

Neutral Citation No. - 2023:AHC:168146

Court No. - 35**Case :-** WRIT - A No. - 10907 of 2023**Petitioner :-** Pankaj Kumar Priyam**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Sanjay Maurya**Counsel for Respondent :-** C.S.C.**Hon'ble Vikas Budhwar,J.**

1. Heard Sri Sanjay Maurya, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 and 2.

2. The case of the writ petitioner is that the State Government in order to achieve its noble objects to cope away with the scarcity of the regular teachers came up with a policy decision dated 24.07.2021 making short term appointments for a period of one year commensurate to the academic session in that regard. First in the league was the Government Order dated 24.07.2021. The said Government Order infused fresh light for the academic sessions to come in future and in this regard, the said Government Order was further followed in a subsequent Government Order dated 17.05.2023. As per the writ petitioner, another Government Order was issued on 25.05.2023 with regard to the modalities for appointment of teachers in Sanskrit Vidyalaya. In line with the said Government Order a notification was issued by the respondents dated 07.06.2023 for the purposes of making recruitment of Sanskrit Teachers for 14 posts including the Sukhnandan Sanskrit Pathshala, Mohammadpur, Mau. The writ petitioner as per own saying applied in pursuance of the said notification on 19.06.2023 and submitted his document before the institution so specified therein and thereafter triggered an Email to the District Inspector of Schools on 19.06.2023.

3. Since the candidature of the writ petitioner was not being considered for the post of Sanskrit Teacher so the writ petitioner preferred the present writ petition seeking relief to the extent that a mandamus be issued directing the respondents to consider the petitioner's application for the post of Sanskrit Teacher which was claimed to be submitted on 19.06.2023.

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4. This Court entertained the writ petition on 21.07.2023 and passed the following order.-

"This Court on 13.07.2023 has passed the following orders.-

"Sri Sanjay Maurya, learned counsel for the petitioner submits that pursuant to the Government Order dated 07.06.2023 recruitment exercise was to be undertaken for recruitment of Sanskrit Teachers on 15 posts including the Sukhnandan Sanskrit Pathshala, Muhammadpur, Mau and the the last date for receiving the application form was 23.06.2023.

In paragraph-5 of the writ petition, it has been averred that the writ petitioner preferred an application on 19.06.2023 and a specific submission has also been made in paragraph-8 of the writ petition that he had also submitted application through e-mail (online). However, now, he is not being allowed to participate in the interview on the pretext that his application sent on 19.06.2023 has been received after the last date, i.e. 23.06.2023.

Learned counsel for the petitioner further submits that as per the advertisement, the applications were to be submitted by both the modes, i.e. through online as well as offline and thus, he further submits that as per the covenant contained in the Government Order in question, which is at page-11A of the paper-book dated 25.05.2023, minimum 15 days' time is to be accorded to the applicant to submit its application in that regard.

Sri Saurabh, who appears for the respondents no. 1 and 2 seeks time to obtain instructions. He is conscious about the fact that the matter is of extreme urgency so he requests a short time.

Put up as fresh on 17.07.2023, so as to enable the learned Standing Counsel to obtain instructions on the said issue."

Pursuant to the said order the instructions have been received under the signature of the District Inspector of Schools, Mau, second respondent dated 19.07.2023 according to which the application form submitted by the writ petitioner was received after the due date i.e. on 24.06.2023 and the writ petitioner had sent an E Mail which was received on 19.06.2023 within time but it did not accompany the fees. Sri Pradeep Kumar Shahi learned Additional Chief Standing Counsel submits that he may be granted short time to file counter affidavit enclosing therewith the Government Order the advertisement (clear copy) and the E Mail along with the attachment and other document.

Put up this case on 01.08.2023 as fresh a copy of the counter affidavit be served upon the learned counsel for the petitioner by 28 of July, 2023 so as to enable the learned counsel for the writ petition to file his reply. On the next date the matter will be finally heard.

The instructions filed today is taken on record and marked as Appendix 'A'."

5. A counter affidavit has been filed by respondents No. 1 and 2 under the signatures of the District Inspector of Schools, Mau

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dated 07.08.2023, a rejoinder affidavit has also been filed by the writ petitioner which is available on record.

