

(2018) 03 CAL CK 0020
In the Calcutta High Court
Case No : W.P. 21964(W) of 2017

ASKUSH SHARMA

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2018) 03 CAL CK 0020

Hon'ble Judges : SAMBUDDHA CHAKRABARTI, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Let the affidavit-in-opposition as well as the affidavit-in-reply filed in Court today be kept with the record.

The petitioner is appearing in person and the respondents are also represented by Mr. Mukherjee, the Dy. Manager (Personnel), Coal India Limited.

The petitioner applied for the post of Management Trainee of the Coal India Limited. The qualification for the said post was an engineering

degree in Industrial Engineering. It was clarified that Production and Industrial Engineering or any such other combinations with Industrial Engineering

will not make the holder of the qualification eligible for the post.

The petitioner possesses a B. Tech. degree in Industrial Engineering and Management. In the written examination, the petitioner succeeded.

However, after scrutinizing the candidature, it was found that the petitioner possesses a combined degree of Industrial Engineering and Management

which is not the requirement of the respondent organization. Such decision is under challenge in this writ petition.

It appears that the sheet-anchor of the petitioner's case is that one Pradeep Kumar who had also a graduate degree in the same branch of

engineering had been taken in as a management trainee in the year 2015 by the Coal India Limited. From this the petitioner argued that the

respondents have treated the equals as unequals and have committed an act of discrimination in not allowing the petitioner to appear at the interview.

If the qualification of those candidates who had already been selected and that of the petitioner is same, the petitioner submitted, refusal to allow the

petitioner to appear at the interview is an act of discrimination and the respondents cannot indulge in any such act being a State within the meaning of

Article 12 of the Constitution of India.

The petitioner is further aggrieved that he did not hide his qualification at the time of filling up the application form. If the respondents were of the

view that his qualification did not match with their requirement, they should have informed the petitioner long before without allowing him to appear at

the written examination.

To take the second point first. The advertisement itself made it very clear that before applying the candidates were to ensure that they fulfilled the

eligibility criteria as on the cut-off date and the candidates would be subject to verification of details/documents at the time of interview, if shortlisted

or even at a later stage.

Mr. Mukherjee appearing for the respondents submitted that they had precisely followed this procedure. In fact all the applicants had been allowed to

appear at the written examination and the question of scrutinizing the documents arose only if they were shortlisted. At this stage it was detected that

the petitioner did not have the requisite qualification for the post. Thus, so far as the second point raised by the petitioner is concerned, I find no merit

in it.

The petitioner wanted to make out a case that the specific mention of the ineligible branches of engineering in the advertisement, so far as the

Industrial Engineering is concerned, was Production and Industrial Engineering or any such other combinations with Industrial Engineering. He

submitted that Production and Industrial Engineering are two hard core engineering subjects but management was not an engineering subject. All that

the respondents prohibited was a combination of Production and Industrial

Engineering or any such other combination.

This submission, however, does not really stand the scrutiny of the eligibility criteria laid down in the advertisement itself. The authorities specifically

mentioned that Production and Industrial Engineering or any such other combination with Industrial Engineering would be an ineligible qualification for

a candidate to apply. This cannot be read as only restricted to the combination of Production with Industrial Engineering. The combination of

Production and Industrial Engineering is followed by the disjunctive clause 'or' which means that any other combination of subject with

Industrial Engineering was not acceptable. Combination of any degree with Industrial Engineering having been laid down as an ineligible qualification,

the petitioner cannot ask an employer to interpret the qualification in the manner he likes. Laying down the qualification for a certain post, unless it can

be shown to be absolutely perverse or mala fide, is the prerogative of the employer. If the employer requires that a degree of Industrial Engineering

shall not be combined with any other degree, the respondents cannot be faulted and must be deemed to have done it on the assessment of the

requirement of the job.

The law on the point is now well-settled that it is open to the appointing authority to lay down the requisite qualifications for recruitment to a particular

post. This principle was laid down more than six decades ago in the case of Banarsidas Vs. State of U.P., reported in AIR 1956 SC 520. This right

inheres in an appointing authority as the same pertains to the domain of policy-making, as laid down in Commissioner, Corporation of Madras Vs.

Madras Corporation Teachers' Mandram, reported in AIR 1997 SC 2131.

The argument that combining the degree of Industrial Engineering with a degree in management should not attract the exclusion of the combination of

a degree in any subject with industrial Engineering from the zone of consideration, is not convincing. It is obvious from the qualification laid down for

the relevant posts that the respondents wanted a degree in Industrial Engineering alone, and not a combination of any subject along with Industrial

Engineering. The respondents were the competent authorities for deciding the qualification for a particular post considering the nature of the work to

be discharged by the holder of that post. What should be the qualification for a particular post is a matter for the administration to decide and the Court

cannot interfere in this respect, unless, of course, it is established that the qualification so laid down is entirely irrelevant for the post or has no nexus

with the duty to be discharged by an incumbent. The prerogative of the employer to decide the qualification required for the post has been laid down

by the Supreme Court in *Mangej Singh Vs. Union of India*, reported in (1998) 9 SCC 471, where it has been held that a Court cannot substitute the

requirement for a particular post on its assessment of what the requirement should be.

So far as the case of Pradeep Kumar is concerned, he was appointed as a management trainee in the year 2015. The petitioner cannot cite his

example gainfully. On being asked whether the advertisement against which Sri Pradeep Kumar was appointed was the same, the petitioner

confidently submitted that the qualification was the same and he prayed for leave to produce the advertisement of 2015. Subsequently, he produced

the advertisement for the year 2012 in Court.Â However, Mr. Mukherjee submitted that in the year 2015 no advertisement was issued by Coal India

Limited. Appointments were made on campus interview. The modality of recruitment was very different. The candidates selected by campus

recruitment form a class by themselves and those who applied pursuant to an advertisement formed another class. The two different modes of

recruitment cannot be compared and clubbed together.

Since there was no advertisement for recruitment in the year 2015, the petitioner cannot allege that in respect of Pradeep Kumar, the respondents had

ignored the eligibility criteria and taken somebody with the same qualification as that of the petitioner. In a case where there is no advertisement, any

allegation based on comparative qualification does not lie. Moreover, if the authorities had decided in the year 2017 they would recruit the candidates

on the basis of online application pursuant to an advertisement, the qualification laid down therein will be the ultimate requirement for a candidate to

fulfil.

Even if it would have been that in a given case the respondents had recruited somebody in violation of the eligibility criteria that would not have given

any mileage to the petitioner nor would he have been entitled to allege any discrimination or violation of Article 14 of the Constitution of India. It is a

settled principle of law that equality is a positive concept and it never does

operate negatively. Even assuming that in a given case, there was a deviation from the rules laid down by the employer that by itself does not give any right to the petitioner to ask for the perpetuation of the said alleged deviation. The second submission of the petitioner equally fails.

For the reasons aforesaid, I find no merit in the writ petition and the same is hereby dismissed.

There shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be supplied to the parties at an early date.