

State of U.P. and Others Vs. Param Hansh Singh

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Court : Allahabad

Decided On : May-23-2001

Reported in : [2000(85)FLR9]; 2002LabIC158; (2001)2UPLBEC1685

Judge : G.P. Mathur and ;Bhagwan Din, JJ.

Acts : [Uttar Pradesh Excise Act, 1910](#) - Sections 3(2), 10(2) and 53; Uttar Pradesh Excise Rules - Rule 13; Allahabad High Court Rules, 1952 - Rules 5 and 19; [Constitution of India](#) - Articles 14, 226 and 309; Supervisors Services Rules, 1983 - Rules 5(1), 9, 13 and 27; [Uttar Pradesh Excise Act, 1910](#) - Sections 3(2), 10(2), 50, 53, 60, 61, 62, 63 and 65

Appeal No. : Special Appeal Nos. 91-94, 122, 552 and 121 of 2000

Appellant : State of U.P. and Others

Respondent : Param Hansh Singh

Advocate for Def. : Ashok Khare and; W.H. Khan, Adv.

Advocate for Pet/Ap. : Sabha Jeet Yadav, Adv.

Disposition : Special appeals allowed

Judgement :

G.P. Mathur, J.

1. The controversy Involved in all these special appeals is Identical and, therefore, they are being disposed of by a common order. Special Appeal No. 91 of 2000. State of U. P. and others v. Param Hansh Singh, shall be treated as leading case.

2. An advertisement was issued on 8.4.1997 inviting applications for the post of Excise Constables in the Excise Department of State of U. P. The applications were to be submitted before the respective Divisional Deputy Excise Commissioners. In pursuance of the advertisement, the respondents in the appeal (writ petitioners) applied for the post. A selection was held at the level of Deputy Excise Commissioners on 28.8.1997 in which the physical measurement of the candidates, namely, height and chest (expanded and unexpanded) was also taken. The writ petitioners having been selected were issued appointment letters on 30.8.1997. It appears that the State Government received complaints that the persons who did not meet the prescribed qualifications regarding physical measurement had been selected and consequently, a direction was issued to the Excise Commissioner to hold a fresh examination of all candidates who had been selected. The Excise Commissioner, U. P., accordingly passed an order on 6.1.1998 directing that all the selected candidates should appear at the Head Quarters at Allahabad on 20.1.1998 for examination of their physical measurements. The Chief Medical Officer, Allahabad, constituted a team of two doctors, namely, Dr. Ajit Singh and Dr. Anil Kumar, who measured the height and chest of over 100 candidates who had been selected in the selection held at the divisional level in August. 1997. According to their report, the writ petitioners did not meet the requirement regarding physical standards prescribed in the Rules. The Excise Commissioner, U. P., by the order dated 1.10.1999 directed the Deputy Excise Commissioner to take appropriate steps by issuing notice for termination of the services of the writ petitioners. The Deputy Excise Commissioner, thereafter, issued a notice to the writ petitioner (Param Hans Singh) on 7.10.1999 to show cause why his services should not be terminated, as he did not meet the requirement of the Rules regarding physical standards. Separate notices were issued to all the writ petitioners mentioning their height and chest measurement (expanded and unexpanded). The writ petitioners submitted reply to the show cause notices and after considering the same their services were terminated by the order dated 6.11.1999 on the ground that they did not meet the

requirement of Rule 13 of the Rules which governed their recruitment. The termination order was challenged by the respondents by filing writ petitions under Article 226 of the Constitution and the learned single Judge by his judgment and order dated 4.1.2000 quashed the order dated 6.11.1999. Feeling aggrieved the State of U. P., Excise Commissioner and Deputy Excise Commissioner have preferred this special appeal.

3. The Governor of U. P., exercising powers conferred by the proviso to Article 309 to the Constitution and in supersession of all existing Rules and orders on the subject made Constables, Drivers and Tari Supervisors Services Rules, 1983 (hereinafter referred to as the Rules), which was published in U. P. Gazette on 23.5.1983. Rule 5 (1) (c) provides that recruitment to the post of Excise Constables (ordinary scale) shall be made by direct recruitment. Rules 9 and 13 of the Rules, which have abearing on the controversy in hand, are being reproduced below :

Rule 9. A candidate who has :

(i) served in the territorial army for a minimum period of two years :

(ii) has obtained a 'B' certificate of the National Cadet Corps : shall other things being equal, be given preference in the matter of direct recruitment.

