

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 1189 of 2020

Appellant :- Km. Sunita

Respondent :- State of U.P. And 4 Others

Counsel for Appellant :- Udai Narain Khare, Basdeo Nishad

Counsel for Respondent :- C.S.C., Arun Kumar

Hon'ble Govind Mathur,Chief Justice

Hon'ble Piyush Agrawal, J.

To examine correctness of the order dated 21st October, 2020 passed by learned single Bench, this appeal is before us.

The order aforesaid reads as under:-

“Heard learned counsel for the petitioner and the learned Standing Counsel.

The instant petition has been preferred seeking the following relief:-

"Issue a writ order or direction in the nature of mandamus directing and commanding the respondents to allow the petitioner to join the counselling which is still in process.

Issue a writ order in the nature of mandamus directing and commanding the respondent permit the petitioner to join the counselling and issued to appointment letter to the petitioner and to and permit him join the services as the petitioner during pendency of the writ petition."

Admittedly although the petitioner participated in the Assistant Teacher Recruitment Examination, she was not included in the counselling sessions which were held thereafter since she did not submit the requisite online form. According to the petitioner since she was on duty at the relevant time, she could not complete the formalities as a consequence of which

she has been denied the right to participate in the counselling process.

Sri Arun Kumar learned counsel appearing for the department apprises the Court that a candidate who had cleared the written examination was only required to submit an online form to participate in the counselling process and that all other details were to be gathered by the Department from the application form that had already been submitted.

The Court notes that it is not the case of the petitioner that she did not have the requisite facility to either access the internet or to submit the application online. The submission of choices for the purposes of participating in the counselling did not require any physical steps to be taken.

In view of the aforesaid, the Court finds no ground to issue the writs as prayed. The writ petition consequently stands dismissed.”

Factual matrix of the case is that on 16th May, 2019 the respondents notified 69000 vacancies relating to the post of Assistant Teacher. The vacancies so notified were to be filled in by way of direct recruitment and for the purpose, a competitive examination i.e. “Assistant Teacher Recruitment Test 2019” was to be conducted. As per the scheme of the process of selection, in the first phase aspirants were to compete the test of 2019 and then to go for counselling. Suffice to state that the counselling is nothing but verification of documents and allotment of district for appointment as per choice and merit of the selected incumbent. To face the test, the aspirants were supposed to submit an application in the prescribed proforma and on qualifying the test they were also supposed to submit a requisition to be called to attend the counselling.

The appellant-petitioner a female member of the Other Backward Caste class presently holding the post of Constable in the Uttar Pradesh Police submitted an application in pursuant to the notification dated 16th

May, 2019 and participated in written test. On 24th March, 2020 nation wide lockdown was declared to combat virus COVID-19. During lockdown, result of the written test was declared on 12th May, 2020. The appellant-petitioner secured multiplication of merit marks 67.8% gross. She was to attend counselling on 28th May, 2020 subject to submitting online requisition for the purpose. The appellant-petitioner at the relevant time was deputed with COVID-19 duties at Gorakhpur. Her original documents were lying at her native place and during the period of lockdown she had no means to borrow the same from her home.

Be that as it may, the appellant-petitioner being on COVID-19 duties failed to submit requisition to attend counselling. However, on the day next to calling of the lockdown she submitted a representation to the authority competent to allow her to attend the counselling. In the representation in quite unambiguous terms she narrated all the circumstances preventing her from submitting requisition/application showing her desire to attend counselling.

On being failed to have any positive response from the respondents, she approached single Bench of this Court to have a writ in the nature of mandamus but that came to be dismissed under the order impugned dated 21st October, 2020.

In appeal, the argument advanced on behalf of the appellant-petitioner is that she failed to submit online application showing her desire to attend counselling due to unavoidable reasons, therefore, the equity demands that an opportunity be given to her to face counselling. It is the position admitted that the counselling is still going on and that would be concluding on 30th December, 2020.

While opposing and defending the judgment passed by learned single Bench, it is submitted by learned Standing Counsel that the entire process of selection was online and the appellant-petitioner admittedly, failed to submitted application to face counselling.

In absence of application form, it was not at all possible for the agency conducting the process of selection to call her to face the process and further that in the scheme of the process of selection there is no provision to allow any person by manual submission of requisition to attend counselling that too subsequent to the date of counselling given to the candidate concerned.

It is submitted that even during the lockdown the appellant-petitioner could have submitted application online as done by several other candidates.

Heard learned counsels appearing on behalf of rival parties.

