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(2013) 07 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (C) 2512 of 2012

Uttam Singh and Others — APPELLANT

Vs

MCD and Others — RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0064

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : C. Harishankar and Mr. S. Sunil and Mr. N. Jagdish, for the Appellant; Mukesh Sharma, Proxy Counsel for Ms. Shobha Gupta, Advocate for MCD in W.P. (C) 2512/2012, Ms. Zubeda Begum and Ms. Sana Ansari, Advocates for GNCTD in W.P. (C) 2512 and 2513/2012, Ms. Jyoti Singh and Ms. Saahila Lamba, Ms. Tinu Bajwa and Mr. Amandeep Joshi, Advocates for R-3 to R-7 in W.P. (C) 2512/2012 and W.P. (C) 2513/2012 for Private Respondents, Mr. Alpha Phiris Dayal and Mr. Jindal, Proxy Counsels for Mr. Sanjeev, Advocate for DPCC in W.P. (C) 2513/2012, Ms. Biji Rajesh, Proxy Counsel for Mr. Gaurang Kanth, Advocates for R-1/MCD, Mr. Varun Gupta and Ms. Sonia Arora, Advocates for R-2 in W.P. (C) 987 and 1570/2013 and Ms. Rachna Golchhha, Advocate for R-1 in W.P. (C) 1570/2013, for the Respondent

Judgement

Pradeep Nandrajog, J.—On January 07, 1983 the erstwhile Municipal Corporation of Delhi notified the Recruitment Rules to the post of Lower Division Clerk. As per column No. 5 the post was declared to be a selection post and as per serial column No. 10, 10% posts had to be filled by promotion on the basis of a competitive examination conducted by the Municipal Corporation of Delhi from Class IV employees and the remaining 90% posts had to be filled up by direct recruitment through the ''Clerks Grade Examination'' to be conducted by the Staff Selection Commission. Serial No. 6, 7, 8, 9 and 10 the Recruitment Rule read as under:-

And suffice would it be for us to note at the outset that the draftsman of the Recruitment Rule, while giving ink to the thought of the author thereof has done

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a fairly clumsy job. Notwithstanding it being settled legal position that appointment on promotion through a Limited Departmental Competitive Examination is not appointment by direct recruitment, in column No. 6 the draftsman wrote against ''Age limit for direct recruits'': ''for Clerks Grade Examination for Class IV staff not exceeding 45 years...for Clerks Grade Examination not less than 18 years''. It evidences that the draftsman misunderstood the mind of the author and as against providing two serial numbers with distinct head of applicability i.e. age limit for direct recruits and age limit for promotees, treating both to be direct recruitment, indicated two different age limits. This misunderstanding continued when column 7 was inked. Listing the subject matter in column 7 ''Education and other qualifications required for direct recruits'' the draftsman wrote: for Clerks Grade Examination and Clerks Grade Examination for Class IV staff'' followed by listing at sub-para (i) the educational qualification and under para (ii) a skill test prescribed with a typing speed of not less than 30 words per minute in English or not less than 25 words per minute in Hindi. At serial No. 8 pertaining to the subject: ''whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees'' the draftsman wrote that the age and qualifications would be as per column No. 6. Further, while penning the note under sub-para (ii) in the column against serial No. 7 the draftsman wrote that the minimum standard of the type test may be as fixed by the ''Staff Selection Commission'' and while so doing overlooked the fact that as per the column at serial No. 10 the direct recruitment alone had to be through an examination conducted by the Staff Selection Commission, meaning thereby there is a serious problem in the various columns at serial No. 10 on account of the reason pertaining to the essential qualifications the same are made applicable for the clerk grade examination to be conducted by the Staff Selection Commission as also the clerk grade examination for Class-IV staff which as per serial No. 10 is conducted by the Municipal Corporation of Delhi.

2. In what manner the aforesaid mismatch between the thought of the author and the ink of the draftsman has created a problem would require us now to note the facts giving birth to the instant dispute.

