
(2018) 12 DEL CK 0206

In the Delhi High Court

Case No : Civil Writ Petition No. 3993 Of 2017

Neeraj Pal & Ors

APPELLANT

Vs

Central Warehousing Corporation

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 12 DEL CK 0206

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Kushagra Bansal, Ashish Chauhan, Rajiv Shukla, Shivani Kapoor, Gorang Goyal

Final Decision : Allowed

Judgement

1. Vide the present petition, the petitioners seek direction thereby setting aside the recruitment process for the post of "Junior Technical Assistant" as per the advertisement no.CWC/1-Manpower/DR/Rectt/2016/02 dated 20.09.2016 or setting aside the final result dated 17.04.2017 issued by respondent no.2.

2. The petitioner no.1 is a graduate holding First Class Degree of Bachelor of Science (Hons.) in Botany from the University of Delhi.

3. The petitioner no.2 is a post graduate degree holder who had pursued her studies from Ranchi University and Punjab University. After completing her Bachelors of Science in Biotechnology Honours in First division from Ranchi University in 2013 pursued her post graduation i.e. Master of Science (Microbial Biotechnology) from Punjab University and further completed the same in the year 2014.

4. The petitioner no.3 pursued his engineering B.Tech in Biotechnology from Amity University Rajasthan with a CGPA of 6.71 and completed the same in 2014.

5. The petitioner no.4 had pursued his Bachelors of Science in Microbiology as

the principal subject and Chemistry and Botany as the subsidiary subjects. After completing his Bachelor's Degree, the petitioner no.4 pursued M.Sc. in Bioinformatics from the University of Pune.

6. It is pertinent to mention here that vide order dated 08.08.2017 in CM APPLN. 28046/2017, the petitioner no.2 "Mrs.Asha Kumari" has withdrawn herself as a petitioner in the writ petition who has been selected as Supervisor Gr-II under the Delhi Subordinate Services Selection Board. Thus, the present petition is qua the other petitioners minus petitioner no.2 "Mrs.Asha Kumari".

7. The respondent no.2 issued an advertisement dated 20.09.2016 for the recruitment of individuals at various described posts via online application form. The requisite essential requirements were mentioned in the advertisement brochure. The same is marked as Annexure-6. The petitioners after carefully scrutinizing the aforesaid advertisement applied for the post of "Junior Technical Assistant" having the total vacancy of 300 with an annual CTC of Rs.3.75 lakhs per annum. As per the advertisement, the recruitment process for the said post requires Online Test and Document Verification. The minimum educational qualification required for getting eligible for the aforesaid test was mentioned in clause B(ii) of the advertisement, "Degree in Agriculture or a Degree with Zoology, Chemistry or Bio-Chemistry as one of the subjects". As per the aforesaid advertisement, no experience was needed for the post in question. The petitioner applied for Online Test. The respondent no.2 conducted the Online Test on 18.11.2016. The petitioners duly appeared in the said test. The respondent no.2 declared the result in the mid of December 2016. Accordingly, respondent no.2 called all the qualified candidates for the documents verification including the petitioners. Respondent no.2 uploaded the final result on 17.04.2017. However, to the utter shock and surprise of the petitioners, it is intimated by respondent no.2 that the application form of the petitioners had been rejected as they failed in qualifying the minimum essential criteria.

8. Learned counsel for the petitioners submits that petitioner no.1 thereafter searched the website of respondent no.2 wherein the petitioners found the seniority list of "Junior Technical Assistant" issued by respondent no.2 on 09.06.2016, which is marked as Annexure 18. The averments of respondent no.2 is that the petitioners did not fulfil the requisite essential requirements as per the advertisement is totally unsustainable as it is quite evidence from the above seniority list that respondent no.2 had earlier appointed the candidates having degree in other streams of science such as Agro/Meterlogy, Agronomy, Biotech etc. in the year 2015. Accordingly, the petitioner no.2 wrote a representation dated 18.04.2017 to respondent no.2 raising the aforesaid illegal and arbitrary conduct of their officials in the appointment process which is marked as Annexure 19. Respondent no.2 duly replied to the aforesaid representation whereby respondent no.2 discarded the averments of the petitioners and further affirmed the decision.

