

W I T H

CIVIL APPEAL No. 1964 of 2019
[Arising out of S.L.P. (Civil) No. 9419 of 2013]

JAHANGEER KHAN Appellant

Versus

STATE OF U.P.Respondent

W I T H

CIVIL APPEAL No. 1965 of 2019
[Arising out of S.L.P. (Civil) No. 14853 of 2013]

SACHIDANAND PRASAD Appellant

Versus

STATE OF U.P.Respondent

W I T H

CIVIL APPEAL No. 1966 of 2019
[Arising out of S.L.P. (Civil) No. 22782 of 2013]

AJAY KUMAR Appellant

Versus

THE STATE OF UTTAR PRADESHRespondent

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. All the above Appeals pertain to the selection and appointment to the post of Technician Grade-2 (Apprenticeship Electrical) in the Uttar Pradesh Power Corporation. An advertisement was issued inviting applications from the eligible candidates for filling up 2,974 posts of Technician Grade-2 (Apprenticeship Electrical) by the Electricity Service Commission, Uttar Pradesh on 4th March, 2011. The eligibility criteria according to the said advertisement was that a candidate should have two years National/State level professional certificate in Electrician Trade with High School from Board of Secondary Education, Uttar Pradesh or equivalent with Science and Math subjects. In addition, production of Course on Computer Concept (CCC) certificate given by the Department of Electronics

Accreditation of Computer Courses (DOEACC) (hereinafter referred to as '*DOEACC certificate*'), at the time of interview was compulsory. 16,712 persons applied for selection to 2,974 posts which were advertised. Out of 13,576 candidates who appeared in the written examination conducted on 7th August, 2011, 6,218 persons qualified. 5,687 persons appeared for the interviews which were conducted from 28th November, 2011 to 28th December, 2011. A large number of candidates who attended the interview could not produce the DOEACC certificate. On the said account, several representations were made to the Chairman and Managing Director of the U.P. Power Corporation wherein a request was made for extension of time for submitting the DOEACC certificate and to permit such of those candidates who were found meritorious, to participate in the interview without submitting the DOEACC certificate. A decision was taken by the Chairman and Managing Director of the U.P. Power Corporation to permit candidates without DOEACC certificate to participate in the interviews, subject to their submitting the certificate

within a period of three months. However, it was made clear that the appointment letters would be issued to such candidates only after they submit the certificates.

2. The extension of time for submission of DOEACC certificate expired on 28th March, 2012 and the process of recruitment was conducted. The result could not be declared due to the ban on recruitment by the Government. Such of those candidates who could not submit their certificates before 28th March, 2012 approached the Chairman of the U.P. Power Corporation and requested for further extension. Pursuant to a decision taken by the Corporation on 19th April, 2012, time for submission of the certificate was further extended by three months. The results of the selection to the posts of Technician Grade-2 (Apprenticeship Electrical) were announced on 21st May, 2012. Candidates who did not produce the DOEACC certificate were informed that they should submit the certificate by 31st July, 2012 failing which their selection would stand cancelled automatically. Unsuccessful candidates filed Writ Petitions challenging the selections that were notified

on 21st May, 2012. The grievance of the Writ Petitioners was that the select list contained the names of candidates who could not submit the DOEACC certificates at the time of interview. They also sought for a direction to exclude such candidates and publish a revised list. A learned Single Judge of the High Court dismissed the Writ Petitions.

3. The learned Single Judge relied upon Rule 45 of the U.P. Rajya Vidyut Parishad Parichalkiya Karmchari Varg Sewa Niyamawali, 1995 to hold that the Chairman was competent to relax the Rules. He observed that there was nothing wrong in the exercise of the power of relaxation as the Chairman/ Managing Director of the Corporation relaxed the Rule after a thorough consideration of several representations made on behalf of the candidates. The submission made on behalf of the Writ Petitioners that the relaxation of the Rule could not have been done after the selection process commenced and that such endeavour would amount to changing the rules of the game mid-way, was rejected by the High Court. The unsuccessful Writ Petitioners preferred an

appeal against the judgment of the learned Single Judge in which they submitted that the rules for the selection could not have been altered after the selection process commenced. They urged that the advertisement did not mention anything pertaining to the relaxation. According to them, even if the power of relaxation is provided in the Rules, it is mandatory that the advertisement should also indicate the existence of such power. It was argued before the Division Bench of the High Court that submission of DOEACC certificate at the time of the interview is compulsory according to the Rules and the advertisement. Such of those candidates who did not produce the certificates were ineligible for appointment as Technician Grade-2 (Apprenticeship Electrical). The Division Bench partly allowed the appeals by holding that those candidates who submitted the DOEACC certificate prior to 31st March, 2012 were entitled to be included in the select list. The learned Division Bench further concluded that all candidates who produced the certificates after 31st March, 2012 were not eligible for appointment. The authorities were directed to declare

the results afresh by deleting the names of candidates who produced the CCC certificate after 31st March, 2012, from the select list.

4. By relying on a judgment of this Court in ***Bedanga Talukdar v. Saifudullah Khan & Ors.***¹ the Division Bench of the High Court held that relaxation of the Rule was impermissible as there was no mention about the relaxation in the advertisement. However, the first relaxation by which candidates were permitted to submit the certificate before 28th March, 2012 was upheld in larger public interest as DOEACC did not issue the certificate, for which the candidates could not be penalized.

