
(2002) 08 DEL CK 0112

In the Delhi High Court

Case No : Letters Patent Appeal No. 147 of 2002

Ex. Const. Tailor Babu Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0112

Hon'ble Judges : Mukul Mudgal, J;A.D. Singh, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; A.K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This is an appeal from the order of the learned single Judge dated 20th December 2001 in CW. No. 3865 of 1999 dismissing the appellant's writ petition.

2. The crux of the present case is that the petitioner/appellants had applied for the post of Constable (Tailor) in the Central Reserve Police Force, respondent No. 2. The respondent No. 1 is the Union of India through the Secretary, Ministry of defense, New Delhi. The issue involved in the present appeal is the validity of the "Prathma" certificate relied upon by the appellant to seek enrolment as an equivalent to metriculation. The appellant had been selected on 30th June, 1992 at a Camp at Delhi by respondent No. 2 and the averment in the writ petition by the appellant that at the time of the enrollment the "Prathma" certificates had been taken and the appellant had only been enrolled after due verification on 25.7.92, was not denied in the counter affidavit. On 2.6.97 proceedings were initiated against the appellant for furnishing false information at the time of the enrollment. In spite of the appellant producing the certificates from the concerned University that "Prathama" was recognized as equivalent to High School, the appellant was found guilty of furnishing false information and after about six years of service removed from service by the order dated 22.10.98.

This removal was challenged by a writ petition before the learned Single Judge by the appellant and in the Counter Affidavit respondent No. 2 took the stand that Pratham exam was equivalent to metriculation for Hindi standard only. Before the learned Single Judge, the appellant also placed on record the notification of 27.7.01 of the Central Government to the effect that "Prathma" certificate had been recognized by the Central Government for the purpose of the posts of which the desired qualification was metriculation but the learned Single Judge dismissed the writ petition without adverting to the said notification of the Central Government dated 27.7.2001.

3. The requirement for the post of Constable Tailor, according to respondent No. 2, are as under:

"Sl. No. Rank Age Limited. Minimum Educational qualification required Remarks

10. Constable Tailor Between 18 & 23 years metriculation Should know tailoring

(ii) Education: For appointment to any reserved vacancy in the Class IV post of Peon, Daftry, Follower etc. every Ex-servicemen who has put in not less than 3 years service in the Armed Forces of the Union shall be exempted from the prescribed educational qualifications."

4. While applying for the aforesaid post of tailor, the appellant had quoted the educational qualification as metric. Accordingly the appellant was enrolled as Constable Tailor sometime in the month of July 1992. Pursuant to a departmental enquiry the appellant was removed from service. The present appeal arises from an unsuccessful challenge in a writ petition based on an order of termination of petitioner's services by the respondent No. 2 on the basis that the certificate of PRATHMA issued by the Hindi Sahitya Sammelan, Allahabad (Hindi University) is not metriculation and the petitioner while seeking appointment made a false declaration that the PRATHMA was equivalent to metriculation. For this purpose reliance was placed on the Press Communication dated 18th February, 1970, issued by the Government of India, Ministry of Education.

5. The respondent has paraphrased the said communication in the following terms in its written submission:-

"That as per the press communication F-7-05/69 H dated 18th February 1970 issued by the Govt. of India, Ministry of Education (Annexure X 3) the certificate issued by the Hindi Sahitya Sammelan, Allahabad, is not treated as equivalent to the metriculation/B.A., as the case may be. The press communication states, however, such certificate of Hindi Sahitya Sammelan, Allahabad is treated as metriculation/ B.A. as the case may be for the standard of Hindi only."

6. In our view the learned Single Judges has been unduly swayed by the fact that the metriculation of the appellant was only for Hindi and the further fact that the appellant's certificate stated that Prathma was equivalent to High School and was not equivalent to metriculation. However, the press note of the Government of India, Ministry of Education dated 18.2.70 relied upon by the respondent itself

