

Rakesh Kumar Sharma

v.

Govt. of NCT of Delhi & Others

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE S.A. BOBDE

Civil Appeal No. 6116 Of 2013 | 29-07-2013

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and order dated 13.2.2013, passed by the High Court of Delhi at New Delhi allowing the Writ Petition No.5150 of 2012 filed by the respondents against the judgment and order of the Central Administrative Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') dated 3.1.2012 passed in O.A. No. 3420/2010, whereunder the Tribunal quashed the show cause notice/order passed by respondent no.1 terminating the services of the appellant for not possessing the requisite eligibility as on the last date of submission of applications.

2. Facts and circumstances giving rise to this appeal are that:

A. Delhi Subordinate Services Selection Board – Respondent no.3 being a recruitment agency issued an advertisement dated 12.10.2007 inviting applications for recruitment to the post of Trained Graduate Teachers (hereinafter called 'TGT') for various courses including TGT (Sanskrit). The last date for submission of the application was 29.10.2007.

B. A pre-requisite qualification for the post was that of B.Ed. Though he had appeared in the B.Ed examination prior to submission of the application for TGT (Sanskrit), the result however was declared only on 28.1.2008. He participated in the selection process as he made a representation that he had acquired the requisite eligibility. The appointment letter dated 19.6.2009 was issued making it clear that the appointment was temporary and on provisional basis for two years and further subject to verification of character, antecedents and educational qualification etc. by the Deputy Director Education, New Delhi (hereinafter called 'DDE'). The appellant joined the service as TGT (Sanskrit) on 26.6.2009. The DDE issued a show cause notice dated 21.9.2010 to the appellant to show cause why his services should not be terminated as he was awarded the B.Ed degree only on 28.1.2008 which was much after the cut-off date which was 29.10.2007.

C. In clause 11 of the letter of offer of appointment it was made clear that if at any stage it is found that any information/declaration and submission given by a candidate was false or that any

information had been concealed/misrepresented, the appointment would be terminated and further the candidate would be liable to be proceeded against in the matter.

D. The appellant submitted the reply to the said show cause notice stating that subsequent to his joining the post he had submitted the copies of the documents including marks sheet of B.Ed for verification and he possessed the eligibility and there was no question of any concealment/misrepresentation on his part. As the reply submitted by the appellant was found to be unsatisfactory, the competent authority DDE passed an order dated 5.10.2010 terminating the services of the appellant. The order recites that the employment had been obtained by misrepresentation since he was ineligible, not being possessed of the educational qualification of B.Ed on the last date of submission of the application. The information furnished by him was found to be false and as per clause 11 of the terms of appointment as he had made a false representation. His services were accordingly liable to be terminated.

E. Aggrieved, the appellant challenged the show cause as well as the said order of termination by filing O.A. No.3420 of 2010 on various grounds before the Tribunal, which was allowed vide judgment and order dated 3.1.2012 quashing the said show cause notice and granting all consequential benefits to the appellant.

F. Aggrieved, the respondents, Govt. of NCT of Delhi challenged the same before the High Court of Delhi at New Delhi by filing Writ Petition No.5150 of 2012. When the matter came up for hearing on 13.2.2013, the High Court allowed the writ petition placing reliance on the judgment and order passed in connected Writ Petition No.4798 of 2012 basically on the ground that the appellant did not possess the requisite eligibility in qualification on the prescribed date.

Hence, this appeal.

3. We have heard S/Shri Rajat Aneja, Aruneshwar Gupta, Bharat Singh, Sanjiv Sen, learned counsel for the appellant in this appeal as well as in other connected appeals and Shri Rakesh K. Khanna, learned ASG for the respondents and perused the record.

4. The facts are not in dispute. As per the advertisement, applications had to be submitted by 29.10.2007 and the appellant made a representation that he had obtained the B.Ed degree but could not submit a copy of the marks sheet or Degree certificate. The appointment letter dated 19.6.2009 was temporary/provisional, subject to verification of various aspects including that of educational qualification. The appellant was permitted to join services on the basis of provisional appointment letter and therefore, the sole question involved herein is whether the appellant could claim any relief, if for one reason or the other his result had not been declared upto the last date of the submission of the application form.

5. A three Judge Bench of this Court in *State of Punjab & Ors. v. Surinder Kumar & Ors.*, AIR 1992 SC 1593 dealt with a case where regular appointment had not been made. The court held that unless a person holds the post permanently, his services would be governed by the terms and conditions incorporated in the appointment letter and the court must in all circumstances enforce the terms specifically stated therein.

6. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

7. In *U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana*, (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible. 8. A three Judge Bench of this Court, in *Dr. M.V. Nair v. Union of India & Ors.*, (1993) 2 SCC 429, held as under:—

“It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.”

(Emphasis added)

9. In *Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab & Anr.*, 1995 (Suppl) 4 SCC 706, this Court held:

“It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to Rules.”

(Emphasis added)

10. This Court in *Rekha Chaturvedi v. University of Rajasthan*, 1993 Supp (3) SCC 168 held:

“The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/ notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra(1990) 2 SCC 669; and District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655.”

(Emphasis added)

11. In Ashok Kumar Sharma v. Chander Shekhar, 1993 Supp (2) SCC 611 [hereinafter referred to as Ashok Kumar (1993)], the majority view was as under:

“The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect”.

(Emphasis added)

However, the opinion of Justice R.M. Sahai had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.

12. A three-Judge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) (*supra*) observing:

“The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment.”

(Emphasis added)

The Court further explained that the majority view in *Ashok Kumar Sharma* (1993)(*supra*) was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

“The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

(Emphasis added)

It may also be pertinent to mention here that in the aforesaid case reference to *Rekha Chaturvedi* (*supra*) appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. Infact the court wanted to make a reference to the case of *Ashok Kumar Sharma* (1993) (*supra*).

13. In *Bhupinderpal Singh v. State of Punjab*, AIR 2000 SC 2011, this Court placing reliance on various earlier judgments of this Court held:

“The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.”

(Emphasis added)

14. This Court lately in *State of Gujarat v. Arvindkumar T. Tiwari*, AIR 2012 SC 3281 held:

“A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See *Prit Singh v. S.K. Mangal* 1993 Supp (1) SCC 714 and *Pramod Kumar v. U.P. Secondary Education Services Commission* (2008) 7 SCC 153.)”

(Emphasis added)

15. A similar view has been re-iterated by this Court in *Pramod Kumar v. U.P. Secondary Education Services Commission*, (2008) 7 SCC 153; and *State of Orissa v. Mamta Mohanty* (2011) 3 SCC 436.

16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the

date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

18. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

19. The appeal is devoid of any merit and does not present special features warranting any interference by this court. The appeal is accordingly dismissed.