Rule 13. No candidate shall be appointed to a post in the service unless he be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties. Before a candidate is finally approved for appointment to the service, he shall be required to produce a medical certificate of fitness In accordance with the Rules framed under Fundamental Rule 10 as contained in Chapter III of the Financial Hand Book, Volume II. Part III :

Provided that a medical certificate of fitness shall not be required from a candidate recruited by promotion :

Provided further that in the case of candidates for the posts of Excise Constables, their chest measurements should not be less than 81.3 cm. unexpanded and 86.4 cm. after expansion and height should not be less than 167.6 cm. (162.6 cm. in

the case of candidates belonging to Kumaon Division and the districts of Pauri Garhwal. Tehri Garhwal. Uttar Kashi and Chamoli).

4. The second proviso to Rule 13 shows that the minimum height for the post of Excise Constable (other than those belonging to hills] is 167.6 cm. and the chest measurement should not be less than 81.3 cm. unexpanded and 84.6 cm. after expansion. It appears that the standards were originally in inches and after enforcement of the metric system, it was converted into centimetres. It converted into inches, the minimum height comes to 5 feet 6 inches and the chest measurement

Sp. App. No. 91 of 2000 (Param Hansh)

Sp. App. No. 92 of 2000 (Prem Chand)

Sp. App. No. 93 of 2000 [Rajesh Prasad)

Sp. App. No. 94 of 2000 (Sanjay Hajela)

Sp. App. No. 122 of 2000 (Ram Briksha Pd. Patel)

Sp. App. No. 552 of 2000 (Sualb Ahmad)

Sp. App. No. 121 of 2000 [Rajendra Kumar Sen)

Sp. App. No. 121 of 2000 (Mohd. Salim)

Sp. App. No. 121 of 2000 (Dinesh Kumar)

Sp. App. No. 121 of 2000 (Rajendra Kumar)

5. A perusal of the details given above would show that the respondents did not satisfy the requirements of Rule 13 regarding physical measurements as either they were short in height or their chest measurement (expanded and unexpanded) was less than the prescribed standard.

6. The order of termination was assailed by the writ petitioners before the learned single Judge on several grounds which were mostly repelled. The only ground

which found favour with him was that there was no material that the finding of the selection committee as regards measurement of height and chest was wrong. It will be convenient to reproduce the relevant part of the finding of the learned single Judge which reads as follows :

'With regard to present cases, it appears that admittedly at the time of selection and appointments, petitioners were found to be fit and satisfying requisite qualifications and such comes to 32-34 inches. The measurement of the respondents done by the team of doctors at the Head Quarters on 20.1.1998 was found as follows :

Height 173.5 cm. chest 79.5 cm.- 84 cm. Height 165.8 cm. chest 82.0 cm.- 87.0 cm. Height 170.0 cm. chest 80.0 cm.- 85.0 cm. Height 161.5 cm. chest 84.0 cm.- 88.0 cm. Height 165.8 cm. chest 86.0 cm.- 91.0 cm. Height 170.0 cm. chest 79.0 cm.- 84.0 cm. Height 165.7 cm. chest 81.0 cm.- 86.0 cm. Height 169.5 cm. chest 79.0 cm.- 84.0 cm. Height 165.0 cm. chest 84.0 cm.- 85 cm. Height 172.7 cm. chest 80.0 cm.- 85.0 cm. finding was by the selection committee. There is no material to reach the conclusion that the findings of the selection committee as regards measurement of height and chest were wrong. The Impugned order also does not record such a finding. The allegation that the members of the selection committee did not have expertise to measure height and chest is also devoid of any merit as ordinarily it cannot be accepted that in such measurement any expertise is required. On behalf of the respondents also, the above was not substantiated in any manner at the time of hearing. Therefore, findings against the petitioners in the impugned order on the aforesaid ground cannot stand.'

