

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION  
 CIVIL APPEAL NO(s). 2245 OF 2006

STATE OF U.P. & ORS.

Appellant (s)

VERSUS

NIKHILESHWAR KUMAR DIXIT

Respondent(s)

O R D E R

We have heard Mr. S.R. Singh, learned senior counsel for the appellants, and Mr. Nikhileshwar Kumar Dixit, respondent in-person.

2. The respondent is an ex-serviceman having retired as Sergeant in Indian Air force.

3. The Uttar Pradesh Police Headquarter, Allahabad, issued an advertisement for direct recruitment of Sub Inspectors/Platoon Commanders, PAC against the vacancies for the year 2001. Inter alia, the vacancies advertised included 799 vacancies for male Sub Inspectors and 99 male PAC Commanders. These vacancies, among others, included vacancies reserved for ex-servicemen.

4. The respondent made an application for his appointment pursuant to the above advertisement. He was declared unsuccessful in the physical efficiency test. Being aggrieved by the result in the physical efficiency

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test, he filed Writ Petition [being Writ Petition No. 2868 (S/S) of 2003]. In that writ petition, by an interim order dated May 22, 2003, the respondent was permitted provisionally to participate in the main written examination scheduled on May 25, 2003. However, the interim order clarified that the result of the respondent shall not be declared and shall be subject to the final decision in the writ petition.

5. In pursuance of the interim order dated May 22, 2003, the respondent appeared in the written examination and was declared successful.

6. The respondent filed yet another writ petition [being Writ Petition No. 4763 (S/S) of 2003] before the High Court of Allahabad for issue of a writ of mandamus commanding the present appellants (respondent therein) to grant him exemption from physical efficiency test and to consider his candidature for selection and appointment to the post of Sub Inspector/Platoon Commander ignoring his performance in physical efficiency test.

7. The above two writ petitions were taken up together by the single Judge of that Court and were dismissed on March 18, 2004. Certain observations were made in the order that the State Government or the authority entrusted by it may consider whether or not the standards fixed for various events of physical efficiency

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test are just and proper for persons of inclining age who, by virtue of reservation (like, ex-servicemen) allowed to them, have been made eligible to the posts in question.

8. The respondent filed a petition seeking review of the order of the single Judge, but that was dismissed on May 4, 2004. Then, before the Division Bench, the respondent filed two Special Appeals [being Special Appeal No. 196 (SB) of 2004 and Special Appeal No. 197 (SB) of 2004] - one against the order of the single Judge passed on March 18, 2004 and the other against the order dated May 4, 2004 passed in the review petition.

9. The respondent also made representation to the State Government pursuant to the observations made in the order dated March 18, 2004.

10. The State Government considered the representation made by the respondent and rejected the same on February

18, 2005.

11. The respondent challenged the order of the State Government rejecting his representation.

12. The Special Appeals preferred by the respondent were allowed by the Division Bench on October 4, 2005 and it was held that the respondent was entitled to appointment sought for by him. In its order dated October 4, 2005, the Division Bench directed thus :-

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"The impugned order under appeal is set aside. Let the appellant be granted appointment with immediate effect; salary and other emoluments shall be paid to him from the date he reports and joins. Such joining should be permitted to him within a period of four weeks. We give only this liberty to the respondents that, if before granting him employment, they wish to test him for any items of physical efficiency test, they will be at liberty to put him to such test and in case he fails, they may apply to this Court for variation of this order, but in case no such necessity of retest is felt by the respondents, let employment be given finally to the appellant as directed hereinabove. The employment will commence in the usual manner i.e. by the training being following by the regular employment."

13. It is this order that is impugned by the State of Uttar Pradesh and its functionaries in this Appeal, by special leave.

14. The qualification test for direct recruitment of Sub Inspectors/Platoon Commanders, PAC comprises of six stages, namely, (i) equal measurement eligibility; (ii) medical examination; (iii) preliminary written examination; (iv) physical efficiency test; (v) main written examination, and, (iv) interview. A candidate has to be successful in all stages and thereafter has to undergo successful medical examination.

15. That the respondent cleared the first three stages, namely, (i) equal measurement eligibility; (ii) medical examination, and, (iii) preliminary written

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examination successfully, is not in dispute.