clearly stated that Prathma was equivalent to metriculation in Hindi. The charge against the petitioner was furnishing false information in his application for recruitment. Thus the learned Single Judge has erred in not noticing the impact of the very note dated 18.2.70 which was relied upon before him by the respondent No. 2 to hold that Prathma was high school and not metriculation. The said note clearly stated that certificate of Prathma is treated as an equivalent to metriculation/BA for Hindi only. Before the learned Single Judge a notification of the Government of India dated 27.07.2001 had been placed which recognized Prathma as equivalent to metriculation by Central Government for all posts under the Central Government. The learned Single Judge has failed to consider this vital notification which clearly demonstrated that subsequently even the Central Government treated Prathma as equivalent to metriculation without qualification. Furthermore, the learned Single Judge rightly found that the present case was not a case of submitting false certificate but a case of submission of false information. Thus on the one hand, the learned Single Judge found that appellant's qualification of Prathma was only high school and not metriculation, yet on the other hand he found that the appellant had passed Prathma which was equivalent to metriculation in Hindi. The appellant in our view had not submitted any false information as he had stated he was metriculate and enclosed his certificate of Prathma at the time of enrolment on 30.6.92. He was only appointed almost a month after the selection on 25.7.92 after his certificates had been verified. Furthermore, one could not lose sight of the fact that the appellant had submitted his certificates at the time of enrollment for verification and the action to terminate his services was taken five years later when the appellant had become overage for other government employments. The respondents had relied on a circular of 19.5.93 for sustaining the action against the appellant. The action was commenced four years even after the Memorandum dated 19.5.93. This even assuming that the Memorandum dated 19.5.93. This even assuming that the memorandum applied (though we have held to the contrary as the appellant has been found to be eligible), there is no Explanation whatsoever why no action was taken right up to 1997 on an alleged misrepresentation made in 1992 at the time of enrollment, and said to be covered by the Memorandum dated 19.5.93.

7. In our view the plea of the respondent can not stand scrutiny. The press communication relied upon by the respondent themselves clearly states that the certificate of Prathma is treated as metriculation etc. as the case may be for the standard of Hindi only. Thus whatever be the nuances which may be put on the meaning of "metriculation in Hindi", the appellant's statement that he was a metric cannot be said to be a misstatement.

8. What we are required to judge is the basis of the appellant's dismissal i.e., that he got himself enrolled by furnishing wrong information. The appellant/petitioner had only stated his qualification as metric in the form. He had also enclosed his PRATHMA certificate at the time of enrolment/selection. Even the communique of R1 relied upon by the respondent treats the certificate of

the petitioner to be treated as metriculation though for the purpose of Hindi only.

9. The petitioner had clearly stated that he had passed metric and also annexed his certificate of prathma. The petitioner had not Therefore make any wrong statement in stating that he was metric. His statement in the present case is also required to be judged in context of the facts and the nature of employment sought. It was not disputed before us and fairly so, that for the job of a Tailor in CRPF knowledge of Hindi is sufficient. In seeking appointment as a Tailor, the petitioner has not derived any unfair advantage by making a statement that he was metric though only for Hindi. Furthermore, we have been taken through the Certificate of Prathma which discloses that the appellant secured a second division and apart from Hindi literature passed in History, Geography, Maths and English also.

10. The relevance of educational qualification and its mandatory nature is negated from the document indicating the requirements for the post in question. For certain posts ex-servicemen with three years experience have been totally exempted from the educational qualification. This itself shows that educational requirements were not a sine qua non and imperative for the Post. Furthermore, even the communique relied upon by the respondent No. 2 itself stated that Prathma was equivalent to metriculation in Hindi. In this context the statement made in the form by the petitioner cannot be viewed to be a misstatement. The petitioner has also relied upon the notification of Government of India dated 27th July, 2001 which treats the Prathma as metriculation for purposes of employment under the Central Government. The relevant portion of notification dated 27.7.2001 reads as follows:-

".....On the recommendation of the High Level Committee for recognition of Educational Qualifications, the Government of India have decided to recognized the Prathma Examination being conducted by Hindi Sahitya Sammelen, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is a pass in metriculation."

The Respondent No. 2 CRPF is a para military force of Respondent No. 1, UOI. If UOI itself has treated the Prathma as equivalent to metric in Hindi and since 2001 has treated it as equal to metric without any qualification qua Hindi, the respondent No. 2 CRPF cannot take a narrow view. In any event the petitioner has not made any misstatement nor was he not ineligible or unqualified for the post of Tailor. Consequently, the Hon"ble Supreme Court's judgment of Dist. Collector v. M. Tribura Sundar Dev, 1990 SCR 437 relied upon by the respondent No. 2 to contend that no person with inferior qualification could be appointed/ continued, can have no application to the present case as we have found and indeed it is not in dispute that the petitioner was a metriculate in Hindi and the job specification/requirements did not rule out a metriculate in Hindi. Consequently the learned Single Judge fell in error in dismissing the writ petition of the petitioner. The appeal and the writ petition are thus allowed and the Single Judge's judgment dated 20th December, 2001 is set aside and the order dated

22nd October, 1998 terminating the petitioner" services is quashed. The petitioner shall be reinstated in service Along with all consequential benefits within four weeks from today.