

Kaushal Kishore Vs. U.P. Public Services Commission and ors.

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Court : Allahabad

Decided On : May-25-2001

Reported in : (2001)3UPLBEC2142

Judge : A.K. Yog, J.

Appeal No. : Civil Misc. Writ Petition No. 41032 of 1997

Appellant : Kaushal Kishore

Respondent : U.P. Public Services Commission and ors.

Advocate for Def. : Pushpendra Singh, Adv.

Advocate for Pet/Ap. : L.K. Dwivedi, Adv.

Judgement :

A.K. Yog, J.

1. Heard Sri L.K. Dwivedi, learned Counsel for the Petitioner and Shri Pushpendra Singh, learned Counsel appearing on behalf of Respondent No. 1. Respondent Nos. 2, 3 and 4 shall be deemed sufficiently served as per affidavit of service and the copy of summons annexed therewith. Respondent No. 4 has filed counter-affidavit and represented by Shri S.T.M. Rizvi, Advbcate.

2. Petitioner appeared as an examine candidate in the examination conducted by U.P. Public Services Commission on filling up the post of Upper/Lower Division Assistant/Assistant Accountant. It is urged that he appeared in General Knowledge Paper held on 16th January, 1997. It is alleged that he objected to the Examination Officials/Invigilators in talking loudly in the hall and disturbing the Petitioner, which annoyed these official, Respondent No. 3, who managed to harm the petitioner by scoring certain position of his answer book, after examination was over, and thereafter charging attendance sheet to as to manage to declare the petitioner as absent in the Second Meeting. It is also alleged that the petitioner went to made complaint to the Commission. A Photostat copy of the Gate-pass shows that on 16th January, 1997 he had visited Commission at 2.30 p.m. It may be noted that Second Meeting had started at 2.00 p.m. on that day.

3. Commission was directed to produce original record and the same has been perused in the presence of the learned Counsels for the parties.

4. This petition could be disposed on a short point, namely, the petition is not the proper forum because of highly disputed questions of fact being raised. In order to adjudicate upon the truthfulness of the version of the petitioner or that of the Commission, both the parties should be given opportunity to lead evidence, both oral as well as documentary and the same cannot be done in writ jurisdiction. It will not be safe to believe or disbelieve version on either side on the basis of affidavits alone. However, this Court is also conscious of the fact that in case petitioner was directed to file civil suit, it may consume several years and the real remedy sought by the Petitioner may be lost by passage of long time.

5. Consequently, this Court endeavoured to ascertain that in case petitioner is awarded maximum marks in case his version is accepted in toto and in the paper in which he absented i.e. in Second Meeting on 16th January, 1997, average marks in the basis of marks obtained in the said examination can the petitioner compete and come within the merit zone of successful candidate becoming eligible for being recommended for the post in question. On such exercise having been done and having obtained report from the Commission, it transpires that even if Petitioner is accorded extra six marks in First Paper (First Meeting of 16th

January, 1997 as per claim of the petitioner and further or the paper in which he is said to be absent, he is given average mark as per ratio laid down by the Apex Court and this Court in several decisions, the petitioner does not secure enough marks to come in the eligibility mark zone. In view of the above. I do not find any useful purpose shall be served by deciding the petition on merit after taking upon itself the exercising of adjudicating the correctness of the averments made by Respondents. Such an exercise will be an exercise in futility.

6. Shri L.K. Dwivedi, learned Counsel for the petitioner pointed out at this stage that petitioner had appeared in all the papers for the post of Assistant Accountant (Examination) and that the case of the petitioner should be considered on merits as there is no hurdle for the same. Shri Pushpendra Singh, learned Counsel for the Commission stated that if that he so, the case of the petitioner shall be considered provided he comes in the eligibility merit zone.

7. Consequently, petition is final disposed of subject to the observation made above.