

(2016) 04 SC CK 0108

In the Supreme Court Of India

Case No : Civil Appeal Nos. 4484 of 2016 (Arising out of SLP (C) No. 35442 of 2010) with Special Leave Petition(C) No. 5752 of 2012 With Special Leave Petition(C) No. 6380 of 2012

Dheerender Singh Paliwal

APPELLANT

Vs

UPSC

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 4 Scale 573

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla;S.A. Bobde, JJ.

Bench : Division Bench

Advocate : Abhigya, Abhay Singh Kushwaha, K.N. Agnihotri, Pradeep Kumar Dubey, Naresh Kaushik, Vardhman Kaushik, Manoj Joshi and Lalita Kaushik, Advocates.

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is directed against the judgment of the Division Bench of the High Court of Delhi dated 30th September, 2010 in WP (C) No. 2734 of 2010 by which the Division Bench set aside the order of the Central Administrative Tribunal (in short "the CAT") which directed the respondent to accept the application of the appellant as complete since he had already come out meritorious in the selection process appointing him in the post of Senior Scientific Officer in the FSL. The brief facts which are required to be stated are that:

There was an Advertisement No. 4 dated 6th March, 2009 published in the employment news dated 28th February to 6th March, 2009 by the respondent-Commission inviting application for various posts. At Serial No. 29 of the said Advertisement applications were invited from the eligible candidates for filling up nine posts of Senior Scientific Officers (Biology) in Forensic Science Laboratory, Home Department, Government of Delhi.

3. In the said Advertisement the qualifications prescribed were as under:

"QUALIFICATIONS:ESSENTIAL: (A) EDUCATIONAL Masters Degree in Zoology or Botany or Anthropology or Human Biology or bio-chemistry or micro-Biology or Genetics or Biotechnology or Molecular Biology or Forensic Science with Zoology or Botany or Forensic Science as one of the subjects at B.Sc. Level from a recognised University. (B) EXPERIENCE : 3 years experience in analytical methods/research therein in the relevant field. DESIRABLE : QUALIFICATIONS, DUTIES and HQ; same as in Item No. 27 above."

4. In the INSTRUCTIONS AND ADDITIONAL INFORMATION TO CANDIDATES FOR RECRUITMENT BY SELECTION at Serial No. 3 under the head "MINIMUM EDUCATIONAL QUALIFICATIONS" it was stipulated that all the applicants must fulfil the essential requirements for the post. It was further mentioned therein that the candidate should mention all the qualifications and experience in the relevant field over and above the minimum qualification and should attach attested/self certified copies of the certificates in support thereof.

5. In note III of the said paragraph it is specifically mentioned "in regard to Educational Qualifications, the mark sheet in lieu of Educational Certificate will not be accepted by the Commission". In the same instructions in Serial No. 7 the requirements of CERTIFICATE TO BE ATTACHED, it is mentioned at serial (ii) "Degree or diploma certificate or other certificates in support of their educational qualifications to be attached either by way of attested copies or self certified copies". By way of Note No. iii, it is mentioned that if no copies of above certificates are sent with the application it is liable to be rejected and no appeal against its rejection would be entertained.

6. Pursuant to the said Advertisement, the appellant filed his application in the printed application form. In Serial No. 9 of the question form it is mentioned as "do you possess the essential qualifications as mentioned in the Advertisement? (Mark "1" for yes and "2" for No)" for which the appellant Marked "1" thereby asserting that he possessed the essential qualifications. His application was dated 3.3.2009.

7. The appellant is already working as Senior Scientific Assistant in the finger print unit at Forensic Science Laboratory. In his resume namely the personal record maintained in his department, the qualification of the appellant right from his secondary school level upto his post-graduate level has been noted. Insofar as his degree qualification is concerned, it is already noted in the resume as Bsc. (Hons.) Zoology 1991-Desh Bandhu College, University of Delhi.

8. The appellant came to know that inspite of fulfilment of all the requirements including the essential qualifications, he was not called for the interview. He therefore approached the CAT by filing OA No. 2492 of 2009 and the Tribunal by its interim order dated 4.9.2009 while issuing notice permitted the appellant to appear for the interview. Based on the said interim order the respondent-Commission interviewed the appellant.

9. The outcome of the said interview was directed to be furnished by the Tribunal by a separate order dated 23.11.2009. Pursuant to the said order, the respondent-Commission produced the result which was contained in Note Sheet Page no. 48 and 49 of the File No. F1/9(3)/2009-R-11 at UPSC. Insofar as the appellant was concerned, it has been noted as under:

"Roll No. 202/203(SC): Sh. Dheerender Singh Paliwal-His candidature has been rejected under "Incomplete Applications" category with the remarks that "Proof of Forensic Science or Botany or Zoology at B.Sc. level not furnished. He has been called for interview on the basis of court order passed by Hon"ble CAT (PB), New Delhi on 11.09.2009. On the day of interview he has produced original B.Sc./ M.Sc. Degrees in Zoology. He has also submitted the attested photocopy of his B.Sc. (Zoology) degree, which seems in order. His Candidature may be cleared."

(Emphasis added)

10. Having noted the said development after interviewing the appellant, the Tribunal held that the appellant was earlier not called for interview because his application was considered to be incomplete and without calling for the proof of having studied Bsc. with Zoology as one of the subjects. The Tribunal thereafter having been conveyed that the appellant possessed all the essential qualifications required including the subject Zoology as one of the subjects in the Bsc. Degree level, ultimately issued the direction to the respondent-Commission to accept the appellant's application as complete and since he has already been found meritorious to be selected as Senior Scientific Officer issue the order of appointment.

