

SUPREME COURT OF INDIA

Malik Mazahar Sultan Etc.

Vs.

Pub.Service Commission,Uttarakhand

C.A.No.8861 of 2010

(Dr.Mukundakam Sharma and Anil R.Dave JJ.)

08.10.2010

JUDGEMENT

Dr. Mukundakam Sharma, J.

1. By passing an order on 15.9.2010, we dismissed SLP(C) No. 12787 of 2008 which was connected with SLP(C) No. 12788 of 2008. SLP (C) No. 12787 of 2008 was dismissed as not pressed.
2. SLP(C) No. 12788 of 2008 was filed by the petitioners namely Shri Vijendra Kumar Verma and Shri Harendra Kumar Ozha. But so far as Shri H.K. Ozha is concerned, on his behalf a prayer was made to withdraw his name from the petition as he was appointed as a judicial officer in the State of Uttar Pradesh. By an order passed on the same day i.e. 15.9.2010, we removed his name as petitioner from the said petition with a further direction that the aforesaid petition would be considered only so far as Shri Vijendra Kumar Verma is concerned.
3. After passing the aforesaid order, we proceeded to hear the learned counsel appearing for the parties and after hearing the parties at length, we reserved our orders.
4. Leave granted.
5. By this common judgment and order, we now propose to dispose of the appeal in terms of our discussion and reasons recorded herein. The selection of judicial officers for Uttaranchal Judicial Service is governed by a set of rules called the Uttaranchal Judicial Service Rules, 2005. The Rules deal with the procedure and mode of selection, recruitment and appointment in the Uttaranchal Judicial Service comprising group A and B posts. In Uttaranchal Judicial Service, there is a post called Civil Judge (Junior Division). Rule 8 of the said Rules lays down the eligibility criterion that a candidate for direct recruitment to the service apart from holding qualification of Bachelor of Law must possess a thorough knowledge of Hindi in Devnagari script as well as the basic knowledge of computer operation.

6. Rule 8 reads as follows:- "8. A candidate for direct recruitment to the Service must be –

“ (a) A bachelor of Law from a University established by law in Uttaranchal or any other University of India recognized for this purpose by the Governor.

(b) Must possess thorough knowledge of Hindi in Devnagri script.

(c) Basic knowledge of Computer operation."

7. Rule 14 of the said Rules lays down that the examination may be conducted at such time and on such dates as may be notified by the Commission and the same would consist of a written examination on such legal and allied subjects in the syllabus prescribed under Rule 17, an examination to test the knowledge of the candidate in Hindi and in English and an interview for assessing the merit of the candidates.

8. Rule 17 provides that the syllabus and the Rules relating to the competitive examination shall be such as given in Appendix II. The said Appendix II contains the syllabus as well as the individual aggregate marks to be allocated against individual papers.

9. Rule 18 of the said Rules speaks of the manner and mode of the preparation of the final list of the selected candidates in order of their proficiency as disclosed by the aggregate of marks finally awarded to such candidates in the written examination and interview whereas Rule 19 makes a provision as to how on submission of the final list of the candidates prepared by the Commission, appointment is to be made to the Post of Civil Judge (Junior Division). It provides that on receipt of the list of candidates submitted by the Commission, the Governor shall make appointment to the post of Civil Judge (Junior Division) in the order in which their names are given in the list.

10. An advertisement was issued on 16.2.2006 inviting applications from eligible candidates for filling up 50 posts of Civil Judge (Junior Division). The appellant herein submitted his application for one of the aforesaid posts. The appellant appeared in the preliminary examination and he was declared successful in the said examination on 16.9.2006.

11. Thereafter, he was called for the Viva Voce examination also, but despite his appearance in the viva voce examination and doing reasonably well according to his own estimation, he was not selected and his name did not appear in the final list of selected candidates. The appellant, however, came to know that he received total of 576 marks together in written examination and in viva voce examination and on the basis thereof in his estimation he should have been selected as persons getting total marks of 568 were inducted into the service. The appellant submitted that to his knowledge and information he was not selected because according to the respondents the appellant did not have basic knowledge of computer operation. The reason for non-selection of the appellant was also disclosed in the counter affidavit filed on behalf of Respondent No. 1 against the writ petition filed by the appellant. In the said counter affidavit, it was stated that the appellant was to put to test for determining and ascertaining as to whether he possessed the basic knowledge of computer

operation. It is also stated in the said affidavit that an expert in the field of computer was associated for determining, assessing and ascertaining the aforesaid fact and it was found that the appellant did not possess basic knowledge in computer operation. Therefore, he was not selected.