6. In order to effectively decide the issue in question while going into the legality and the propriety of the stand of the respondents, it would be apposite to extract the relevant clauses of the Government Orders dated 24.07.2021 clause 4 at page 11 of the counter affidavit as well as advertisement in question.-

4. अभ्यर्थी द्वारा अपना आवेदन पत्र सम्बन्धित विद्यालय को रजिस्टर्ड डाक द्वारा प्रेषित किया जायेगा तथा उसकी छायाप्रति जिला विद्यालय निरीक्षक के ई-मेल आई० डी० पर प्रेषित किया जायेगा। जिला विद्यालय निरीक्षक की ई-मेल आई० डी० को विज्ञप्ति में प्रकाशित कराया जायेगा।

Advertisement No. 2 of the 2023

आवेदन शुल्क- विज्ञापन में यथाविहित सामान्य एवं पिछडा वर्ग के अभ्यर्थी हेतु रुपये 250/- आर्थिक रूप से कमजोर वर्ग एवं अनुसूचित जाति को रुपये 150/- एवं अनुसूचित जनजाति अभ्यर्थी हेतु रुपये 100/- का बैंक ड्राफ्ट अथवा रेखांकित पोस्टल आर्डर संस्था प्रबन्धक के पक्ष में देय होगा। आवेदन-पत्र प्राप्ति को अन्तिम तिथि- दिनांक-23.06.2023 तक आवेदन-पत्र पंजीकृत डाक से सायं 05.00 बजे तक सम्बन्धित प्राधिकारी को प्राप्त हो जाने चाहिये एवं आवेदन-पत्र की छाया प्रतियों को सम्बंधित जनपद के जिला विद्यालय निरीक्षक के ई-मेल dios.amau@gmail.com पर भी उक्त तिथि एवं समय तक प्रेषित किया जाना चाहिए। विलम्ब या अन्य कोई माध्यम से प्राप्त आवेदन-पत्रों पर कोई विचार नहीं किया जायेगा।

7. Sri Sanjay Maurya, learned counsel for the writ petitioner has argued that in terms of the Government Order dated 24.07.2021 clause (4) an applicant who was aspirant for the said post had to submit its application form before the concerned institution within the time stipulated therein and a copy of the application after fulfilling the necessary formalities was to be sent through Email to the concerned District Inspector of Schools. It is the stand of the writ petitioner that he has submitted the application form while sending it through registered post to the institution in question on 19.06.2023, however, according to the stand of the respondents the same got received on 24.06.2023 in the institution in question i.e. one day later to the last date being 23.06.2023. While inviting the attention of the Court towards Annexure 4 at page 34 reference whereof has been given in para 6 of the writ petition it is sought to be submitted that even in fact the postal endorsement at page 34 and 35 itself shows that the registry was sent on 19.06.2023 which was received on 24.06.2023. Learned counsel for the writ petitioner has further invited the attention of the Court towards the Annexure 4 at page 19 of the counter affidavit so as to contend that

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the Email itself was sent by the writ petitioner was received on 19.06.2023 in the office of the District Inspector of Schools, Mau, second respondent, thus, by all practical purposes the application of the writ petitioner was within time.

8. Learned counsel for the writ petitioner in order to further buttress his submission seeks to rely upon the full bench decision in the case of Neena Chaturvedi Vs. U.P. Public Service Commission (2010) 4 UPLBEC 2876 so as to contend that once only a solitary mode was provided to send the required documents that too by registered post then the postal department becomes the agent of the respondent and in view of the said admitted fact mere receipt of the application form of the writ petitioner after the due date though sent before the due date cannot be at the fault of the writ petitioner. He, thus, prays that the application being processed and he be permitted to participate in the selection.