16. As regards physical efficiency test, it appears from the available material that the respondent did appear for that test. The appellants claim that the

respondent has failed in that test which comprised of five items, viz., (1) Cricket Ball throw - 50 mtrs thrice; (2) Long-jump - 13 ft. thrice; (3) Chinning - 5 times; (4) Run/walk - 5 kmts. 30 minutes, and (5) Pushup - 40 in 2 mins 30 seconds and sit-up - 50 in 50 seconds.

On the other hand, the respondent's case is that he was maliciously declared failed by the Physical Instructor.

17. The Division Bench, having noticed that the respondent was a retired Sergeant in the Indian Air Force and on his physical appearance found that he appeared reasonably fit, felt that he deserved the appointment sought for by him and directed accordingly.

18. In our view, the Division Bench was not right in clearing the respondent in physical efficiency test on the basis of his physical appearance before the Court. This should not and could not have been done.

19. The single Judge although dismissed the writ petitions filed by the respondent, but observed that the norms of physical efficiency test fixed for direct recruits of 21-25 years cannot reasonably be applied to the candidates of inclining age but who, by virtue of

reservation, have been made eligible to the posts in question. The learned single Judge expected the State Government or the authority entrusted by it to look into the standards fixed for physical efficiency test for the candidates of reserved category of ex-servicemen. However, despite the respondent's representation, the State Government did not think it fit to revise the standards. In our view, the State Government should reconsider the standards fixed for various events of

physical efficiency test for the post reserved for ex-servicemen, who are near or above 40 years of age if the reservation for such category is to be made meaningful.

20. Be that as it may, insofar as the present case is concerned, it is pertinent to notice that pursuant to the interim order passed by the High Court, the respondent appeared in the main written examination and cleared the same. We are also informed that the respondent has been

provisionally selected as Platoon Commander against one of the vacancies noted above. He has been denied appointment as he has not cleared physical efficiency test.

21. The respondent submitted before us that if an opportunity was given, he would undertake physical efficiency test under the existing standards fixed by the Government. Mr. S. R. Singh, learned senior counsel for

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the appellants, submitted that in that case the appellants would not mind holding fresh physical efficiency test for the respondent if directed by this Court.

22. Having regard to the above facts, we are satisfied that the interests of justice shall be sub-served by the following order :-

(i) The appellants (or any one of them who is competent authority) shall hold physical efficiency test for the respondent within four weeks from today in accord with the existing standards fixed for such test.

(ii) On receipt of the intimation from the concerned authority, the respondent shall appear for physical efficiency test on the date, time and venue fixed for that purpose.

(iii) If the respondent is successful in the physical efficiency test in accord with

existing standards for the post of Platoon Commander, the appointment order shall be issued to the respondent immediately and in no case later than two weeks from the date of clearance of physical efficiency test by him.

(iv) In case the respondent fails in that test, his claim for selection to the post of

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Platoon Commander against the vacancy advertised for the year 2001 shall come to an end and no proceeding in that regard shall be entertained thereafter in any court or forum.

23. The Appeal is disposed of accordingly. No costs.

.....J.  
(R.M. LODHA)

NEW DELHI;  
NOVEMBER 29, 2011

.....J.  
(H.L. GOKHALE)  
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ITEM NO.102

COURT NO.10

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2245 OF 2006

STATE OF U.P. & ORS.

Appellant (s)

VERSUS

NIKHILESHWAR KUMAR DIXIT

Respondent(s)

(With office report )

Date: 29/11/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE H.L. GOKHALE

For Appellant(s)

Mr. S.R. Singh, Sr. Adv.  
Mr. S.K. Dwivedi, Adv.  
Mr. Manoj K. Dwivedi, Adv.  
Mr. G.V. Rao, Adv.  
Mr. Praveen Swarup, Adv.

For Respondent(s)

Respondent-In-Person

UPON hearing counsel and respondent in-person  
the Court made the following  
O R D E R

The Appeal is disposed of in terms of the signed  
order.

(Rajesh Dham)  
Court Master

(Renu Diwan)  
Court Master

(signed order is placed on the file)