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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (C) NO. 7221/2007

Date of Decision : 23.11.2010

N.D.M.C.

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate

versus

AFTAB SINGH

..... Respondent

Through: Mr. P.N.Dwivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J. (ORAL)

1. This writ petition impugns the decision of the Labour Court dated 1.7.2006, whereby the petitioner was directed to promote the respondent Aftab Singh, to the post of, "Technical Supervisor" from the date on which another employee, Ms. Rajni Gaur, was also promoted to that post, on similar terms, along with all consequential benefits.

2. Admittedly, the respondent, who joined the services of the petitioner on 16.6.1973 as a Lab Assistant, was recruited before Ms. Rajni Gaur, who had also joined as a Lab Assistant later. To begin with, Ms. Rajni Gaur was promoted as Senior Lab Technician in

preference to the respondent with effect from 7.5.1978. Consequently, the respondent raised an Industrial Dispute bearing No. 109/91, seeking promotion to the post of Senior Lab Technician from the same date, on the ground that he was senior to Ms. Gaur. This was allowed by the Labour Court, and the petitioner promoted the respondent as well to the post of Senior Lab Technician, from 7.5.1978, with all consequential benefits.

3. Thereafter, on 9.8.1996, Ms. Rajni Gaur was promoted again. This time, to the post of Technical Supervisor. The respondent, who maintained that he was senior to Ms. Rajni Gaur on the basis of his initial appointment on 16.06.1973, now raised another Industrial Dispute bearing No. 239/2001 before the Labour Court, seeking promotion to the post of Technical Supervisor as well. This resulted in the impugned order of 1.7.2006, granting the relief sought by the respondent.

4. The petitioner has no grievance as regards the respondent's stand that he was recruited before Ms. Rajni Gaur as a Lab Assistant and that, to that extent, he was senior to Ms. Rajni Gaur. It also does not have any grievance with regard to the promotion of the respondent to the post of Senior Lab Technician w.e.f. 7.5.1978, in terms of, and in compliance with the directions of the Labour Court in the earlier Industrial Dispute No. 109/1991.

5. However, notwithstanding this position, it is the petitioner's case that even if it is assumed that the respondent was entitled to be promoted to the post of Senior Lab Technician before Ms. Rajni Gaur, that by itself would not entitle him to the next post of

Technical Supervisor. This is because the relevant recruitment rules for the post of Technical Supervisor, in respect of which the respondent has raised a claim, admittedly state that that post is a purely selection post, for which the following educational and other qualifications are required;

“6. Educational and other qualifications required for direct recruitment.	B.Sc. (Medical Lab. Technology) with 3 years experience as Tech. Asstt. In any of the group of these Lab. Of Medical Institution/Hospital.
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OR

1. Matriculation/Hr. Sec./Sr. Sec. with Science.
2. Diploma in Medical Lab. Technology from a recog. Institution.
3. 3 years experience as a Tech. Asst. in a Hospital.”

With regard to promotees, the position is set down in paragraph 7 of the aforesaid recruitment rules, thus;

“7. Whether age & Educational qualifications prescribed for direct recruitment will apply in case of promotees.	Age No Educational Qualifications...Yes”
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From this, it is obvious that in the case of promotees, such as the respondent, the educational qualifications prescribed for direct recruitment are fully applicable.

6. Admittedly, the respondent does not possess a degree of B.Sc. in Medical Lab. Technology. Consequently, to be eligible for consideration for the post of Technical Supervisor, it was necessary for him to have the other qualifications prescribed in the aforesaid recruitment rules, which were: (1) Matriculation/Higher

Secondary/Senior Secondary with Science, (2) Diploma in Medical Lab. Technology from a recognized institution, and (3) 3 years experience as a Tech. Asstt.

7. The bone of the contention is with regard to the qualification prescribed at Serial No. 2, which is a, "Diploma in Medical Lab. Technology from a recognized institution". Admittedly, the respondent has only a Certificate of training in a Laboratory.

8. In support of his case, counsel for the respondent refers to paras 9 and 10 of the aforesaid recruitment rules for the post of Technical Supervisor, which set down that the method of recruitment is to be by promotion, failing which it is by direct recruitment. In this case, since suitable departmental candidates were available for promotion, therefore, the question of direct recruitment did not arise and the promotional channel was required to be followed. Counsel further points to paragraph 10 of the aforesaid rules, which states as follows:

"10. In case of Rectt. By promotion/ deputation/ transfer grades from which promotion/ deputation transfer to be made.	Sr. Lab. Technician with five years regular service."
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It is the respondent's case that since the recruitment was by promotion, the grade of Senior Lab Technician with five years' regular service is the prescribed or feeder grade from which the promotion is to be made. He submits that, consequently, the respondent, having admittedly satisfied the requirement of being a Senior Lab Technician with five years' regular service, the promotion ought to have been granted to him without insisting that he also

satisfy the aforesaid educational qualifications prescribed in paragraphs 6 and 7 of the Rules.

