

(2014) 11 DEL CK 0256

In the Delhi High Court

Case No : Writ Petition (Civil) 887/2014, C.M. Nos. 1782/2014 and 9412/2014
(for stay)

V. Satish Kumar

APPELLANT

Vs

The Commissioner North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 1 AD 273

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajeev Sharma, Advocate for the Appellant; Parvinder Chauhan, Standing Counsel, Sumit Bansal, Sumi Anand and Richa Oberoi, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The main issue which arises for this Court's consideration in the present writ petition - which questions an order of the Central Administrative Tribunal ("CAT") dated 23.02.2012 in O.A. No. 3171/2010 is whether the third respondent's regular appointment with effect from 02.09.2002 - by an order of the Municipal Corporation of Delhi (MCD) dated 12.05.2010 was justified and legal. The petitioner's contention is that the said contesting respondent did not hold the relevant qualification and was selected for the post of Assistant Director (Horticulture).

2. The brief facts are that the writ petitioner along with the other four applicants were selected and appointed as direct recruit Assistant Director (Horticulture) sometime in 2005. The third respondent, who joined employment of MCD on 28.02.1983 as Section Officer (the post having undergone changes of nomenclature) was kept on current duty charge as Assistant Director (Horticulture) in 1993, and later, on ad-hoc basis in 2000. He was promoted in the quota available for promotees on 07.02.2007. He was aggrieved by the fact that despite his having officiated as Assistant Director (Horticulture) for a long duration of time, his regular promotion was given effect to only in 2007. He

consequently approached this Court by filing writ petition, which was transferred to CAT as T.A. No. 913/2009. In those proceedings, the writ petitioner and other direct recruits were made parties. By its order, CAT directed the MCD on 12.10.2009 to hold a review Departmental Promotion Committee (DPC) vis-a-vis eligible candidates and consider their claim for promotion with effect from 2002. The MCD did that on 12.05.2010 and determined that the third respondent was eligible for relief. Consequently, his appointment in the promotion quota of Assistant Director (Horticulture) was made effective from 02.09.2002.

3. The petitioner felt aggrieved by this order and approached the CAT by filing O.A. No. 3171/2010 which was rejected by the order dated 23.02.2012. The review proceeding, being R.A. 129/2012 was rejected on 27.04.2012. The CAT was of the opinion that the third respondent/applicant was eligible and that the educational qualifications held by him entitled him to continuation in the regular post. It consequently upheld the order granting him appointment with effect from 02.09.2002.

4. It is contended on behalf of the petitioner that the CAT fell into error. Learned counsel relied upon the recruitment rules and advertisement to say that these clearly required the aspirant or candidate to hold either a degree in Agriculture with Horticulture as a special subject, or, alternatively, a degree in Botany and a diploma in Horticulture. It was argued that a Degree in Agriculture comprises the subject Horticulture as a part of it, owing to which it was 4 years long. A Degree in Botany, on the other hand, owing to the absence of the subject Horticulture, was only 3 years long. Elaborating on this, in order to visualize this kind of situation, it was submitted that no less than five institutions or universities are offering diplomas in horticulture. The third respondent did not possess any diploma qualification from any of these. Consequently, it is contended that the view of the DPC - as recorded in minutes of meeting dated 10.05.2010 reveal that the UPSC's orders of relaxation were deemed essential. This was specifically on the understanding that the third respondent did not possess the requisite qualification. Learned counsel contended that the CAT fell into error in completely overlooking this aspect, and in proceeding to hold that the said respondent was entitled for promotion as Assistant Director (Horticulture). It was lastly urged that even though in T.A. No. 913/2009 preferred by the applicant, the petitioner and other direct recruits were arrayed as parties, they in fact had no notice of those proceedings and consequently, the CAT's decision, to the extent that it excluded them from challenging the appellants' qualifications, as well as by creating an inference as to its finality, was in error.

5. Learned counsel for the respondents urged that this Court should not interfere with the order of the CAT. It was firstly urged that the CAT correctly interpreted the recruitment rules and that the arguments based upon the DPC's understanding should not be accepted considering that on 12.05.2010 itself, the MCD gave effect to the DPC's ultimate recommendations which were to promote the third respondent. It was also argued that in the previous round of litigation,

i.e. T.A. No. 913/2009, the petitioners were impleaded as party respondents and had chosen to allow that order to become final. It was in these circumstances that they approached this Court after an inordinate delay in 2014. That writ petition was withdrawn. Learned counsel emphasized that the interpretation of the recruitment rules favoured by the CAT, in the impugned order is neither untenable nor unreasonable and that if the petitioner's argument were to be accepted, the Court would be examining the content and curriculum of various educational qualifications, to discern whether some or all of them fit the description in the recruitment rules. Clearly, submit the respondents, this falls within the exclusive domain of the executive agency, i.e. the MCD.

6. Before proceeding with the discussion on the rival merits of the case, it would be necessary to notice the relevant recruitment rules, for the purpose of appointment/promotion to the post of Assistant Director (Horticulture). Among other conditions, the following educational requirement has been spelt-out:

"Degree in Agriculture of Botany with Horticulture as a special subject of a recognized university or equivalent diploma in Horticulture of a recognized university/institution"

7. It would be immediately apparent that the rule making authority used the expression "diploma in Agriculture of Botany" - a facial misprint. The CAT has discussed this issue in considerable detail in para 9 of the impugned order dated 23.02.2012, and concluded that a situation in which one would possess a "degree in Agriculture of Botany with Horticulture as a special subject" would not arise at all. Instead, "of" should be read as the disjunctive "or". This Court sees no flaw in that reasoning as the plain reading of the rule would indicate that the word "of" and its placement in the rule would make no sense if it is read as such. This Court is conscious that there was a proposal to change or amend the rule and that such amendment which has not yet been formalized. Equally, the DPC's opinion did express, in its minutes of the meeting, dated 10.05.2010 that absent an express relaxation of the rules, promotion with effect from 2002 - to the third respondent would not be possible. At the same time, the DPC did recommend the relief which the said third respondent was ultimately given on 12.05.2010. Another important feature is that the petitioners cannot question the third respondent's entry into the grade even on the basis that he was promoted in 2007 was not and could not be disputed by them. They clearly lack in capacity or locus standi because they are direct recruits. What they cannot, therefore, do directly, i.e. challenge his entry into the grade (through promotion) they cannot equally achieve indirectly, by questioning his ante-dated regular promotion due to lack of educational qualification.

8. Revering back to the merits of the argument that five or so institutions do issue diplomas in Horticulture, this Court is again in agreement with the CAT's order in this regard. It is nobody's case that a degree of Agriculture with Horticulture as a special subject or degree in Botany with Horticulture as a special subject do not exist. In these circumstances, as to whether the

qualification held by the third respondent was equivalent to the one prescribed in the rules had to be even ultimately determined and applied by the MCD. Having regard to the conspectus of circumstances, this Court is of the opinion that the mere fact that five institutions impart specific diplomas in Horticulture alone would not be determinative in this regard so as to rule out the candidature of the contesting respondent.

9. In view of the foregoing discussion, this Court is of the opinion that there is no merit in the petition. It is accordingly dismissed.