

(2013) 04 DEL CK 0342
In the Delhi High Court
Case No : W.P. (C) 6225 and 7025/2012

Deepak

APPELLANT

Vs

UOI and Others
 Parmod Vats Vs Employees State
Insurance Corporation

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0342

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Identical issue raised in the two captioned petitions was decided by a Division Bench of which one of us, Pradeep Nandrajog, J. was a Member of, when four writ petitions, lead matter being W.P. (C) No. 696/2013 Mukesh Kumar Vs. ESIC & Ors. were dismissed. Issue pertained to ESIC requiring minimum 6 marks out of 10 marks to be obtained for Formatting features i.e. prescribing a minimum cut off marks; and the grievance being that the advertisement inviting applications did not so specify. It was urged that rules of the game have been changed midstream. In paras 5 to 9 of the decision dated March 08, 2013, it was noted as under:-

5. On November 05, 2009 an advertisement was issued inviting applications from eligible candidates to fill up 70 vacant posts of Lower Division Clerks by direct recruitment by Employees State Insurance Corporation. It was indicated in the advertisement that information pertaining to the proposed examination may be accessed on the website "www.esicdelhi.org.in". It was indicated that the written examination of 200 marks would be held in the month of January 2010 and that on merit basis pertaining to the written test, in a ratio, candidates would be called to take the Computer Skill Test.

6. Pertaining to the written test, the website displayed as under;-

Maximum Marks: 200

Number of Questions: 200

Test Duration: upto 3 Hours

Sections in the Test:

(i) English Language

(ii) General Intelligence & General Aptitude

(iii) Numerical Aptitude and

(iv) General Awareness

(v) Clerical Aptitude(Sometimes this section is removed)

7. Pertaining to the Computer Skill Test, the website indicated:-

Skill Test is conducted to judge the knowledge of computer. Candidates are called for the skill test based on their performance in the Part I (written test).

Note:

? The candidate has to secure minimum qualifying marks in each part.

? There is negative marking for wrong answers

8. It may be noted that the website did not display the conditions prescribed in the office order dated October 19, 2006 i.e. the manner in which the candidates would be evaluated and in particular that pertaining to the Computer Skill Test, 10 marks would be allocated for formatting and that a candidate should secure at least 6 marks to qualify.

9. Writ petitioners were a few of the thousands of applicants. They were the few hundred who successfully cleared the examination and were called to take the Computer Skill Test, but success eluded them notwithstanding they and a few more, obtaining higher marks in the aggregate vis-a-vis a few who were selected. The reason being that the writ petitioners obtained less than 6 marks out of 10 marks pertaining to the Computer Skill Test which had 50 marks, but out of which, formatting was assigned 10 marks.

2. Reasoning in paras 26 to 28 of the opinion reads as under:-

26. We have already noted hereinabove in paragraph 5 that the advertisement dated November 05, 2009 clearly indicated to the prospective candidates that information pertaining to the proposed examination may be accessed on the website: "www.esicdelhi.org.in". It was indicated in the advertisement that a written examination for 200 marks would be held in the month of January, 2010 and candidates would be called to take the Computer Skill Test in ratio of merit basis upon success at the written examination. Thus, the candidates were made aware that further information may be accessed on the website. As noted by us

in paragraph 6 above, the website displayed the subject on which the written test would be held. As noted by us in paragraph 7 above, the website displayed that the skill test to judge the knowledge of computers would require the candidates to "secure minimum qualifying marks in each part". The reference to securing minimum qualifying marks in each part is in a Note displayed on the website pertaining to the information relating to the Computer Skill Test and thus the argument that the Note made a reference to minimum qualifying marks in the written test and the Computer Skill Test, to be taken in the aggregate for the two papers, is rejected by us for the reason the website distinctly spelt out the information pertaining to the written test and distinctly to the Computer Skill Test; and only pertaining to the latter was the Note indicating minimum qualifying marks to be secured in each part. This would mean each part of the Computer Skill Test, wherever prescribed.

27. The candidates were thus made known that the different segments of the Computer Skill Test require minimum qualifying marks to be secured in some part. It may be true that what was the minimum qualifying mark prescribed was not made known to the candidates, but as rightly opined by the Tribunal, it was the duty of the candidates to have found out the minimum qualifying marks prescribed. In the view we have taken on facts, where we find that the decision containing the criteria to test the knowledge of the candidates had preceded the initiation of the selection process, we need not deal with the decision relied upon heavily by both sides reported as *K. Manjusree Vs. State of A.P. and Another*, .

28. To conclude, we simply state that the relevant material would evidence that the applicable Recruitment Rule for the post in question prescribed 75% posts to be filled up by direct recruitment. The Recruitment Rule required said quota to be filled up on the basis of a competitive examination. The criteria to determine competitiveness of the candidates was prescribed on October 19, 2006 and therein pertaining to the Computer Skill Test it was clearly indicated that for formatting features, candidates have to secure at least 6 marks out of 10 marks to qualify. The advertisement issued in the year 2009 clearly informed the candidates that information pertaining to the examination would be accessed on the website of the organization, and the website clearly made it known that pertaining to the Computer Skill Test the candidates have to secure minimum qualifying marks wherever prescribed in each part of the skill test.

3. It is urged that on February 18, 2013, the Secretary to the Government of India has recorded that notice on the website of ESIC did not inform minimum cut off qualifying marks.

4. Now, as noted by the Division Bench, the website did not indicate the minimum cut off qualifying marks i.e. 6 marks out of 10 marks for Formatting features, but as noted in para 7 of the decision, the Note pertaining to the skill test did indicate that candidates have to secure minimum qualifying marks in each part.

5. We find no hiatus between the view taken by the Secretary to the Government of India and the decision of the Division Bench pronounced on March 08, 2013. The writ petitions are dismissed but without any orders as to costs.