

AFR

Court No. - 7

Case :- WRIT - A No. - 3979 of 2022

Petitioner :- Uday Singh And 6 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Medical Education Lko. And 4 Others

Counsel for Petitioner :- Avinash Tiwari

Counsel for Respondent :- C.S.C.,Shubham Tripathi

Hon'ble Rajnish Kumar,J.

1. Heard Shri Avinash Tiwari, learned counsel for the petitioners and Shri Sanjay Bhasin, learned Senior Advocate assisted by Shri Shubham Tripathi, learned counsel for the respondent Nos.2 to 5. Learned Standing Counsel is present for respondent No.1.

2. By means of the present writ petition, the petitioners have prayed for a direction to conduct online common recruitment test in Hindi language for selection in pursuance of the advertisement dated 06.01.2022 and declare the final result of the selection only after conducting Common Recruitment Test in Hindi language properly with all consequential benefits. The petitioners have also prayed for quashing the procedure of online Common Recruitment Test conducted on 20.06.2022 or in alternative issue a suitable direction to the opposite parties not to make any selection or appointment only in pursuance of Common Recruitment Test conducted on 20.06.2022. The petitioners have also prayed for a direction not to give effect to the marks obtained in online Common Recruitment Test conducted on 20.06.2022. The petitioners have also prayed for similar and consequential reliefs.

3. The brief facts of the case, for adjudication of the controversy raised in this petition, are that an advertisement dated 06.01.2022 was issued by the opposite party No.3/Director Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow for several posts. The petitioner Nos.1, 2 & 3 had applied for post of Sister Grade II, Petitioner Nos.4, 5 & 6 for the post of Medical Lab Technologist and petitioner No.7 for the post of Junior Medical Lab Technologist against the said advertisement. The petitioners, being found eligible, were called for the online Common Recruitment Test (hereinafter referred to as the 'CRT') containing multiple choice questions of 100 marks. The CRT was held on 20.06.2022 and the list of marks obtained by the candidates was declared on 21.06.2022. After being unsuccessful in the CRT, the petitioners approached this Court mainly with the prayer that CRT may be conducted in Hindi language and to declare the result on the basis of same.

4. Learned counsel for the petitioners submitted that the CRT has wrongly and illegally been conducted only in English language in violation of the terms and conditions of the advertisement for selection. The Rules and the advertisement does not provide the English language as the medium of test, therefore, the CRT should have been held in bilingual languages, i.e., in Hindi also. The advertisement and admit card were issued in bilingual languages for the said posts. He also submitted that Diploma essential for the posts in question is also being held in bilingual languages. He further submitted that as per the Government Order dated 7th August, 1992, the Rules/Regulations of the State Government in service matters of the employees would be applicable on the employees of Sanjay Gandhi Post Graduate Institute of Medical Sciences

(hereinafter referred to as the 'SGPGI'). He also submitted that the State Government has issued the Uttar Pradesh Competitive Examination (Medium of Written Examination) Rules, 1994 (hereinafter referred to as the Rules of 1994), which provides that the questions paper shall be in English in Roman script and Hindi in Devanagari Script. Therefore, the question paper should have been in English as well as in Hindi.

5. Learned counsel for the petitioners relied on *Bedanga Talukdar Vs. Saifudaullah Khan and others; (2011) 12 SCC 85* and *Anil Chandra Vs. Birbal Sahni Institute of Palaeobotany; 2003 LawSuit (All) 76/2003 21 LCD 396*.

6. Per contra, learned counsel for the respondents submitted that the petitioners have challenged the selection after participation without any demur and after being unsuccessful, therefore, the writ petition is not maintainable. He further submitted that the SGPGI is an autonomous Institute created under the statute namely Sanjay Gandhi Post Graduate Institute of Medical Sciences Act, 1983 (hereinafter referred to as the 'Act 1983'). The Director of SGPGI is the appointing authority. He further submitted that after framing of the first statute of the SGPGI in 2011, the Rules and Regulations of the Government are not applicable unless adopted by the Institute and Rules relied by the petitioners have not been adopted by the Institute. He further submitted that the CRT conducted in pursuance of the advertisement issued on 06.01.2022 was an All India Test and is being conducted in English medium only as per the policy of the Institute. He also submitted that all previous examinations (CRT) have been conducted in English language only. He further submitted that though the advertisement and the admit card were issued in bilingual languages but the syllabus for the posts in question was published in English

language only and no objection was ever raised by the petitioners or any candidate. He also submitted that 10 marks were for General English in CRT. It is also not the case of the petitioners that they do not have the knowledge of the English language or English is not required for the posts in question. It is well known to the petitioners as they are working with the SGPGI through outsourcing agency.