7. Sri Sabhajeet Yadav, learned standing counsel has submitted that the view taken by the learned single Judge that there was no material to come to the conclusion that the finding of the selection committee regarding physical measurement was wrong is patently against the record inasmuch as in the measurement done by the team of doctors at the Head Quarters of Excise Commissioner at Allahabad, which examined all the candidates, found that the writ petitioners did not meet the requirement of Rule 13 as either they were short in height or their chest measurement was less than the prescribed standard. He has

further submitted that the question whether the selection committee had the expertise to measure height and chest is wholly irrelevant as it has been found as a fact that the writ petitioners did not meet the requirement of the Rule regarding height and chest. Sri Ashok Khare, learned senior counsel for the respondents in Special Appeal Nos. 91, 92, 93 and 122 of 2000 has submitted that the requirement of Rule 13 is that the candidate should be in good medical and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties and before his appointment he has to produce a medical certificate of fitness in accordance with Fundamental Rule 10 whereunder the Chief Medical Officer is not required to give any certificate regarding physical measurement. Learned counsel has further submitted that the stand taken in the counter-affidavit filed by the State before the learned single Judge was that the officers of the department were not technically qualified for conducting the physical measurement test. However, the Rules do not show that the selection committee has to have any technical expertise for taking the physical measurements and, therefore, the selection of the writ petitioners cannot be faulted on this ground.

8. It is difficult to accept the contention of the learned counsel for the writ petitioners. Rule 13 contains a main clause and then there are two provisos. The main clause provides that a candidate shall not be appointed in the service unless he is in good medical and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties. He has to produce a medical certificate of fitness under Fundamental Rule 10. This clause applies to the entire service which consists of Tari Supervisors, Head Excise Constable, Excise Constables, Excise Constables (selection grade), Drivers and Drivers (selection grade) as laid down in Rule 4. The second proviso specifically deals with the post of Excise Constables and, therefore, for such category of candidates, there is an additional requirement regarding height and chest. A person seeking appointment as Excise Constable must not only satisfy the requirement of the main clause but also the requirement of second proviso. If a person satisfies the requirement of the main clause but does not satisfy the requirements of second proviso, he would be lacking in qualification regarding physical measurements and cannot be held eligible for appointment on the post of Excise Constable.

9. Fundamental Rule 10 of Chapter III of Financial Hand Book Vol. II, Part II to IV reads as under :

'10. Unless any other form of medical certificate is prescribed in the rules, regulations or instructions regulating recruitment to a particular service or post, a medical certificate of fitness for Government service shall be in the following forms :

I do hereby certify that I have examined.....a candidate for employment In the.....department and cannot discover that he/she has any disease (communicable) or otherwise, constitutional weakness or bodily Infirmity except..... do not consider this a disqualification for employment in the..... department.

The candidate's age according to his/her own statement is.....years and the appearanceyears.'

A perusal of the Rule would show that the certificate given here is of a different type, namely, whether the person concerned is suffering from any disease or has any constitutional weakness or bodily infirmity. The certificate does not contemplate taking measurement of height or chest of the person.

10. The contention raised by the learned counsel for the respondent on the basis of the stand taken in the counter-affidavit is equally untenable. The specific plea taken therein in paragraph 11 is that complaints had been received that certain persons who were not eligible as they did not meet the physical requirements regarding height and chest had been selected and appointed. In the order passed by the Excise Commissioner. U. P.. on 6.1.1998 (Annexure-1 to the stay application filed in special appeal), it is mentioned that the State Government had passed orders for getting fresh measurement done of all the selected candidates in view of irregularities done in the selection held in August, 1998. The order passed by the Excise Commissioner, U. P., on 1.10.1999 (Annexure-3 to the stay application filed in special appeal) mentions that the State Government had received complaints that corruption had prevailed at the time of the selection and some persons not meeting the prescribed physical standards had been

