

# SUPREME COURT OF INDIA

Union Public Ser.Commn.

Vs.

Gyan Prakash Srivastava

C.A.No.10178 of 2011

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.,)

30.11.2011

## JUDGMENT

**G.S.Singhvi,J.,**

1. The question which arises for consideration in this appeal is whether the decision of the Union Public Service Commission (for short, `the Commission') to reject the respondent's candidature for the post of Legal Advisor-cum-Standing Counsel in Land and Building Department, Government of NCT of Delhi was legally correct and the Central Administrative Tribunal (for short, `the Tribunal') and the Delhi High Court committed an error by nullifying the same.

2. After acquiring Degree in Law from Allahabad University in 1979, the respondent got himself enrolled as an Advocate with the Bar Council of Uttar Pradesh. He practiced in the Allahabad High Court from September 1980 to September 1986. Thereafter, he worked as Assistant (Legal), Law Officer, Assistant Director of Estates (Litigation), Vigilance-cum-Legal Officer and Officer on Special duty (Litigation) in different departments of the Central Government for over two decades.

3. In response to Advertisement No.11 issued by the Commission, which was published in Employment News 13-19 June, 2009, the respondent applied for the post of Legal Advisor (fully described in the opening paragraph of this judgment). Along with the application, he attached copies of the following documents:

“ (i) High School Certificate,

(ii) Degree of Bachelor of Arts awarded by Allahabad University,

(iii) Certificate issued by the Bar Council of Uttar Pradesh under Section 22(1) of the Advocates Act, 1961,

(iv) Certificate dated 23.5.1986 issued by the High Court Bar Association, Allahabad, and

(v) The certificates issued by different departments of the Central Government.”

4. The Commission rejected the respondent's application on the ground that he had not enclosed any document to show that he had been awarded a Degree in Law by a recognized University, which is an essential qualification for the post of Legal Advisor.

5. The respondent challenged the decision of the Commission in an application filed under Section 19 of the Administrative Tribunals Act, 1985 by asserting that even though he possesses the prescribed qualification and produced the relevant documents, the Commission arbitrarily rejected his candidature. In the counter affidavit filed on behalf of the Commission, it was averred that the respondent's application was rejected because he had not annexed any document to show that he had secured Degree in Law from a recognized University.

6. The Tribunal referred to paragraph 7 of the advertisement, the respondent's reply to the questions enumerated in paragraphs 9 and 10, the details of his educational qualifications and employment in different departments of the Central Government and observed:

"What clearly emerges from the advertisement is that whereas matriculation or equivalent certificate in support of declaration of age had necessarily to be attached, it was not essential to attach the degree or diploma certificate, and it would have been permissible for a candidate to have attached other certificates in support of educational qualification. As regards degree or diploma, in the present case it would be the degree of law, and if, therefore, copy of the same was not to be attached, it was permissible to attach other certificates which may show that the candidate had the degree. Further, note-I would clearly indicate that there was not to be any compromise or concession in submitting the matriculation or equivalent certificate, like higher secondary, which was to be submitted for purpose of proof of age. Marks sheet and admit card as a proof of date of birth was not to be accepted. This strict adherence, insofar as the degree in law is concerned, was not the requirement. A combined reading of column 7 with Notes-I and II appended thereto, as reproduced above, would clearly demonstrate that whereas, matriculation or equivalent certificate as regards the proof of age had to be necessarily attached, the certificate of degree in law need not have been attached, as one could show from other certificates attached that he was having a degree in law."

The Tribunal distinguished the orders passed by the Delhi High Court in Writ Petition (C) No. 13451 of 2009 - *Dr. Vineet Relhan v. U.P.S.C.* decided on 13.1.2010 and Writ Petition No. 10058 of 2009 - *U.P.S.C. v. Government of N.C.T. of Delhi and others* decided on 25.1.2010 and observed:

"We would rest our judgment on the only issue that the present was a case where there was no requirement of necessarily attaching the law degree certificate. The requirement was that either it should be a degree in law or other certificates in support of educational qualifications. The applicant, in addition to attaching the certificate issued by the Bar Council of his enrollment as an advocate, had attached voluminous record which would unmistakably show even to a man of ordinary prudence that he must have obtained degree of law. In this connection, we may only mention that the claim of the applicant that he has been working on different posts which all essentially require degree of law, has been substantially proved by placing necessary documents on record, mention whereof has been made hereinbefore. We are of the considered view that a great deal of injustice would be caused to the applicant if despite his impressive service credentials and number of posts held by him for which he was selected by UPSC only, and on the basis of his essential degree of law and when he has stood first, that he should be denied the well earned appointment on the post of Legal Advisor-cum-Standing Counsel. The candidature of the applicant was rejected in the category of those who had not attached the requisite certificates. No effort was made thus as to whether he answered the eligibility as per the criteria adopted for short-listing."