3. On May 12, 2005 the Municipal Corporation of Delhi issued a circular inviting applications from Class IV employees to fill up the existing and future vacancies likely to arise in the future; and we note the number was not indicated in the circular, indicating in the circular that the age has not to be more than 45 years as on January 01, 2004. It was indicated that matriculation from a recognized board/university or equivalent was a must. It was indicated that the candidates would be subjected to a written test and those who qualify would have to qualify the skill test by passing a typewriting test at the speed of 30 words per minute in English or 25 words per minute in Hindi. The written examination was conducted and the process was halted. A list in order of merit with reference to the marks obtained at the written test was published. Those who had cleared the written test and probably had learnt of the vacancies available were obviously impatient

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for the reason it would be a quantum jump in their life. From lowly paid Class IV employees their social status would rise to that of a clerk. From a white collared job to a blue collared job; and who says that colour does not matter. 85 writ petitions by 85 impatient and expectant persons were filed. They prayed that the selection process for purposes of promotion to the post of Lower Division Clerk be directed to be completed and they pleaded a past practice consistently followed by the Corporation since the year 1988 of making appointment by promotion on the basis of the Limited Departmental Competitive Examination but providing a stipulation in the appointment letter that those who had been selected and promoted would clear the typing test within a period of two years.

4. On notice being issued in the said writ petitions, counsel for Corporation conceded to the past practice and the result was that on January 09, 2006 the 85 writ petitions were allowed by a singular order directing the Corporation to promote the petitioners to the post of Lower Division Clerk but subject to the outcome of proceedings in W.P. (C) No. 22546-48/2005, which we find was a writ petition filed by Uttam Singh and two others, which writ petition on transfer to the Tribunal when a notification was issued requiring service disputes between the Corporation and its employees to be heard exclusively by the Tribunal, was registered as TA No. 323/2009. It has been decided along with two other transferred writ petitions to the Tribunal as per the order dated August 03, 2011; the subject matter of challenge in W.P. (C) No. 2512/2012, 2513/2012 and 987/2013.

5. It needs to be noted therefore at this stage what was the challenge by Uttam Singh and others. They were claiming that the list of successful candidates at the written test could not form the basis for promotion. They stated that clearing a skill test i.e. a typing test was a condition precedent for promotion. They stated that only after conducting a skill test and weeding out those who could not clear the same from amongst those whose names stood entered in the list of candidates who had cleared the written test, should promotions be effected. To wit: say there were hundred posts to be filled up by promotion. Ten out of the first hundred candidates in order of merit at the written examination failed to clear the typing test. They would be out of reckoning.

6. Under cover of the order dated January 09, 2006, the Municipal Corporation of Delhi effected promotion without subjecting the candidates who had cleared the written test and whose merit position entitled them to be promoted against the existing vacancies. Letter offering appointment issued on January 31, 2006 contained a condition that the candidate concerned would have to clear a typing test as prescribed by the Recruitment Rule i.e. achieve the requisite typing test within two years.

7. As noted above, writ petition filed by Uttam Singh and others and two other writ petitions filed by the writ petitioners of W.P. (C) No. 2513/2012 and 987/2013 were also transferred to the Tribunal when a notification referred to in paragraph 4 above was issued and the three writ petitions were registered before

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the Tribunal as TA No. 318/2009, TA No. 323/2009 and TA No. 506/2009.

8. The debate before the Tribunal fought between the two warring fractions before the Tribunal was in the following words: Uttam Singh and others argued that the note appended under sub-para (ii) of column 7 ought to have been applied to the promotions effected. The other group argued that the note did not apply and could not be applied on account of the fact that column at serial No. 8 restricted application of the subject matter of the column only to age and education qualification. In other words the opposite group drew a distinction between educational qualification and a skill qualification.

9. The debate has been won by the latter group i.e. the ones who were promoted without being subjected to a skill test before promotions were effected. Vide decision dated August 03, 2011 the three writ petitions which were transferred before the Tribunal were dismissed and review sought of the order dated August 03, 2011 was rejected when order dated March 05, 2012 was passed by the Tribunal dismissing the review applications. The reason for seeking review was the past practice referred to by the Corporation that in the past since the year 1988 it have been effecting promotions without a skill test but subject to the promoted candidate clearing the skill test within two years of promotion which was accepted by the Tribunal when the order dated August 03, 2011 was passed. It was brought to the notice of the Tribunal that on information obtained under the Right to Information Act the Corporation had informed that it had never conducted any skill test by subjecting anybody to a typing test. It was then brought to the notice of the Tribunal that the practice adopted by the Corporation was to accept certificates issued by Industrial Training Institutes, which after training students/candidates as per course designed by the Institutes, conduct a test and issue a certificate akin to some kind of a diploma and the skill test is at a speed required under the Recruitment Rule.

10. The protagonist of the fourth writ petition i.e. W.P. (C) No. 1570/2013 were the companions sailing the boat in which Uttam Singh was sailing, and the Original Application filed by them was dismissed by the Tribunal following the reasoning in the order dated August 03, 2011.

