



**Dismissed.** (E-5)

**List of Cases cited:**

The Director of Teacher's Training Research Education & anr. Vs O.M. Jessymol

(Delivered by Hon'ble Saurabh Srivastava, J.)

1. With the consent of learned counsels for both the parties, these two petitions shall be heard together and disposed of with a common order.

2. Heard Sri Alok Kumar Yadav, learned counsel for the petitioner and Sri Satyendra Kumar Tripathi, learned Standing Counsel for the State-respondent nos.1 to 3.

3. Writ A No.29840 of 2010 has been filed seeking the following relief:-

*"A. Issue a writ, order or direction, in the nature of certiorari, quashing the impugned dismissal order dated 31.03.2010 passed by the Respondent no.3 (Annexure No.21).*

*B. Issue a writ, order or direction, in the nature of mandamus directing the Respondents No.2 and 3 to allow the petitioner to work as Nalkoop Mistry, Nalkoop Anurakshan Khand, Bhadohi under Nalkoop Mandal of respondent No.2 and Division of respondent No.3.*

*E. Issue a writ, order or direction in the nature of mandamus declaring Paragraph-Ga of office memorandum dated 09.09.2008 issued by Chief Engineer as ultra-vires to Rule 9-Kha of the Service Rules."*

4. Writ A No.18844 of 2010 has been filed seeking the following relief:-

*a) Issue a writ, order or direction, in the nature of certiorari, quashing the impugned dismissal order dated 25.03.2010 passed by the Respondent no.2 (Annexure No.20).*

*B. Issue a writ, order or direction, in the nature of mandamus directing the Respondents No.2 and 3 not to interfere in the functioning of the petitioner as Nalkoop Mistry, Nalkoop Anurakshan Khand, Bhadohi under Nalkoop Mandal of respondent No.2 and Division of respondent No.3.*

5. It is the case of the petitioner that he being ITI certificate holder applied for the post of Tubewell Mechanic in pursuance of the advertisement notification wherein minimum prescribed qualification for seeking appointment over the post of Tubewell Mechanic was mentioned as ITI and having 5 years of experience from the specified institutions as mentioned in the notification itself. The petitioner submitted the experience certificate of 7 years and 4 months for seeking appointment under the eligible candidate in pursuance of the eligibility criteria as prescribed under the advertisement notification. The petitioner was selected and joined on the said post on 29.05.2009.

6. On the complaint as well as writ petition preferred by the respondent no.4, the discrepancy and irregularity while conducting appointment is specifically in favour of the petitioner has been highlighted wherein it has been mentioned that the petitioner has submitted the experience certificate on 16.09.2008 is not as per prescribed in the advertisement notification.

7. After re-scrutiny of the experience certificate as submitted by the petitioner, it

has been revealed that the experience after ITI as obtained by the petitioner was only for 3 years and 4 months and before completion of ITI, it was 4 years.

8. The competent authority being the head of selection procedure decided vide order dated 25.03.2010 that experience as obtained by the petitioner before the ITI cannot be given any credence and as such the experience obtained by the petitioner after ITI is less than the prescribed experience in the advertisement notification dated 16.9.2008 and as such, the selection of the petitioner has been cancelled even after putting him in the final select list which culminated into joining in the services and rendered for few months. The precise ground for challenging the determination as drawn while passing the order dated 25.03.2010 as well as order dated 31.03.2010 that the experience as mentioned in the rules pertaining to the Tubewell Mechanic as mentioned in the Tubewell Mechanic Service Rules, 1951 wherein the minimum experience required for ITI holder is only minimum 2 years as prescribed under Rule 9(B) and as such, the rules framed under the powers extracted from the Article 309 of the Constitution of India cannot be substituted or supplemented by the office memorandum/Government Order and as such in pursuance of the Rule 9(B) of the 1951 Rules, the petitioner was having requisite qualification along with the experience as required for the post of Tubewell Mechanic and as such, the order dated 31.03.2010 passed by the respondent no.3 is contrary to the rules and the same is liable to be set aside.

9. Per contra, learned Standing Counsel vehemently opposed the prayer as made in the petition on the ground that the

petitioner never challenged the terms and conditions as defined in the advertisement notification dated 16.09.2008 wherein the minimum experience required for ITI holder was 5 years for seeking appointment over the post of Tubewell Mechanic, rather the petitioner participated in the same by way of producing experience certificate of 7 years and 4 months which was legally ignored by the competent authority since the experience of four years as mentioned by the petitioner, was before obtaining the certificate of ITI and as such, the same cannot be counted for the purposes of seeking appointment for the post of Tubewell Mechanic wherein the minimum qualification is ITI, the experience as obtained by the petitioner after holding the certificate of ITI can only be counted for seeking appointment over the said post.

