

Kanta Rani and ors. Vs. Staff Selection Commission and ors.

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Court : Delhi

Decided On : Aug-28-1989

Reported in : 39(1989)DLT330

Judge : Leela Seth and; P.K. Bahri, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal No. 598 of 1989

Appellant : Kanta Rani and ors.

Respondent : Staff Selection Commission and ors.

Advocate for Def. : Mr. Sat Pal

Advocate for Pet/Ap. : V.P. Singh,; Anil Bhatnagar,; Dhruv Aggarwal,;

Judgement :

Leila Seth, J.

(1) A piquant situation had developed in his case and we were not quite clear at the beginning as to how we should proceed, consequently, we heard the matter at length.

(2) On 6th October, 1988, Mr. A.K. Dhull and Mr. Narendra Singh filed Civil Writ No. 2306/88. They imp leaded the Staff Selection Commission, Department of

Personnel & Training, Ministry of Home Affairs, the Secretary, Ministry of Home Affairs and the Municipal Corporation of Delhi as respondents.

(3) In the said petition, it was mentioned that the Municipal Corporation of Delhi was running a large number of primary schools and employed thousands of teachers. Consequently, the Municipal Corporation of Delhi requested the Staff Selection Commission to select Assistant Teachers (Primary) for them. In response to this request the Staff Selection Commission published an advertisement on 17th September, 1988 and specified certain educational qualifications.

(4) The only part of this advertisement with which Mr. Dhull and Mr. Singh were aggrieved was the note appended to the educational qualification, which reads: 'Candidates who have yet to appear at the academic/certificate examination or whose result has been withheld or not declared on or before 1.8.1988 are not eligible.'

(5) The case of these two gentlemen was that both of them had enrolled themselves at the Maharishi Dayanand University, Rohtak and had sat for the B. Ed examination in April, 1988 but the declaration of results, holding them successful, was issued by the University on 17th August, 1988. They contended that the date of 1st August, 1988, fixed by the Staff Selection Commission, as the educational eligibility date was arbitrary and there was no rationale behind fixation of this cut off date especially as the last date for submitting applications was 10th October, 1988 and the written examinations were to be held on 18th December, 1988. They also indicated that in some examinations held by the Union Public Service Commission Central Recruitment Board etc. candidates were permitted to take the examination even if they did not have the requisite qualifications on that date as long as they 'come to possess the minimum educational qualification subsequently'.

(6) On 7th October, 1981 a Bench of this Court issued notice to show-cause to the respondents why rule may not issue. On 4th November, 1988, the petition was disposed of in limine with the following order : 'The grievance of the petitioner is that in spite of the fact that the last date for submission of application was

10.10.1988 but it was provided that the candidates must possess the qualifications prior to 1.8.1988. The petitioners have acquired qualifications after 1.8.1988 but prior to 10.10.1988. The contention of Shri V.P. Singh, the learned counsel, for the petitioner before us, is that this is contrary to recognised principles and even the Handbook of examination conducted by the UPSC. We find that the contention of Mr. Singh is perfectly correct and the date has been fixed arbitrarily. The question now arises as to whether at this stage we could exercise discretion under Article 226 of the [Constitution of India](#) to direct the respondents to readvertise the post and invite fresh applications. It has been stated that as many as 35000 applications have been received and 1000 teachers are to be selected. The examination has to be held on 18.12.1988. In case we make the rule absolute, the result would be that the respondents will have to invite fresh applications and it would be absolutely impossible to hold the examination on 18.12.1988 as is already fixed. The further result would be that 35.000 applicants who have been waiting for a chance will be deprived of such a chance for quite some time. In these circumstances, we are not inclined to exercise our discretion in favor of the petitioners. However, in case for any reason the examinations are postponed Mr. Sat Pal learned counsel for the respondents states that posts will be advertised again and in that event we have no doubt the petitioners will be found eligible to apply for the same. With these observations, we dispose of the petition.'