9. Learned counsel further submits that as per clause B(ii), the educational

qualification required for the post of "Junior Technical Assistant" was "Degree in Agriculture or a Degree with Zoology, Chemistry or Bio-chemistry as one of the subjects." It was never clarified by respondent no.2 that the applicants require a Degree in Zoology, Chemistry or Biochemistry as stated in reply dated 26.04.2017. Therefore, respondent no.2 had wrongly interpreted the provisions and caused hardship to the petitioners.

10. Learned counsel for the petitioner submitted that as per clause C (1)(4) of the advertisement, the applicant has to undergo test namely Reasoning, English Language, Numerical Ability, General Awareness and Professional Knowledge. The syllabus of the test under the head of "Professional Knowledge" is provided in the advertisement only. It is quite evident from the same that respondent no.2 would test the educational knowledge of the applicant before calling the applicants for document verification. The petitioners in the instant case cleared the cut off marks in the category of "professional knowledge" and became eligible for the post in question, therefore, respondent no.2 had wrongly changed the rule/regulations in the middle of the process vide its reply dated 26.04.2017 by stating that the "Junior Technical Assistant" are primarily entrusted to supervise the technical work in the Warehouse/place of posting which involves doing prophylactic and curative treatment of the stock, taking various qualitative refraction of the stocks, completing official technical record etc. The "Junior Technical Assistant" also deals with various insects, pests and qualitative and quantitative scientific equipments at their place of posting. Thus a candidate having studied above subjects as one or two papers in their degree will not be eligible since the requirement is specific.

11. Learned counsel further submits that respondent no.2 in its reply dated 26.04.2017 did not consider the fact that the petitioners had already undergone the test of their technical knowledge under the head of "Professional Knowledge" and already cleared the cut off marks. Therefore, there is not an iota of doubt that the petitioners fully comply and satisfy the basic educational qualifications. Moreover, after issuance of advertisement on 20.09.2016, respondent no.2 neither released nor printed any clarifications/rules, etc. in regard to the appointment process whereby respondent no.2 clarified its stand that the "Degree with Chemistry, Zoology or Biochemistry as one of the subjects" means "Degree in Chemistry, Zoology or Biochemistry". However, when the petitioners raised the aforesaid issue before the appropriate authority then respondent no.2 changed the criteria and clarified the same.

12. To strengthen his argument, counsel for the petitioners has relied upon the case of Supreme Court decided in K Manjusree vs. State of Andhra Pradesh: (2008) 2 SCC 512 and Hemani Malhotra vs. High Court of Delhi: (2008) 7 SCC 11 whereby it is settled that no authority can change the recruitment criteria once the recruitment process has been initiated. In case the same is done, then it would make the entire recruitment process illegal, arbitrary and violative of Article 14 of the Constitution of India.

13. On the other hand, learned counsel appearing on behalf of the respondents submits that the job profile of "Junior Technical Assistant" demands that the candidate should have been enough exposure to the subjects as mentioned in the recruitment rules and accordingly, the answering respondent has been recruiting the candidates for the post of JTA who are having a Degree in Agriculture or who have studied the required subjects i.e. Chemistry, Zoology or Bio-Chemistry during all semesters/years in their Degree course. Mere studying of the subjects in a few semesters as ancillary subject/optional subject will not equip the candidate with the sufficient knowledge/expertise to deal with the complex technical matters at the warehouse. He further submitted that it was nowhere mentioned in the reply dated 26.04.2017 that candidate require a Degree in Zoology/Chemistry/Bio Chemistry as alleged by the petitioners. Mere study of subjects in few semesters as ancillary subjects would not render a candidate eligible for the post of JTA, as the requirement of job would not be fulfilled. The petitioners have completely misunderstood or deliberately attempting to misconstrue the contents of the advertisement and the reply dated 26.04.2017 to secure employment with the answering respondent even though they do not qualify the prescribed minimum qualification.

14. Counsel for the respondent further submits that no rule/regulations were changed in the middle of the recruitment process and answering respondents has been undertaking recruitment activities on the same principles in the previous years too. Moreover, General Clause 18 of the advertisement dated 20.09.2016 provides that "CWC reserves the right to change (cancel/modify/add) any of the criteria, method of selection and appointment, etc." The petitioners agreed to such condition and then only filled up their respective forms.