12. The aforesaid writ petition was filed by the appellant praying for declaration that since the respondents have introduced a new selection criterion during the midstream of the selection, therefore, the selection process was vitiated. It was also submitted that the action of the respondents in failing the appellant only on the ground that he did not have basic knowledge in computer operation should be set aside and quashed and that the appellant should now be inducted into the service.

13. The aforesaid writ petition was heard by the Division Bench of the Uttarakhand High Court and finally by the impugned judgment and order dated 28.3.2008, the writ petition was dismissed with certain observations contained in the said judgment.

14. Being aggrieved by the aforesaid judgment and order, the present appeal is filed by the appellant on whom we heard the learned counsel appearing for the parties.

15. Mr. Shyam Diwan, the learned senior counsel appearing for the appellant submitted before us that no syllabus was ever prescribed by the respondents for judging and ascertaining the basic knowledge of the candidate in computer operation either before the selection process was initiated or even at the time when the advertisement was issued and therefore such a syllabus could not have been introduced by the respondents in the midstream of such selection process and therefore, the action of the respondent, in introducing a benchmark at a subsequent stage is without jurisdiction and the same is required to be set aside.

16. It was also submitted by the learned counsel for the appellant that the benchmark provided for judging the suitability of the person in computer operation being vague and there being no proper guidelines for adjudging the said competence and suitability, failing the appellant only on the ground that he did not have sufficient knowledge in basic computer operation was uncalled for and unjustified and therefore the appellant should be declared to have passed the examination as he had passed even in the viva voce examination as he scored more than the minimum marks obtained by the successful candidates.

17. The aforesaid submissions of the learned counsel appearing for the appellant were refuted by the learned counsel appearing for the respondents who has taken us through the records and on the basis of which he submitted that the respondents have all along spelt out that the candidate desiring to be appointed to the aforesaid post of Civil Judge (Junior Division) must have the basic knowledge of computer operation and therefore the same was a part and parcel of the syllabus which was known to each one of the candidates including the appellant and therefore no grievance could be raised in that regard.

18. It was also submitted by him that the appellant having participated in the entire selection process and having specific knowledge that he would be required to have basic knowledge in computer operation and then having taken a chance therein by appearing in the viva voce and facing the questions of the expert on the computer operation, he cannot now turn back and take a stand that the said selection process is vitiated.

19. In the light of the aforesaid submissions of the learned counsel appearing for the parties, we have considered the records. The advertisement inviting applications from eligible candidates for filling up the posts was published in a newspaper on 16.2.2006. In the said advertisement, conditions of eligibility have also been mentioned in clause 4 wherein the essential qualifications were prescribed. In clause 4(c), it was specifically mentioned that the candidate should have basic knowledge of computer operation. In clause 9 of the aforesaid advertisement, it was stated that the candidate desiring to apply should read the advertisement carefully and apply only if he is satisfied regarding eligibility according to the conditions of advertisement. In paragraph 12(4), it was also mentioned that only those candidates would be called for interview who would be declared successful on the basis of main examination (written examination).

20. The candidates were thereafter called for the written examination which was held from 17.1.2007 to 19.1.2007 and a list of successful candidates in the written examination was published by the Uttarakhand Public Service Commission on 26.4.2007. In the aforesaid notification which was published, it was also mentioned that the aforesaid successful candidates in the written competitive examination will have to establish that they have sufficient knowledge of Hindi in Devnagari script and basic knowledge of computer operation. It was further stated that with regard to the basic knowledge of computer operations, the candidates should have the knowledge of Microsoft Operating System and Microsoft Office operation. Interview letters were thereafter issued and in so far as the appellant is concerned, his interview letter was dated 21.5.2007. In the said call letter for the interview also, it was specifically mentioned that basic knowledge of the computer operation would be essential to the candidate and in connection with the basic knowledge of the computer operation, knowledge of Microsoft Operating System and Microsoft Office Operation would be essential to the candidate and the said knowledge of the candidate would be examined at the time of interview. Therefore, the appellant knowing fully well about the requirement of having basic knowledge of computer operation went for his viva voce examination and gave the said test without any protest or demur of the kind that is being raised in the writ petition and before us.

