
(2014) 10 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (Civil) 7243/2014 and CM No. 16993/2014

Shiv Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 AD 654 : (2015) 215 DLT 75

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Hari Prakash, Advocate for the Appellant; Ripu Daman Bhardwaj, Advocate and Mohinder J.S. Rupal, Advocate for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner praying inter alia that the respondents No. 1 to 4/University and the respondent No. 5/College be directed to withdraw the post of Section Officer (Administration) from the advertisement dated 4.2.2014 published in the daily newspaper (Annexure P-4) . Further, the petitioner seeks a declaration to the effect that he is entitled for promotion to the post of Section Officer (Administration) and therefore, the process of making direct recruitment to the subject post ought to be stayed by the respondents.

2. Learned counsel for the petitioner submits that the petitioner had joined the respondent No. 5/College as a temporary Junior Assistant-cum-Typist on 12.4.1999 and was confirmed to the said post in March, 2002. In the month of March, 2006, the petitioner was promoted to the post of Assistant. In February, 2008, the respondent No. 5/College sought a clarification from the respondents No. 1 to 4/University regarding promotion to the post of Senior Assistant. Vide letter dated 28.2.2008, the University had clarified to the respondent No. 5/ College that no candidate with less than three years" experience would be considered for promotion to the post of Senior Assistant. Thereafter, in the year 2009, the respondent No. 5/College had again approached the respondent No. 4/

University seeking approval for promotion of the petitioner to the post of Senior Assistant (Administration) , which was once again turned down by the respondents No. 1 to 4/University, vide letter dated 1.9.2009, reiterating inter alia, its earlier decision on the same issue communicated to the respondent No. 5/College vide letter dated 3.7.2009. It is relevant to note that the petitioner did not challenge the aforesaid decision taken by the University in the court of law.

3. The petitioner was finally promoted to the post of Senior Assistant on 1.2.2012. Now, he claims that he ought to have been promoted to the post of Senior Assistant (Administration) w.e.f. 2009 and the rejection by the respondents No. 1 to 4/University of the recommendation made by the respondent No. 5/College is illegal and arbitrary and liable to be set aside.

4. Mr. Rupal, learned counsel for the respondents No. 1 to 4/University, who appears on advance copy, opposes the present petition and states that it is misconceived and liable to be rejected for the reason that even as per the averments made in the petition, particularly in para 14 thereof, the petitioner has admitted having participated in the written test prescribed for the post of Section Officer (Administration) which is to be filled up through direct recruitment in terms of the impugned advertisement dated 4.2.2014. He submits that having participated in the selection process, now the petitioner cannot be permitted to approach the Court for quashing of the very same advertisement only because he has failed to clear the written test. In support of the aforesaid submission, learned counsel relies on the decision of the Supreme Court in the case of Manish Kumar Shahi Vs. State of Bihar and Others, .

5. Learned counsel for the respondents No. 1 to 4/University further contends that the petition is hit by delay and laches insofar as the second relief is concerned and if the petitioner was truly aggrieved by the decision of the respondent No. 4/University that was communicated to the respondent No. 5/College as long back as in August/September, 2009, then he ought to have taken legal steps to challenge the same within a reasonable time and having failed to do so for over five years, he cannot claim entitlement to promotion to the post of Senior Assistant particularly after publication of the impugned advertisement issued for direct recruitment to the post of Section Officer (Administration) in response whereeto he had elected to participate in the process without demur.

6. It is not denied by learned counsel for the petitioner that pursuant to issuance of the impugned advertisement by the respondent No. 5/College inviting applications for filling up the post of Section Officer (Administration) , amongst others, through direct recruitment, his client had applied through proper channel in February, 2014 and as per the said result, he had participated in the written test that had taken place in August, 2014. On enquiry, counsel for the petitioner submits that the result of the written test was declared by the respondent No. 5/College on 20.9.2014 and as per the said result, the petitioner had failed to clear the said test. A perusal of the paper book reveals that the petitioner had filed the present petition three days thereafter, i.e., on 23.9.2014, but the same had

remained under objections and is listed for admission today. In other words, the petitioner decided to approach this Court only after finding out that he had failed to clear the written test for the subject post.

7. Having taken his chance by applying for the subject post in terms of the impugned advertisement and having participated in the written test prescribed by the respondent No. 5/College for direct recruitment to the said post, the petitioner cannot be permitted to approach this Court to question the very same advertisement after discovering that he had not cleared the test. If the petitioner had a genuine grievance with regard to the decision taken by the respondent No. 5/College to fill up the post of Section Officer (Administration) through direct recruitment instead of through promotion as claimed by him, then the petitioner ought to have approached the Court at the first available opportunity, i.e., immediately after issuance of the advertisement in February, 2014. Instead, the petitioner chose to apply for the subject post through proper channel in February, 2014, and after having applied, he sat for the written examination that was conducted in August, 2014.

8. It was only after finding out that he has not passed the written examination, that the petitioner has chosen to lay a challenge to the mode adopted by the respondent No. 5/College for filling up the subject post, which is impermissible. The aforesaid conduct of the petitioner disentitles him from approaching the Court under Article 226 of the Constitution of India and questioning the selection process adopted by the respondent No. 5/College in which he had elected to participate. Similar conduct on the part of the petitioner in the case of Manish Kumar Shah (*supra*) , was frowned upon by the Supreme Court and the following observations were made :-

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

9. In the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , the Supreme Court had observed that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair.

10. As for the grievance of the petitioner that the respondents No. 1 to 4/ University have wrongly turned down his representation submitted through the

respondent No. 5/College for approving his promotion to the post of Senior Assistant, it was for the petitioner to have challenged the said decision within a reasonable time from the date the rejection order was passed by the University some time in August/September, 2009. Admittedly, the petitioner has not taken any steps in that regard till date and by now his claim has turned stale.

11. For the aforesaid reasons, this court declines to entertain the present petition which is accordingly dismissed, along with the pending application.