
(2012) 07 DEL CK 0369

In the Delhi High Court

Case No : Writ Petition (C) 600 of 2011 and CM No. 1285 of 2011

Giffara S. (Smt.)

APPELLANT

Vs

National Seeds Corporation Ltd. and Another

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 10 AD 354 : (2012) 191 DLT 325 : (2013) 1 SLJ 191

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : N. Mohammad, for the Appellant; Sudhir Kulshreshtha, Adv for R-1 and Mr. Yashvardhan, for R-2, for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition, petitioner is seeking Mandamus or direction commanding the respondent no. 1 to appoint the

petitioner to the post of Assistant Manager (Legal) in pursuance of Employment Notice of respondent no. 1, wherein the essential educational

qualifications were mentioned as under:-

As per the employment notice, respondent no. 1 invited applications for appointment to one post of Assistant Manager (Legal) and shortlisted 04

candidates. The petitioner figured at serial no. 2 in the shortlist. As required by respondent no. 1, petitioner attended the interview. But respondent

no. 1, who issued simultaneously a provisional short list containing altogether 32 candidates, appointed respondent no. 2, who was not included in

the main short list, but at serial no. 23 in the provisional short list.

2. As per the employment notice, incomplete applications were liable to be rejected. The provisional shortlist shows that the applications of the

candidates like the respondent no. 2, who was included therein only, were

incomplete also in one way or the other. Yet, respondent no. 1 not only entertained the incomplete application of respondent no. 2, but gave him appointment also from the provisional short list, overlooking the entitlement of the petitioner, who remained included at serial no. 2 in the main shortlist with much higher qualifications than respondent no. 2.

3. Ld. Counsel for the petitioner submitted that the General Instructions of the Employment Notice were as under:-

Interested candidates may send their applications in the prescribed Proforma which can be downloaded from NSC website www.indiaseeds.com.

Application form duly filled in all respect along with attested copies of certificates and marksheets in support of qualification, age, experience, etc.

should be sent in an envelop subscribing the name of the post which may reach the General Manager (Admn.), National Seeds Corporation

Limited, Beej Bhawan, Pusa Complex, New Delhi on or before 9th July, 2010 along with a Demand Draft of Rs. 100, in favour of National Seeds

Corporation Limited payable at Delhi.

However, SC/SCT/PH candidates need not send DD. Candidates working in Government / Semi Government / Public Section Undertakings

should send their application through proper channel or should enclose NOC from the present employer. Computation of age limit and experience

will be counted as on 01.01.2010. The Corporation shall not be responsible for any postal delays. Incomplete application will be rejected.

The candidate applying in response to this advertisement should satisfy themselves regarding their eligibility in all respect for the post (s) for which

he / she is applying. Separate application form duly completed in all respect may be submitted for the separate post (s). Mere fulfillment of

qualification and experience will not entitle the person to be called for written / interview. Canvassing in any form and or bringing a in any influence

will be treated as disqualification.

The last date of receipt of application is 9th July, 2010.

4. In the provisional shortlist, respondent no. 2 has been shown at serial no. 23 and shortlisted candidates were directed to produce the following

documents for verification at the time of interview; as under:

1. Original certificates and testimonials in support of your educational qualification, experience, salary and date of birth along with two recent

passport size photographs.

2. One set of photocopies of all the certificates and testimonials duly attested as referred to above,

3. You have to produce ""NOC"" at the time of interview from your present employer if employed in Govt., Semi Govt., PSU, Autonomous /

Statutory bodies and Societies (not in case of Pvt. Co.), failing which you will not be allowed to appear before the selection committee.

4. Ist Class / IInd AC (Rail) / Bus for shortest route for to and fro journey shall be reimbursed on production of tickets / necessary documentary

proof.

5. On scrutiny of your application, it was found that you had not attached your experience certificate along with application at the time of

submission of your application for the above post. Kindly, note that you have to produce the original-experience certificate (3 years practice at

Bar, apart from producing certificate from the concerned bar Council / association, the candidates shall be required to certify with appropriate

evidence that she / he has represented in at least 5 matters in the year while practicing at Bar), with attested copies of the same on the above date

of the interview. Kindly note that in case you fail to do so, you would not be allowed to attend the interview.