7. The Commission challenged the Tribunal's order in Writ Petition (C) No.2889 of 2011, which was dismissed by the High Court. The Division Bench of the High Court referred to the relevant portions of the advertisement, the documents annexed with the application submitted by the respondent, noticed the ratio of the judgments of this Court in *Charles K. Skaria v. Dr. C. Mathew and others*<sup>1</sup> and *Dolly Chhanda v. Chairman, JEE*<sup>2</sup> and held that the Tribunal did not commit any error by quashing the decision of the Commission.

8. Ms. Indira Jaising, learned Additional Solicitor General argued that the impugned order is liable to be set aside because it runs contrary to the orders passed by the High Court in four other cases, i.e. *Dr. Vineet Relhan v. U.P.S.C.*(supra), *U.P.S.C. v. Government of N.C.T. of Delhi and others* (supra), Writ Petition (C) No.9934 of 2009 - *U.P.S.C. v. Neelam Yadav* decided on 5.5.2010 and Writ Petition (C) No. 2734 of 2010 - *Union Public Service Commission v. Dheerender Singh Paliwal* decided on 30.9.2010 in which similar issues were considered and decided in favour of the Commission. She further argued that the Tribunal and the High Court committed serious error by tinkering with the decision taken by the Commission, which is a Constitutional body, not to entertain the respondent's candidature. The learned Additional Solicitor General also pointed out that the Commission had rejected 99 out of 187 applications received for the post of Legal Advisor and of them 38 were rejected on the ground of non-submission of the requisite documents including Degree in Law.

9. Shri Amrendra Sharan, learned senior counsel representing the respondent argued that rejection of his client's application by the Commission was ex facie illegal, arbitrary and discriminatory and the Tribunal and the High Court did not commit any error by ordering consideration of his candidature. Learned senior counsel submitted that even though the judgments in Charles K. Skaria v. Dr. C. Mathew and others (supra) and Dolly Chhanda v. Chairman, JEE (supra) relate to admissions in medical colleges, the ratio thereof was rightly invoked by the Tribunal and the High Court for deciding the issue relating to entitlement of the respondent to be considered for appointment as Legal Advisor. Shri Sharan emphasized that the certificate issued by the Uttar Pradesh Bar Council under Section 22(1) of the Advocates Act, 1961 (for short, 'the Act') is sufficient to show that the respondent possesses Degree in Law and the Commission had no right to reject his application. Learned senior counsel then argued that if the expression 'other certificates' in support of their educational qualifications' used in paragraph 7(ii) of the advertisement is interpreted keeping in view other paragraphs thereof, it becomes clear that even though a candidate may not have produced copy of the Degree/Diploma in the particular subject, which is an essential qualification, his application cannot be rejected on that ground if he has produced other certificate(s)/documents to show that he possesses the requisite qualification. Shri Sharan then submitted that the Commission was duty bound to carefully scrutinize all the documents annexed with the application of the respondent including the certificate issued by the Bar Council of Uttar Pradesh and if that had been done, his application could not have been rejected on the ground of non-production of the copy of Degree in Law from a recognized University.

10. We have considered the respective arguments/submissions. Paragraph 8 of the main portion of the advertisement which relates to the post of Legal Advisor and paragraph 7(i) and (ii) of the instructions and additional information, which are relevant for deciding the question raised in the appeal are as under:

"8. (REF. NO.F.1/66/2009-R-II) ONE LEGAL ADVISOR- CUM-STANDING COUNSEL IN LAND & BUILDING DEPARTMENT, GOVT. OF NCT OF DELHI. QUALIFICATIONS: ESSENTIAL:

A. EDUCATIONAL: Degree in Law of a recognized University or equivalent.

B. EXPERIENCE: 12 years' experience as an advocate or as a member of a State Judicial Service or equivalent experience in the legal department of the Central/State Government/UTs. DESIRABLE: i) Experience of Land Acquisition cases. Ii) Experience in Handling Revenue Lands and Acts. DUTIES: To conduct Litigation work on behalf of Department in relation to Land Acquisition cases/Compensation cases before District Court, RFAs and Writ Petitions before the High Court and the cases before Supreme Court of India. Impart legal advice in Land Acquisition and related statue. To supervise the Legal Branches of the Land & Building Department and also the work assigned to him by the Govt. of Delhi. HQ: Delhi/New Delhi."