7. Learned counsel for the respondents relied on *Hindi Hitrakshak Samiti and others Vs. Union of India and others; (1990) 2 SCC 352*, Judgement and order dated 03.09.2011 passed in *Ashima Dwivedi Vs. Registrar General High Court Judicature at Allahabad and another*; Special Appeal No.1572 of 2011 and *Ashok Kumar and another Vs. State of Bihar and others; (2017) 4 SCC 357*.

8. I have considered the submissions of learned counsel for the parties and perused the records.

9. The advertisement dated 06.01.2022 was issued for several posts including the posts of Sister Grade-II, Medical Lab Technologist and Junior Medical Lab Technologist for which the petitioners had applied. The CRT was held on 20.06.2022, result of which was declared on 21.06.2022. The CRT was held only in English language. Therefore, the petitioners have approached this Court by means of the present writ petition with a prayer that the CRT should be held in Hindi language also and after holding the CRT in Hindi, the result should be declared a fresh. Therefore, the issue to be decided in this case is as to whether the CRT should be held in Hindi also or not.

10. The advertisement provides that for all the posts a CRT will be held. The CRT will be of 2 hours duration and of 100

marks. It will contain multiple choice questions. It is further provided that 60 marks on the subject(s) related to the posts and of level of qualifications required; 10 marks on General English, 10 marks on General Knowledge, 10 marks on Reasoning and 10 marks on Mathematical Aptitude. It has further been provided that 1 mark will be given for the correct answer and 1/3rd mark will be deducted for the wrong answer, (i.e., there will be negative marking). Minimum qualifying marks of the CRT for all the posts will be 50% for General, EWS and OBC and 45% for SC/ST.

11. The advertisement does not provide any medium of questions paper. However, there are 10 marks on General English, therefore, a person appearing in the CRT is required to know the General English. The question paper was a multiple choice questions paper. Since the advertisement does not provide for any language for CRT, therefore, the contention of learned counsel for the petitioners that there is violation of terms and conditions of the advertisement is misconceived and not tenable. Any condition, which is not provided under the advertisement cannot be said to have been violated. Therefore, the judgements relied by the learned counsel for the petitioners in the case of **Bedanga Talukdar Vs. Saifudaullah Khan and others (supra)** and **Anil Chandra Vs. Birbal Sahni Institute of Palaeobotany (supra)** are not applicable on the facts and circumstances of the case. As per the said judgements, the selection procedure has to be conducted strictly in accordance with stipulated selection procedure and the conditions of advertisement has to be adhered.

12. So far as the Uttar Pradesh Competitive Examination (Medium of Written Examination) Rules, 1994 relied by learned counsel for the petitioners is concerned, Rule 4 of the

said Rules provides that a candidate may answer papers in English in Roman Script or Hindi in Devanagari script or Urdu in Persian script except that the language paper must be answered in the same language; provided that question paper as a whole, and not for each question separately, must be answered in any of the above script; provided further that the question paper shall be in English in Roman script and Hindi in Devanagari Script. Therefore, the rule indicates that it is not for the multiple choice questions because in multiple choice questions there is no requirement of answering the question paper in any language and it is also not the case herein. The definition clause in Rule 3(b) provides that the 'Examination' means a written examination or a competitive examination for direct recruitment to any post or service under the Rule making power of the Governor under the proviso to Article 309 of the Constitution. Therefore, this Rule is applicable only to the posts or services, which are under the Rule making power of the Governor under Article 309 of the Constitution, whereas the appointment in the SGPGI are made under the first statute of the SGPGI by the Director. Rule 3(e) provides that the 'Commission' means the Uttar Pradesh Public Service Commission or Uttar Pradesh Subordinate Service Selection Commission as the case may be. It indicates that this Rule is applicable on the examinations being conducted by the said commissions. Therefore, it is not applicable on the selection in question.

