
(2001) 08 DEL CK 0110

In the Delhi High Court

Case No : Civil Writ Petition No. 7208 of 1999

Ms. Geeta Mahadevan

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2001) 94 DLT 102 : (2002) 61 DRJ 540

Hon'ble Judges : Sharda Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. S. Balakrishnan and Mr. K.B.S. Rajan, for the Appellant; Mr. Rahul Roy, for the Respondent

Final Decision : Allowed

Judgement

Khan, (J)

1. Respondents issued advertisement dated 28.4.1995 inviting applications for two posts of Scientist-B presenting the following essential qualifications to be possessed by the candidates:-

(i) First Class (with not less than 65% marks) M.Sc. in Chemistry with Associateship in Information Science or M.Phil/Ph.D. in Science Communication with basic Master's degree in Chemistry.

(ii) Two years of experience in editing of scientific and technical literature.

(iii) Candidate should be able to work with computers using word processing and editing softwares.

2. It also provided that candidates would be short-listed by a duly constituted Screening Committee and that their applications complete in all respects received latest by 8.6.1995.

3. Petitioner, a Senior Technical Assistant, working with R-3 responded to this

and applied for the post also allegedly informing respondents that she was shortly to complete M.Phil. in Science Communication which would make her eligible for the post. It seems that she qualified the requisite M.Phil. meanwhile but after the last date fixed for receipt of applications and Screening Committee invited her for written test and interview held on 17.10.1995, she was selected and offered the post and appointed by order dated 8.11.1995 from 3.11.1995. She was then put on probation which she cleared and she was confirmed from 2.11.1997 by order dated 14.1.1998. She had barely enjoyed her confirmed status when she was asked to show cause why her appointment be not cancelled. She made a representation against this but in vain and her appointment was finally cancelled on the ground that she was erroneously appointed as she did not possess the essential qualification.

4. Petitioner challenged this before CAT in OA No. 2533/99 which was summarily dismissed by impugned order dated 29.11.1999 by Tribunal holding that her appointment was non est since she lacked in requisite essential qualification. Reliance in this regard was placed by Tribunal on a Supreme Court judgment in AIR 1998 91 (SC) . She has now filed this petition challenging Tribunal order on the ground that respondents are estopped from invoking any condition of the advertisement notice after she was selected, appointed and confirmed by them and that in any case she was not liable to be removed save otherwise in accordance with the mandate of Article 311 of Constitution.

5. Learned counsel for the petitioner Mr. S. Balakrishnan argued that respondents should be deemed to have granted one time relaxation in the essential qualifications as none of the candidates for the post possessed all the prescribed essential qualifications. He asserted that they were estopped from invoking any condition of advertisement notice after they had subjected petitioner to whole selection exercise and had confirmed her on the post. In any case, no statute or Rule and not even the terms of advertisement notice required a candidate to possess the requisite qualifications on the last date of receipt of applications. He submitted that petitioner could have been removed only after satisfying requisite of Article 311 but respondents had neither held any inquiry nor afforded her any opportunity of hearing to show how their mind worked at the relevant time in the situation where none of the candidates possessed all the prescribed qualifications. He took us through various judgments of the Supreme Court dealing on the issue laying down that prescribed essential qualifications were to be possessed on the last date of receipt of applications and distinguished these in the context of relevant Notification which specifically provided for such a condition.

6. Mr. Balakrishnan lastly urged that even if petitioner's appointment was to be held bad, it would be only irregular and not void and for this he placed reliance on a number of Supreme Court judgments including that of Ram Sarup Vs. State of Haryana and Others, and J.C. Yadav and others Vs. State of Haryana and others, pointed out that the Apex Court had saved all the appointments on

equitable considerations or otherwise even where these were found made in breach of Rules.

7. Respondents' case proceeds on expected lines focussing on the available precedent laying down that requisite prescribed qualification was to be possessed on the last date of receipt of application. It is denied by them that any relaxation was granted in the matter under Rule 83 of CSIR Rules by the Screening Committee which could be only done by the Screening Body of CSIR.

