

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.10058/2009**

Judgment reserved on: November 26, 2009

% Judgment delivered on: January 25, 2010

1. Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

2. N. Mukherjee  
Under Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioners

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

2. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

3. Praveen Kumar  
S/o Shri Raghveer Singh  
R/o 1288, Sector-2, Rohtak  
Haryana.

...Respondents

Through: Mr. L.K. Garg, Advocate for  
Respondent Nos. 1 and 2.  
Mr. Arun Bhardwaj, Advocate for  
Respondent No. 3.

**With**

**Writ Petition (Civil) No. 9949/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Govt. of NCT of Delhi  
Through its Lt. Governor  
Raj Niwas Marg  
Delhi-110054.
2. Shefali Barnala  
D/o Mr. Inderjeet Barnala  
W/o Mr. Deepanshu Tandon  
R/o B-452, Meera Bagh  
Paschim Vihar  
New Delhi-110063.

...Respondents

Through : Mr. L.K. Garg, Advocate for  
Respondent No. 1.  
None for Respondent No.2.

**With**

**Writ Petition (Civil) No. 10059/2009**

1. Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

2. N. Mukherjee  
Under Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioners

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

2. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

3. Vinay Sharma  
S/o Sh. Satbir Singh  
R/o 1562 Urban Estate  
Jind, Haryana.

...Respondents

Through: Mr. L.K. Garg, Advocate for  
Respondent Nos. 1 and 2.  
Mr. Arun Bhardwaj, Advocate for  
Respondent No. 3.

**With**

**Writ Petition (Civil) No. 9962/2009**

1. Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

2. N. Mukherjee  
Under Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioners

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Ms. Vandana  
D/o Sh. Prakash Chandra  
R/o C-10, INA Colony  
New Delhi.

2. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

3. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

...Respondents

Through : Mr. Arun Bhardwaj, Adv. for  
Respondent No.1.  
Mr. L.K. Garg, Advocate for  
Respondent Nos. 2 and 3.

**With**

**Writ Petition (Civil) No. 10060/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Manoj Kumar Rana  
S/o Sh. Kartan Singh  
House No.120, Village Nangli Puna  
Delhi-110036.

2. Dharmender Singh  
S/o Late Shri Om Parkash  
R/o No.19, Village Kirari Sultanpuri  
Delhi-110086.

3. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

4. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

...Respondents

Through : Mr. Harpreet Singh, Advocate for  
Respondent No. 1.  
None for Respondent No.2.  
Mr. L.K. Garg, Advocate for  
Respondent Nos. 3 and 4.

**With**

**Writ Petition (Civil) No. 9953/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

Chander Mohan  
S/o Sh. Gyan Chand  
House No.11-A, Street No.1  
Vijay Nagar, Batala Road  
Amritsar, Punjab.

...Respondents

Through : None

**With**

**Writ Petition (Civil) No. 10063/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Manoj Kumar Meena  
S/o Sh. Rang Lal Meena  
R/o B-60, Shankar Vihar Colony  
Near Sawai Gattor, Malviya Nagar  
Jaipur, Rajasthan.

2. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

3. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

...Respondents

Through: Mr. Harpreet Singh, Advocate for  
Respondent No. 1.  
Mr. L.K. Garg, Advocate for  
Respondent Nos. 2 and 3.

**With**

**Writ Petition (Civil) No. 10062/2009**

1. Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

2. N. Mukherjee  
Under Secretary  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioners

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

1. Naveen Kumar  
S/o Sh. Z.S. Kundu  
R/o 27, New Shanti Nagar  
Model Town, Panipat, Haryana.

2. Govt. of NCT of Delhi  
Through its Chief Secretary  
Indraprastha Sachivalaya  
New Delhi-110001.

3. The Secretary  
Directorate of Prosecution  
Govt. of NCT of Delhi  
Players Building ITO  
Delhi-110054.

...Respondents

Through: Mr. Harpreet Singh, Advocate for  
Respondent No. 1.  
Mr. L.K. Garg, Advocate for  
Respondent Nos. 2 and 3.