9. Sri Shailendra Singh, learned Standing Counsel who appears for respondents No. 1 and 2 while countering the submission of the learned counsel for the writ petitioner submits that the terms and conditions mentioned in the advertisement are itself loud and clear and the writ petitioner being not a rustic but an educated person cannot plead ignorance. Submission is that the Government Order dated 24.07.2021 providing for submission of the application form at the first instance along with the necessary formalities to be fulfilled at the end of the candidate was to reach before or on the last date of submission of the application form and a scanned copy of the same was to be mailed in the official E Mail I.D. Of the second respondent, District Inspector of Schools, Mau is a mandatory condition and since in the present case in hand might be the writ petitioner had submitted the online form while sending it through registered post on 19.06.2023 which reached the ultimate destination on 24.06.2023 after the last date 23.06.2023, thus, the same will denude the claim of the writ petitioner for processing his application in order to participate in the selections in question. As per the specific stipulation contained in the Government Orders and the advertisement in question there were two fold requirements to be fulfilled by the applicant, the first and foremost was to submit application form in hard copy before the concerned institution specified in the advertisement before the last date and the second step was to scan the copy of the application submitted before the institution in question while transmitting it through Email in the official official Email I.D. of the District Inspector of Schools. The said two steps were a condition precedent which was to be undertaken within the cut off date specified in the

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advertisement. Mere compliance of one of the conditions would not be sufficient as the advertisement itself spelt out that both the conditions were to be fulfilled at the end of the candidate. Since the writ petitioner had sent the application form through registered post to the institution in question on 19.06.2023 but it reached the ultimate destination on 24.06.2023 well beyond the last date i.e., 23.06.2023, thus, the first requirement itself stood non-complied with, less to say about triggering of the mail after scanning the hard copy as the second step is dependent upon the first step which as per own showing became defective for want of receipt by the institution in question within the due date. Reliance has been placed upon the judgment in the case of Rajendra Patel Vs. State of U.P., yet another full bench reported in 2016 (1) UPLBEC 331.

10. I have heard the learned counsel for the parties and perused the record.

11. Undisputedly, the entire exercise for making recruitment on the post in question is referable and stems out from the Government Order dated 24.07.2021, the relevant extract whereof has been quoted in the earlier part of the judgment. As per clause (4) the candidate is to submit the application after fulfilling all the formalities before the due date to the institution in question and after posting the same a copy of the said application is to be sent through Email to the District Inspector of Schools before the last date. Here, the Court finds as per the own saying of the writ petitioner that he had sent the application form on 19.06.2023 to the institution in question which as per the postal endorsement attached with the counter affidavit was received on 24.06.2023, the last date whereof being 23.06.2023. The other part which was to be performed by the respective applicant, the petitioner in the present case was to transmit the application which he had submitted before the institution in question through Email before the last date in the office of DIOS. Apparently, in the counter affidavit it has come on record that the Email was received on 19.06.2023 well within the last date but the crucial question arises as to whether the first part stood complied with the at the end of the writ petitioner or not while submitting the application before the institution before the last date. Though learned counsel for the writ petitioner seeks to rely upon the judgment in the case of Neena Chaturvedi (supra) so as to contend that once only a solitary mode was provided for submission of the application form that too by registered post and the writ petitioner sent the same while posting it within the time stipulated then merely because it reached the ultimate destination subsequently would not be a disqualification for the writ petitioner.

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In this regard it would be profitable to quote the relevant extract of the judgment in the case of Neena Chaturvedi (supra) which is recapitulated hereinunder.-

"43. If the postal rule is made applicable in matters of inviting applications to appear for an examination or for an interview, and applications are to be sent by post, even if one application does not reach in time on account of postal delay to scrap the examination or hold special examination in such cases would produce manifest inconvenience and absurdity.

44. In ANSON'S LAW OF CONTRACT edited by A.G. Guest, 26th Edition, the postal rules has been explained as where the terms of the offer expressly or impliedly indicate that it is to be accepted, not by the performance of some act or forbearance, but by a return promise given by the offeree, the general rule is clear: acceptance must be communicated before it can take effect. But in certain exceptional cases the law, for reasons, of convenience, is prepared to hold that the offeror is bound though the acceptance has not reached him. This is so where it is reasonable for the offeree to notify his acceptance by post or telegram. Learned author notes that logic of this rule may be questioned and various attempts have been made to justify this rule analytically. After considering various lines of reasons, the author observes that the better explanation would seem to be that the rule is based, not on logic, but on commercial convenience. If hardship is caused, as it obviously may be, by the delay or loss of a letter of acceptance, some rule is necessary, and the rule at which the Courts have arrived is probably as satisfactory as any other would be. It is always open to the offeror to protect himself by requiring actual notification of the acceptance, and the nature of the offer or the circumstances in which it was made may indicate that notification is required.

