

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6860 OF 2021

(Arising out of SLP (CIVIL) No.5006 of 2020)

State of Uttar Pradesh and Ors.

....Appellant(s)

Versus

Pankaj Kumar

.... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

1. The appellants are before this Court assailing the order dated 29.08.2019 passed by the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, in Special Appeal Defective No. 366/2019. Through the said order the Division Bench of the High Court has dismissed the Special Appeal, thereby upholding the judgment and order dated 12.03.2019 passed by the learned Single Judge in W.P. No.693 (S/S) of 2019, titled Pankaj Kumar vs. State of U.P and Ors.

2. The brief facts leading to the present appeal is that the appellants had published an advertisement in the year 2015 to recruit Police Constables to the Provincial Armed Constabulary (Male) by direct recruitment. The respondent herein was one of the candidates who had responded to the said advertisement and submitted his application. Pursuant thereto, the admit card was issued to the respondent and the initial fitness examination was held. In order to complete the process of selection, the documents were to be verified and the candidates were to be subjected to physical fitness test which was to be made subsequently as the next stage of recruitment process. The issue presently is with regard to the respondent being unable to appear for the physical fitness test and the verification of documents which he alleges is for want of written communication.

3. According to the appellants, the candidates who were required to appear for the physical fitness test and document verification were intimated by issuing SMS over the mobile phone, the number of which had been furnished in the application. Several other candidates who had received such

SMS had appeared and taken part in the process of document verification and the physical fitness test. The respondent who had not appeared, made out a grievance about appellants not intimating the respondent through post. In that light, the respondent filed the writ petition bearing SS No.693 of 2019 seeking that the appellants herein be directed to complete the document verification and the physical fitness test of the respondent pertaining to his height, weight and chest measurement and to declare the result after completing the process. The case put forth was that the appellants had not adhered to the requirement contemplated under the Uttar Pradesh (Civil Police) Constable and Head Constable Rules, 2008. According to the respondent, as per rule, a call letter was required to be issued. Since, such call letter has not been issued to the respondent he was unable to take part in the process of document verification and physical fitness test. The Learned Single Judge though did not record a finding with regard to there being violation or non-compliance of any rule, had arrived at the conclusion that there was inadvertence on part of the respondent since an applicant would not have deliberately not participated in the process of recruitment. In

that circumstance, as a matter of equitable consideration, the Learned Single Judge had directed the appellants to permit the petitioner to appear for the document verification and physical fitness test for the post of Constable in pursuance to the recruitment advertised in the year 2015.

4. The appellants herein, claiming to be aggrieved by such direction issued by the Learned Single Judge filed an intra court appeal in Special Appeal No.366/2019 before the Division Bench of the High Court. The Division Bench having extracted the portion of the observations made by the Learned Single Judge wherein an equitable consideration was made, has further indicated that there is no dispute to the fact that except for the SMS sent to the respondent no other mode of information was sent and in that view the Division Bench approved the direction issued by the Learned Single Judge whereby an opportunity has been granted to the respondent to appear for the document verification and physical fitness test. It is in that view, the appeal was dismissed.

5. Mr. Pradeep Misra, learned counsel representing the appellants while assailing the order passed by the Learned

Single Judge as also the Division Bench has contended that keeping in view the large number of candidates and the process to be completed, the candidates were intimated by sending SMS to appear for the document verification and the physical fitness test. It is his further contention that the negligence of the respondent in not responding to such SMS by appearing for the further process should be to his own detriment and cannot interfere with the process of selection which has been completed. It is pointed out that the physical standard test had been held as far back as on 17th, 18th and 19th September 2018. At this belated stage, no indulgence can be shown when admittedly the SMS had been received by the respondent on the mobile no.8394959934 which was furnished by him. Reference is made to the information/notification dated 15.05.2018 wherein the details of the process of selection had been indicated and the candidates had also been notified therein that the result is available on the website, the details of which was furnished. The candidates were required to keep track of the details of the selection process through the website. Hence the respondent cannot come up with the contention as has been put forth by him herein. It is contended that though one

opportunity had been granted as a concession to about 151 candidates pursuant to direction issued by the Court, the said process cannot be a continuing one, as and when individuals/candidates seek to reopen the selection process time and again. It is contended that the Coordinate Bench of the High Court in another writ petition had rejected a similar claim as that of the respondent and the Division Bench had upheld the rejection. It is in that light contended that in respect of the selection process which was commenced in the year 2015 and concluded in all respects in the year 2018, request for opportunity at this belated stage ought not to have been entertained by the High Court.