**"7.CERTIFICATE TO BE ATTACHED:**

Candidates should note that they should attach with their applications attested/self certified copies of the following documents:

(i) Matriculation or equivalent certificate in support of their declaration of age.

(ii) Degree or Diploma Certificate or other certificates in support of their educational qualifications; NOTE: I: ORIGINAL CERTIFICATE SHOULD NOT BE SENT WITH THE APPLICATION. THESE SHOULD BE PRODUCED AT THE TIME OF INTERVIEW., NOTE:II: Candidates should note that only the date of birth recorded in the Matriculation, Higher Secondary Examination Certificate or any equivalent certificate on the date of submission of application, will be accepted by the Commission. Mark Sheet, Admit card as a proof of date of birth will not be accepted. No subsequent request for its change will be considered or granted.

NOTE: III: If no copies of the above certificates are sent with the application, it is liable to be rejected and no appeal against its rejection will be entertained.

NOTE: IV: The period of experience rendered by a candidate on part time basis, daily wages, visiting/guest faculty will not be counted while calculating the valid experience for short- listing the candidates for interview."

11. What emerges from an analysis of the above extracted portions of the advertisement is that Degree in Law of a recognized University or equivalent was an essential qualification for the post of Legal Advisor. In addition, 12 years' experience as an Advocate or as a member of a State Judicial Service or equivalent experience in the legal department of the Central/State Government/UTs was a must. In terms of paragraph 7(i) and (ii), the candidates were required to attach with their applications attested/self certified copies of Matriculation or equivalent certificate in support of their declaration of age and Degree or Diploma Certificate or other certificates in support of their educational qualifications.

12. The use of the expression or other certificates in support of their educational qualifications' in paragraph 7(ii) of the instructions contained in the advertisement is clearly indicative of the intention of the Commission that if a candidate did not readily have the Degree or Diploma Certificate, he could attach attested or self certified copies of other certificates in support of his educational qualifications.

13. It is not in dispute that after securing Degree in Law from Allahabad University, the respondent got himself enrolled with the Bar Council of Uttar Pradesh and a certificate to this effect was issued under Section 22 (1) of the Act. Section 24(1) of the Act specifies the conditions which a person seeking admission as an Advocate must fulfill. These are:

“(a) He is a citizen of India;

- (b) He has completed the age of twenty-one years;
- (c) He has obtained a Degree in Law -
- i) before the 12th day of March, 1967 from any University, in the territory of India; or
- (ii) before the 15th of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or
- (iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or (iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or
- (iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purpose of this Act by the Bar Council of India or; He is a barrister and is called to the Bar on or before the 31st day of December, 1976 or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;
- (e) He fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;
- (f) He has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council: Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to the effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be one hundred rupees and to the Bar Council of India, twenty-five rupees. Explanation - For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.

14. A reading of the plain language of the above reproduced provision makes it clear that no person can be admitted as an Advocate unless he has obtained Degree in Law. If he has obtained such degree after 12.3.1967, then he must have undergone a three years course of study in law from any University in India which is recognized for the purposes of the Act by the Bar Council of India.

15. Since the respondent had attached with his application the certificate issued by the Bar Council of Uttar Pradesh, which must have been issued keeping in view the fact that he possessed Degree in Law awarded by a University recognized by the Bar Council of India for the purpose of the Act and the certificates issued by different departments of the Central Government showing his employment on different posts (for two of these posts, Degree in Law was an essential qualification), the Commission was not at all justified in refusing to entertain his application for the post of Legal Advisor. The rejection of the respondent's application may have been justified only if it could be shown that Allahabad University is not recognized by the Bar Council of India for the purposes of the Act or that he had not undergone a 3 year degree course in law from that University. However, it is neither the pleaded case of the Commission nor it has been argued before us that Allahabad University is not recognized by the Bar Council of India or that the respondent had not undergone 3 years' course of study in law. It is also not in dispute that the respondent had been appointed as Assistant (Legal) and Officer on Special Duty (Litigation) in the employment of the Central Government because he was having a Degree in Law and was duly selected by the Commission. Therefore, there is no escape from the conclusion that rejection of the respondent's application for the post of Legal Advisor was per se illegal and arbitrary and the Tribunal and the High Court did not commit any error by quashing the decision of the Commission. True it is that the Commission is a constitutional body but its actions and decisions are not immune from judicial review and if a competent judicial forum finds that the impugned action is ultra vires the Constitution or any legislation or is otherwise arbitrary or discriminatory, there will be ample justification to nullify the same.