10. It is the admitted case of the petitioner that the experience after having the minimum qualification as required under the advertisement notification was only three years and four months and as such, the same was not meeting the minimum experience as required through notification dated 16.09.2008 and as such, the selection of the petitioner was rightly cancelled by the competent authority.

11. After hearing the rival submissions as extended by the learned counsels, the only point is available for determining by this Court that whether the minimum experience as required for the post of Tubewell Mechanic notified vide advertisement notification dated 16.09.2008 was to be held justified mentioned in the notification in pursuance of the circular issued on 09.09.2008 through which the prescribed length of experience has been extended or the minimum experience mentioned mentioned

in the 1951 Rules may be taken into consideration by the competent authorities?

12. While substantiating the arguments as raised by learned counsel for the petitioner, it has been argued that the specific rules framed in shape of the 1951 Rules, any of the rules and provisions cannot be interfered with, altered, modified or determined contrary to the same by mere issuing a Government Order/circular by any authority of the State-respondents. The entire experience has to be carried out by the competent body who framed the rules itself.

13. In reply to the contentions and legal arguments as raised by the learned counsel for the petitioner, again the learned Standing Counsel vehemently argued that if the petitioner was aggrieved with the amending rules, he should have challenged the same at the time when he was intended to seek appointment over the post of Tubewell Mechanic wherein the prescribed minimum eligibility was ITI with 5 years of experience, it is the petitioner who applied for the same and after accepting all the minimum qualifications as required through advertisement notification and as such after cancelling the selection of the petitioner, the cause of action does not survive in his favour for challenging the circular through which the Rules have been modified or explained or clarified through the circular dated 09.09.2008. There is a much force in the arguments as raised by the learned counsel for the petitioner that the rules cannot be modified by mere issuing a circular or Government Order but at the same time, it is admitted case of the petitioner that he has never challenged any of the required eligibility criteria as mentioned in the advertisement notification dated 16.09.2008 whereas being the

eligible candidate under the prescribed eligibility criteria mentioned in the notification, he submitted his claim through an application along with requisite minimum experience certificate by way of submitting experience certificate of 7 years and 4 months, it is also admitted by the learned counsel for the petitioner that the experience after ITI was only for 3 years and 4 months.

14. Once, the petitioner submitted his application along with experience certificate, it clearly demonstrates that the entire terms and conditions mentioned in the advertisement notification was duly accepted by the petitioner, it is not the case of the petitioner that without accepting the minimum experience length as mentioned in the notification, he submitted his claim for seeking appointment over the post of Tubewell Mechanic and as such, after being declared not suitable for the post of Tubewell Mechanic on the ground of minimum experience as required through the advertisement notification, the legal ground available with the petitioner that the minimum experience as mentioned in the rules cannot be altered by way of issuing office memorandum/circular/order which held the orders impugned the petition as illegal.

15. The petitioner once accepted the terms and conditions as mentioned in the advertisement notification, he will not be permitted to take any ground whatsoever is available once he has been declared unsuccessful on the ground of re-scrutiny of the mandatory documents which were required to be submitted at the time of seeking appointment over the post of Tubewell Mechanic wherein it has been found that the experience certificate as submitted by the petitioner was

considerably less in nature as mentioned in the notification which was 5 years and experience certificate submitted by the petitioner was only 3 years and 4 months.

16. In support of the stand taken up by the petitioner he has placed reliance on the judgement passed by Hon'ble the Apex Court in the case of **The Director of Teacher's Training Research Education and another Vs. O.M. Jessymol<sup>2</sup>**.

17. In the aforementioned Civil Appeal, the epigenes of the case starts from the challenge initiated by the teacher who obtained the Teacher's Training Certificate from the State of Nagaland and obtained less than 50% marks and as such, the appellat was treated ineligible for appointment as Secondary Grade Teacher at the time issuing the notification of advertisement for the post of teacher, the requisite 50% marks obtained in the Teachers' Training Certificate was mentioned but the same was silent in the rules whereupon the determination has been made by Hon'ble the Apex Court that once the position of requirement of minimum marks is silent in the rules, the same cannot be mentioned in the advertisement notification issued for appointment over the post of teachers.