11. We need not cull out the reasoning of the Tribunal in its decision dated August 03, 2011 for the reason we find that the Tribunal has centered on what was being projected as the rival view points before it without noticing a patent error in the language of the Recruitment Rule in question creating fair amount of confusion if one reads the language of the Recruitment Rule keeping in mind the settled principles of law.

12. It is settled law that appointment from a lower post, on the basis of a Limited Departmental Competitive Examination, is appointment by promotion and not appointment by direct recruitment. The first and the foremost confusion created by the draftsman of the Recruitment Rule was to list under the subject ''Age limit for direct recruits'' the age limit for those who had to be appointed by promotion.

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It is apparent that the draftsman thought that appointment through the Limited Departmental Competitive Examination was also a case of direct recruitment. This erroneous reflection continued in column 7 where pertaining to the subject ''Education and other qualifications required for direct recruits'' the draftsman, before listing under sub-para (i) the educational qualifications and sub-para (ii) the ability to type at a speed, wrote: ''For Clerks Grade Examination and Clerks Grade Examination for Class IV staff''. Meaning thereby, that the content of column at serial No. 7 is capable of being read, as sub-para (i) and (ii) thereof, being applicable to both i.e. direct recruitment 90% quota and the 10% promote quota. But, we should hasten to add that the note would suggest that the skill test contemplated is limited only to the written examination for the direct recruitment 90% quota for the reason the note refers to the written examination conducted by the Staff Selection Commission; and relevant would it be to highlight that as per column No. 10, where the method of recruitment is prescribed, the 90% direct recruitment vacancies have to be filled up on the basis of the Clerks Grade Examination conducted by the Staff Selection Commission.

13. It is no doubt true that every attempt has been made to interpret a statute, which would include even a Rule, in a manner that no part thereof becomes redundant i.e. Rule against redundancy has to be followed and thus ordinarily one should not lead oneself to hold that a word or a group of words in a statute are surplus but situations may arise when, to give effect to the intention of the Legislature or the Executive (in the case of delegated legislation) the un-skillfulness of the draftsman in introducing certain words in the statute or the Rule may have to be taken into account and those words have to be ignored to give effect to the intention of the Legislature. One such problem was encountered way back in the year 1856. Section 1 of the Natal Ordnance of 1856 came to be interpreted with respect to the meaning of the word ''Resident'' in the context of the expression ''as if such natural born subject resided in England''. Lord Hobusu observed:-

It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman''s un-skillfulness or ignorance of law... Very likely the draftsman, whose want of skill is shewn by other expressions in the ordinance, attributed to residence a legal effect which it does not possess... And he then adds words which may add nothing to what has gone before, but which ought not without necessity to be construed so as to destroy all that has gone before.

14. In the decision reported as (1990) 1 All. ER McMonagle Vs. Westminster City Council, construing the Local Government (Miscellaneous Provisions) Act 1982, the words ''which are not unlawful'' were found to be surplus and ignored. The court opined:-

I entertain no doubt in my own mind that we should be giving effect to the true intention of the legislature if we could avoid this absurdity by treating the phrase

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which is not unlawful in each of the sub-paragraphs of para 3A where it appears as mere Surplusage. I recognize that this is a strong course to take in construing a statute and one which imputes an unusual degree of ineptitude to the draftsman. The difficult question is whether in the circumstances the course I would choose, if it is available, is a legitimate judicial exercise in construction or whether it must be left to the laborious process of amending legislation to make sense of the statute. The presumption that every word in the statute must be given some effective meaning is a strong one, but the Courts have on occasion been driven to disregard particular words or phrases when, by giving effect to them, the operation of the statute would be rendered insensible, absurd or ineffective to achieve its evident purpose.

15. It is settled law that while interpreting a Recruitment Rule a past practice consistently followed by the department needs to be kept in view by the Court: See the decision of the Supreme Court reported as N. Suresh Nathan and another Vs. Union of India and others, . And the aforesaid dictum of law would be applicable with greater vigour where there is an ambiguity in the Recruitment Rule.

16. The undisputed position is that the consistent practice followed in the past by the Municipal Corporation of Delhi was to make appointment by promotion of Class IV employees to the post of Lower Division Clerk on the basis of a written test and the typing skill test was to be satisfied within two years with reference to certificates so certifying filed by the candidates on clearing the tests conducted by Industrial Training Institutes. Thus, not for the reasons given by the Tribunal but for our reasons above noted we dismiss the writ petitions but without any orders as to costs, simultaneously recommending that clarity be brought to the Recruitment Rule by making necessary amendment.

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