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**Court No. - 35**

**Case :-** WRIT - A No. - 6591 of 2020

**Petitioner :-** Sarthak Raheja

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Abhishek Mishra, Alok Mishra

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

**Hon'ble Manoj Kumar Gupta,J.**

The petitioner applied for recruitment in the state services conducted by U.P. Public Service Commission, Allahabad (for short 'the Commission'). The examination consisted of three stages i.e., Preliminary Examination; Mains Examination and Personality Test (Interview). The petitioner successfully completed the preliminary examination. For appearing in the Mains Examination, firstly the candidates were to fill up online application. Second step was deposit of examination fee. The petitioner successfully completed the above two steps. The third step was to download the online application and submit its hard copy in the office of the Commission alongwith self attested copies of all testimonials. Two modes were prescribed by the Commission for submitting the hard copy of the application form and the documents. The first mode was by personal delivery in the office of the Commission and the second mode was by sending the same by registered post so as to reach the office of the Commission by the last date. By a notification dated 20.3.2020, the Commission notified 23.3.2020 as the last date for submitting online application and 26.3.2020 as the last date for submitting hard copy of the application form alongwith the documents.

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Sri Nisheeth Yadav, learned counsel appearing for the Commission points out that on account of technical glitches, the candidates were not able to complete the third stage in time, therefore the date for submitting online application was extended till 23.3.2020 and the hard copy with documents till 26.3.2020. It is noteworthy that since the midnight intervening 22/23 March 2020, a complete lock-down was declared in the country to prevent spread of Covid-19 infection, as a result thereof, there were complete suspension of all modes of transportation. Keeping in mind the said scenario, the Commission extended the last date for submitting hard copy of application form alongwith self attested documents upto 19.4.2020 and then to 15.5.2020.

The case of the petitioner is that he got stuck at Delhi in the lock-down declared since 23.3.2020. His original testimonials were at Allahabad, the place where he resides permanently. Therefore he was not in a position to send the hard copy of the application form and documents by posts from Delhi. During unlock-1, the place where he was residing in Delhi was in containment zone. After the restrictions imposed in the said zone were lifted, he came to Prayagraj and had to undergo 15 days self-quarantine. After completing his quarantine period, he immediately went to the office of the Commission on 16.6.2020 and narrated his difficulty and the circumstances in which he could not deposit hard copy of the application form and self attested documents. It is also his case that when hard copy of the application form and self attested documents were not accepted, he, on suggestion of an employee of the Commission, sent it to the Commission by post through the Post

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Office located at the premises of the Commission. On 19.6.2020 he sent an E-mail to the Commission and requested for due consideration of hard copy of application form and the documents sent by post. He again represented to the Commission by sending E-mails on 26.6.2020 and 4.7.2020 but when realised that the Commission is not ready to consider the hard copy of the application form and self attested documents sent to it, the instant petition has been filed.

Learned counsel for the petitioner submitted that on account of extra ordinary circumstances prevailing in the country due to spread of Covid-19 pandemic, petitioner could not send hard copy of application form alongwith self attested documents to the Commission nor deposit the same in its office in time. However, he complied with the said requirement at the very first opportunity. The Mains Examination is to start from 22 September 2020 and in such circumstances, the Commission should permit the petitioner to appear in the same, failing which the petitioner would suffer irreparably.

Yesterday, when the matter was taken up, this Court being *prima facie* satisfied that it would be too harsh to exclude the petitioner from the recruitment exercise, permitted learned counsel for the Commission to seek instructions from the Commission as to whether it is ready and willing to accept hard copy of the application form and self attested copy of the documents submitted by the petitioner on 16.6.2020.

Today, on matter being taken up, Sri Nisheeth Yadav, learned counsel for the Commission stated that the Commission is not ready to

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accept the hard copy of application form as it was submitted beyond the last date. He submitted that the petitioner had downloaded the hard copy of application form on 27.2.2020. It was much before lock-down was imposed, therefore, he should not have waited till the last date. It is urged that the petitioner was aware of the specific condition that application form received after last date will not be considered. He placed reliance on Full Bench judgement of this Court dated 14.8.2015 in Rajendra Patel vs. State of U.P. and others (Writ-A No.7401 of 2015) in support of his contention that if different modes of service are prescribed as well as the last date for submitting the documents, the same could not be relaxed even by the Courts. The paragraph on which much reliance has been placed, is as follows :-

*"For these reasons, we hold that where the Commission requires the submission of a hard copy of the online application together with all accompanying documents by a prescribed last date and has clearly placed the candidates on notice of the fact that an application which is submitted beyond the last date together with the prescribed documents would result in the invalidation of the candidature, the condition which has been imposed by the Commission would have to be scrupulously observed. It would not be open to the Court to hold that notwithstanding such a clear condition, an application which has not been received by the last date should be entertained. The Commission has given an option to candidates of submitting their applications in the hard copy by either of the two modes, namely by registered post or by personal delivery. A candidate who has opted for one of the two modes, is required to comply with the condition that all the requisite four stages are completed within the time stipulated. "*

The facts of the case are of exceptional nature and so were the circumstances prevailing in the country which prevented the petitioner from submitting hard copy of the application form and documents before the Commission in time. This Court could not loose sight of the fact that

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as a result of imposition of nationwide lock-down w.e.f. 23.3.2020 all modes of transportation i.e., Road, Rail and Air remained paralysed. Judicial notice can also be taken of the fact that there were restrictions imposed by the different States/Union Territories in regard to crossing of the borders from one State/Union Territory to another State/Union Territory. These are some of the circumstances which were beyond the control of the petitioner.

The law laid down by the Full Bench is binding on this Court. The petitioner before the Full Bench, had sent hard copy of the application form with documents before the cut off date by registered post. Because of postal delay, it was delivered to the Commission after the prescribed cut off date. In the said context, the Full Bench laid down the law extracted above. The present dispute is an outcome of extraordinary situation not comprehended by any one in the past. The requirement of meeting the deadline, though mandatory, is procedural in nature. The Commission itself taking notice of the situation arising out of nationwide lock-down extended the date from time to time. Still the petitioner, on account of extra ordinary situation prevailing at that time, could not meet the deadline. It is not disputed that the Commission has received hard copies of the application form alongwith the testimonial sent by the petitioner by post on 16.6.2020. The Mains Examination is yet to be held from 22.9.2020. The Commission still has sufficient time to verify the documents. In such circumstances, this Court is of the considered opinion that the petitioner, who is victim of events beyond his control, should be granted permission to appear in the Mains

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Examination provisionally subject to the documents submitted by him being found in order.

As prayed by Sri Nisheeth Yadav, learned counsel for the Commission, he is granted three weeks' time to file a detailed counter affidavit.

List on 12.10.2020.

In the meantime, subject to the Commission being satisfied with the documents submitted by the petitioner alongwith hard copy of his application form, he shall be permitted to appear in the Mains Examination provisionally and subject to further orders to be passed in the instant petition.

**Order Date :- 17.9.2020**

skv

(Manoj Kumar Gupta, J.)