

Court No. - 33

A.F.R.

Case :- WRIT - A No. - 1984 of 2022

Petitioner :- Alok Shukla And Another

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., M.N. Singh

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Siddharth Khare, learned counsel for the petitioner, the learned Standing Counsel for the State-respondent nos.1 &2 and Mr. Nisheeth Yadav, learned counsel for the respondent no.3.

2. This writ petition has been filed inter alia for the following reliefs:-

"(a) a writ, order or direction in the nature of certiorari quashing the advertisement dated 19.01.2022 insofar as it excludes Post Graduate Degree in Geology as a permissible qualification for consideration for the post of Mines Officer.

Alternative, direct the respondents to consider the grievance of the petitioners for including Post Graduate Degree in Geology for consideration for the post of Mines Officer and B.Sc. in Geology as an essential qualification for consideration for the post of Mines Inspector within a short period.

(b) A writ, order or direction in the nature of mandamus commanding the respondent authorities to treat a Post Graduate Degree in Geology for consideration for the post of Mines Officer in Advertisement dated 19.01.2022.

(c) A writ, order or direction in the nature of mandamus commanding the respondent authorities to treat the qualification of B.Sc. in Geology as an essential qualification for consideration for the post of Mines Inspector.

(d) A writ, order or direction in the nature of mandamus commanding the respondent authorities to permit the petitioners to appear in the selection proceeding for the post of Mines Officer pursuant to the Advertisement dated 19.01.2022 after treating a Post Graduate Degree in Geology as one of the required qualification."

3. Brief facts of the case is that an advertisement dated 19.01.2022 has been issued by respondent no.3-UP PSC, Prayagraj inviting applications for 16 posts of Mining Officer. A requisition for 36 posts of Mining Inspector has also been forwarded by the State Government for selection and appointment. The service rule governing the post of Mining Officer and Mining Inspector is known as "the Uttar Pradesh Geology and Mining Service Rules, 1983 (for short "the Rules of

1983”) has been amended from time to time.

4. The required qualification for the post of Mining Officer under the Rules of 1983 as well as in the advertisement as issued by the commission is Degree in Mining Engineering or Diploma in Mining Engineering with one year experience. Similarly, the required qualification for the post of Mining Inspector as per the rules is Diploma in mining engineering.

5. Learned counsel for the petitioners submits that though the Rules of 1983 have been amended from time to time but the qualification required for the post of Mining Officer and Mining Inspector has remained unchanged. Despite the fact that the qualification of post graduate degree in Geology, which is possessed by the petitioners in the present case is much higher than one required under the Rules of 1983 as well as the advertisement. In such circumstances, the petitioners are not in a position to apply in pursuance to the impugned advertisement.

6. He further submits that the qualification required for the post of Mining Inspector, which is diploma in Mining Engineering while B.Sc. in Geology is higher qualification than diploma, has also not been taken into consideration.

7. Learned counsel for the petitioners has pointed out that advertisement issued by the different States wherein the essential qualification required for the appointment on the post of Mining Officer is post graduate in Geology whereas for the post of Mining Inspector is graduate degree in Geology. Hence a representation in this regard has been moved before the State Government to include the aforesaid degrees as essential qualification for the post of Mining Officer and Mining Inspector as such degree is higher than one required as per the advertisement and the Rules of 1983, but no decision has been taken yet.

8. After arguing the matter at length learned counsel for the petitioners

has confined his matter may be placed before the State Government so that appropriate decision may be taken in accordance with law.

9. On the other hand, Mr. Nisheeth Yadav, learned counsel for the respondent no.3-UPPSC as well as learned Additional Standing Counsel opposed the submission made by learned counsel for the petitioners and submits that the issue with respect to qualification for the said posts is a policy matter and it is within the domain of the State Government to take decision in this respect. He has relied upon the judgment of the Apex Court in the case of ***Dr. R.K. Goyal vs. State of U.P. and Ors. reported in (1996) 11 SCC 658.***

10. He further submits that regarding similar controversy, this Court in the case of ***Km. Pratima Gupta vs. State of U.P. & Ors. in Writ-A No.25238 of 2016 decided on 09.01.2019*** has held that undisputedly the advertisement as well as the Rules of 1983 specified a degree of Mining Engineering or Diploma in Mining Engineering with one year experience for the post of Mining Officer and similarly as per rule, qualification for the post of Mining Inspector is diploma in Mining Engineering. Nothing could be placed before the Court regarding any decision of the State Government holding the degree possessed by the petitioners to be equal to that as required as per the advertisement and the Rules of 1983.