**With**

**Writ Petition (Civil) No. 11426/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

Yogesh Kumar Kahrana  
S/o Ram Lal Karhana  
R/o-Behind Pratap School  
Mohalla Akhaypura, Alwar  
Rajasthan-301001.

...Respondent

Through : Mr. Rahul Srivastava with  
Ms. Anshum Jain, Advs.

**With**

**Writ Petition (Civil) No. 9935/2009**

Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

Anima Kujur  
R/o – C/o Shri Prem Prakash  
H.No.590, Ground Floor  
Dr. Mukherjee Nagar  
New Delhi-110009.

...Respondent

Through : Mr. Rajesh Ranjan, Adv.

**With**

**Writ Petition (Civil) No. 9954/2009**

1. Union Public Service Commission  
Through its Under Secretary  
Dholpur House, Shahjahan Road  
New Delhi-110069.

...Petitioner

Through: Mr. Naresh Kaushik with Ms. Aditi  
Gupta and Ms. Amita K. Chaudhary,  
Advocates.

Versus

Sarika Tyagi  
D/o Shri Sushil Tyagi  
R/o House No.8-A, Rampuram  
Meerut Road, District Muzafarnagar, U.P.

...Respondent

Through : Mr. Mohan Kumar with  
Ms. Rashmi Singh, Advs.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**MADAN B. LOKUR, J.**

We are dealing with a batch of 11 writ petitions directed against similar orders passed by the Central Administrative Tribunal.

2. The broad issue in all these cases is the same, namely, whether the Detailed Application Form submitted by the Respondents (either without the required documents or the documents being in the wrong format) for appointment as Assistant Public Prosecutor in the Directorate of Prosecution, Government of NCT of Delhi ought to have been accepted by the Union Public Service Commission (UPSC). In our opinion the Detailed Application Forms submitted by the Respondents (in nine cases) were rightly rejected by the UPSC and the Tribunal erred

in setting aside the decision of the UPSC.

3. One batch of seven writ petitions is directed against the order dated 2<sup>nd</sup> April, 2009 passed by the Tribunal; the second batch consists of three writ petitions directed against the order dated 1<sup>st</sup> May, 2009 while the third batch consists of one writ petition directed against the order dated 13<sup>th</sup> July, 2009 passed by the Tribunal. The main impugned order is dated 2<sup>nd</sup> April, 2009. The other impugned orders have merely followed this order.

4. With the consent of learned counsel for the parties we took up WP(C) No.10058/2009 as the main case. This is directed against the order dated 2<sup>nd</sup> April, 2009.

5. The Petitioner (Union Public Service Commission – UPSC) issued an advertisement for recruitment of 38 posts of Assistant Public Prosecutor in the Directorate of Prosecution, Government of NCT of Delhi. The advertisement was published in the Employment News dated 22-28 March, 2008. The essential qualification for appointment was a degree in law of a recognized University or equivalent and three years

experience at the Bar. The advertisement is titled as “Special Advertisement No.52/2008”.

6. There are three significant facts that need to be noted from the Special Advertisement No. 52/2008. They are: (i) the format of the application form is given along with the advertisement, (ii) candidates are advised to go through the instructions and additional information to candidates for recruitment by selection given in Advertisement No.06 published in the same issue of the Employment News, (iii) a recruitment test would be held on 3<sup>rd</sup> August, 2008 and (iv) the proformae for all the certificates are given in the Special Advertisement.

7. It is significant to note that no certificates/documents were required to be attached along with the application form.

8. The instructions mentioned in Advertisement No.06 particularly clause 7 thereof makes it clear that all original certificates/documents are not required to be sent along with the application form but are required to be produced at the time of interview.

9. Some of the other relevant instructions are as follows:

**“NOTE-I:** The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview.

**NOTE-II:** Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to Interview all the Candidates, the Commission at their discretion may restrict the number of Candidates, to a reasonable limit by any or more of the following methods:

- (a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement; or
- (b) On the basis of experience in the relevant field; or
- (c) By counting experience before or after the acquisition of essential qualifications; or
- (d) By holding a screening test.

