

(2011) 12 DEL CK 0398
In the Delhi High Court
Case No : LPA 739 of 2010

Usha Devi

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Letters Patent Act, 1865 — Section 10

Citation : (2011) 12 DEL CK 0398

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : A.K. Bajpai with Mr. M.F. Khan, for the Appellant; Zubeda Begum, Advocate with Ms. Sana Ansari, Advocate for GNCTD, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The appellant has impugned, in this appeal filed u/s 10 of the Letters patent Act, orders dated 28th May, 2010 passed by the learned Single judge of this Court thereby dismissing the review petition filed by the appellant seeking review of judgment dated 17th May, 2007 passed in Writ Petition (c) 262/2007. The aforesaid writ petition was filed seeking directions to the respondents to appoint her on the post of Laboratory Assistant in the Health and Family Welfare Department. The writ petition was dismissed on the ground of laches and delays vide orders dated 17th May, 2007. The appellant/petitioner filed review petition seeking review of this order in which the appellant has remained unsuccessful as this review is also dismissed on the ground that there is no error apparent on the fact of record which the appellant could point out in the orders dated 17th May, 2007. Before taking note of these two orders, we may recapitulate the factual matrix in brief.

2. The appellant applied for the post of Laboratory Assistant in the Health and Family Welfare Department, Govt. of NCT of Delhi on 1.3.1999 in terms of

advertisement dated 1.3.1999 published in Hindustan Times newspaper vide advertisement No. 002/99. The appellant appeared in the entrance examination held by DSSSB for the post of Lab Assistant. The respondent No. 1 & 2 declared the result for the post of Lab Assistant for the candidate belonging to OBC category and the appellant was provisionally selected for the post of Laboratory Assistant. The respondent directed the appellant to submit relevant certificates.

3. We may mention that the results were declared in the year 2005. We may also mention that the advertisement for the post of Laboratory Assistant stated the eligibility to be Diploma in Medical Laboratory Techniques from a recognized Institution. Accordingly, the appellant was directed to give explanation as to the recognition of Institute from where she completed her diploma in MLT vide letter dated 23.5.2005. The appellant submitted the details. However, as per the respondent, the appellant did not pass diploma from a recognized Institute and, therefore, vide letter dated 4.8.2005 she was informed that no appointment could be given to her. The appellant thereafter kept on indulging in some correspondence and made representations stating that she had done her diploma from an Institute recognized from AICTE. However, she did not approach the Court immediately after the rejection on 4.8.2005. Instead she filed the writ petition challenging the action of the respondents only on 9.1.2007. While dismissing this writ petition the learned Single Judge took note of the fact that in the letter dated 4.8.2005 of the respondent No. 1 refusing to give the appellant appointment to the said post, reference was made to a judgment of this Court dated 12th May, 2005 in the case of Vijay Kumar Nautiyal Vs. GNCT of Delhi (WP (C) No. 7333/2003). In the said case, while dealing with the contention of the petitioners therein, that they had received Diploma from institutes recognized from States of Kashmir Nagaland, Manipur and Sikkim etc., the court held as below:-

In the present case, Respondent No. 2 had checked their educational qualifications and having found that the Petitioners had not attended an Institute recognized/approved by either of these Respondents employment was not granted. Petitioners have not succeeded in either disclosing that the Institute attended by them, namely, Respondent No. 3, has the approval of the Government of NCT of Delhi. They have also not succeeded in showing that the said Respondent No. 3 has recognition by the AICTE. Annexure R-1 details all the educational Institutions which have the approval of AICTE. Respondent No. 3 does not feature there. The Court cannot be blind to the fact that there is a mushrooming of so-called educational institutions which charge large sums of money for issuing diploma/degrees etc. Some of them even make an effort to impart education to its students. However, if such Institutions do not possess approved accreditation acting on their Diplomas/Degrees would be deleterious to social interest. This is all the more so where public health is in question.