6. It is once again requested that before attending interview you may be ensure that you fulfill the eligibility criteria both in terms of educational

qualification (s) and experience advertised for the post. In case it is found that you do not meet the eligibility criteria for the post you would not be

allow to appear in the interview. You may report for interview at the above venue at 9.00 AM on 16.09.2010.

5. Ld. Counsel for the petitioner submitted that finally, 36 applications were shortlisted, which were meeting preferential eligibility criteria of L.L.M.

with requisite experience and age for the post advertised.

6. It is pertinent to mention that all the 36 candidates were LLM with requisite experience mentioned in (i) or (ii) given in the advertisement. 36

shortlisted applications also included four applicants, who had submitted all complete documents and petitioner is one of those 04 candidates. Out

of 36 candidates, only four candidates submitted proof that she / he represented in at least 5 matters in a year while Practising at bar duly certified

from the Registrar of Court or a copy of the Court Order sheet showing details of appearance. All the remaining 32 candidates also submitted an

undertaking / affidavit to claim appearance in 5 cases, but did not submit proof to this effect.

7. Ld. Counsel for the petitioner has relied upon a Judgement of District Collector and Chairman, Vizianagaram Social Welfare Residential School

Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, wherein it has been held as under: It must further be realised by all concerned

that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between

the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee

or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a

fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No

court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

8. Ld. Counsel has further submitted that the respondent had no power to relax the conditions for the respondent as there was no procedure

thereto.

9. He has further relied upon a case of Supreme Court in Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, wherein it is

held as under:

The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for the

applicant-respondent No. 1 it was unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria

cannot be changed. The logic behind the same is based on fair play." A person who did not apply because a certain criteria e.g. minimum

percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said

percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is

because every statute or statutory rule is prospective unless it is expressly or by

necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See P. Mahendran and others Vs. State of Karnataka and others, and Gopal Krishna Rath v. M.A.A. Baig)

Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

10. Ld. Counsel for the petitioner has relied upon a case of Supreme Court in State of Punjab and Others Vs. Manjit Singh and Others, , wherein it is held as under:

Now advertent to the point under consideration, it may be observed that so far the powers and functions of the Commission in short listing of candidates is concerned, there can certainly be no doubt about it. Say for example 10,000 candidates apply for recruitment to 100 posts, it would obviously not be possible to take full test/examination and interview of such large number of applicants, though eligible. In that event short listing of the candidates by screening out those, in respect of whom it would serve no purpose to call them for further test, may be excluded by adopting the method of screening test. Generally speaking a ratio of 3-5 candidates for one post is normally accepted depending upon the number of seats.

Therefore, for 100 posts the selecting body may in order of merit take out about first 500 candidates for further tests/interview. The rest of the candidates would be screened out. No candidate excluded by adopting such a method for short listing can raise any grievance whatsoever. As

observed earlier, for the purpose of short listing it would not at all be necessary to provide cut-off marks. Any number of given candidates could be taken out from the top of the list upto the number of the candidates required in order of merit. For example, there may be a situation where more than required number of candidates may obtain marks above the cut-off marks, say for example out of 10,000 if 8,000 or 6,000 candidates obtain 45% marks then all of them may have to be called for further tests and interview etc. It would in that event not serve the purpose of short listing by this method to obtain the given ratio of candidates, and, the vacancy available. For 100 vacancies at the most 500 candidates need be called. If that is so any candidate who is otherwise eligible upto the 500th position whatever be the percentage above or below the fixed percentage would be eligible to be called for further tests. Thus the purpose of short listing would be achieved without prescribing any minimum cut-off marks.

11. Ld. Counsel for the petitioner further submits that respondent no. 1 has violated the procedure of selection and without any jurisdiction relaxed the conditions of the employment notice, which is bad in law.

12. Respondent no. 1 has filed response to the instant petition and submitted that out of 36 candidates applied, only 4 candidates submitted proof that he/ she has represented in at least 5 matters in a year while Practising at Bar duly certified from the Registrar of Court or a copy of Court order sheet showing details of appearance. All the remaining 32 candidates also submitted an undertaking / affidavit etc. to claim appearance in 5 cases, but they did not submit proof to this effect.