8. it is in this background that we are called upon to consider whether the petitioner's appointment was non est or void for want of prescribed requisite qualification on the last date of receipt of applications (8.6.95) though she was holding this on the date of written test/interview and whether she was liable to be removed from service after her clearing the probation and confirmation on the post without any enquiry or hearing.

9. It's no more rest integra that a candidate's eligibility was to be adjudged with reference to last date fixed for receipt of applications for the post where the advertised notification specified so and even otherwise in the absence of such date. Supreme Court has repeatedly ruled this in a number of its decisions (See A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, , District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, ; Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, and even in corrected judgment in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, . In Rekha Chaturvedi's case, it held:-

"The proposition that these applications are called prescribing last date for filing applications, eligibility of candidates shall have to judged with reference to that date. A person who acquires the prescribed qualification subsequently can be considered at all."

10. The reasoning adopted was that the date of selection was usually uncertain and if that was made to be the cut off date, it would create uncertainty and enable candidates who would possess essential qualifications later in point of time to establish their eligibility. The court, however, took a contrary view in Ashok Sharma's case (1993 Supp (2) SC 611 holding that essential qualification could be possessed by a candidate even up to the date of interview in the facts and circumstances of the case to ensure wider and broader selection but this did not last long and was set rightly, promptly on a review to restore uniformity in the legal position on the issue. The settled position now is that where applications are called prescribing a particular date as the last date for filing applications, the eligibility of a candidate was to be judged in reference to that date and to that date alone.

11. Could petitioner survive in the face of the established position is the question. We have no doubt that she would in the facts and circumstances of her case because even if her appointment was held to be in breach of condition

prescribing essential qualifications, it could be at the best irregular and not void or non est as held by Tribunal. We find support for this in several judgments of Supreme Court including Ram Sarup's case followed in J.C. Yadav's case holding as under:-

"3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years" experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised."

12. The court saved the situation even in Rekha Chaturvedi's case thus:-

"However, for the reasons which follow, we are not inclined to set aside the selection in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weight the respective merits of the candidates and to relax the minimum qualifications in favor of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weight with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected."

13. Therefore, even if it was accepted that petitioner was ineligible on the last date of receipt of application though she became eligible few months later on the date of interview/written test, her appointment would be at best irregular and would be deemed regularised given regard to conduct of respondents who had selected her, appointed her, confirmed her on the post with eyes open over a period of time. They could not be now allowed to turn round and whip up a dead horse by invoking a condition of an advertisement which they had failed to enforce at relevant time and that too by reference to a legal precedent which had evolved in different fact situation. They are to be held estopped from doing so because possession of requisite essential qualification on the last date of receipt of applications in this case was not prescribed by any statute or recruitment rule.

14. Looking at it from the other angle, respondents also could not have removed petitioner from service arbitrarily and without observing the mandate of Article 311 . Once she was found to hold the post regularly, she could be only removed upon an enquiry and after offering her reasonable opportunity of being heard. It is not that an enquiry would have been an empty formality or she would have no defense to offer in the situation. Such an inquiry could have perhaps provided a

peep into the manner and method of decision making at the relevant time and the circumstances in which petitioner was selected and appointed. It would have also provided her access to official records to show how the Selection/Appointing Authority's mind and decision process had worked. Having failed to satisfy these constitutional safeguards, respondents had arbitrarily thrown her out on the plea that her appointment suffered from error. We fail to appreciate how could she be removed and her right of livelihood taken away because of respondents error, if any. It is also not understandable how her appointment could be termed erroneous without examination of relevant selection record and an inquiry in the matter. It could as well be that she was appointed on a conscious decision because of non-availability of suitable candidates to meet an administrative exigency.

15. We accordingly hold that petitioner's appointment even if held to be made in breach of conditions of advertisement notice would at best be irregular and would have to be treated regularised in the face of conduct of respondents appointing her and confirming her on the post. Her removal from service in disregard of the safeguards guaranteed under Article 311 was otherwise unsustainable.

16. This petition accordingly succeeds and is allowed. Impugned orders passed by Tribunal and by respondents are quashed._