The preposition for adjudication on basis of the argument advanced on behalf of the appellant-petitioner is that “whether in given set of facts the principle of reasonableness demands for issuing a writ in the nature of mandamus to the respondents to allow the appellant-petitioner to face the counselling for consideration of her candidature for the purpose of appointment as Assistant Teacher?

At the threshold, it would be appropriate to State that the principle of “reasonableness” is one attribute to equality or non-arbitrariness protected by Article 14 of the Constitution of India.

In *Menka Gandhi Vs. Union of India and another* reported in *AIR 1978 SC 56* the Supreme Court held that the members of reasonability legally as well as philosophically is an essential element of equality or non-arbitrariness every action of the State may that be administrative must right, just, fair and without any arbitrariness. No action should be fanciful or oppressive.

In *Ramana Dayaram Shetty Vs. The International Airport Authority and others* reported in *AIR 1979 SC 1628* the Apex Court while giving more larger meaning to non-arbitrariness held that action of the government in different eventualities including the award of jobs must be rational, relevant and non-discriminating. Any injury to these standards

would liable to struck down action concerned. The law laid down by the Supreme Court in *Menka Gandhi Vs. Union of India and another (supra)* as well as *Ramana Dayaram Shetty Vs. The International Airport Authority and others* has further been enriched in last four decades and the doctrine of legitimate expectation too has been included as an important limb of “reasonableness”. The constitutional courts are required to examine every action brought before it for scrutiny in light of the principle of reasonability *inter alia*.

In the case in hand, the appellant-petitioner is a young girl from rural part of Uttar Pradesh belonging to Other Backward Caste. Presently she is holding the post of Constable in Uttar Pradesh Police. As a part of her duty, she was posted in an operation to combat COVID-19 pandemic duties at Gorakhpur. While working as Constable she had an aspiration to become a Teacher and for that she faced a process of selection. She qualified written test with quite higher marks. Admittedly, she was entitled to face counselling, which is nothing but verification of documents and other testimonials. Unfortunately, being engrossed with COVID-19 duties, she failed to convey the respondents about willingness to attend counselling within the time prescribed but immediately after calling off the lockdown, she requested the competent authority to allow her to face the counselling.

Worthwhile, to note here that the counselling was in process at that time and that is still going on. The respondents, who are under obligation to have best hands on basis of merit examined, looking to the existing circumstances, especially involvement of the appellant-petitioner in COVID-19 duties and further as the counselling was in currency, should have called her to face the counselling. Instead of it, they chose to keep silence on the request made by the appellant-petitioner and compelled her to approach the writ Court.

Learned single Bench dismissed the writ petition arriving at the conclusion that the involvement of the appellant-petitioner in COVID-19

duties would not have any hindrance in submitting an online request/application to disclose her willingness to join the counselling.

True it is, the online process was available to the appellant-petitioner but Court should have examined that whether a person working as Constable had any opportunity to leave her duties and to avail a device to satisfy online process. The appellant-petitioner may also not have a smart phone with her or even the internet connectivity to avail online facility. In such circumstance, she had to go to some other place may that be e-mitra or otherwise but merely a failure to avail that, does not mean that she was not interested in facing the counselling.

More important fact deserves to be noticed is that immediately after calling off the lockdown she represented to the respondents to have counselling. Being a person discharging duties to combat COVID-19, she must be having an expectation to have support from the system in all adversaries for her further development. The denial to consider her request to face counselling reflects arbitrariness and also an approach unfair and unjust. The circumstances would have a different, if the counselling would have been completed or the process of selection would have not in currency but that is not so. Admittedly, the counselling is still going on and will continue till 30th December, 2020.

Looking to this factual background, the appropriate course was to allow her to face the counselling for the purpose of appointment as Assistant Teacher. Learned single Bench, in our considered opinion, did not consider the aspect of reasonability while dismissing the petition for writ.

In view of whatever stated above, this appeal deserves acceptance. Accordingly, the same is allowed. The judgment impugned dated 21st October, 2020 passed by learned single Bench in Writ-A No.5011 of 2020 is set aside. The petition for writ preferred by the appellant-petitioner is accepted. The respondents are directed to call the appellant-petitioner to

face counselling for the purpose of appointment as Assistant Teacher and further to consider her candidature for appointment as Assistant Teacher in pursuance to the notification dated 16th May, 2019 in accordance with law. No order to cost.

Order Date :- 7.12.2020

Bhaskar

(Piyush Agrawal, J.)

(Govind Mathur, C.J.)