13. It is further stated that it could be very unfair with these candidates to reject their applications merely on these grounds. Hence, it was decided to shortlist them provisionally, but only those candidates will be finally admitted for interview who would file a documentary evidence of 5 cases in a year from the designated authority as mentioned above. An information to this effect was also made available on the official website of the Corporation on 30.09.2010.

14. After due approval from the competent authority, the interview call letter to all the above 36 candidates were sent. In interview call letters issued to 32 provisional candidates, it was made clear that in terms of Para (5)

that one has to produce the original experience Certificate (3 years

Practice at Bar apart from producing Certificate from concerned Bar Council / Association), the candidates shall be required to certify with

appropriate evidence that he / she has represented in at least 5 matters in a year while practicing at bar with attested copies of the same on the date

of the interview.

15. It was also made dear that in case candidates fails to do so he / she would not be allowed to attend the interview.

16. The above information was also uploaded along with the list of provisional shortlisted candidates. Finally, out of 32 provisional shortlisted

candidates only 19 candidates could furnish required documents and in all 21 (i.e. 2+19) were interviewed by Selection Committee constituted as

per the Recruitment Rule for the said post. For the purpose, Selection Committee was constituted with due approval of competent authority. For

the selection to the post of Assistant Manager (Legal) following members were nominated for the Selection Committee:

17. It is further submitted that as is evident from the above members, one independent Director of Board was also member of Selection

Committee along with Chairman-Cum-Managing Director. The Selection was based on the performance of candidate during interview,

accordingly, Shri S.K. Sinha, respondent no. 2 was recommended by Selection Committee. After due approval of appointing authority, the offer

of appointment was issued to Sh. S.K. Sinha.

18. Ld. Counsel for the respondent has submitted that the first short list consisted the names of the candidates who had given complete and full

certificates. The name of the petitioner was at serial no. 2. But, the names of candidate, (who have desired qualification and fulfilled the eligibility,

but whose documents / certificates were incomplete for any reasons such as the certificate is applied for and not available at that time as well as

those who were illegible / dim), were included in the provisional shortlist for interview subject to production of original certificate at the time of

interview.

19. Ld. Counsel further submitted that prior to interview every candidate was asked to furnish the original certificates and documents with the

procedural fairness and compliance of the principles of natural justice to give

opportunity to all those candidates, who fulfilled the desired qualification and eligibility criteria.

20. Ld. Counsel has pointed out that experience of respondent no. 2 at Bar is more than that of the petitioner. As much as respondent no. 2 is working as Assistant Manager (Legal) since the date of his selection and joining on 08.02.1010: He has 11 years of experience of practice, whereas the experience of the petitioner is only 8 years of practice in the courts. The qualification of L.L.M. is desirable and not compulsory while both the petitioner and respondent no. 2 have the L.L.M. degrees, in addition to minimum qualification.

21. The Interview Board / Selection Committee was not biased in favour of any candidate and there is no challenge to the constitution of the same and the interview conducted from both the list, appears to be fully justified in the interest of fairness and principle of natural justice, equity and good conscience.

22. Ld. Counsel has further clarified that in response to advertisement dated 26-2 July, 2010 in all 138 applications, for one post were received. It was due to overwhelming response for one post, the higher educational qualification of L.L.M. instead of L.L.B. was kept for screening after due approval of competent authority. After careful scrutiny and screening, only 36 candidates were found to have met the requisite educational qualification and experience as per the advertisement and the remaining 102 candidates were not shortlisted. Out of these 36, only 04 candidates enclosed the supporting documents for experience as was required.

23. Ld. Counsel has further submitted that in interview call letters, sent to 32 provisional candidates, it was emphasized in Para (5) that "On Scrutiny of your application, it was found that you had not attached your experience certificate along with application at the time of submission of your application for the above post. Kindly note that you have to produce the original experience certificate (03 years practice at Bar) apart from producing Certificate from the concerned Bar Council / Association, the candidate shall be required to certify with appropriate evidence that he / she has represented in at least 5 matters in a year while Practising at Bar.