4. The learned Single Judge also held that the writ petition suffered from laches and delays inasmuch rejection was in the year 2005 when the post in question

was also filled up in that year. However, the appellant had chosen to file the writ petition after about two years from the date of rejection. This aspect was dealt with in the following manner by the learned Single Judge:-

The advertisement was issued in the year 1999, whereby the request for appointment was declined in the year 2005. The present petition has been filed in a January, 2007, after about two years from the date of rejection of the application of the petitioner. Such a belated claim for seeking appointment to a post apparently filled up in 2005, cannot be entertained today. Counsel for the petitioner submits that the cause of action continues to accrue in favour of the petitioner as she has been writing letters to the respondent in this regard. Writing letters is not enough to agitate a legal claim. Nor is it a substitute for seeking enforcement of a legal right.

5. The review petition was filed by the appellant on the ground that it was not mandatory for the candidate applying for the post to obtain the diploma from an institute recognized by AICTE. The appellant had sought information to this effect by filing an application under the RTI Act. This information the appellant got from the concerned Department but the reply receipt was not clear. The learned Single Judge has, however, held that the appellant has not been able to point out any error in the order dated 17th May, 2007 which is apparent on the face of the record. We would like to reproduce the relevant portion of the order, below:-

Counsel for the petitioner seeks to draw the attention of this Court to a certificate dated 19.7.2005 issued by the All India Institute of Local Self Government to the effect that it was a recognized educational institute by the Government of Maharashtra and hence the diploma certificate in MLT issued in favour of the petitioner, is valid. Considering the fact that the advertisement to the post of Laboratory Assistant was issued by the Govt. of NCT of Delhi, recognition of the MLT course, if any, has to be as per the norms laid down by the said Department and/or the DSSSB. Even otherwise, this was not the case urged by the petitioner in the writ petition. The only ground taken by the petitioner in her writ petition was that the respondent wrongly ignored the diploma obtained by her in MLT, which was from a regular institution duly approved by the Government of Maharashtra. As against this, the stand of the Govt. of NCT was that the said diploma was not issued by any recognized institute, i.e. AICTE or any other Govt. Organization/Institution.

For the petitioner to state today that the aforesaid Recruitment Rules did not require that the diploma in MLT be issued by an institution recognized by the AICTE or that after passing of the order dated 17.5.2007, the petitioner approached the respondents No. 1 & 2 by way of an application filed under the RTI Act for seeking certain details regarding the Rules, cannot be a ground to seek review of the order dated 17.5.2007. The petitioner has not been able to point out any error in the order dated 17.5.2007, which is apparent on the face of the record. New facts cannot be urged by the petitioner at this stage to seek recall of the order. In fact, what the petitioner is seeking under the garb of

review, is a rehearing of the petition, which is not permissible. A review application cannot be treated as a substitute for an appeal. If the petitioner is aggrieved by the order dated 17.5.2007, her remedy lies elsewhere.

6. In this appeal both orders dated 17.5.2007 passed in writ petition and orders dated 28.5.2010 passed in review petition have been challenged.

7. Insofar as challenge to order dated 17.5.2007 is concerned, the appeal is clearly time barred as no application for condonation of delay in challenging that order has been filed. In fact this appeal even against the order passed in review petition is time barred. The appellant however chose to file application seeking condonation of delay in challenging that order only. The appellant, therefore cannot challenge the orders dated 17.5.2007, now in this appeal. That apart, we are of the opinion that the learned Single Judge was right in holding that the writ petition was suffered from laches and delays. Merely because appellant made certain representations or kept on making representation, would not come to her rescue. What is to be kept in mind is that the post was filled up in the year 2005 itself through other candidate. Thus a valuable right accrued to the said candidate. In such circumstances, the appellant could not have the luxury of waiting for almost two years in filing the writ petition.

8. Once we consider the position as of today, it is clear that the advertisement was of the year 1999 and selection was made in the year 2005. Therefore, it may not be proper to now look into this matter and upset the appletart in that year 2011.

9. We are also agreement with the observations of the learned Single Judge in the order dated 28.5.2010 that the appellant could not point out as to what was the error apparent on the face of the record. The appellant tried to counter the plea of delay on the ground that she had made repeated representations which were not accepted. On this save-self ground the appellant could not re-argue, as once a view is taken, right or wrong, that would not amount to an error apparent on the face of the record. Merely because the appellant tried to seek some information under RTI which is also not clear could not become the basis of filing the review petition.

10. We thus do not find any merit in this appeal which is accordingly dismissed.

11. However, there shall be no order as to costs.