15. To strengthen his argument, learned counsel for the respondents has relied upon the case of Tarun Pal vs. Ministry of Consumer Affairs, Food & Public Distribution and another in Special Appeal No.229/2018 dated 25.04.2018 passed by the High Court of Uttarakhand at Nainital in the appeal filed by the petitioner therein who challenged the order passed by learned Single Judge whereby his petition was dismissed for the same recruitment process. He further relied upon the case of D. Saroja Kumari vs. R Helen Thilakom and Ors.: AIR 2017 SC 458 whereby held that having appeared in the interview and not being successful were not permitted to challenge the method of recruitment. Thus, the present petition also deserves to be dismissed.

16. I have heard learned counsel for the parties.

17. As per the advertisement dated 20.09.2016, the educational qualification required for the post of "Junior Technical Assistant" is "Degree in Agriculture or a Degree with Zoology, Chemistry or Biochemistry as one of the subjects." It was never clarified by the respondent no.2 that the applicants require a degree in Zoology, Chemistry or Bio-chemistry before reply dated 26.04.2017 to the representation of petitioner no.2.

18. Petitioner no.1 Mr.Neeraj Pal is "Bachelor of Science (Hons.) in Botany and he studied Chemistry as subsidiary subject

19. Petitioner no.2 Mr.Nivesh Sharma is "Bachelor of Technology (Biotechnology)" with Applied Chemistry-1 and Applied Chemistry Lab-1.

20. Petitioner no.3 is concerned, he is "Bachelor of Science in microbiology and studied Chemistry Theory Paper-1, Zoology Theory Paper 1 & 2, Zoology Practical.

21. I am conscious that one of the candidate namely Tarun Pal approached the High Court of Uttarakhand at Nainital but lost his legal battle in the writ petition and the appeal as well whereby it is observed that the question as to whether he studied Bio-chemistry as one of the papers in 4th semester would fulfil the requirement is a matter to be understood from the stand point of the employer particularly having regard to the nature of the duties to be performed by the selected candidate.

22. On perusal of the office order dated 09.09.2016 Annexure 18 regarding seniority list of Junior Technical Assistant as on 01.04.2016, S.No.13 Mr.Abhishek Kumar has educational qualification of B.Sc. (Zoology) with Botany and Chemistry; S.No.16 Saranga Dutta having qualification of M.Sc. (Bio-Technology); and at S.No.48 Ms.Raj Bala Sinha has qualification of B.Sc. (Bio-Technology).

23. It is pertinent to mention here that during the arguments counsel for the respondents justified educational qualification that during the selection of the Junior Technical Assistant mentioned in Annexure-18 above, the interview was not the criteria whereas in the advertisement in question, apart from the written test, the interview was also conducted.

24. But the fact remains that the petitioner not only qualify the written examination but also qualify the interview conducted by the respondent no.2. Thus, I do not find any substance in the argument of the respondent no.2 that the earlier interview was not there, therefore, the Junior Technical Assistants were appointed on a different educational qualification criteria. However, it is admitted that in the previous years also, the educational qualification was the same but only interview is introduced in the advertisement in question in the present case.

25. Similar issue came before the High Court of Gujarat at Ahmedabad in case of Mamta A Ghodasara & 2 Ors. vs. State of Gujarat through Principal Secretary & 2 Ors. which was decided on 17.02.2011 in a Special Civil Petition No.526/2011 whereby it is held as under:

"20. It would be relevant to consider the specific language and the words used in the Rules. It is stated that a candidate must possess a Bachelor's degree of any recognized University with one of the subjects named therein, such as Botany, Chemistry, Physics and Zoology. If Rule 4(b) of the ACF Rules is read carefully, it is seen that the first portion thereof envisages that the candidate should possess