16. We may now advert to the orders passed by the Delhi High Court on which reliance has been placed by the learned Additional Solicitor General. In Writ Petition (C) No. 13451 of 2009 - Dr. Vineet Relhan v. Union Public Service Commission, the High Court upheld the order passed by the Tribunal which had dismissed the original application filed by the writ petitioner against the rejection of his application by the Commission for the post of Specialist Grade-II (Dermatology) on the ground that he had not attached the required documents along with his application. A perusal of the order passed in that case shows that the writ petitioner had not attached the required document along with the application form but, after the last date, he submitted the relevant papers. While dismissing the writ petition, the Division Bench of the High Court observed:

"Before us, learned counsel for the Petitioner contended that the documents could have been produced by him later on and his mere failure to submit the requisite documents at the appropriate time ought not to have an adverse effect. In this regard, learned counsel for the Petitioner relied upon *Charles K. Skaria and others v. Dr. C.*

*Mathew and others*<sup>3</sup>, which was followed in *Dolly Chhanda v. Chairman, JEE and others*<sup>4</sup>,

We have perused the two decisions cited by learned counsel for the Petitioner. It is true that the Supreme Court held that a formalistic and ritualistic approach should not be followed in such matters. However, in *Charles K. Skaria* the relevant proof of eligibility was in fact produced by the candidates before the selection was made, as mentioned in paragraph 20 of the Report. In *Dolly Chhanda* the candidate belonged to the reserved MI category and there was some error in the certificate issued to her as a result of which her candidature was cancelled. This error was later rectified and under these circumstances, the Supreme Court held that depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it would not be proper to apply any rigid principle as it pertains to the domain of procedure. In so far as the present case is concerned, there is nothing on record to suggest that the Petitioner submitted the requisite documents at the appropriate time. That apart, it is not as if the Petitioner is uneducated or could not have filled the form intelligibly. He claims to hold a degree of M.D. (Dermatology) and he ought to have been clear about the fact that the requisite certificates must be furnished along with the application form. For his failure to do so, the Petitioner has only himself to blame."

17. In Writ Petition (C) No. 10058 of 2009, which was disposed of by order dated 25.1.2010, the Division Bench of the High Court considered several writ petitions. The first batch of seven writ petitions was directed against order dated 2.4.2009 passed by the Tribunal in relation to the selection made by the Commission for recruitment of 38 Assistant Public Prosecutors in the Directorate of Prosecution, Government of NCT of Delhi. In that case, the Commission had issued Special Advertisement No.52 of 2008. The respondents appeared in the recruitment test held on 3.8.2008 and cleared the same. Thereafter, they submitted detailed application forms. The Commission rejected their applications on the ground that the same were not accompanied by the relevant documents including LL.B. Degree Certificates and Matriculation/Senior Secondary certificates. The respondents claimed that they could not attach LL.B. Degree Certificates because the same had not been made available by the concerned University. They also pleaded that enrolment with the Bar Council was sufficient proof of their having passed the LL.B. Examination. The Division Bench of the High Court declined to accept the reason put forward by the respondents for not producing LL.B. Degree Certificates by making the following observations:

"In our opinion, it is difficult to believe that the LLB degree certificate was not issued to the Respondents for several years. It may be mentioned that one of the requirements for the applicants is to have three years experience at the Bar, which they all had. It is, therefore, extremely unlikely that these Respondents did not get their LLB degree for three years. In any event, there is no evidence of this, except their bald averment. That apart, we find that soon after the rejection of their candidature on 30th December, 2008 these Respondents managed to produce their LLB degree certificates within a few days. It is obvious that these Respondents, if they were in possession of the LLB degree certificate, did not make any effort to attach it to the DAF and took the matter very casually until they found that their DAF

was rejected. If what these Respondents say is correct and if they did not have the LLB degree certificate in their possession, they did not make any special effort to obtain the LLB degree certificate despite the requirement. Nor did these Respondents place on record any material to show the special efforts made by them (if any), in spite of which they were unable to obtain the LLB degree certificate. We are of the opinion that these Respondents were aware well in advance, that is, from the issue of the Employment News dated 22-28 March, 2008 that they would be required to submit the LLB degree certificate on their passing the written examination scheduled for 3rd August, 2008. These Respondents, therefore, had sufficient time (from March, 2008 at least till August, 2008 if not November, 2008) to obtain their LLB degree certificate for submission along with the DAF. These Respondents, who did not make even this minimum effort for such a long time, have only themselves to blame for their cavalier and casual approach."