(7) From the order of 4th November, 1988, it is apparent that the Bench held that the date. fixed is arbitrary. However, it did not exercise its discretion to grant any relief in view of the fact that time was short and it would result in depriving 35,000 applicants of their chance to sit for the examination due to be held on 18th December. 1988. Both sides were aggrieved by this order.

(8) Thereafter, on 7th November, 1988, Mr. Dhull and Mr. Singh filed a special leave petition in the Supreme Court, being special leave to Appeal (Civil) No. 13648 of 1988. After notice, on 2nd January, 1989 Hon'ble Mr. Justice G.L. Oza and Hon'ble Mr. Justice S.R. Pandian passed the following order: 'According to the petitioners, they have appeared in the examination. No decision has been taken yet in respect of the observation made by the High Court in this appeal, it is in our opinion the special leave petition at this stage is premature. The special leave

petition is thereforee rejected.'

(9) The Staff Selection Commisswion, the Secretary to the Government of India, Ministry of Home Affairs and the Municipal Corporation of Delhi also filed a special leave petition, being Special Leave to Appeal (Civil) No. 1822/89. On 23rd March, 1989, a Bench comprising of Hon'ble Mr. Justice K.N. Singh and Hon'ble Mr. Justice Kuldip Singh also dismissed this special leave petition. The order reads : 'The Special Leave Petition is dismissed. However, the question that the High Court could interfere with the advertisement, fixing the date of eligibility is left open.'

(10) A number of writ petitions being Civil Writ Nos. 598,771,805, 807,809,820,840. 857, and 1009 of 1989 have been filed. Since the point in issue is the same, we are dealing with Civil Writ No. 598 of 1989, and the decision in this case will cover the other cases as well. The challenge in these petitions is the same as that in Dhull's case as above indicated. The eleven petitioners were all students of Maharishi Dayanand University, Rohtak and sat for the B. Ed. examination in April, 1988 but their results were declared only on 17th August, 1988. However, they replied to the advertisements dated 17th September, 1988 within time and were issued roll numbers, as admittedly, the applications are scrutinized after the written examinion. Consequently, they sat for the examination held on 18th December, 1988 and were successful. The examination results were published in the Employment News, which contained the following note : 'SSC conducted an examination for recruitment of Primary Teachers in the Municipal Corporation of Delhi on 18th December 1988. The following is the list of candidates who have qualified for being called for interview. It may. however, be noted that the candidates who do not fulfill any of the conditions of eligibility prescribed in the Notice of the examination will not be called for the interview. The result given below is thus subject to verification of eligibility, the category (as shown below) and also the correctness of the information furnished by the candidate in his/her application.'

(11) The petitioners were also directed by letters dated 21st February 1989 to produce within a week proof in support of the fact that their B. Ed. examination

result had been declared earlier than 1st August, 1988.

(12) Relying on the decision of this Court in Dhull's case, dated 4th November, 1988, holding that the cut off date of 1st August, 1988 for possessing educational qualification was arbitrary, the petitioners filed this petition on 27th February, 1989.

(13) On 28th February, 1989. this Court issued notice to the respondents to show-cause why rule may be not issued. A bench of this Court also directed the respondents 'to call the petitioners for interview and consider the cases of the petitioners on merits for recruitment to the vacancies in the post of Assistant Teachers (Primary) in the Municipal Corporation of Delhi, but the respondents may withhold the results of their interview till further orders'.

(14) On 9th May, 1989, in accordance with the directions of the court the results of the candidates who appeared in the interview were produced' Petitioners 2,6.9 and 11 had not passed. Consequently, the court issued Rule. D.B. with regard to petitioners 1,2,3,4,5,7,8 and 10 and dismissed the petition with regard to the other petitioners. Directions were given for filing counter-affidavits etc. and the writ petition was directed to be listed for final hearing.

