

(2011) 02 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) No. 13227 of 2009

Babita

APPELLANT

Vs

State (Govt. of NCT, Delhi) and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2012) 186 DLT 210 : (2012) 3 SLJ 141

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Keshav Kaushik and Kanica, for the Appellant; Meenakshi Singh, for R2 and Saroj Bidawat, for MCD, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—Despite a direction given to the Petitioner on 14th September, 2010 to file written submissions in two pages before the next date of hearing, which was 18.11.2010, written submissions have still not been filed.

2. It is the case of the Respondent that the petitioner had not acquired the requisite qualification on the closing date. Furthermore, the Petitioner also failed to deposit the requisite examination fee. Even the form filled in by the Petitioner was submitted much after the last date of receipt of applications.

3. Counsel for the Respondent relies on a decision of the Division Bench in WP(C) No. 13525/2009 decided on 2.12.2009 titled Poonam Rani v. GNCT and Ors., holding that once the closing date has been prescribed in the concerned advertisement and it is stated that the educational qualification, experience etc. shall be determined as on that date, then in case the necessary certificates etc. have not been produced and the qualifications have not been attained before that date, the candidature cannot be considered.

4. In terms of the advertisement issued, the Petitioner was obliged to acquire the requisite qualification, being a diploma in Education, on or before 12.08.2008. Admittedly, the diploma in question was conferred on her on 25.08.2008. The

last date for receipt of application form was also, admittedly, fixed as 12.08.2008. However, the Petitioner submitted her form only on 6.10.2008. Furthermore, the requisite examination fee was also not deposited by her.

5. Indubitably, the application form was submitted by the Petitioner after the closing date of 12.08.2008, inter alia, because the Petitioner herself has stated in paragraph 16(a) that she received the required diploma on 25.08.2008. This fact could only have been mentioned after 25.08.2008 and not before.

6. With regard to the late submission of the application form only on 6.10.2008, i.e. much beyond the specified closing date of 12.08.2008, counsel contends that the Petitioner was permitted to do so by an "addendum of advertisement" dated 04.09.2008, issued later on by the DSSSB, which is annexed as Annexure R/2 with the counter affidavit filed by Respondent No. 2. It states as follows:

Applications are, therefore, invited from all such applicants who thus become eligible (only SC/ST/PH) for the post of Teacher (Primary) in M.C.D. from 23.09.2008 - 15.10.2008. However, the crucial date for determining the age and attaining the requisite qualification shall remain 12.08.2008, as mentioned in main Advertisement No. 02/2008.

7. As perusal of the said addendum advertisement shows that by that advertisement, applications were invited only from Scheduled Castes, Scheduled Tribes and Physically Handicapped candidates, who became eligible for the post of Teacher (Primary) in the MCD from 23.09.2008 to 15.10.2008. Admittedly, the Petitioner does not fall into this category. She belongs to the OBC category. Therefore, the question of any application being invited from the Petitioner after the closing date by this advertisement, does not arise at all.

8. Counsel then states that regardless of this, the Petitioner was still entitled to be considered because the General Instructions and Procedure For Submission of Application Form prescribed by the Respondent, and in particular, Clause 10 thereof, which deals with cancellation of candidature, only permits candidature of a candidate to be cancelled, if on verification, at any time before or after the written examination or at any stage of the recruitment process, it is found that he/she does not fulfil any of the eligibility conditions, therefore, the Petitioner's candidature could not have been called for late submission of the form.

9. In short, the case of counsel for the Petitioner is that submission of the application form beyond the date fixed for doing so has nothing to do with the eligibility of the candidate to be considered for appointment. I do not agree. An employer is empowered to prescribe criteria that must be met before a prospective candidate becomes eligible for consideration. This can very well include the condition that his application for being considered must be submitted on or before a certain date. If thereafter a person chooses not to file his form on or before the prescribed date, it is open to the Respondent to declare him ineligible for being considered.

10. Although no authority has been cited by counsel for the Petitioner in favour of the proposition, he however contends that some sort of estoppel has come into operation because the Respondent permitted the Petitioner to appear in the examination. Again, I do not agree. It was clearly stated by the Respondent in Paragraph 10 of the General Instructions & Procedures for submission of Application Forms that merely because a candidate has been allowed to appear in the examination it will not be considered as a ground for his/her being selected. To my mind, this alone is sufficient to negate that contention, and it is not necessary to examine this proposition further.

11. At this stage, counsel for the Petitioner, has referred to the decision of the Punjab & Haryana High Court in Hardwari Lal v. G.D. Tapasey and Ors. AIR 1982 PH 439. While no particular paragraph was referred to even after being requested to do so, he submits that there the Petitioner was initially appointed by the Vice Chancellor of the University on the promise that his tenure will be renewed on expiry. Since the same was not renewed as promised, the High Court held that in view of the promise held out to the Petitioner, an estoppel operated against the University, which was bound to renew the tenure of the Petitioner. To my mind, in the instant case, no such promise has been held out by the Respondent either directly or indirectly. On the contrary, a specific condition has been laid down in paragraph 10, which clearly states that merely because the Petitioner was permitted to appear in the examination it will not be considered as a ground for his/her being selected. Therefore, this authority is of no use in the present case.

12. It bears repetition that not only did the Petitioner submit the application from after the prescribed date, she also did not possess the required Diploma on that date.

13. It is finally submitted by counsel for the Petitioner that although 270 posts were advertised by the Respondent, but, ultimately, only 216 vacancies were filled up, therefore, as a special case the Petitioner should be given one of those posts. This has no legal basis. At best, it is just a lay suggestion. It cannot, and does not warrant the exercise of writ jurisdiction.

14. This writ petition is, therefore, dismissed.

CM No. 14403/2009

15. Since the main petition has been dismissed, this application does not survive and the same is dismissed as such.