21. The basic knowledge of the appellant in computer operation was tested at the time of his interview by an expert who was sitting with the interview members conducting the interview. The said expert after testing the knowledge, the suitability of the appellant and his basic knowledge in computer operation gave his opinion that the appellant did not possess the basic knowledge of computer operation. Since possession of such knowledge of computer operation was one of the eligibility criteria for being selected for the aforesaid post of Civil Judge and as the appellant was not found suitable and lacking in basic knowledge of

computer operation, he was not selected. The issue is whether such a course adopted by the respondent could be said to be illegal, without jurisdiction and unheard of.

22. In support of his contention, the learned counsel appearing for the appellant relied upon the decisions of the Supreme Court in (2008) 3 SCC 512. In paragraph 25 and 27 of the said judgment, it was said that introducing minimum marks for interview in the midstream of the selection process is illegal.

23. The counsel for the appellant also relied upon a judgment Court of Delhi & Anr. reported in (2010) 3 SCC 104 in support of the contention that minimum benchmark provided for selection during the midstream of the selection process is without jurisdiction.

24. In our considered opinion, the reliance on the aforesaid judgments by the counsel appearing for the appellant was misplaced as in the present case the requirement and the necessity for having basic knowledge of computer operation as one of the eligibility criteria and conditions for selection is prescribed in Rule 8 itself. The said clause was also specifically mentioned in the advertisement issued making it clear to all the intending candidates that they must have basic knowledge of computer operation.

25. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office Operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

26. In this connection, we may refer to the decision of the Ors. reported in (1976) 3 SCC 585 wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus:- "15.... He seems to have voluntarily appeared before the Committee and taken a chance of having a favorable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee." reported in (2008) 7 SCC 70, this Court relying on the above principle held thus;

"44.Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow....."

28. In *Union of India and Others vs. S. Vinodh Kumar and Others* reported in (2007) 8 SCC 100 at paragraph 18 it was held that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. Besides, in *K.H. Siraj vs. High Court of Kerala and Others* reported in¹ in paragraph 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.

29. Now, while deciding the submission of the counsel appearing for the appellant that judging the suitability of the candidate by laying down the benchmark of basic knowledge of computer operation being sufficient or insufficient is vague, we are of the opinion that possessing of basic knowledge of computer operation is one of the criteria for selection and in order to judge such knowledge, an expert on the subject was available at the time when the candidate was facing the Interview Board. In order to ascertain the candidate's knowledge of computer operation, he put questions and thereafter he gave remarks that the candidate has sufficient knowledge or that he does not have sufficient knowledge.

30. It is also to be considered that the Indian judiciary is taking steps to apply e-governance for efficient management of courts. In the near future, all the courts in the country will be computerized. In that respect, the new judges who are being appointed are expected to have basic knowledge of the computer operation. It will be unfair to overlook basic knowledge of computer operation to be an essential condition for being a judge in view of the recent development being adopted. Therefore, we are of the considered opinion that requirement of having basic knowledge of computer operation should not be diluted. We also deem fit not to comment over the standard applied by the expert in judging the said knowledge as the same is his subjective satisfaction. However directions can be recommended to make the procedure more transparent. The directions in respect of same have already been given by the High Court we do not think proper to prescribe the directions for the same separately.

31. The aforesaid procedure for testing the knowledge may not be foolproof but at the same time it cannot be said that the same was not reasonable or that it was arbitrary. Therefore, after giving very thoughtful consideration to the issues, we are of the opinion that the

appellant has failed to make out any case before us for interference with the orders passed by the High Court. We find no merit in this appeal and the same is dismissed.

Judgment Referred.

¹(2006) 6 SCC 0395