(15) Mr. V.P. Singh, learned counsel for the petitioners has argued that there is no reasonable nexus between the objects sought to be achieved and the cut off date. He submits that the date fixed for possessing the educational qualification is arbitrary, especially as it is a date prior to the advertisement and before the last date for submitting the application. He further contends that the decision, of this court dated 4th November, 1988 is conclusive and consequently in the facts of the present writ petition, the petitioners should be considered for appointment as teachers in order of merit.

(16) Mr. Sat Pal, learned counsel appearing for respondent No. 1, however, contended that the date given is not arbitrary arid that the matter is not concluded by the decision of this court dated 4th November, 1988, in view of the order of the Supreme Court dated 23rd March, 1989.

(17) A Government of India circular dated 4th December, 1979 has been referred to by both sides, which fixes the crucial date for determining age limits etc. for competitive examinations held by the Union Public Service Commission/Staff Selection Commission. In the said circular, it is stated that the question as to the crucial date that should be prescribed for competitive examinations held by the Union Public Service Commission/ Staff Selection Commission etc. has been carefully considered in consultation with the Union Public Service Commission and it has been decided that the crucial date should be : (i) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.

(18) Mr. V.P. Singh, learned counsel for the petitioners submits that since this circular fixes the crucial date for determining the age limit and does not fix the crucial date for eligibility regarding educational qualification criteria, the two are to be delinked, further the Union Public Service Commission in many of its examinations has delinked the crucial date with regard to the cut off date of age and the cut off date of educational qualifications. The contention of learned counsel for the petitioners is that the cut off date of educational qualifications must have a nexus with the object sought to be achieved. The object in this case, being the employment of a large number of teachers and consequently the more the applicants the better the choice. He submits that the cut-off date for possessing the educational qualifications can be the date of the interview, the date of the examination, or the last date of filing the application, but certainly cannot be a date prior to the advertisement, which has no connection with any of the dates.

(19) The question that the court has to examine is not whether some other date is better or more reasonable, but whether the date fixed is arbitrary.

(20) The affidavit of Mr. S.C. Srivastava, Under Secretary to the Government of India affirmed on 25th April, 1989, filed with regard to the question of fixation of the cut off date for educational qualification is pertinent. It says that the crucial date fixed for determining the possession of educational qualification in all the open competitive examination held by the Staff Selection Commission is applied

informally and no deviation whatsoever is made in any case. It is further stated therein that the earlier criteria by the Staff Selection Commission used to be the last date of the receipt of the applications. Many representations were received and grievances aired against this criteria. Consequently, the Commission considered the entire matter in depth and decided to follow the same criteria for determining the eligibility of educational qualification as fixed by the government for determining the age. The cut off date as prescribed is uniformly being applied in all open competitive examinations held by the Staff Selection Commission since July, 1987. The specific reasons for arriving at the cut off date of 1st August, 1988 have been indicated in paragraph 8 as follows : '(a) Generally the academic session in most of the universities begins in July and as such the results are declared before that. That being so, the crucial date of 1st August is quite in keeping with normal academic session. Keeping in view the necessity of having uniform criteria, it would be improper to deviate from the above mentioned principle of cut off date so as to cater to stray cases, in which the results are not declared in the month of July. (b) The respondent no. 1, prescribe different closing dates for some special remote and inaccessible areas like the North Eastern Region and Jammu and Kashmir. The closing date for candidates from these areas in 15 days after the normal closing date. In the cases of emergent situations like riots, natural calamity, like floods, snowfall or earthquake etc. further concession in regard to the closing date is allowed. The criteria of keeping closing date as the crucial date for determining the educational qualification was changed after experiencing difficulties on this account, it is not necessary to emphasize that stipulation of two or more separate cut off dates for determining educational qualification would be impracticable, discriminatory and unconstitutional. (c) Most of the examinations conducted by the respondent no. 1 are held in later half of the year, but they are advertised in the first half with closing date also in the first half of the year. In that case, if the closing date is fixed as the criteria, most of the candidates whose results are due for declaration in June/July of the year would be excluded from taking the examination in that year. (d) The simplification of the procedure is very important for organisation like respondent no. 1 who handle more than 20 lacs. applications every year. If the crucial date for age and educational qualification is same, the procedure of scrutiny becomes simple. Moreover, this