selected.....11. In the notice issued to the writ petitioner, Param Hansh Singh, on 7.10.1999 (Annexure-4 to the writ petition), it was mentioned that in the measurement done by the team of doctors constituted by Chief Medical Officer. Allahabad, on 20.1.1998, his height was found to be 173.5 cm. and the chest was found to be 79.5 cm. (unexpanded) and 84.5 [after expansion) and thus he was not qualified for being appointed as Excise Constable. The material on record shows that the State Government had received complaints that irregularities in selection had been done on account of corrupt reasons due to which some persons who did not meet the requirements regarding physical standards had been selected. It was thereafter that the Excise Commissioner, U. P.. directed all the candidates to appear at the Head Quarters at Allahabad and a fresh physical measurement was done. It has been found as a fact that the writ petitioners did not meet the requirement of the Rule regarding physical measurements. There is no averment in the writ petition that the measurement taken by the team of doctors at the Head Quarters on 20.1.1998 is not correct nor any such contention was raised during the course of the argument. The mere mention of one sentence in the counter-affidavit that the selection committee did not possess the expertise to take physical measurements of the candidates cannot be of any assistance to the writ petitioners. The material on record shows that the fresh physical measurement was got done as the State Government had received complaints that substandard persons who did not meet the requirement of the Rules had been selected as a result of corruption. It may be pointed out that the height of one of the candidates namely, Sanjay Hajela (respondent in Special Appeal No. 94 of 2000) was found to be 161.5 cm. which is 6.1 cm. less than the prescribed minimum height. It is impossible to believe that selection of such a candidate was as a result of want of expertise on the part of the selection committee and the only inference possible is that he was selected on totally extraneous considerations. The selection of the writ petitioners cannot be held to be valid only on account of a stray sentence in the counter-affidavit when it has been found as a fact that they did not meet the requirement of the Rule regarding physical standards and they were unqualified to be appointed as Excise Constables.

11. Sri Ashok Khare has next submitted that there was a very minor deficiency in the height or chest measurement of the writ petitioners and there can be variation

in measurement if different methods are adopted by different people. It is not the case of the writ petitioners that the measurement done by the team of doctors at the Head Quarters at Allahabad on 20.10.1998 was not correct. In fact, no such contention was raised either before the learned single Judge or before us in the appeal that the measurements noted by the team of doctors was not accurate. The language used in the second proviso to Rule 13 contains the words should not be less than. The Rule has fixed the minimum height and the measurement of chest (expanded and unexpanded) and there is no scope for any kind of variation in the same. If a candidate is unable to meet the prescribed standard even by a slight margin he has to be held as unqualified. If any deviation from the Rule is permitted, it will lead to complete uncertainty, as the extent to which such deviation may be allowed will give rise to arbitrariness and nepotism. The requirement of a Rule regarding initial recruitment to a service must be strictly construed otherwise it will lead to arbitrariness and will also give scope for corruption.

12. Sri Khare has also contended that the writ petitioners had put in 2 years of service and there is no material to show that on account of deficiency in their physical measurements, they are inefficient in work in any manner and, therefore, termination of their service is not Justified. It is difficult to accept such a contention where the question of qualification of a candidate for appointment in a service is in issue. In the case in hand, we are not required to judge the work and performance of a candidate. The question in issue is whether the writ petitioner was qualified to be appointed to the post of Excise Constable. If a service Rule prescribes a minimum qualification for appointment, then while judging the validity of the appointment. It has to be seen whether he possessed the minimum qualification prescribed under the Rules. The appointment of a candidate not possessing the prescribed minimum qualification cannot be validated or upheld on the ground that his performance later on has been satisfactory or has been otherwise good.

13. The provision of U. P. Excise Act, 1910 thereafter referred to as the Act) show that an Excise Constable has to perform tough duties. Section 3(2) defines 'Excise Officer' and it means a Collector or any officer or person appointed or invested with powers under Section 10. Section 10 (2) (d) empowers the State Government to appoint officers of the Excise Department with such classes and