a Bachelor's Degree with one of the specified subjects, whereas the latter portion stipulates that a candidate should possess a Bachelor's Degree in Animal Husbandry and Veterinary Science or a Bachelor's Degree in Agriculture, or a Bachelor's Degree in Forestry or a Bachelor's Degree in Engineering, or possess an equivalent qualification recognized as such by the Government for this purpose. From the words used while framing the Rule, it is clear that it provides for a Bachelor's Degree with the subjects of Botany, Chemistry, etc. or Bachelor's Degree in Animal Husbandry and Veterinary Science, Agriculture, Forestry, or Engineering; meaning thereby that the Bachelor's Degree envisaged by the Rules should be with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology. Admittedly, the petitioners have studied Botany, Chemistry, Mathematics, Physics, and Zoology in their Higher Secondary and also in their First and Second Years of the B.Sc. Degree course, though the subject of Microbiology is their principal or special subject. Therefore, they have a Degree of Bachelor of Science with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, as stated in the Rules. As such, there is no ambiguity in the Rules which would lead to a different interpretation or meaning.

21. The language of the above-mentioned Rule is clear and unambiguous. The word 'with' connotes inclusion and not exclusion and the intention of the Legislature is clearly demonstrated. The word 'in' had been used in the latter portion of the Rule. Had it been the intention of the Legislature that the Bachelor's Degree should specifically be 'in' Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, the said word would have been used instead of 'with', as has been done in the case of the subjects of Animal Husbandry and Veterinary Science, Agriculture and Forestry or Engineering. The Legislature is presumed to have used the language it actually intends to use, keeping in view the Legislative intent. The words used have to be understood in their normal, ordinary sense. The word 'with' is to be understood in its ordinary sense, therefore, proper effect should be given to its meaning. The only prudent and rational connotation and interpretation of the word 'with' would be an inclusive one and not an exclusive one, whereas the connotation of the word 'in' is specific. Had the word 'in' been used instead of 'with', it would have meant that candidates would have to possess a Bachelor's Degree in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not with the said subjects. However, this has not been done which demonstrates the intention of the Legislature.

24. Applying the principles of law laid down in the decisions referred to above, to the relevant Rule, the only clear and natural meaning that emerges is that the candidate should possess a Bachelor's Degree along with one of the specified subjects. The interpretation being resorted to by the respondents that the subjects mentioned in the Rule should be the principal or special subject only, is not borne out from the language employed by the Legislature while framing the Rules. Moreover, the Rule nowhere states that the marksheets of only the Third

Year of Bachelor of the B.Sc. course should be scrutinized to ascertain whether the candidate has the necessary qualification with one of the specified subjects. Such a construction is clearly a distortion of the Rule and cannot be read into it, as is sought to be done by the learned Assistant Government Pleader."

26. In case of P. Ranjitha vs. University Grants Commission & Ors. in Civil Writ Petition No.2679/1989 and 4093/1989, this Court held as under:

"(3) The petitioner is a B. Com. Graduate with Economics as one of the subjects from Osmania University and has secured 81.08% marks. After having come to Delhi in pursuit of higher studies, she applied for M.Sc. in Agricultural Economics to respondent No. 2 being eligible for such a course according to the Prospectus (Information Bulletin) issued by the I.A.R.I. and also the advertisement. The minimum qualification of eligibility as laid down in the prospectus has been given in para 9 of the petition.

Accordingly a candidate must satisfy the minimum eligibility of qualification of Social Science (Economics) and one of the special qualifications of the discipline of Agricultural Economics as "B. Sc. (Ag.), or Bachelor's degree (with Economics as one of the subjects)". Admittedly, the petitioner possessed a Bachelor's degree in Commerce with Economics as one of the subjects and as such she applied for admission to the course of Agricultural Economics. According to the petitioner, as per para 6.24 of the Calendar issued by I.A.R.I. the application of the petitioner for M.Sc. course was screened and she was found eligible for the said course and as such she was allotted Roll No. 101-0005 for the written entrance test scheduled to be held on August 20, 1989 at 9.30 A.M. The petitioner topped in the written entrance test and was selected by the Academic Council for admission to the said course. Consequently vide letter dated September 1, 1989, annexure 'F' to the petition, she was asked to deposit dues up to September 11, 1989 as also to comply with other formalities which she did and as such she was admitted to the course. However, the petitioner received the impugned letter dated September 11, 1989 informing her that her admission has been kept in abeyance pending decision by the competent authority with regard to her eligibility. In fact, during the course of arguments, Mr. Jaitley, learned Addl. Solicitor General appearing for respondents, informed the court that the decision has been taken by the Academic Council and the petitioner has been found 'not eligible'.