11. Mr. Yadav, learned counsel for the Commission further submits that there is no statutory provision obligating either the State or the Commission to consider any degree equivalent to that possessed by the petitioners, however, since the matter is a policy matter, therefore, the same may be placed before the State Government so that appropriate decision may be taken in accordance with law after calling for expert opinion from the Commission.

12. I have considered the submissions made by the parties as well as gone through the entire materials brought on record.

13. Before coming to the merits of the submissions made by the learned counsel for the parties, it would be relevant to refer that as per the Uttar Pradesh Geology and Mining Service Rules, 1983, the qualification for the post of Mining Officer is degree of Mining Engineering or Diploma in Mining Engineering with one year experience and for the post of Mining Inspector is diploma in Mining Engineering.

14. In the present case, it is no doubt that the petitioners possess higher qualification than that as required for the aforesaid posts as per the rule but there is no clarification/notification by the State Government providing for equivalence of any other qualification for the post of Mining Officer and Mining Inspector. It is the State Government which has the powers to prescribe the requisite qualification required for the efficient discharge of duties for the post for which the advertisement is issued. A Full Bench of this Court in the case of ***Deepak Singh and Others vs. State of U.P. and Others being Writ -A No. 24273 of 2018*** has rejected similar plea for grant of equivalence on the ground that petitioner therein possesses higher qualification.

15. Prescription of qualifications and other conditions of service pertains to the field of policy and is within the exclusive discretion and jurisdiction of the State. It is not open to the Courts to direct the Government to have a particular method of recruitment or eligibility criteria. The observation of the Supreme Court made in paragraph 10 of the judgment in ***P.U. Joshi and Others vs. Accountant General, Ahmedabad and others reported in (2003) 2 SCC 632***, read thus:-

"10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in

the constitution of India and not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate."

(Refer: V.K. Sood vs. Secretary, Civil Aviation AIR 1993 SC 2285)

16. In ***Chandigarh Administration vs. Usha Kheterpal Waie and others***, (2011) 9 SCC 645, the Supreme Court, in paragraph 22, observed:-

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. [See J. Rangaswamy vs. Govt. of A.P. (1990) 1 SCC 288 and P.U. Joshi vs. Accountant General (2003) 2 SCC 632]. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."

17. The policy decision has to be taken by the State Government for changing the academic qualification for the post of Mining Officer as well as Mining Inspector, which cannot be judicially reviewed by this Court. The Apex Court in the case of ***Vasavi Engineering College Parents Association Vs State of Telangana & Ors.*** reported in (2019) 7 SCC 172, has held that the Court can neither act an appellate authority nor can usurp jurisdiction of decision maker and make the

decision itself is arbitrary or in violation of any provision of law or is infringing the fundamental rights of any person.

18. In ***Fertilizer Corporation Kamgar Union (Regd.), Sindri vs Union of India***, reported in (1981) 1 SCC 568, it was also observed:-

*“35.We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. **The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded.** If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.”*

19. Reference may also be made to the judgment of the Apex Court in the case of ***Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors.***, reported in (2007) 4 SCC 737, where the Apex Court held as follows:-

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate.”

20. The selection and appointment to any post should be made strictly in accordance with terms of the advertisement and the recruitment rules as has been held by the Apex Court in the case of ***Yogesh Kumar And Others vs Government Of NTC Delhi*** reported in (2003) 3 SCC 548.

21. The issue regarding the fact that post graduate degree in Geology and graduate degree in Geology may be considered as essential qualification for appointment on the post of Mining Officer and

Mining looked into by the State Government as the same is a policy matter and the policy decisions of the State are not to be disturbed/interfered with unless they are found to be grossly arbitrary or irrational.

22. Counsel for the parties agree that the writ petition may be disposed of finally at this stage without calling for further affidavits specifically in view of the order proposed to be passed today as well as to the relief pressed by learned counsel for the petitioners before this Court today.

23. Considering the facts and circumstances of the case and submissions made by the parties, this writ petition is disposed of with a direction to the petitioners to make a detailed representation along with the copy of writ petition, all the documents so advised as well as certified copy of this order before the respondent no.2, i.e. Director, Geology & Mining, U.P., Lucknow, who shall forward the same to the respondent no.1, i.e. Principal Secretary, Geology & Mining Department, Government of U.P., Lucknow. If any such representation is made, the respondent no.1 after obtaining expert opinion from Uttar Pradesh Public Service Commission, Prayagraj, U.P. shall make all endeavours to consider and decide the same, in accordance with law, preferably within a period of two months from the date of receipt of the said representation.

24. Accordingly, this writ petition is **disposed of**. No order as to costs.

(Manju Rani Chauhan, J.)

Order Date :- 24.02.2022
JK Yadav