with such designation, powers and duties under this Act as the State Government may think fit. by issuing notification to that effect. Chapter IX of the Act deals with the powers and duties of the officers. Section 50 thereof provides that any officer of the Excise Department may arrest without warrant any person found committing an offence punishable under Sections 60, 62, 63 or 65 and may seize and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under the Act or other law for the time being in force relating to excise revenue and may detain and search any person upon whom, and any vessel, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be. Section 53 gives power to an officer of the Excise Department to search any place where he has reason to believe that an offence punishable under Sections 60, 61, 62, 63 or 65 has been, is being or is likely to be committed and that a search warrant cannot be obtained without affording the offender an opportunity to escape or concealing evidence of the offence. Chapter X deals with offences and penalties. It is averred in para 11 of the counter-affidavit filed in reply to the writ petition that an Excise Constable has to perform various preventive and detective duties involving raids, checking and chasing of criminals and hence minimum physical requirement has been made mandatory, in para 21, it is averred that Excise Constable has to participate in raids, chase and overpowering the criminals, serve as security guards for raiding and inspecting parties, make personal searches on the basis of information regarding Excise and narcotic goods. Many times the raiding parties have to face the fury and onslaught of Excise/Narcotic criminals and the Excise Constable has to defend the officers from such elements. The Excise Constable in the Enforcement Wings are provided with weapons (guns, etc.) by the Government which they have to carry and use as per requirements of the situation. Their duty is to detect and prevent crimes and to use as protection force for the department. The minimum physical measurement has been prescribed so that the Excise Constables may project an effective appearance before the criminals and they are able to perform their duties effectively. The correctness of the stand taken in the counter-affidavit cannot be doubted. The minimum height and chest measurement is prescribed for members of forces who have to perform tough duty and have to face the criminal element- Rule 9 of the Rules provides that a person who has

served in the territorial army for 2 years or has obtained a 'B' certificate of the National Cadet Corps shall other things being equal, be given preference in the matter of recruitment. This Rule clearly shows that a person who is capable of performing tough physical duties has to be given preference in the matter of appointment and this has a direct correlation with the physique of the person. Therefore, the appointment of such persons who do not meet the prescribed minimum physical standards cannot be validated on the ground that there is only a slight variation or that there is no complaint against their work or efficiency.

14. It is well-settled by a catena of decisions of the Apex Court that a person who does not possess the minimum qualification cannot be appointed to a post. In *District Collector v. Tripura Sundari Devi*, 1990 (3) SCC 655, it was held as follows :

'When an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualification in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.'

15. In *State of Rajasthan v. Hitendra Kumar Bhatt*, (1997) 6 SCC 574, the last date for receipt of application was 29.6.1992 and the minimum qualification prescribed was B.S.T.C. or its equivalent. The respondent had appeared in the B.Ed. examination but his result was declared on 6.8.1992. By the interim order of the High Court in a writ petition, he was called for Interview and was selected and appointed. In appeal, the Supreme Court held that the respondent was not eligible for consideration as he did not possess the qualification on the last date prescribed for submission of the application. It was further observed that relaxing the prescribed requirement in the case of one individual may, therefore, cause injustice to others and accordingly his appointment was set-aside. In *Union of*

India v. Ravi Shankar, (1998) 3 SCC 146, it was held that the person not possessing the requisite qualification under the recruitment Rules cannot have any right of appointment. Similar view was taken in Upen Chandra Gogoi a. State of Assam. (1998) 3 SCC 381.

16. The writ petitioners did not possess the minimum qualification for appointment as Excise Constable as they did not meet the requirement of second proviso to Rule 13 of the Rules and, therefore. In view of the settled legal position, their appointment was illegal and consequently, the order of termination of their service was perfectly valid and the view to the contrary taken by the learned single Judge cannot be sustained.