45. Even in respect of an agency the same is based on the principle, that the Principal is bound by the acts of the agent. Rule of agency in a case of merely inviting offers normally would not apply if a date for receipt of the acceptance is set out Therefore in such cases if at all the law of agency applies it would be between the sender and the post office by virtue of the fact that the sender delivers the letters or articles to the post office. The post office is bound as an agent of the sender to deliver it to the addressee."

12. The judgment in the case of Neena Chaturvedi (supra) throws light on the issue as according to it, it has been propounded that a contract between the applicant and post office cannot bind the third party otherwise accepting such a proposition that the post office becomes the agent of the body which invited the application will lead to manifest inconvenience and absurdity as to for how long could such a body has to wait for the receipt of the application sent by the applicants.

13. Now coming to the judgment in the case of Rajendra Patel (supra), yet another full bench this Court in para 15, 16, 17, 19, 20 and 21 it was observed as under.-

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"15. On the other hand learned senior counsel appearing on behalf of the Commission has submitted that (i) the documents are submitted by a candidate for the first time with the office of the Commission together with a hard copy; (ii) the submission of the hard copy of the application together with prescribed documents is not just a confirmation of the online application but it is only on the basis of the documents which the candidate submits together with his application that the Commission is in a position to determine whether the candidate fulfils the required conditions of eligibility;

(iii) all the candidates were specifically placed on notice that should they fail to fulfil all the prescribed four steps by the last date which had been prescribed, the candidature would stand rejected; and (iv) the Commission which conducts the examination is required to fix some cut off date and once a cut off date has been fixed, it would necessarily have to be regarded as mandatory, failing which, the conduct of public examinations on such a large scale would become impossible of compliance.

16. The Commission while conducting the Combined Services Examination had clearly placed all the candidates on notice of the fact that the process of submitting applications for appearing at the main examination involves four stages. The advertisement which was issued by the Commission on 4 October 2014 delineated each one of the four stages and prescribed a last date for compliance. The question of compliance at a subsequent stage arises only when the prior stage has been completed by the prescribed last date. In the first stage, the candidate is required to visit the website for the purpose of selecting the examination centre and the optional subjects. In the second stage, the candidate has to submit the examination fee through the prescribed electronic mode. In the third stage, the candidate has to submit the application online after deposit of the examination fee and obtain a print out of the online format by the date prescribed. In the fourth stage, the candidate is required to submit a conventional hard copy complete with all documents in the office of the Commission either through registered post or by personal delivery by a stipulated last date. All the candidates were also placed on notice that in the event they do not comply with the stages as prescribed, the candidature would stand rejected.

17. Having regard to the clear stipulations which are contained in the advertisement which was issued by the Commission and the instructions to candidates in the brochure, all candidates were placed on an unambiguous notice in regard to the process of compliance and the consequences of a breach. Compliance was not made optional but was mandatory for all the candidates. When the Commission holds public examinations on such a large scale, candidates must be clearly aware of the fact that it is not open to a candidate to decide as to when an application should be submitted and compliance with the time schedule which has been indicated is mandatory. If this is not read to be mandatory, the entire process of holding an examination would stand dislocated. If no last date for the receipt of the hard copy of the application with the documents were to be provided for, the issue which would arise would be until when would the Commission be required to consider the application submitted. Should this be until the examination is held or should this continue until the date fixed for the holding of the interview? These aspects cannot be left in uncertainty more so at the individual discretion of candidates. The submission of the hard copy of the application together with

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the documents is not a mere ministerial act nor does it constitute a mere confirmation of the application which has been submitted online. Candidates who submit applications online are still required to submit full documentary evidence which evinces eligibility and satisfaction of the required conditions. For instance, a candidate who applies for a particular post may be required to hold a qualification with a specialisation in a particular subject. It is only on scrutinising the application and the documents that the Commission can determine whether the candidate does fulfil the required conditions. This process cannot be left in a perpetual state of indecision or uncertainty. Hence, we are of the view that as a matter of first principle, the time schedule which was prescribed by the Commission for submission of the print out copy of the application submitted online with the documents was of a mandatory nature. Non-compliance with the schedule would invite the consequence which was clearly specified, namely the rejection of the candidature of the applicant.