24. Ld. Counsel has further submitted that action of respondent no. 1 was fair, justified and keeping in view the Article 14 of the Constitution of

India. The said procedure was adopted in compliance of the principle of natural justice, fair place and for getting the best candidate out of the lot.

25. Id. Counsel for the respondent no. 1 has submitted that Law has been settled by the Apex Court in Dalpat Abasaheb Solunke and Ors. Vs.

Dr. B.S. Mahajan and Ors. 1990 (1) SCC 305, wherein it has been held asunder:

It is needless to emphasize that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize

the relative merits of the candidates. Whether a candidate is fit for the particular post or not has to be decided by the duly constituted Selection

Committee which has the expertise on the subject. The Court has no such expertise. Therefore, the decision of the courts can be interfered with

only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or

proved mala fides affecting the selection etc.

26. Division Bench of this Court also in case of Union Public Service Commission vs. Gyan Prakash Srivastava while referring the case of Dolly

Chhanda Vs. Chairman, JEE and Others, whereby it is held as under:-

General Rule is that while applying for any course for study or post a person must possess the eligibility qualification on the last date fixed for such

purpose either in the Admission Brochure or in application form as the case may be unless there is an express provision to the contrary. There can

no relaxation in this regard i.e. in the matter of holding requisite eligibility qualification by the date fixed. This has to be established by producing the

necessary certificates / degrees or marksheets. Similarly, in order to avail all the benefits of reservation or weightage etc. necessary certificates

have to be produced.

27. I heard Id. Counsel for parties.

28. Law has been settled in the case of Y. Zheto Asumi & Ors. V. State of Nagaland and Ors. whereby the Hon"ble High Court of Guwahati

while referring the case of Assam Animal Husbandry and Veterinary Service Association and Others Vs. State of Assam and Others, held as

under:

In the instant case, however, precisely what is objected to on behalf of the respondents is that the petitioner had participated in the interview and

according to their own allegations they became aware of the alleged irregularities during the course of the selection proceedings itself. Therefore, immediately after the selection was over, it would have been proper that the petitioners had challenged the proceedings, rather to wait till result was declared and the petitioners came to know that they remained unsuccessful. It is not to be taken mechanically that since the petitioners participated in the interview that they may not be heard complaining about the same. But what is objectionable if that they were keeping quiet after the alleged irregularities came to their knowledge till the result was out. Respondents would not be unjustified in pointing out that this period of waiting, for result to be declared, was only for the purpose of taking a chance and on being declared unsuccessful they turned round to challenge the proceedings in respect of which they did not raise objection before the result was declared.

29. Also, Law has been settled in the case of Raj Kumar and Others Vs. Shakti Raj and Others, whereby the Apex Court while referring the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, has held as under:-

A candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection.

30. Law has also been settled in case of Punjab State Electricity Board and Others Vs. Malkiat Singh, that:

Mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment.

31. Therefore, direction cannot be given to respondent no. 1 to give appointment to the petitioner.

32. Petitioner has not established that there was any favourable bias attitude by the respondent no. 1 while selecting respondent no. 2, therefore,

not selected him. It is not the case of the petitioner that the respondent no. 2 did not possess the required essential educational qualification as well

as the desirable educational qualification. It is mentioned in the General Instruction that incomplete application will be rejected. However, while

selection for the post in question; fair chance was given to all the eligible candidates applied for the post and to get the best metal out of the lot. If

the petitioner was aggrieved with the fair change given to the candidates by asking them to submit the complete documents at the time of interview,

then the petitioner should have challenged the same before appearing in the interview. Once she has appeared and declared unsuccessful

candidate, then the instant petition cannot be entertained.

33. I note that both the list i.e. main short list containing 04 candidates and the provisional list containing 32 candidates were published in the same

date i.e. on 30.08.2010. The petitioner preferred not to challenge, but appeared in interview. When, she was declared unsuccessful candidate,

then she preferred instant petition.

34. Therefore, I find no malafide and unjust procedure adopted by respondent no. 1.

35. In view of the above, I find no merit in the instant petition. The same is accordingly dismissed with no order as to cost.

CM 1285/2011(Stay)

In view of the above, instant application becomes infructuous and disposed of as such.