11. The respondent challenged the said order of the Tribunal and the Division Bench by taking a hyper technical view as to be production of the required certificate relating to essential qualification as subject Zoology in the degree-level qualification namely B.Sc. not having been enclosed alongwith the application submitted by the appellant, held that the Tribunal's direction could not be sustained. So saying the Division Bench, set aside the order of the Tribunal.

12. We heard Mr. V. Shekhar, learned Senior counsel for the appellant who drew our attention to the various interviews narrated above which are part of our record and also relied upon the decision of this Court reported in 1980 (2) SCC 752 wherein this court has held as under in paragraph 21 and 26.

"21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: has he the requisite qualification? If he has the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower

technicality where human justice is at stake.

26. Even so, there is a snag. Who are the diploma-holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the dateline makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the concerned authority. An examinee for a degree or diploma must complete his examination-written, oral or practical-before he can tell the selection committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled, viz., the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. May be, the examination is cancelled or the marks of the candidates are with-held. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the selection committee has the result before it at the time of-not after-the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom-unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unveracious touch about the process."

(Emphasis added)

13. Mr. Naresh Kaushik, learned standing counsel for the respondent-Commission earnestly submitted that in the advertisement as well as the instruction to the candidates there are specific directions that the essential qualifications should be supported by the required certificate in proof of essential qualification and the Commission had to necessarily apply such a prescription in letter and spirit and therefore when admittedly the appellant did not enclose the required certificate in

proof of the essential qualification namely Bsc. Degree with Zoology as one of the subjects, the non consideration of the appellants application by not calling for interview cannot be faulted. The learned standing counsel however fairly submitted that when pursuant to the interim direction of the Tribunal the appellant was interviewed two other candidates were also interviewed in whose cases also there was certain lapses in the matter of production of caste certificate and in their cases also where they were found fully merited for appointment based on the relevant certificates produced subsequently, they came to be appointed. The learned standing counsel would only contend that in the Appellant's case when the advertisement specifically directed that in support of the essential qualification, the candidate should produce the required copies of the certificates and in the event of failure to comply with the said requirement, his application was not entertained, the Commission cannot be in any way blamed and on that score no leniency can be shown and the matter of selection made by the respondent-Commission cannot be faulted.

14. Having considered the respective submissions and having noted the dictum of this Court as noted above, we are of the view that in the light of the prescription noted in the advertisement, the particulars furnished by the appellant in response to the said advertisement and the production of the degree certificate for having secured the Bsc. Degree with Zoology as the subject at a later point of time there was substantial compliance of the requirement to be fulfilled in the matter of the essential qualifications possessed by the appellant. Therefore, applying the principle set down by this Court, the respondent-Commission ought to have considered the application and more so when the appellant was already in the services of the Forensic Science Laboratory as Senior Scientific Assistant and his essential qualifications were very much on record in the form of resume and therefore pursuant to the direction of the Tribunal when the respondent-Commission interviewed the appellant and found him fit to be selected and appointed for the post of Senior Scientific Officer in all fairness should have appointed the appellant.

15. In the first place, it must be stated that it is not a case of the appellant not possessing the required essential qualifications but was of only not enclosing the certificate in proof of the added qualification of Zoology as one of the subjects at Bsc. level, from a recognised University. In the application when once the appellant, mark "1" against column No. 9 and thereby confirmed that he possess the essential qualification namely the post graduate qualification as well as the degree level qualification, if at all there was any doubt about any of the qualification, the appellant should have been called upon to produce the required certificate in proof of such essential qualification. In fact in this context, when we refer to the interview proceedings of the appellant as well as two other candidates we find that the appellant produced the original Bsc./Msc. Degree in Zoology and also submitted the attested photo copy of the Bsc. Zoology degree. The outcome of the said interview was that the appellant should be cleared of his selection. Insofar as other two candidates namely Miss Babyto and Miss Imrana,

we find that the production of their caste certificate was not in the prescribed proforma initially, nevertheless those candidates were allowed to produce the original caste certificate issued by the competent authority and after verifying the same by accepting the attested photo copies of such caste certificates, their cases were cleared. Therefore when such a course was adopted by the respondent-Commission in regard to those two candidates there is no reason why the candidature of the appellant alone was kept in suspension, though he also cleared interview process. Even assuming such clearance was not made awaiting the outcome of the Order of the Tribunal, when the Tribunal upheld his selection and directed the respondent to issue necessary orders for appointment, in all fairness the respondent-Commission should have issued the order of appointment. We are of the view that such an approach of the respondent-Commission was unfair having regard to the very trivial issue namely a non production of an added qualification as part of the essential qualification at the degree level which the appellant did possess and for mere asking, the appellant could have readily produced the same through his employer.

16. We are therefore convinced that the interference with the Order of the Tribunal by the Division Bench was uncalled for and accordingly while setting aside the impugned judgment of the Division Bench of the High Court, the Order of the Tribunal dated 9.12.2009 stands restored. The appeal is allowed. The appellant shall be appointed as Senior Scientific Officer as directed in the aforesaid Order and shall be granted all the benefits including restoration of the seniority as on the date of the appointment of any of his juniors in the said position pursuant to the selection made in the Advertisement dated 28.2.2009-6.3.2009. However, applying the principle of not having actually performed the duties of the Senior Scientific Officer, we hold that such conferment of benefits shall be made on notional basis without any monetary liability. Above directions shall be carried out within two weeks from the date of production of the copies of this order.

17. In the light of the judgment in Civil appeal, arising out SLP(C)No. 35442 of 2010, we dismiss SLP (C)Nos. 5752 and 6380 of 2012.