6. Mr. Sarvesh Kumar Dubey, learned counsel for the respondent on the other hand seeks to sustain the order passed by the Learned Single Judge and approved by the Division Bench of the High Court. It is his contention that the Rules contemplated that the intimation has to be sent through post, but no such intimation was issued to the respondent. It is contended that the mere issue of SMS intimating the date of further process in the selection would not be sufficient. He contends that the mobile number would be furnished by the

candidates at the time of making an application and in the instant case since about 3 years had elapsed from the date of the application, there could be no assumption that the candidate would possess the very same mobile connection and the number. In that light, it is contended that the appropriate course to ensure proper service would be through postal intimation, which had not been done in the instant case. It is in that background, the Learned Single Judge as also the Division Bench has arrived at the conclusion that an opportunity is required to be furnished as the employment opportunity should not be jeopardized. He therefore, seeks that this appeal be dismissed.

7. In the light of the rival contentions, having perused the order passed by the learned Single Judge as also the conclusion reached by the Division Bench of the High Court, it would indicate that the High Court has not granted the relief to the respondent by recording a finding with regard to the non-compliance of any requirement envisaged under the Rule or procedure provided in the advertisement calling for applications. The Rule as referred to by the learned counsel for the respondent mentions that the intimation is to be provided

by postal communication or any other mode. In that view, there is no bar in intimating the candidates through SMS, more particularly when large number of candidates had to appear in the subsequent process and majority of the candidates have appeared for document verification and physical fitness test pursuant to intimation by SMS. Even, so far as the respondent is concerned, it is not his case that he had not received the SMS. It is only a technical contention that he ought to have been intimated through postal communication. When a requirement is stated in the application to provide the mobile number, it is with a purpose to communicate and in the instant case, the appellants have sent the SMS to the very number which had been furnished by the appellant.

8. Though, the learned counsel for the respondent vaguely contended that a person may not retain the same number after a long lapse of time, no material has been brought on record to indicate that the respondent did not possess the said mobile connection as on the date the SMS was sent. Further, the argument as put forth by the learned counsel for the respondent that one may not retain the same number after lapse of long time would hold good even for the address which

is furnished for issue of postal communication. In a given case, the person may not reside in the same address which is furnished for communication as it existed when the application is made. In such circumstance, it is for the candidate to intimate any change to the authorities, since such change would be within the knowledge of the candidate and it is in his or her own interest such intimation is to be made. In the instant case, when there can be no dispute that the respondent was in possession of the same mobile connection, the detail of which was furnished in the application and the SMS had been sent to the respondent, the respondent having not acted on the same cannot at his own convenience make request to be permitted to participate in the selection process which has already concluded, not having utilized the opportunity which was available to him.

9. Further, from the very nature of consideration made by the High Court, it is seen that it was the casual attitude of the respondent which had brought about the situation though the High Court has mildly put it as, inadvertence and provided an opportunity. It is no doubt true, that as contended by the respondent in the objection statement, an opportunity was

granted to about 151 candidates to take part in the selection process as indicated in the notice dated 14.01.2019 issued pursuant to directions issued by the High Court in the writ petitions which were filed. It is to be noticed that the respondent was not vigilant at the earliest point in time but it is only after such consideration had been made by the High Court and an opportunity was granted to certain other persons, the respondent had chosen to file the writ petition by merely contending that he had made a request to permit him to take part in the process on 15.01.2019 and he had not been permitted.

10. In that background, it is to be noted that another learned Single Judge of the High Court in a similar circumstance had dismissed Writ Petition No.3647 of 2019 filed by one Radha Sharma seeking similar relief and the said order was upheld by the Division Bench in Special Appeal Defective No.903 of 2019. The order of the learned Single Judge was dated 13.05.2019. In any event, though indulgence was shown in the earlier cases, a line has to be drawn at some stage as otherwise, the recruitment process undertaken by the competent authorities would be meaningless without a time line

and the next recruitment process will also get effected since determination of the number of vacancies for the next process will keep fluctuating. The process herein had commenced in the year 2015 and the document verification along with the physical fitness test was held in 2018. Several candidates who were permitted pursuant to the order of the High Court had taken part in early January 2019. Since, sufficient time has elapsed thereafter it would not be appropriate to make an exception in the case of the respondent at this stage as otherwise the trickle would continue.

11. We are therefore of the opinion that the learned Single Judge as also the Division Bench of the High Court was not justified in their conclusion. The order dated 12.03.2019 passed by the learned Single Judge in W.P No.693 (SS) of 2019 and the order dated 29.08.2019 passed in Special Appeal Defective No.366 of 2019 by the Division Bench are set aside. Consequently, the Writ petition No.693 (SS) of 2019 titled Pankaj Kumar vs. State of U.P. and Ors. stands dismissed.

12. The appeal is allowed with no order as to costs.

13. Pending application, if any, stands disposed of.

.....**J.**
(DR. DHANANJAYA Y. CHANDRACHUD)

.....**J.**
(A.S. BOPANNA)

**New Delhi,
November 18, 2021**