(6) We have carefully considered the contention of the learned counsel for the petitioner and we find good deal of force in her submission. The eligibility criteria laid down in the prospectus as well as in the advertisement clearly stipulates that for the purpose of admission to M.Sc. (Agricultural Economics) a candidate must possess Bachelor's degree with a minimum of 55% marks in Social Science (Economics) and for a discipline of Agricultural Economics, a Bachelor's degree with Economics as one of the subjects. It is nowhere mentioned that a Bachelor's degree in Social Science (Economics) should be a degree with Economics as principal subject or the Honours in Economics. Furthermore, it does not provide

that a student who has got a degree in Social Science (Economics) or Bachelor's degree (with Economics as one of the subjects) must have mathematics compulsory paper. The eligibility criteria laid down in the prospectus as well as in the advertisement only provide that candidate must possess the Bachelor's degree with Economics as one of the subjects and not a Bachelor's degree with Economics as principal subject or Honours in Economics or compulsory paper in Mathematics. Therefore, since the petitioner holds a Bachelor's degree in Social Science with Economics as one of subjects, in our view, she no doubt possesses the requisite qualification and she is Fully eligible to be admitted to the M.Sc. (Agricultural Economics)."

27. The word "with" connotes inclusion and not exclusion whereas the word "in" connotes specific enclosure. The intention of the legislatures were quite clear while drafting of the rules. The word "in" had been used in the former portion of the Rules. Had it been the intention of the legislature that the Degree should specifically be "in" Zoology, Chemistry or Bio-chemistry, the said word would have been used instead of "with" as has been done in case of the subject of Agriculture. Thus, respondent no.2 clearly failed to apply doctrine of literal interpretation in the instant matter. The legislature is presumed to have used the language it actually intends to use, keeping in view the legislative intent. The use of words in the rule/provisions had to be understood in its ordinary sense. It is quite evident from the reading of the rule that the legislature intended to use the word "with" in inclusive manner rather than exclusive. The use of the word "in" is quite specific as in the case of Degree in Agriculture. Therefore, the only clear and natural meaning that emerges is that the applicant must possess a Degree along with one of the specified subjects. Therefore, the plain and ordinary reading of the aforesaid rule makes it quite clear that the applicant must possess a Degree with Zoology, Chemistry or Bio-chemistry as one of the subjects. Hence, respondent no.2 had issued the final result without appreciating the aforesaid interpretation of the rule in question.

28. As per clause C (1)(4) of the advertisement, the applicant has to undergo test namely Reasoning, English Language, Numerical Ability, General Awareness and Professional Knowledge. The syllabus of the test under the head of "Professional Knowledge" is provided in the advertisement only. It is quite evident from the same that respondent no.2 would test the educational knowledge of the applicant before calling the applicants for document verification. The petitioners in the instant case cleared the cut off marks in the category of "professional knowledge" and became eligible for the post in question, therefore, respondent no.2 had wrongly relied upon the contents of its reply dated 26.04.2017.

29. For the sake of repetitions, the petitioners had already undergone the test of their technical knowledge under the head of "Professional Knowledge" and cleared the cut off marks. Therefore, there is not an iota of doubt that the petitioners fully comply and satisfy the basic educational qualifications.

30. Vide the present petition, the petitioners seek direction thereby setting aside the recruitment process for the post of "Junior Technical Assistant" and the final result dated 17.04.2017 issued by respondent no.2. The said prayer is made due to the reasons that the petitioners despite having required educational qualifications could not get selection. Since this Court is of the view that the petitioners are qualified for the post in question, therefore, instead of setting aside the recruitment process and final result dated 17.04.2017, justice would be met by giving directions to the respondents to give appointments to the petitioners.

31. In view of above discussion and the facts and circumstances of this case, I hereby allow the present petition by directing the respondents to issue appointment letters to the petitioners for the post of "Junior Technical Assistant" within two weeks from the receipt of this order, if the petitioners are otherwise eligible.

32. It is made clear that the petitioners are entitled for all benefits including seniority except the past wages.

33. The petition is, accordingly, allowed subject to no order as to costs.