The candidate should, therefore, mention all the qualifications and experience in the relevant field over and above the minimum qualifications and should attach attested/self certified copies of the Certificates in support thereof. Note I and II under para 3 above are not applicable to Special Advt. Nos. 51/08 and 52/08.

**NOTE-III:** In regard to Educational Qualifications, the mark sheet in lieu of Educational Certificates will not be accepted by the Commission.

**NOTE-IV:** The provisional claim whatsoever in regard to eligibility to the post will not be accepted by the Commission.

## 7. CERTIFICATE TO BE ATTACHED:

**Candidates should note that they should attach with their applications attested/self certified copies of the following documents:**

- (i) Matriculation or equivalent certificate in support of their declaration of age.
  - (ii) Degree or Diploma Certificate or other certificates in support of their educational qualifications;
  - (iii) If the qualification possessed by the candidate is equivalent, then the authority (with number and date) under which it has been so treated must be indicated;
  - (iv)           xxx           xxx           xxx
  - (v) A candidate who claims to belong to one of the Scheduled Castes or Scheduled Tribes has to submit, in support of his claim, an attested copy of a certificate in the prescribed form issued by the competent authority (original to be produced at the time of interview).
  - (vi) A candidate who claims fee exemption being Physically Handicapped (eligible for appointment to the post on the basis of prescribed standards of Medical Fitness) has to submit an attested copy of a medical certificate issued by the Surgeon/Medical Officer of the Government Hospital/Medical Board in the prescribed form. (Original to be produced at the time of interview).
- The candidates claiming fee concession under this para should produce a certificate in prescribed proforma.
- (vii) A candidate who claims to belong to one of the Other Backward Classes has to submit in support of his claim an attested copy of a certificate in the prescribed form

issued by the competent authority specified by the Govt. in their OM No. 36012/22/93-Estt. (SC) dated 22.10.93. OBC Certificate should be issued within one year of the closing date. Candidates may produce the original Certificates at the time of Interview.

**NOTE :I: ORIGINAL CERTIFICATE SHOULD NOT BE SENT WITH THE APPLICATION. THESE SHOULD BE PRODUCED AT THE TIME OF INTERVIEW.**

**NOTE :II:** Candidates should note that only the date of birth recorded in the Matriculation, Higher Secondary Examination Certificate or any equivalent certificate on the date of submission of application, will be accepted by the Commission. Mark Sheet, Admit card as a proof of date of birth will not be accepted. No subsequent request for its change will be considered or granted.

**NOTE :III:** If no copies of the above certificates are sent with the application, it is liable to be rejected and no appeal against its rejection will be entertained.

**NOTE :IV:** The period of experience rendered by a candidate on part time basis, daily wages, visiting/guest faculty will not be counted while calculating the valid experience for short-listing the candidates for interview. **[For SPL Advt Nos. 51/08 and 52/08, the above documents are to be produced at the time of interview].”**

One of the important boxed instructions is to the effect that all the prescribed proformae could also be down loaded from the website of the UPSC, that is, [www.upsc.gov.in](http://www.upsc.gov.in). It is specifically mentioned that the applications sent in any other format are liable to be rejected.

10. As mentioned in Special Advertisement No.52/2008, a recruitment test was in fact held on 3<sup>rd</sup> August, 2008. There is no dispute that the Respondents passed the recruitment test.

11. By a letter dated 10<sup>th</sup> November, 2008 the Respondents were informed that they had qualified the written examination for being called for an interview. Along with that letter, a Detailed Application Form (DAF) was enclosed. The DAF was required to be submitted by the Respondents to the UPSC within fifteen days. A perusal of the DAF makes it clear that it has to be sent along with all requisite certificates and documents, the originals of which are required to be produced at the time of interview.

