

(2009) 01 DEL CK 0196
In the Delhi High Court
Case No : Writ Petition (C) 7652 of 2005

Union of India (UOI)

APPELLANT

Vs

Ms. Neelu

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 7 ILR Delhi 26

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Dalip Mehra, Rajiv Ranjan and Satvir Singh, Administrative Officer, for the Appellant; R.K. Handoo and S.P. Pandey, for the Respondent

Judgement

S. Ravindra Bhat, J.—Heard the counsel for the parties.

2. In this Writ Petition, directed against an order of the Central Administrative Tribunal (hereafter referred to as CAT.) dated 17.3.2005 ordering the petitioner to appoint the respondent - Ms. Neelu, has been in question.

3. This Court is called upon to resolve a disagreement between two learned Judges of a bench; Mr. Justice Mukul Mudgal held that in the circumstances of this case, the respondent should be offered appointment. Mr. Justice J.P. Singh differed with that conclusion.

4. The brief facts are that the Management of Dr. RML Hospital issued an advertisement on 6th and 12.9.2003 notifying applications for filling up the post of Staff Nurse/Group "C in the pay scale of Rs. 5000-8000/- (pre-revised), the age limit indicated was 35 years and the essential qualification stipulated, were either diploma in general nursing and midwifery or equivalent; or the applicant being registered as Nurse and registered as midwife or equivalent with any State Nursing Council.

5. It is common ground that the respondent - Neelu who applied for the post, held a degree in Nursing with 64.1% marks. She was called for interview,

provisionally selected and issued with an appointment letter which contained the following stipulation:

The candidature of the above post is provisional subject to his/her having passed Diploma in General Nursing and Midwifery/B.Sc. (Nursing) with 65% or more marks in aggregate.

6. It was claimed by the respondent that the stipulation of 65% or more was not spelt out in the advertisement and its imposition at the stage of appointment was arbitrary and unjustified.

7. The respondent, therefore, challenged the condition that it had the effect of depriving the appointment itself. She approached the C.A.T., which by its impugned order allowed her Application relying upon the judgment of the Supreme Court in P. Mahendran and others Vs. State of Karnataka and others, and other decisions. The petitioner - Union of India contended before the Division Bench that the formulation of 65% cut off marks in the aggregate in diploma in general nursing took place before issuance of the appointment letter, although after the advertisement had been published. Both the learned Judges i.e. Justice Mukul Mudgal as well as Justice J.P. Singh discerned no infirmity in the stipulation and were unanimous in the view that its prescription after the publication of advertisement and application at the stage of appointment would not be arbitrary.

8. Disagreement between the two learned Judges, however, arose after the finding. Justice Mudgal was of the opinion that authorities concerned had sufficient power to relax the essential qualification and should have exercised it in view of the fact that the respondent - Neelu was a degree holder having obtained 64.1%; she, thus possessed qualification superior to what were prescribed as essential. The relevant part of that reasoning is as follows:

Furthermore, the qualification prescribed for the Staff Nurse according to the Recruitment Rules of Willingdon Hospital and Nursing Home (Class-3 Post) pursuant to which the advertisement dated 6th and 12th September, 2003 were issued by the RML Hospital does not mention 65% marks in Diploma in General Nursing and Midwifery or equivalent. It was only in the letter of appointment that such condition was imposed. It was also provided by the rules that the qualifications are relaxable at the discretion of the competent authority in case of the candidates otherwise well qualified. Thus, the appellant had sufficient discretion to select respondent Neelu who had secured 64.1% in a higher course of degree in Nursing and Midwifery that too, in First Division, as compared to a diploma prescribed in the advertisements, by relaxing the percentage. The respondent Neelu could thus not be rejected on the basis of a cut off percentage for a Diploma holder prescribed later in the appointment letter. Consequently, the Writ Petition (C) No. 7652/2005 filed by the Union of India against the judgment of the CAT qua the respondent Neelu is dismissed.

9. The second Judge Justice J.P. Singh concurred with the views of Justice Mudgal in holding that the prescription of 65% after publication of advertisement could

not be termed as arbitrary or illegal. However, he disagreed with the Justice Mudgal and declined to direct the authorities vis-a-vis relaxation in the facts of Ms. Neelu's case. That part of the reasoning is found in para 21 of his judgment where he stated that from whatever angle, the Court could appreciate the contentions, the respondents did not have any case and that the provisional offer made to Ms. Neelu had to be and was rightly withdrawn.

10. As the above narration would disclose the disagreement between the two learned Judges was not on the main point and controversy which was whether 65% criteria could have been insisted upon after issuance of advertisement. On that point both the learned Judges agreed to and held that the criteria could be evolved and applied, at that stage. However, it was on the question of relief that there was a disagreement. Justice Mudgal was of the opinion that the respondent - Neelu held a superior qualification i.e. degree in which she obtained 64.1% and that in the circumstances of the case, the petitioner should have exercised its power of relaxation and appointed her. The other learned Judge Justice J.P. Singh, however, was not persuaded to agree to such course of action.

11. During the course of submissions today, learned Counsel for the petitioner submitted that without being treated as a precedent, he has instructions to state that an offer would be made to Ms. Neelu and that she would be permitted to join. In view of this statement, the matter normally would have been treated as academic and the petition disposed of in such terms. However, since a reference to a third Judge has been made in view of the disagreement, it is necessary for this Court to record its reasons.

12. In view of the facts and circumstances of the case, I am persuaded to adopt the reasoning of Justice Mukul Mudgal for the reasons Ms. Neelu hold a better qualifications than what was prescribed. Concededly, she is a holder of a degree; the essential eligibility conditions stipulated for the post is a diploma or equivalent. Although, she did not secure 65%, nevertheless in view of the fact that she holds a superior qualification, the petitioner ought to have exercised its discretion and allowed her to join duties pursuant to the provisional appointment letter issued to her. The reference is, therefore, answered in the above terms.

13. In view of the statement made by Mr. Dalip Mehra, Advocate, the petitioner is hereby directed to issue the appointment letter/offer to the respondent within two weeks from today.

14. The Writ Petition is disposed of in terms of the above directions.

Order dasti.