17. Sri Ashok Khare next contended that the second proviso to Rule 13 which prescribes a minimum height and chest measurement is arbitrary and, is therefore, liable to be struck down. In support of his submission, he placed reliance on a decision rendered in C.M.W.P. No. 36264 of 1994, Krishna Kumar Sharma v. State of U. P., decided on 28.5.1997. This contention was not accepted by the learned single Judge on the ground that there the Court was considering a case relating to promotion to the post of Excise Inspector which was governed by a different Rule. Apart from what the learned single Judge has observed, we must place it on the record that we are in complete and total disagreement with the view taken in the case of Krishna Kumar Sharma (supra). The aforesaid decision is a very short one and the only reason given therein is that a man should not suffer for no fault of his unless the physical requirement is absolutely necessary for the duties which he performs. It is further observed therein that the duties of an Excise Inspector do not require that he should be above 162 cm. in height and that brain and character matter more than height. We have already referred to the provisions of U. P. Excise Act and there cannot be even a slightest doubt that the nature of duties which has to be performed by an Excise Inspector require toughness, physical strength and capacity to deal with criminals. The height and chest measurement of a person have always been held to be a good criteria for judging the physical strength of a person and his capacity to deal with criminals. Minimum height and chest measurement is prescribed in many services which require enforcement of law and dealing with criminals not only in India but in many parts of

the world. It is preposterous to contend that prescription of a minimum height has no nexus with the duties which has to be performed by an Excise Inspector. The writ petitioners cannot get any advantage from the decision rendered in the case of Krishna Kumar Sharma (supra) which, in our opinion, does not lay down the correct law.

18. Special Appeal No. 94 of 2000. Deputy Excise Commissioner and State of U. P. v. Sanjay Hajela, has been filed challenging the order dated 5.1.2000 passed by a learned single Judge in Civil Misc. Writ Petition No. 318 of 2000. The height of the writ petitioner, Sanjay Hajela, was found to be 161.5 cm. in the measurement done on 20.1.1998. His height is 6.1 cm. less than the prescribed minimum height. He was given notice on 7.10.1999 to show cause why his services be not terminated and after considering his reply, the Deputy Excise Commissioner passed a detailed order on 6.11.1999 holding that he did not fulfil the requirement of the Rule and accordingly, terminated his services. This order was challenged by Sanjay Hajela by filing the writ petition in which a learned single Judge by his order dated 5.1.2000 stayed the operation of the termination order dated 6.11.1999 and further directed that he shall continue in service and shall be paid his salary. Sri W. H. Khan, who has appeared for the writ petitioner has raised a preliminary objection that the special appeal against the Interim order is not maintainable. In our opinion, the contention raised has no substance. The provisions of Chapter VIII, Rule 5 of Allahabad High Court Rules do not prohibit filing of a special appeal against an interim order. If the interim order is of such a nature which grants principal relief claimed in the writ petition, the special appeal against such an order cannot be held to be barred. The order passed by the Deputy Excise Commissioner mentions in detail that the minimum height for recruitment and appointment of an Excise Constable is 167.6 cm. but the height of the writ petitioner (Sanjay Hajela) is only 161.5 cm. and, therefore, he did not possess the prescribed minimum qualification regarding physical measurement. It was on this ground that the services of the writ petitioner were terminated. We do not find any infirmity in the order of the Deputy Excise Commissioner as we have already held that such an order is perfectly valid. By passing the interim order, the learned single Judge granted a relief which was available to the writ petitioner at the time of the final hearing. On the facts and circumstances of the case, we do

not find any ground whatsoever on which the order of termination of service could have been stayed.

19. Since we have heard a bunch of special appeals relating to termination of service of Excise Constables as a result of fresh measurement done at the Head Quarters of the Excise Commissioner at Allahabad, we requested learned counsel for the writ petitioner to address us on merits also as simply setting-aside the interim order and remitting the matter back to the learned single Judge would have meant waste of public time and further harassment to the parties. Sri W. H. Khan addressed us on the merits of the writ petition and has raised two additional contentions. His first contention is based upon Rule 19 which provides that a person on appointment to a post in the service in or against permanent vacancy should be placed on probation for a period of one year. Sub-rule (2) of this Rule provides that the period of probation shall in no case be extended by more than one year. Learned counsel has contended that the writ petitioner having been appointed on 30.8.1997 shall be deemed to have been confirmed on 30.8.1999 and, as such, his services could not have been terminated by the order dated 6.11.1999. In our opinion, the contention raised is wholly misconceived. The provisions of Rule 19 will come into play after a person has been validly appointed to a post in the service and thereafter he is allowed to continue for more than 2 years. As mentioned earlier, the Government had received serious complaints regarding corruption and gross violation of Rules in the selection held in August 1997 and, therefore, it directed a fresh physical measurement of the selected candidates. There is no dispute that the height of the writ petitioner is 6.1 cm. less than the prescribed minimum height and, therefore, he does not meet the requirements of second proviso to Rule 13. The writ petitioner was thus not at all qualified to be appointed as Excise Constable. Though the impugned order recites that the services are being terminated but in effect and in reality, it is an order of cancellation of appointment. A person who does not possess the prescribed minimum qualification and secures an appointment in total violation of the Rules cannot get advantage of Rule 19 and the status of a confirmed employee cannot be conferred upon him only by passage of time. If such a contention is accepted, it would mean that if a person not possessing the prescribed minimum educational qualification somehow secures an appointment by submitting forged degrees and