The Division Bench then considered the respondents' plea that the enrolment certificates produced by them were sufficient for considering them eligible for recruitment as Assistant Public Prosecutors. While rejecting this plea, the Division Bench observed:

"These Respondents say that because they were enrolled with the Bar Council, therefore it must be assumed that they had a valid LLB degree certificate. This is neither here nor there. There was no requirement for a candidate to attach the proof of enrolment with the Bar Council. Consequently, if an applicant attached such a document, the UPSC was not obliged to take note of it. What was required to be attached was a valid LLB degree certificate, nothing more or less."

18. In our view, even though the Division Bench of the High Court was right in not entertaining the respondents' plea that they could not produce LL.B. Degree Certificates because the same had not been made available by the University, it is not possible to approve the view that enrolment certificates issued by the Bar Council were not sufficient for treating the respondents eligible for the post of Assistant Public Prosecutor. Unfortunately, the Division Bench of the High Court did not give due weightage to the essential qualifications specified in the advertisement, i.e. a Degree in Law of a recognized University or equivalent and 3 years' experience at the Bar and the fact that one can gain experience at the Bar only by practicing as an Advocate and for that purpose enrolment with the Bar Council is sine qua non and, as mentioned above, the requirement of having passed the requisite examination in law is a must for enrolment as an Advocate with the Bar Council. We may also mention that although, paragraph 7 of the instructions contained in advertisement No.6, which was also considered by the Division Bench is almost identical to paragraph 7 contained in the advertisement pursuant to which the respondent had applied for the post of Legal Advisor, no such stipulation was contained in Special Advertisement No.52 of 2008 and absence thereof may offer semblance of justification for the conclusion recorded by the High Court.

19. The third order relied upon by the learned Additional Solicitor General is dated 5.5.2010 vide which Writ Petition (C) No. 9934 of 2009 filed by the Commission was allowed and the order passed by the Tribunal directing consideration of the case of respondent Neelam Yadav

for the post of Assistant Public Prosecutor was quashed. The Division Bench simply relied upon order dated 25.1.2010 passed in Writ Petition (C) No. 10058 of 2009 and observed:

"In the case of respondent, this cannot be disputed that the respondent did not attach a valid LL.B. degree certificate, and consequently, the respondent did not fulfill the criteria for applying for the post of Assistant Public Prosecutor, and the order of the Tribunal directing the petitioner to consider the case of the respondent and allowing her to appear in interview, and in case, she qualifies the interview to select her for the post of Assistant Public Prosecutor, therefore cannot be sustained. There was no requirement for submitting the certificate from Bar Council and submitting the certificate of registration with Bar Council would not cure the defect of not submitting the degree of LL.B. as was contemplated in the application form."

20. In Writ Petition (C) No. 2734 of 2010, which was disposed of by the High Court vide order dated 30.9.2010, the Division Bench noted that the respondent had not attached B.Sc. Degree Certificate with the application, which was an essential qualification for appointment to the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory and reversed the order of the Tribunal by observing that production of the certificate of the Master's Degree in Zoology was not sufficient compliance of the stipulation contained in the advertisement. The Division Bench also referred to order dated 25.1.2010 passed in Writ Petition (C) No. 10058/2009 and held that the Commission did not commit any error by rejecting the candidature of the respondent Dheerender Singh Paliwal.

21. In none of the above noted cases, the High Court had interpreted a stipulation like the one contained in paragraph 7(ii) of the advertisement issued in this case. Therefore, the orders passed in those cases cannot be relied upon for upsetting the well reasoned order passed by the Tribunal and the High Court in the present case.

22. In the result, the appeal is dismissed. The parties are left to bear their own costs. Since the respondent was allowed to participate in the process of selection and he was placed at No.1 in the merit list, we deem it proper to issue the following directions –

“1) within two weeks from the date of receipt/production of the copy of this judgment, the Commission shall forward the respondent's name to the competent authority of the concerned department of the Central Government.

2) within next two weeks, the competent authority shall issue order of appointment in favour of the respondent.”

Judgment Referred.

<sup>1</sup> (1980) 2 SCC 0752

<sup>2</sup> (2005) 9 SCC 0779