, provided that applications of candidates who had appeared at the examination the result whereof was awaited may be accepted provisionally but no such candidate shall be permitted to take the interview unless he is declared successful at the examination, speaking through Thommen, J., for himself and V. Ramaswami, J. conceded that although Rule 37 is not directly applicable the principle of that rule can be applied in the facts and circumstances of the case notwithstanding the fact that the -advertisement did not say that such candidates could apply. In paragraph 14, the majority view was expressed thus:

> "If the principle of Rule 37 is by analogy applicable, the fact that notice of provisional entertainment of applications, subject to passing of the examination before the date of interview, is a requirement in the interests of candidates who fell within that category. The appellants are by analogy persons of that category, but they have no complaint on any such ground."

Taking note of the fact that the appellants had passed the examination before the interviews commenced and were interviewed, selected and appointed, it held that the recruiting authority had made the selection process broad- based and secured the best available talent on comparative

merits. They, therefore, upheld the view taken by the two learned Single Judges in their separate judgments and reversed the view of the Division Bench. Sahai, J., however, while agreeing with the conclusion of the majority observed that a rule framed under one statute cannot be invoked for carrying out the objective of another enactment. He, therefore, expressed a grave doubt if the rules framed by the Public Service Commission could be utilised for the purposes of construing the notification issued by a government department having a separate set of rules. In other words, the learned Judge was not inclined to take the view that Rule 37 could be made applicable on the principle stated in paragraph 14 of the judgment extracted earlier. However, he noticed that before the candidates were interviewed their demand was examined by the Secretary in the department concerned who being satisfied that the prevalent practice was that such candidate should be interviewed directed the board to do so. Therefore, it was not a case of extension of Rule 37 by analogy but factually the appropriate authority had taken a decision to follow the same procedure. Whether this decision was correct or not was not gone into as Sahai, J. was of the view that it would be unfair to quash selection after such a long lapse of time. It was thus on equitable considerations that the learned Judge ultimately agreed with the order proposed by the majority. Two things stand out from this judgment, namely, the majority applied by analogy the principle of Rule 37 whereas Sahai, J. endorsed the decision on equitable considerations. It must, however, be noticed that in that case a conscious decision was taken by the Secretary of the Department that such candidates who submitted the applications after the last date for receipt of applications but before the interviews were held should be considered eligible for appointment. This decision was not challenged and its validity was not required to be gone into. Pursuant to this decision such candidates were examined and selected on merits and were ultimately appointed. It was only when they were granted seniority over others that the latter challenged their appointments after a long lapse of time. The Court was, therefore, reluctant to disturb the status quo.

6. In the facts of the present case we fail to appreciate how the ratio of the said decision of this Court can be attracted. The facts of this case reveal that the respondent was not qualified to apply since the last date fixed for receipt of applications was August 20, 1988. No rule or practice is shown to have existed which permitted entertainment of her application. The Public Service Commission was, therefore, right in refusing to call her for interview. The High Court in Writ Petition No. 1898 of 1991 mandated the Public Service Commission to interview her but directed to withhold the result until further orders. In obedience to the directive of the High Court the Public Service Commission interviewed her but her result was kept in abeyance. Thereafter, the High Court while disposing of the matter finally directed the Public Service Commission to declare her result and, if successful, to forward her name for appointment. The High Court even went to the length of ordering the creation of a supernumerary post to accommodate her. This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on

such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal.

7. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the writ petition of the respondent will stand dismissed. However, if the respondent has been appointed in obedience to the High Court's order her appointment shall not be cancelled, but if she is not appointed she will not be entitled to appointment on the basis of the High Court decision reversed hereby. There will be no order as to costs.