18. In the present case, for requirement of minimum experience as mentioned in the rules is only 2 years but while issuing the advertisement notification for the same post mentioned in the advertisement notification was minimum experience of 5 years. The analogy and the ratio of the said judgement is clearly applicable in the instant matter but the case is slightly different with the matter which has already been decided by Hon'ble the Apex Court.

19. In the instant matter, the petitioner by way of accepting all the terms and conditions and requirements mentioned in the advertisement notification submitted his application for seeking appointment for the post of Tubewell Mechanic along with experience certificate of 7 years and 4 months which was letter on found that the experience actually obtained by the petitioner after holding the certificates of ITI was only 3 years and 4 months which is admitted to the petitioner.

20. In the matter as referred by learned counsel for the petitioner which has been decided by Hon'ble the Apex Court, the aspirants/candidates applied for the post of teachers were not holding the 50% marks in the Teachers' Training Certificate as mentioned in the advertisement notification but the same was not available in the rules and once she applied by way of disclosing the fact that she is not having 50% marks in the Teacher's Training Certificate and her candidature was rejected at the initial level itself then only the entire controversy has been raised and the same has been duly decided by Hon'ble the Apex Court.

21. In the instant matter, the petitioner knowingly each and everything submitted by way of adducing the experience certificate of 7 years and 4 months which clearly shows that the petitioner accepted the terms and conditions for acquiring the minimum experience of 5 years as mentioned in the advertisement notification.

22. In view of the abovementioned facts and circumstances and lengthy discussions upon the factual position, legal provisions as well as the dictum of the judgement of Hon'ble the Apex Court in the

aforesaid case, both the petitions stand **dismissed.**

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**(2023) 5 ILRA 1608**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 20.04.2023**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Application U/S 482. No. 12717 of 2023

**Neelam** **...Applicant**  
**Versus**  
**State of U.P. & Anr.** **...Opposite Parties**

**Counsel for the Applicant:**

Sri Shashi Prakash Misra, Sri Jai Prakash Singh

**Counsel for the Opposite Parties:**

G.A., Sri Pramod Kumar Pandey

**(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Indian Penal Code, 1860 - Sections 363, 366 and 120-B , The Protection of Children from Sexual Offences Act, 2012 - Section 2(d), 16/17 - proceedings under Section 376 I.P.C. and POCSO Act, cannot be quashed on the basis of a compromise between the accused and the victim. (Para - 10)**

**(B) Criminal Law - adjudication of cases involving gender related crimes - courts should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction. (Para - 8)**

Compromise application filed - signed by applicant, prosecutrix, first informant, and prosecutrix's mother and father - case against applicant - conspired with - to cause prosecutrix

to elope with a Class X student - application states - prosecutrix, informant, and husband do not want to pursue prosecution further - prosecutrix and her parents moved an application seeking to compromise. **(Para - 2,3)**

**HELD:-** No good grounds to quash ongoing trial proceedings based on the provided facts. **(Para - 11)**

**Application u/s 482 Cr.P.C. rejected.** (E-7)

**List of Cases cited:**

1. Aparna Bhat & ors. Vs St. of M.P. & anr., 2021 SCC OnLine SC 230
2. Pravin Kumar Singh & ors. Vs St. of U.P. Thru. Prin. Secy. Home Deptt. & anr., 2023 SCC OnLine All 131
3. Nardeep Singh Cheema @ Navdeep Singh Cheema Vs St. of Punj. & ors., CRM-M-2270-2020
4. Om Prakash Vs St. of U.P. & anr., 2023 SCC OnLine All 93

(Delivered by Hon'ble J.J. Munir, J.)

1. This application has been filed seeking to quash the proceedings of Special Sessions Trial No. 71 of 2018 (arising out of Case Crime No. 1888 of 2017 (State v. Neelam and others) under Sections 363, 366 and 120-B I.P.C. and Section 16/17 of the Protection of Children from Sexual Offences Act, 2012, Police Station - Bakhira, District - Sant Kabir Nagar, pending before the Court of the Additional Sessions Judge/Special Judge (POCSO Act), Sant Kabir Nagar.

2. The submission of the learned Counsel for the applicant is that a compromise application dated 13.12.2023 has been filed, signed by the applicant, the prosecutrix, as also the first informant and