12. There is no dispute about the fact that the Respondents submitted the DAF within time but they were not called for an interview because by a letter dated 30<sup>th</sup> December, 2008 (in all the cases) their candidature was cancelled. The reasons given were different from person to person and they are as follows:-

- (i) LLB degree certificate not furnished. (7 Respondents)
- (ii) Certificate indicating three years experience at the Bar not furnished. (3 Respondents in 2 cases)

- (iii) Matriculation certificate/Senior Secondary certificate or any equivalent certificate not furnished as proof of date of birth. (2 Respondents)
- (iv) Physically Handicapped certificate not furnished in the prescribed format. (1 Respondent)
- (v) Scheduled Tribe certificate not furnished in the prescribed format. (2 Respondents)

(The application of two Respondents was rejected for more than one reason).

13. We propose to deal with these grounds of rejection separately.

14. Insofar as the failure of the Respondents to produce the LLB degree certificate is concerned, the common explanation given by them in all the cases is that the degree certificate was not made available by the concerned University and, therefore, it was not furnished with the DAF. It is submitted on their behalf that since they have been enrolled with the Bar Council, that by itself is sufficient proof of their having passed the LLB examination.

15. In our opinion, it is difficult to believe that the LLB degree certificate was not issued to the Respondents for several years. It may

be mentioned that one of the requirements for the applicants is to have three years experience at the Bar, which they all had. It is, therefore, extremely unlikely that these Respondents did not get their LLB degree for three years. In any event, there is no evidence of this, except their bald averment.

16. That apart, we find that soon after the rejection of their candidature on 30<sup>th</sup> December, 2008 these Respondents managed to produce their LLB degree certificates within a few days. It is obvious that these Respondents, if they were in possession of the LLB degree certificate, did not make any effort to attach it to the DAF and took the matter very casually until they found that their DAF was rejected. If what these Respondents say is correct and if they did not have the LLB degree certificate in their possession, they did not make any special effort to obtain the LLB degree certificate despite the requirement. Nor did these Respondents place on record any material to show the special efforts made by them (if any), in spite of which they were unable to obtain the LLB degree certificate.

17. We are of the opinion that these Respondents were aware

well in advance, that is, from the issue of the Employment News dated 22-28 March, 2008 that they would be required to submit the LLB degree certificate on their passing the written examination scheduled for 3<sup>rd</sup> August, 2008. These Respondents, therefore, had sufficient time (from March, 2008 at least till August, 2008 if not November, 2008) to obtain their LLB degree certificate for submission along with the DAF. These Respondents, who did not make even this minimum effort for such a long time, have only themselves to blame for their cavalier and casual approach.

18. These Respondents say that because they were enrolled with the Bar Council, therefore it must be assumed that they had a valid LLB degree certificate. This is neither here nor there. There was no requirement for a candidate to attach the proof of enrolment with the Bar Council. Consequently, if an applicant attached such a document, the UPSC was not obliged to take note of it. What was required to be attached was a valid LLB degree certificate, nothing more or less.

19. We also find that exactly a similar situation exists with regard to other certificates required to be produced by some other

Respondents such as the Scheduled Tribe certificate, Physically Handicapped certificate and Matriculation certificate. In all these cases, the Respondents had adequate time (from March, 2008 till November, 2008) to have their certificates ready in the prescribed proforma but they chose to take it easy and woke up only when their DAF was rejected.

20. As a result of the rejection of their DAF, the Respondents preferred Original Applications before the Central Administrative Tribunal or writ petitions before this Court (which then transferred the petitions to the Tribunal) challenging the rejection of the DAF. By an interim order, the UPSC was directed to interview the Respondents on a provisional basis. After hearing learned counsel for the parties, the applications were allowed by the Tribunal by the impugned orders as mentioned above.

21. The UPSC has challenged the orders passed by the Tribunal and the question before us is whether it was appropriate for the Tribunal to have asked the UPSC to consider the candidature of the Respondents even though their DAF was incomplete.