simplification of the procedure does not harm or prejudice any class or group of candidates. (e) In such matters respondent no. 1 is required to draw line somewhere and if some candidates are left out and are not admitted to the examination in a year, they can apply in the next year's examination. Most of the competitive examinations held by the Commission are conducted every year.' But the moot question before us is, can we examine all these factors and come to a conclusion that the cut off date fixed for possessing the educational qualification is not whimsical and/or arbitrary, in view of the order of this court dated 4th November, 1988 and of the Supreme Court dated 23rd March, 1989.

(21) The order of this court dated 4th November, 1988, set out above, disposing of Mr. Dhull's case in liming, holding that the cut off date is arbitrary, is not a non speaking order. The court has indicated its reasons, albeit briefly, in coming to this conclusion. The court noticed that Mr. Dhull and Mr. Singh had 'acquired qualifications after 1.8.1988 but prior to 10.10.1988', the last date for submission of applications, and accepted the contention of Mr. V.P. Singh that requiring the candidates to possess the qualification prior to 1st August, 1988 'is contrary to recognised principles and even the Hand-book of examination conducted by the UPSC'.

(22) The Supreme Court by its order dated 23rd March. 1989, as above set out, has not set aside this finding of the Delhi High Court that the cut off date of 1st August, 1988 is arbitrary and in fact has dismissed the special leave petition of the respondents, who challenged this finding. It is no doubt correct that while dismissing the petition, the following observations have been made : 'The question that the High Court could interfere with the advertisement fixing the date of eligibility is left open'.

(23) We have referred to our dilemma at the beginning of this judgment and consequently heard the matter fully. But on a careful reading of the order of the Supreme Court dated 23rd March, 1989, and in the background of the facts of Mr. Dhull's case and the two special leave petitions filed in the Supreme Court and their dismissal, it would appear to us that it is not open for this court to decide the question of arbitrariness of the cut off date afresh. That question, it would appear

to us, is left open in the Supreme Court which alone can decide whether the High Court could interfere with the advertisement fixing the date of eligibility.

(24) In Dhull's case, as above noticed, though this court had held the cut off date for possession of educational qualification to be arbitrary, it had not granted the consequential relief. basically on the ground that it would disturb the schedule of the examination already fixed. But the observations were clear that if the examinations were postponed and advertised afresh, there is no doubt that the petitioners would 'be found eligible to apply'.

(25) The Supreme Court by its order dated 2nd January, 1989, observed while dismissing Dhull's special leave petition that it was premature as no decision had been taken in respect of the observations made by the High Court.

(26) In the background, as above indicated, it would appear to us that in the present case the petitioners are entitled to the consequential relief. The petitioners replied to the advertisement dated 17th September, 1988 and applied before the prescribed date of 10th October, 1988. They were given roll numbers, though their B.Ed. results had not been declared on or before 1st August, 1988, to sit for the examination to be held on 18th December, 1988. The petitioners sat for the examination and were declared successful. When they received the letters dated 21st February, 1989 to furnish proof, within a week, of the fact that their B.Ed. examination result had been declared earlier than 1st August, 1988, they moved this court. By virtue of the orders of the court, the petitioners were called for interviews. It is only those petitioners who were successful in the interviews, who are now before us.

(27) Consequently, they are entitled to the benefit flowing from the fact that the cut off date of 1st August, 1988 has been held to be arbitrary by the order of this court dated 4th November, 1988.

(28) We, therefore, direct the respondents to consider the petitioners for appointment to the post of Assistant Teacher (Primary) in the Municipal Corporation of Delhi in accordance with their respective positions on the merit list.

(29) For the reasons outlined above, the rule is made absolute, but in the circumstances of the case, we make no order as to costs.

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