19. The judgment of the Full Bench was followed in a judgment of the Division Bench in Ravindra Kumar (supra) which was delivered on 28 April 2014. The judgment in Ravindra Kumar (supra) was in fact cited before the Division Bench when the writ petition in Nirbhay Kumar (supra) came up for hearing. If the Division Bench in Nirbhay Kumar (supra) was inclined to take a view at variance with what was laid down in Ravindra Kumar (supra), the appropriate course of action would have been to refer the case to a Full Bench for reconsideration. Instead, the Division Bench has charted out a course of action which, with respect, is inconsistent with the law which was laid down in the earlier judgment in Ravindra Kumar (supra). This, in our view, with greater respect, is impermissible.

20. Even on merits, we are not inclined to accept the correctness of the principle which has been laid down in Nirbhay Kumar (supra) that the submission of a hard copy of the application together with the accompanying documents is merely an act of confirmation of the application. The view which has found acceptance in Nirbhay Kumar (supra) would, in our view, dislocate the examination process and would render the process which is conducted by the Commission in a perpetual state of uncertainty. We are, with respect, in agreement with the view which was expressed by the Division Bench in Raj Narayan Singh (supra) decided on 18 February 2015.

21. Reliance was also sought to be placed on a judgment of the Supreme Court in Dolly Chhanda Vs Chairman, JEE6. In Dolly Chhanda (supra), the Supreme Court has observed that the general rule is that while applying for any course of study or post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in the application form, as the case may be, unless there is an express provision to the contrary. The Supreme Court held that there could be no relaxation in the matter of holding the requisite eligibility qualification by the date fixed. However, depending upon the facts of the case, there can be some relaxation in the matter of submitting proof and it may not be proper to apply a rigid principle which may pertain to the domain of procedure. Hence, every infraction of the rule relating to submission of proof need not necessarily result in the rejection of the candidature. These principles which have been laid down are not in dispute and they cannot be. However, the issue in the present case is whether the submission of a hard copy by the specified date together with all the documents was merely a matter of procedure. To accept

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the submission of the petitioner would, as we have held earlier, result in a situation where a candidate would be entitled to assert that despite the stipulated last date and a prescribed consequence of invalidation which has been drawn to the notice of the candidates, the Commission would be bound to scrutinise applications which are received together with the hard copies beyond the prescribed date. This, in our view, would not be permissible. We may also note that in a judgment in Secretary, UP Public Service Commission Vs S Krishna Chaitanya⁷, the Supreme Court has held that the Commission cannot be directed to declare the final results when the application form of a candidate had not been received within the prescribed period."

14. Respectfully following the judgments in the case of the Neena Chaturvedi (supra) and Rajendra Patel (supra), applying the law culled out in the judgment in the case of Neena Chaturvedi (supra) and Rajendra Patel (supra) in the present facts of the case it is apparently clear beyond any shadow of doubt that the though the post office acts as an agent of the respondent but the respondents cannot be bound by any delay on the receipt of the application form and further the respondents cannot be allowed to wait for time immemorial in that regard. There is an additional factor which also needs to be considered that the terms set out in the Government Orders as referred to above and the advertisement in question are quite specific, loud and clear and they cannot be allowed to be twisted or tailored in a manner which suits to the individual applicants. The Courts of law, in case, gives elasticity and leverage as sought by the writ petitioner then obviously the selection proceedings cannot be concluded as even otherwise law is very clear that cut of date is sometime painful to one and beneficial to other. Since in the present case the application so submitted (hard copy was received after the due date) thus merely because the writ petitioner had communicated the same through Email on 19.06.2023 would not make any difference as the two exercises are dependent which in entirety has not been adhered to.

15. For the reasons above, this Court does not find the present case to be a fit case to accord any consideration on the claim of the writ petition and accordingly, the writ petition is **dismissed**.

Order Date :- 21.8.2023

Rajesh