

(1995) 12 CAL CK 0007
In the Calcutta High Court
Case No : C.R. 19224 (W) of 1993

Dipti Samaddar

APPELLANT

Vs

Steel Authority of India Limited and Others

RESPONDENT

Date of Decision : 06-12-1995

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : 100 CWN 122

Hon'ble Judges : Arun Kumar Dutta, J

Bench : Single Bench

Advocate : Aloke Kr. Ghosh, for the Appellant; L.K. Gupta, Manas Kr. Kundu and Kanchan Roy, for the Respondent

Judgement

Arun Kumar Dutta, J.—By this Writ Application under Article 226 of the Constitution of India the Writ Petitioner Dipti Samaddar (hereinafter referred to as Petitioner) has prayed the Court for issue of a writ or in the nature of Mandamus commanding the Respondents their men, agents and subordinates to withdraw, cancel rescind and/or set aside forthwith the advertisement as issued by DSP and published in the Statesman on 22nd September, 1993 for filling up the post of Principal of the Nursing Institute USP by direct recruitment, further commanding them to refrain from proceeding in any form of manner to select any candidate" by direct recruitment for the post of Principal of the said Nursing Institute in terms of the said purported advertisement dated 22nd September, 1993 and to take immediate steps to absorb and/or appoint the petitioner in the post of Principal of the Nursing Institute DSP with all service benefits, including pay and allowances, attached thereto, along with the other reliefs prayed for therein, for the reasons stated and on the grounds made out therein. The Petitioner contends in Para-2 of the Writ application that she had acquired all the qualifications to act as Instructor/Teacher in Nursing Institute in the manner stated therein. She had joined the Nursing Institute, Durgapur Steel Plant, the Respondent No. 6 herein (hereinafter referred to as Institute) as Instructor on 19.2.1979. She was promoted as Tutor thereof in 1987. And she is acting as In-

charge of the Institute since November. 1992. She has the requisite qualification and experience to be appointed as Principal of the Institute. Even so, the Respondents had issued the impugned advertisement, being Annexure "D" to the writ application, inviting applications from candidates for appointment as Principal of the Institute, indicating the qualification and experience therefor.

2. The Petitioner contends that the qualification and experience of Principal of a Nursing Institute has been prescribed as follows by the Notification dated 14.8.1987 issued by the West Bengal Nursing Council, Government of West Bengal :

Master in Nursing with minimum 3 years of teaching experience/B.Sc. Nursing (Basic or post-Basic) 5 years of teaching experience/Diploma in Education and Administration or Public Health Nursing with 8 years of teaching experience.

3. The Petitioner having diploma in Public Health Nursing with eight years of teaching experience has the requisite qualification for appointment as Principal of the Institute. In order to exclude her, a higher qualification has been prescribed in the impugned advertisement for the said post namely "B.Sc. in Nursing with 10 years of Administrative experience (preference for M.Sc. Nursing)", which is clearly unfair and unreasonable In view of her qualification and experience and the fact that she has been acting as In-charge of the Institute since November. 1992 she has the legitimate expectation to be promoted as Principal of the Institute.

4. The Learned Advocate for the Petitioner had referred to the following observation of the Supreme Court in Council of Scientific and industrial Research and Another v. K.G.S. Bhatt and Anr. AIR 1969 Supreme Court 1972 in support of the aforesaid contention :

It is often said and indeed, adroitly an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just, for a job, but for a whole career. One must therefore be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress off any organisation. It is an incentive for personnel development as well.

5. The Learned Advocate for the Petitioner had also referred to the decision of the Supreme Court in Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar and Another etc. 1994 AIR SCW 4068 to support his aforesaid contention, put the said decision does not seem to come to his aid for the reasons I shall presently discuss.

6. The Punjab and Haryana High Court while considering whether specifying higher qualification in advertisement for initial (direct) recruitment than the minimum prescribed there for in the Rules/Statute offends Article 16 of the Constitution of India, (as held in Sent Lal A Others v The State of Haryana & Ors.

