

A.F.R.

Reserved on 26.9.2022

Delivered on 27.9.2022

Case :- WRIT - A No. - 15413 of 2022

Petitioner :- Vaishali Dwivedi

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

Counsel for Petitioner :- Ratnakar Upadhyay, Sr. Advocate

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

Hon'ble Neeraj Tiwari, J.

Heard Sri R.K. Ojha, Senior Advocate holding brief of Sri Ratnakar Upadhyay, learned counsel for the petitioner and learned Standing Counsel for the respondent no.1 and Sri M.N. Singh, learned counsel for the respondent nos. 2 & 3.

As the facts of the case are undisputed, therefore, with the consent of parties, writ petition is decided at this stage without calling for the counter affidavit.

Present petition has been filed with the following prayers:-

"(i) A writ order or directing in the nature of mandamus commanding the respondent-authorities of the U.P. Public Service Commission, Prayagraj to permit the petitioner to make necessary correcting in the application form as General Category (UR) in place of SC category."

"(ii) A writ, order or directing in the nature of mandamus commanding the respondent-authorities of the U.P. Public Service Commission, Prayagraj to issue admit card in favour of the petitioner for appearing in the mains combined State/Upper Subordinate Services Examination, 2022 which is going to be held on 27.9.2022."

Learned Senior Counsel submitted that U.P. Public Service Commission, Prayagraj (*hereinafter referred to as Commission*) has issued advertisement on 16.3.2022 inviting the application form for selection on the different posts of State Services by conducting Combined State/Upper Subordinate Services Examination, 2022 (*hereinafter referred to as*

Examination, 2022). Pursuant to that, petitioner has filled up the application form. Examination, 2022 is having three phases i.e., Preliminary Examination, Main Examination & Interview He next submitted that petitioner belongs to General Category, but by mistake she filled up her form under the SC category and also appeared in the said examination. She was declared successful in the Preliminary Examination under SC category though she obtained more marks than the minimum cutoff marks for the General Category Candidate. He further submitted that after knowing about her mistake, she has written application to the Commission to correct her category from SC category to General category, but the same was not considered by the Commission and her candidature was rejected.

Learned Senior Counsel submitted that he is assailing the action of Commission on two grounds. Firstly, Commission has published notice dated 22.4.2022 permitting the candidates to remove the deficiency with regard to photographs and signatures, if any. He next submitted that action of Commission is arbitrary as once the candidates have been granted an opportunity to remove the deficiencies, that should have been granted for all deficiencies and should not be confined only for two. Therefore, it is required on the part of Commission to accept her request and change her candidature from SC category to General category. Secondly, he submitted that once the petitioner has informed that she does not belong to SC category, her result should have been reconsidered and in case, she has obtained more marks than the minimum cutoff marks fixed for General Category, her result should have been declared under the category of General Candidates. He also submitted that petitioner has filled up his form on the last date, therefore, she could not avail the facility so provided under the para 4 of the advertisement. He lastly submitted that by the change of category, he will not be benefited in any way, therefore, her

mistake has to be taken bonafide and action taken by the Commission is bad. Petitioner may be permitted to appear in the Main Examination.

In support of his contention, he has placed reliance upon the of judgment of this Court in the case of *Prashant Kumar Dwivedi & another vs. State of U.P. and others* passed in *Writ-A No. 5383 of 2020* decided on *28.8.2020*.

Per contra Mr. M.N. Singh, learned counsel for the Commission vehemently opposed the submission of learned counsel for the petitioner and submitted that in paragraph 4 & 14(2) of the advertisement dated 16.3.2022, it is clearly mentioned that in case of any mistake while filling up the online application form, candidates may correct the same within the last date of submission of form. He next submitted that paragraph 14(2) of the said advertisement clearly provides that in case change of category, no application for error correction/modification shall be acceptable. It also says that on submission of false/misleading information, the candidature will be cancelled.