22. At this stage it may be mentioned that in respect of two of the writ petitions, that is, WP(C) No.9962/2009 and WP(C) No.10060/2009, the only ground of rejection of the candidature was that these Respondents did not produce a certificate stating that they had three years experience at the Bar. Before the Tribunal as well as before us it was conceded by learned counsel for the UPSC that this was not a valid ground for rejection of their candidature. Consequently, insofar as WP(C) No. 9962/2009 and WP(C) No.10060/2009 filed by the UPSC are concerned, they have to be dismissed and we do so accordingly. The UPSC should forthwith declare their result.

23. As far as the other writ petitions are concerned, the submission of learned counsel for the Respondents is that in any case all the documents were produced by them when they went for the interview and, therefore, there is no prejudice caused to the UPSC who should have accepted the DAF.

24. In this context, it is necessary to note a few facts. The UPSC stated on affidavit before the Tribunal that in response to the advertisement they received as many as 3011 applications which is

roughly about 90 applications per post. Out of all these applicants 2765 were admitted for the written examination for which 1885 actually appeared. The total number of candidates who qualified for the interview was 134.

25. With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it. It is one thing to say that procedure is a handmaid of justice but it is another thing, in practical life, to give procedure a complete go by for the sake of accommodating a few people. If this is done, then there would be no obligation on anybody to follow any procedure resulting in a completely unmanageable situation.

26. If the submission made by learned counsel for the Respondents is placed on a larger canvas (since the UPSC conducts dozens of such examinations annually), one can well imagine the resultant chaos. For example, it is well known that the UPSC receives lakhs of applications for the Central Civil Services Examination. If every such applicant submits an incomplete application, that is to say

that the relevant information is not submitted along with the application, the processing time for the UPSC would take several months and would, in the long run, be completely counterproductive. Consequently, in our opinion while it is true that procedure is the handmaid of justice, it is not possible to ignore practical difficulties that may arise in a given case.

27. The present case is such a case where, because of a very large number of applications received by the UPSC, if it is compelled to accept procedurally incomplete applications, there would be serious practical difficulties that it would have to encounter and this may very well lead to a break down in the system. We also cannot overlook the fact that the applicants/Respondents are all highly educated persons claiming to have an LLB degree and three years experience at the Bar. Therefore, it must be assumed that they fully understood the contents of the advertisements and the DAF. There was a duty cast on them to correctly fill up the DAF and they cannot be allowed to contend that despite this, their application should be accepted even if it is incomplete only because procedure is the handmaid of justice.

28. The matter may be looked at from another point of view.

The UPSC has rejected the candidature of 45 persons due to non-submission of the required documents and/or submission of documents in the wrong format. If any relief is granted to the Respondents before us, surely it would be appropriate to grant a similar relief to other similarly placed candidates, some of whom may not have approached the Tribunal for relief. If this exercise were to be undertaken, perhaps the entire examination would require to be cancelled. In our opinion this is neither in the interest of the candidates who have qualified nor is it in the public interest to cancel the entire examination for the sake of accommodating a few persons, such as the Respondents.

29. The facts of this case are singular and we are of the opinion that given the very large number of applications received and the number of candidates involved, we must give the benefit of the necessity of sticking to procedural requirements to the UPSC.

30. It is true that it has been held in *Charles K. Skaria and Others v. Dr. C. Mathew and Others*, (1980) 2 SCC 752 that a formalistic and ritualistic approach should not always be followed. But in that case as noted in paragraph 11 of the Report the controversy was

only with respect to three seats and six contenders. In the case that we are dealing with, the large number of contenders in the “musical chair scenario” runs into a couple of thousand. Therefore, *Charles K. Skaria* has no application to the facts of this case.

31. For the above reasons we allow all the writ petitions filed by the UPSC except WP(C) No.9962/2009 and WP(C) No.10060/2009. The impugned orders passed by the Tribunal in respect of the remaining nine writ petitions are set aside.

32. There will be no order as to costs.

**MADAN B. LOKUR, J**

**January 25, 2010**  
**vk**

**MUKTA GUPTA, J**

Certified that the corrected copy of the judgment has been transmitted in the main Server.