1978(1) SLR 133 that It has to be borne in mind that normally the administrator or the employer is the best judge of the qualifications and the experience required to discharge the function of a particular post. Therefore, on principle one sees no blemish in the salutary rule that the State may well be entitled to meaningfully limit the number of applicants and continue its arena of choice of persons having qualifications higher than the minimum prescribed for eligibility.

7. Where this is obviously a prescription of minimum qualifications or the barest requirement for eligibility then plenty there can be no bar for the respondent State to seek persons with higher qualifications than the lowest level laid down by the rule makers. Ordinarily, the rational underlying the prescriptions of qualifications in most statutes or rules is to prevent poor or unqualified persons to be appointed to at post in the public service which requires the performance of responsible duties It could hardly be the intent of the legislature to either debar persons of higher qualifications or to deny them the preference which they by their industry or merit signified by superior qualifications may entail. Nor can are read into the prescription of minimum qualification requirement that every person having such qualification must be considered against that post despite the fact others superior in merit to him are available and sic for the same, Of course, we are not saying that the minimum qualifications cannot be fixed by statute because the legislature may well have plenary powers to do so. All that is being indicated is that unless expressly otherwise provided the prescription of qualifications is ordinarily the minima for eligibility to the particular post and not the mixima therefor Se also held by the Full Bench of Rajasthan High Court in *Munilal Garg v. State of Rajasthan & Ors.* AIR 1970 Rajasthan 164.

8. The Supreme Court, while considering as to whether the State could be said to have acted arbitrarily in fixing 55 percent as the minimum for selection though the relevant rule prescribes 45 percent or more to be the requisite eligibility condition for appointment, has observed as follows in Paragraph -10 in the decision in the *State of Haryana vs. Subash Chandra Varwaha & Ors.* AIR 1973 Supreme Court 2216 :

It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by

selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility.

9. The Supreme Court in the decision in *Madhya Pradesh Public Service Commission v. Nab nit Kumar Potdar & Anr.* (Supra), as referred to by the Learned Advocate for the Petitioner has held that the decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. The same cannot be said to be irrational, arbitrary having no nexus with the object of selecting the best amongst the applicants.

10. In view of the discussions above, fixing higher qualification/experience in the impugned advertisement cannot clearly be said to be irrational, arbitrary, unfair and unreasonable having no nexus with the object to select the best among the applicants. That further is essentially a matter of administrative policy. The Court would be chary to interfere therewith. The Petitioner's prayer for setting aside the impugned advertisement in terms of prayer (a) to the writ application cannot clearly be entertained as such.

11. That apart, the Petitioner claims to have legitimate expectation to be appointed as Principal as she is discharging the duties of the In-charge of the Institute since November, 1992 and has the requisite qualification/ experience to be appointed as such. On my pointed query, the Learned Advocate for the Petitioner could not submit that she has the legal right to be appointed as Principal of the Institute, as claimed by her. The Petitioner has sought for issue of a writ of mandamus in terms of the prayers made in the writ application. But mandamus lies to secure the enforcement of a public or statutory duty by the authority concerned. In the facts and circumstances of the instant matter the Petitioner cannot certainly be said to have derived any legal right to obtain a writ, as prayed for. There must exist a legal right in the petitioner and a corresponding long standing legal duty cast upon the Respondent for enforcing the same by means of mandamus. She (Petitioner) cannot seek any relief merely on the doctrine of legitimate expectation, the way prayed for by her.

12. In the premises above, the writ petition should clearly fail, as it must and be accordingly rejected. The rule be thus discharged. The interim Order passed by the Court's earlier dated 13.10.93 stands vacated, the application filed by the Respondent for vacation and/or modification of the interim order dated 13.10.93 also stands accordingly disposed of. In the facts and circumstances of the matter I make no order as to costs