Learned counsel for the Commission further submitted that notice dated 22.4.2022 is very much clear, which permits only for removal of deficiency with regard to photograph and signatures. In case, petitioner is aggrieved with the same, it is required on her part to challenge the same, which has never been challenged, therefore, she cannot be given any benefit as argued by the learned counsel for the petitioner. So far as second submission of learned counsel for the petitioner is concerned, he submitted that as per policy decision of Commission, benefit of reservation is extended only at the stage of preparation of final result. He further clarified that result of Preliminary and Main Examinations are declared under the category mentioned by the Candidates in its application form and verification of record is only done at the time of appearance in interview. Therefore, in light of para 4 & 14(2) of the advertisement dated

16.3.2022, category of petitioner cannot be changed and further his candidature has rightly been rejected. In support of his contention, he has placed reliance upon the series of judgments of this Court in the cases of ***Santosh Kumar Pandey vs. State of U.P. and others*** passed in ***Writ-A No. 66487 of 2015*** decided on ***22.12.2015***, ***Prabhakar Mani Tripathi Vs. State of U.P. and others*** passed in ***Writ-A No. 17824 of 2019*** decided on ***21.11.2019*** and ***Km. Priyanka Chaturvedy vs. State of U.P. and others*** passed in ***Writ-A No. 485 of 2022*** decided on ***21.3.2022***.

I have considered the rival submissions advanced by the learned counsel for the parties and perused the advertisement as well as judgments relied by the learned counsel for the parties.

Facts of the case are undisputed by the parties. Paragraph 4 & 14(2) of the advertisement dated 16.3.2022 is having provision to deal with such controversy, which is subject matter before this Court and same is quoted hereinbelow:-

“4. Modify Submitted Application: If a candidate comes to know about any error/errors in the submitted application form except in name of the examination and type of recruitment, Registered Mobile Number, E-mail ID, Aadhaar Number and such cases where prescribed fee for modified category is higher (In case of error in these entries, candidate may submit new online application with prescribed fee only as previously deposited fee will neither be adjusted nor refunded.) He/she will be given only one opportunity to modify it/them according to the following procedure before the last date of the submission of application form..... ”

(2) The claim of category, subcategory, domicile, gender, date of birth, name and address will be valid only till the last date of online application. In this regard no application for error correction/modification shall be acceptable. Incomplete application form shall be summarilly rejected and no correspondence shall be entertained in this regard. On submission of false/misleading information, the candidature will be cancelled.”

From perusal of the same, it is apparently clear that she was having opportunity to correct her application form including category, but she has not availed the same. Further, paragraph 14(2) of said advertisement is very specific in nature, which clearly says that on submission of

false/misleading information, the candidature will be cancelled and undisputedly, information so provided by the petitioner in her application form is false.

So far as second argument of learned counsel for the petitioner about the controverting of category from SC category to General category on the basis of marks obtained in Preliminary Examination is concerned, that is also having no force. There is no dispute between the parties that benefit of reservation is given only at the stage of final result prepared after interview. Result of Preliminary and Main Examinations of all candidates are declared only under the category, which is mentioned by the candidates.

Further, it is undisputed that petitioner has not challenged the notice dated 22.4.2022 before the Court, therefore, he cannot be given any benefit as claimed by her. It is within the domain of Commission to grant relaxation, which shall attain finality, if not challenged by the aggrieved person.

I have perused the judgment of this Court in the matter of ***Prashant Kumar Dwivedi (supra)*** so relied by the learned counsel for the petitioner. From perusal of the same, it is clear that controversy in the said judgment is entirely different on facts. In that case, candidates are required to submit certificates duly countersigned by the Principal/Manager/Registrar and Joint Director of Education of the Mandal concerned and those certificates submitted by the petitioners were not countersigned by the authorities. Commission has granted extra time to such candidates to file certificate duly countersigned by the authorities mentioned hereinabove. The action of Commission was under challenged and ultimately Court has dismissed the writ petition, therefore, this judgment will not help the petitioner in the present case.

I have also perused the judgment of this Court in the case of

Prabhakar Mani Tripathi (Supra) relied by the learned counsel for the Commission. In the said judgment, the very same dispute was in question about the change of category and Court after considering the facts of the case, dismissed the writ petition vide order dated 21.11.2019. The said judgment is being quoted hereinbelow:-

“Heard learned counsel for the petitioner and Sri Shikhar Tandon holding brief of Sri Avneesh Tripathi, learned counsel for the U.P.Public Service Commission.

Petitioner is before this Court with a request to issue a mandamus commanding the respondents to consider the petitioner as physically handicapped category and rectify the petitioner's mistake in the column-16 and 16.3 in online form bearing Registration No. 30421315447 for the Review Officer/Assistant Review Officer(General and Special Recruitment) Examination 2017.

