

(2015) 03 DEL CK 0213

In the Delhi High Court

Case No : LPA 339/2014

Oriental Insurance Company Ltd. and Others

APPELLANT

Vs

Abhishek Yadav

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 03 DEL CK 0213

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : K.K. Rai, Sr.Advocate instructed by Rahul Ranjan Verma, for the Appellant; M.K. Bhardwaj, Advocates for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—An advertisement was issued by the first appellant : Oriental Insurance Company Ltd. in January 2012, inviting applications to fill up 477 vacancies for the post of Administrative Officer (Scale-I) in different specialized disciplines. The essential educational qualification prescribed in the advertisement for Group "I" code 09, (Generalist) was, "Bachelor Degree with minimum 60% marks in aggregate or Masters Degree with minimum 55% marks from a recognized university.?"

2. The respondent, Abhishek Yadav submitted an application for a post in Group "I" (Generalist) and sought eligibility on the strength of PGDM (Post-Graduate Diploma in Management). The same had been awarded to him by Jagan Institute of Management Studies Delhi.

3. Successfully clearing the written examination and interviewed on September 11, 2012, the respondent did not receive any intimation of his selection and in response to information sought under the Right to Information Act was informed that though he had obtained marks entitling him to be appointed for the post in question i.e. his merit position was high up enough, he could not be offered appointment because he did not meet the eligibility criteria.

4. Since the respondent had predicated a claim for eligibility with reference to the marks obtained by him at the Post Graduate Diploma in Management Course undertaken by him at Jagan Institute of Management Studies Delhi, in which he obtained more than 55% marks, he obtained a certificate on February 01, 2013 from the Association of Indian Universities certifying that the two years" full time Post Graduate Diploma in Management pursued by him from the Jagan Institute of Management Studies was equivalent to a Post Graduate Degree : MBA from a recognized university.

5. The first appellant took the stand that as per the advertisement, the Post Graduate Degree had to be from a recognized university and not any other institution and further : not a diploma.

6. The respondent proceeded to file W.P.(C) No. 2656/2013, which has been allowed by the learned Single Judge vide impugned order dated March 10, 2014.

7. The reasoning of the learned Single Judge is simple. The Post Graduate Diploma in Management obtained by the respondent from Jagan Institute of Management Studies has been held to be equivalent to a Masters Degree in Business Administration awarded by recognized universities in terms of the letter dated February 01, 2013 issued by the Association of Indian Universities, a body competent to take a decision on equivalence of degrees, coupled with the fact that the diploma course by Jagan Institute of Management Studies was recognized by the All India Council for Technical Education.

8. We have noted hereinabove in paragraph 1 that the essential educational qualification prescribed by the appellant was:-

"Bachelor Degree with minimum 60% marks in aggregate or Masters Degree with minimum 55% marks from a recognized university." 9. Arguing the appeal learned counsel for the appellant relied upon the decisions reported as : (i) J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, ; (ii) V.K. Sood Vs. Secretary, Civil Aviation and others, ; and (iii) Ganapath Singh and Gangaram Singh Rajput Vs. Gulbarga University Rep. by its Registrar and Others, .

10. Learned counsel for the respondent relied upon an unreported decision of this Court deciding a batch of writ petitions, lead matter being W.P.(C) No. 6100/2012 Ms.Nisha Vs. UOI and Ors. decided on November 26, 2012.

11. In J.Rangaswamy's case (supra), the advertisement issued by the Government of A.P. inviting applications for the post of Professor in Radiological Physics prescribed Doctorate in Nuclear Physics as an essential educational qualification. J.Rangaswamy pleaded that the diploma in Radiological Physics which he had obtained from the Bhabha Atomic Research Centre was equivalent, in fact better. The plea was turned down by the Supreme Court holding that the Court cannot consider either the relevance of a qualification prescribed or whether the diploma obtained by J.Rangaswamy was equivalent or better to a

Doctorate Degree in Nuclear Physics.

12. In V.K. Sood's case the essential and desirable qualifications prescribed were subsequently altered and as a result whereof V.K. Sood became ineligible to apply for the post of Examiner of Personnel in the Department of Civil Aviation. The contention of the Department was that it is the prerogative of the Executive to regulate the method of recruitment by prescribing qualifications. The Court upheld the stand of the respondent holding that it is not the province of Courts to trench into an prescribe qualifications, in particular when the matters are of a technical nature.

13. In Ganapath Singh's case the Gulbarga University had prescribed, as an essential qualification, for the post of a Lecturer a Masters Degree in the relevant subject from an Indian University or an equivalent degree from a foreign university. The relevant subject being : "Computer Application". A Masters Degree in Computer Application and its equivalence with a Masters Degree in Mathematics came up for consideration. The University accepted equivalence by treating the latter degree as being in the relevant subject. Notwithstanding that the University itself was treating the two as equivalent opining that the two degrees concerned the relevant subject (probably for the reason the pedagogy in Computer Application was essentially the same as that in Mathematics), the Supreme Court held that once an essential qualification was prescribed, it was not open to consider equivalence. The Supreme Court in said decision relied upon its earlier decision reported as Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another, . The Supreme Court held that where the language of an advertisement was clear and explicit and did not admit of any ambiguity, there was no scope to interfere with the clear language of the advertisement.

14. The decision of this Court in Ms.Nisha's case (supra) did not deal with the issue of equivalence in its conventional sense. It was a case where degrees from recognized universities bore different labels. To wit : B.Tech. Electrical, B.Tech. Computer Science, B.Tech. Electronic and Instrumentation. Whereas the Indian Air Force and the Indian Navy treated all to be the three facets of the same course, the Indian Army treated the same as the three facets of the same course, but only for males and not for females. In the initial advertisement issued by the Indian Army all three were listed as the essential educational qualification for males, but not for females, and by way of corrigendum the latter two were sought to be withdrawn even for males. The Court noted that the other two wings of the Armed Forces treated all three degrees to be the same and so did all public sector undertakings. To satisfy the judicial conscious the Court looked at the course curriculum i.e. the subjects taught in the various semesters of the four years" degree course as also the course content and found the same to be exactly the same, the only difference being that in some universities a particular subject or a discipline was taught earlier and in some later.

15. The legal position would thus be that where the employer prescribes an

essential educational qualification, unless its equivalence is also prescribed by the employer, it would be impermissible for any Court to decide that some other qualification is equivalent.

16. This would have a serious problem. Other candidates who read the advertisement as it spoke and without questioning the issue of equivalence and hence did not apply would lose the right of equal opportunity to seek public employment.

17. The advertisement in question clearly lists that the essential educational qualification, if on a Post Graduate Degree has to be one from a recognized university, and thus the question of the Court directing that a diploma from a recognized institution (not a University) does not even arise, and any direction issued to the contrary would be contrary to the known tenets of service jurisprudence.

18. The appeal is allowed.

19. Impugned decision dated March 10, 2014 is set aside. W.P.(C) No. 2656/2013 filed by the respondent is dismissed.

20. Parties shall bear their own costs all throughout.