5. Originally, the selection was finalized on the basis of the results announced on 21st May, 2012 and the candidates who submitted certificates till 31st July, 2012 were appointed. However, by virtue of the judgment of the Division Bench, candidates who produced their certificates after 31st March, 2012 were removed from the service. Aggrieved thereby, they have filed SLPs. Unsuccessful candidates who did not find place in the

1 (2011) 12 SCC 85

select list have also assailed the judgment of the High Court as, according to them, even the first relaxation given for submission of certificates till 28th March, 2012 was arbitrary and illegal.

6. After hearing the learned counsel appearing for the Petitioners and the Respondents, we are of the opinion that the impugned judgment does not warrant interference for the reasons given below.

7. Admittedly, the Rules governing the selection to the posts of Technician Grade-2 (Apprenticeship Electrical) require every candidate to submit a DOEACC certificate signifying completion of 80 hours CCC at the time of interview. Such condition was made compulsory. The advertisement also contained the condition regarding submission of the certificate at the time of interview. There is no doubt that there exists a power of relaxation of any of the Rules which could be exercised by the Chairman of the Corporation. It is nobody's case that the Chairman/ Managing Director was not competent to relax the Rules. But, the submission made by the learned counsel for the Writ Petitioners is that the relaxation could not have been done as the advertisement did not

mention about a possible relaxation of the Rules. We find force in the said submission made on behalf of the Writ Petitioners as this Court in ***Bedanga Talukdar*** (supra)

held as follows:

“29. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure

that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

8. We are in respectful agreement with the above judgment of this Court. Exercise of the power of relaxation without informing the candidates about the existence of such power would be detrimental to the interests of others who did not possess the certificate and did not take part in the selection process. We are unable to accept the submission that selection is on the basis of the performance of the candidates in the written test and interview and that the DOEACC certificate is not an essential requirement. The Rule as well as the advertisement provide for submission of the certificate at the time of interview, compulsorily. The Rule further provides for production of the certificate as an additional requirement for selection. The above stipulation in the Rule as well as the advertisement cannot be ignored.

9. On the basis of the said findings, the point that remains to be considered is whether the High Court was right in upholding the relaxation in respect of candidates who submitted the certificate before 28th March, 2012. The High Court took note of the fact that the certificates were not being issued by DOEACC to candidates who had already completed the course. The learned Division Bench of the High Court was of the opinion that there was a genuine problem and in the interest of those meritorious candidates who could not secure the certificate for no fault of theirs, they could not be penalized. The High Court placed reliance on the judgment of this Court in ***Amlan Jyoti Borooh v. State of Assam & Ors.***² to support its view that relaxation can be done in larger public interest.

10. The question that then arises is whether the High Court could have granted such a relief after holding that the relaxation of the Rule could not have been made. The final relief in a case can be different from the *ratio decidendi*. It was held in ***Sanjay Singh & Anr. v. U.P.***

2 (2009) 3 SCC 227 ¶ 40

Public Service Commission, Allahabad & Anr.³ as

follows:

“10. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. ..”

11. In view of the above, the conclusion of the High Court in favour of those candidates who submitted their certificate before 28th March, 2012 is correct and need not be interfered with.

12. The next question is, whether the candidates who utilized the 2nd relaxation for submitting their certificates

3 (2007) 3 SCC 720

in the extended period, by 31st July, 2012 can be given the same benefit. We are of the opinion that the beneficiaries of the 2nd relaxation cannot be said to be similarly situated to those who produced their certificates prior to 28th March, 2012. Pursuant to the declaration of results on 21st May, 2012, the candidates who submitted their certificates were appointed. The Writ Petitions filed, challenging the selection list were dismissed on 30th August, 2012. The impugned judgment passed by the Division Bench of the High Court, modifying the relief and extending the benefit of relaxation only in favour of those candidates who submitted their certificates prior to 28th March, 2012 was delivered on 26th September, 2012 pursuant to which, the candidates who submitted their certificates after 28th March, 2012, were removed from service. Persons who submitted their certificates prior to 28th March, 2012 have been working continuously till date. It has been stated by the Corporation in the written note submitted to this Court that recruitment to the post of Technician Grade-2 (Apprenticeship Electrical) was being done every year from 2013 onwards. The last

notification for appointment of Technician Grade-2 (Apprenticeship Electrical), was issued in January, 2019. Any relief of a relaxation given in favour of those who were not diligent in furnishing the certificates prior to 28th March, 2012 could have an adverse effect on the ongoing selection process. There are no posts of the year 2012 which were kept unfilled. There is no interim order reserving any posts of the year 2012 in which the candidates who did not submit their certificates prior to 28th March, 2012 and who have been out of service can be accommodated. Another important difference between the first group of persons who were given the benefit of relaxation subject to production of the certificates prior to 28th March, 2012 and the others who produced the certificates later is that there is no material on record to suggest there was any further delay on the part of DOEACC in the issuance of the certificates. The very fact that certain candidates submitted their certificates prior to 28th March, 2012 would show that persons who sought further relaxation after 28th March, 2012 were not vigilant. It is settled law that there is no

indefeasible right of appointment on the basis of inclusion in the select list. None of the candidates in whose favour relaxation was given have any right to claim appointment. However, we uphold the judgment of the High Court in favour of the candidates who submitted their certificates prior to 28th March, 2012, to do complete justice in the matter.

13. For the aforementioned reasons, the judgment of the High Court is upheld and the Civil Appeals are disposed of.

.....J.
[L. NAGESWARA RAO]

.....J.
[SANJAY KISHAN KAUL]

**New Delhi,
February 22, 2019.**