the fraud is not detected during the period when he is on probation, then the employer is debarred for all times to come to take action against him and to cancel his appointment though the true facts are subsequently revealed.

20. Sri Khan has further urged that Rule 27 of the Rules empowers the State Government to grant relaxation from operation of any Rule and by making appointment of the writ petitioner, it would be deemed that the Rule has been relaxed in his favour. The interpretation sought to be placed upon Rule 27 cannot be accepted. This Rule empowers the State Government to grant relaxation from operation of any Rule regulating the conditions of service of persons appointed to the service where it causes undue hardship in any particular case. This Rule will come into play after a person has been validly appointed to the service and later on during the course of his service, the operation of any Rule may be causing undue hardship to him. The Rules do not empower the State Government to relax the qualification prescribed in Rule 13 right at the time of the initial appointment. The appointment of unqualified person by itself cannot lead to an inference that the State Government has granted relaxation from the Rules. If an interpretation as suggested by learned counsel is given, it will make the Rule arbitrary and it will be hit by Article 14 of the Constitution. No other point was urged by Sri Khan for assailing the termination order dated 6.11.1999. The writ petition filed by Sanjay Hajela, is therefore, liable to be dismissed.

21. Special Appeal No. 552 of 2000 has been preferred by the Deputy Excise Commissioner and State of U. P. against Suaib Ahmad. The chest measurement of Suaib Ahmad, as found on 20.1.1998 at the Head Quarters of Excise Commissioner was 79 cm.-84 cm.-which is less than the minimum prescribed. The Deputy Excise Commissioner, Gorakhpur, issued a notice dated 8.10.1999 asking him to show cause why his services should not be terminated as he did not meet the prescribed minimum standards regarding physical measurement. This order was challenged by Suaib Ahmed by filing Civil Misc. Writ Petition No. 49242 of 1999. The learned single Judge by his order dated 4.1.2000 quashed the notice dated 8.10.1999 in view of the findings recorded by him in C.M.W.P. No. 47786 of 1999, Param Hansh Singh v. State of U. P. and others. The present special appeal was filed on 11.2.2000 against the aforesaid order. It appears that by a

subsequent order dated 22.11.1999, the services of Suaib Ahmed were terminated. He then filed an amendment application and the learned single Judge by his order dated 8.3.2000 corrected his judgment and order dated 4.1.2000 and substituted '22.11.1999' in place of '8.10.1999'. The result of this correction in the Judgment and order - was that the termination order dated 22.11.1999 stood quashed. The appellants then filed an amendment application on 4.5.2000 that the memorandum of appeal be amended corrected and in place of '4.1.2000' the date be corrected as '8.3.2000'. This application was allowed on 13.4.2001. Now the special appeal is directed against the corrected judgment dated 8.3.2000 by which the termination order dated 22.11.1999 has been quashed. The learned single Judge allowed the writ petition in view of the finding recorded by him in C.M.W.P. No. 47786 of 1999. *Param Hansh Singh v. State of U. P.* Since we are setting aside the judgment and order in the aforesaid writ petition, the present special appeal also deserves to be allowed and the writ petition is liable to be dismissed.

22. In view of the discussions made above, all the special appeals are hereby allowed and the impugned judgments and orders passed by the learned single Judge in different writ petitions are set aside. The writ petitions giving rise to present special appeals are hereby dismissed. No cost.