At the very outset, an objection has been raised by Sri Tandon that so far as the advertisement dated 30.12.2017 issued by the U.P.P.S.C., the same was unambiguous and categorical and has placed reliance upon para 14 sub clause (2), which is reproduced herein below.

"No change in category, sub-category, Date of Birth etc. is permissible after the receipt of application form in the office of the Commission. In this regard no application for error correction/modification shall be acceptable."

In this backdrop, initially on the basis of the said instructions, the petitioner has downloaded the form, filled up the same and thereafter submitted in the office of the Commission. He has again downloaded the admit card for appearing in the preliminary examination and only thereafter, the present application for correction/modification in application form has been pressed. Once, the categorical instructions were given as aforementioned, in such situation, as per terms and conditions of the advertisement, it is impermissible that thereafter, the petitioner can apply for correction in the application form.

Once an objection is being raised, the Court has proceeded to examine the record in question as well as advertisement dated 30.12.2017. Bare perusal of the advertisement especially para 14 (2), this Court is of the view once the petitioner has undergone with aforesaid process, thereafter, as per instruction, he cannot avail the relief as has been asked for and as such, the Court declines to interfere under Article 226 of the Constitution of India.

The writ petition lacks merit and is accordingly dismissed.”

This Court in the matter of **Santosh Kumar Pandey (Supra)** has taken firm view that once the petitioner has not proceeded to comply with the instruction and committed error, is not entitled for any relief and dismissed the writ petition Relevant paragraph of the said judgement are quoted below:-

“To see and ensure that identity of candidate is not reflected from the Answer Sheet and there is zero humane interference, important instructions have been issued with clear cut mention that in case there is an error, following consequences would ensue. Once instructions in question are coupled with consequences, then such instructions necessarily will have to be accepted as of being mandatory in character.

.....

Once such is the factual situation and the law on the subject is clear that instructions in question have to be interpreted in the context of object for which it has been framed and here, in this era of computerization, once petitioner has proceeded not to comply with the instructions and has committed error not at one place but at two places in the OMR sheet and same mistake has been repeated in attendance-sheet, then he has to blame himself and same cannot be dubbed as humane error.

Consequently, in the facts of the case, in case any directive is given to U.P. Public Service Commission to undertake such an exercise as has been prayed by the petitioner, then it would not only open flood gate, same would make way for humane intervention and give chance of manipulation and manoeuvring in the fool proof scheme prepared by U.P. Public Service Commission and any interference by us would tantamount to creating a fresh forum i.e. not provided for.

Writ petition is dismissed accordingly.”

I have also perused the judgment of this Court in the case of **Km. Priyanka Chaturvedi (supra)**. The said judgment was placed by the learned counsel for the Commission in reply to submission made by the learned counsel for the petitioner about the submission of application form on the last date. Court has considered this view and reject the same. Relevant paragraph of the said judgement is quoted hereinbelow:-

“The petitioner has sufficient opportunity to go about the exercise of uploading his application form for Main Examination of P.C.S.-2021. He took risk of waiting for the last date and by some misfortune, could not do so on account of vagaries of the internet, which the petitioner has alleged in the writ petition. Even otherwise, the grounds for passing the impugned order by U.P. Public Service Commission has not been denied by the petitioner in her amendment application. Further, the petitioner cannot be permitted to derail the entire recruitment process as she chose to wait for the last date.

In this view of the matter, this Court is of the opinion that the petitioner is not entitled for any relief.”

In light of such factual position as well as law pronounced by the Courts on different occasions, this Court is of the firm view that once the instructions are mentioned in the advertisement, it is required on the part

of candidate to follow the same. In case of failure for any reason on the part of candidates, cannot be a ground to grant any relief. In fact, interference at this stage by the Court would be opening of the Pandora's Box, which may derail the complete examination process causing irreparable loss to the candidates, who have followed terms and conditions of advertisement, while submitting the application form. Once the Commission is not at fault and action of Commission is not arbitrary, there is no occasion for this Court to interfere in such matter by permitting the candidate to appear in the Main Examination, who has admittedly not followed the instruction so given in advertisement.

So far as present case is concerned, petitioner, though having full opportunity, has not followed the instruction given in the advertisement dated 16.3.2022 to correct his category from SC to General, therefore, she is not entitled for any relief and her candidature has rightly been rejected.

In view of above facts mentioned hereinabove as well as law laid by this Court, the writ petition lacks merit and is, accordingly, **dismissed**. No order as to costs.

Order Date :- 27.9.2022

Junaid