13. The Government Order dated 7th August, 1992 provides that in the service matters of the employees of the Institute the Government has accorded its consent for applicability of the Rules/Regulations of the State Government. Therefore, this Government order only indicates the consent of the

Government for applicability of the Rules/Regulations of the State Government but it does not indicate that SGPGI, which is an autonomous body created under the statute, i.e., Act 1983, has adopted and applied it. Even otherwise, once the Rules/Regulations have been framed by the SGPGI with the approval of the State Government, the selection is to be made on the basis of same and the aforesaid Government Order is not applicable.

14. The Hon'ble Supreme Court, in the case of **Hitrakshak Samiti and others Vs. Union of India and others (supra)**, has held that the proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any particular language to the Institution on that basis, is a matter of policy and held that it cannot be appropriately dealt with under Article 32 of the Constitution. Hon'ble Supreme Court has also held that it is difficult to accept that in not holding entrance examination in any particular language, be it Hindi or regional language, amounts to denial of admission on the ground of language. It has also been held that every Educational Institution has right to determine or set out its method of education and conditions of examination. The relevant paragraph 6 is extracted herein below:-

"6. Article 32 of the Constitution of India guarantees enforcement of fundamental rights. It is well-settled that the jurisdiction conferred on the Supreme Court under Article 32 is an important and integral part of the Indian Constitution but violation of a fundamental right is the sine qua non for seeking enforcement of those rights by the Supreme Court. In order to establish the violation of a fundamental right, the Court has to consider the direct and inevitable consequences of the action which is sought to be remedied or the guarantee of which is sought to be enforced. Mr Singhvi, counsel for the petitioners, contends that under Article 29(2)

of the Constitution no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. He contends that by not holding the test in Hindi or other regional languages, there is breach of Article 29(2). He also draws our attention to Article 29(1) of the Constitution which enjoins that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of his own, shall have right to conserve the same. It is difficult to accept that in not holding entrance examination in any particular language, be it Hindi or regional language, amounts to denial of admission on the ground of language. Every educational institution has right to determine or set out its method of education and conditions of examination and studies provided these do not directly or indirectly have any casual connection with violation of the fundamental rights guaranteed by the Constitution. It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in-charge-of any particular situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference."

15. Relying on the aforesaid judgement, this Court has dismissed the **Special Appeal No.1572 of 2011; Ashima Dwivedi Vs. Registrar General High Court Judicature at Allahabad and another (supra)**.

16. The syllabus of the selection in question was in English

and no objection was raised by the petitioners and nothing has been brought on record to show that the petitioners have ever made any request for providing the syllabus in Hindi, therefore, it cannot be said that the petitioners do not know the English language, which may have been required for multiple choice questions, particularly when there are 10 marks for General English. If the syllabus was in English language then it can safely be inferred that the question papers would be in English and if the petitioners have not raised any objection at that stage, they cannot say now that the question paper should have been in Hindi also. A thing which is not provided under the advertisement cannot be said to have been violated in such a situation. When the language of paper was not provided in the advertisement, it cannot be said that CRT has been held in violation of the terms and conditions of the advertisement. Even otherwise, when there are 10 marks for English language, then English would be required for the post in question and it can not be accepted that a candidate who has applied for the post knowing it well does not know the English required for multiple choice questions paper.

17. The Hon'ble Supreme Court, in the case of **Ashok Kumar and others Vs. Bihar and others (supra)**, as held that it was not open to the appellants after participating in the selection process to question the result on being declared unsuccessful.

18. In view of the above and considering overall facts and circumstance of the case, this Court is of the view that the writ petition has been filed on misconceived and baseless ground, which is liable to be dismissed.

19. The writ petition is, accordingly, **dismissed**. No order as to costs.

(Hon'ble Rajnish Kumar,J.)

Order Date :- 03.03.2023

Ashutosh Pandey