9. If the contention of the respondent is accepted, it would mean that, as regards the promotional channel, the educational qualifications which are prescribed as applicable in the case of promotees also, by virtue of paragraph 7 of the same recruitment rules, will have no effect and will thus be rendered otiose. This Court cannot give an interpretation to a Rule by which another part of the same Rules becomes unworkable or becomes null and void. The only weightage that can be given to the aforesaid paragraph 10 of the Rules is that if recruitment has to be done through the promotional channel, then, the grade from which that promotion can be made must be of Senior Lab Technicians with five years' regular service. This would be in addition to the requirement of the educational qualifications prescribed under paragraphs 6 and 7 of the same Rules. In other words, in my view, the Rules cannot be interpreted to mean that the requirement given in paragraph 10 is the only requirement that is to be satisfied and that the educational qualifications given in paragraphs 6 and 7 of the same Rules need not be satisfied.

10. Counsel for the respondent then relies on Annexure R-2A that has been placed on record to show that, in fact, in another case, one Sh. J.C.Kaushal, who was a Senior Lab Technician in the petitioner's service, was granted a relaxation of the requirement of five years' regular service in the feeder grade, and was promoted to the post of Technical Supervisor although he did not have the necessary experience as a Senior Lab. Technician. Counsel contends that since

the petitioner demonstrably relaxed one requirement, the respondent is entitled to a similar relaxation with regard to the prescribed educational qualifications. I do not agree. An educational qualification is an altogether different thing from experience, and without going into the question of the correctness or otherwise of the concerned Departmental Promotion Committee's decision to grant a relaxation of the requirement of five years' experience to Sh. J.C.Kaushal, Sr. Lab Technician, I do not think any such relaxation with regard to the required experience, granted by the DPC in some other case, would vest in the respondent a right to claim relaxation of the educational qualification prescribed for the post of Technical Supervisor. In any case, the DPC's decision with respect to Sh. Kaushal clearly states that it is to be a, "one time measure which will not be quoted as a precedent."

Furthermore, grant of a benefit *de hors* the rules, in some other instance, cannot form the basis of any enforceable right to a similar benefit.

11. In this context, counsel for the petitioner has also relied on **Indian Council of Agricultural Research & Anr. v T.K.Suryanarayan & Ors.**, 1997 (6) SCC 766, wherein it has been held in paragraph 8 thereof, that;

"Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules."

Similar view has been taken by the Supreme Court in **U.P.**

State Sugar Corporation Ltd. Vs. Sant Raj Singh 2006 (9) SCC 82, as well as **Union of India Vs. International Trading Company**, (2003) 5 SCC 437, paragraph 13. Similarly, in Siddharth Singhal vs. Guru Gobind Singh Indraprastha University & Anr. in WP (C) No. 3356/08 decided on 30.4.2008, this Court has also held that, even if the respondents in that case had permitted some students to appear for the semester examinations as a special case by giving them some grace attendance to make up the shortage, which could not have been done under the rules, does not entitle the petitioners to the benefit of the same infraction. Similarly, in this case also, in my view, simply because some other Departmental Promotion Committee has granted a relaxation of the requirement of five years experience to some other candidate in the past, which has no effect on the petitioner's service, the same cannot form the basis for the type of relief being sought by the petitioner in this case.

12. Counsel for the respondent has been unable to demonstrate any rule or regulation which permits the NDMC, or the DPC, to waive the specifications in the Recruitment Rules. The Recruitment Rules have a certain legality and sanctity behind them, and cannot be bypassed in such a manner. If this Court were to hold that the respondent was entitled to a relaxation of the educational requirements prescribed in the rules, it would amount to completely changing the recruitment rules with regard to the educational qualifications, with the effect that the educational qualifications will stand downgraded from a diploma to a certificate. I do not find any ground to follow this course of reasoning.

13. Counsel's further submission, to the effect that when the

respondent joined the petitioner's services in 1973, the recruitment rules for the post of Technical Supervisor were different, does not, in my view, support his case. When a person either applies, or becomes eligible for being considered for a particular post, the extant rules and educational qualifications in force at that time, are the ones which will be applicable. Further, it is settled law that for appointment to any further post by selection or by promotion, the candidate must also satisfy the qualifications prescribed. If the rules themselves do not provide a waiver for in-house candidates, then in the absence of the required qualifications, such candidates cannot claim a vested right to be considered for that post. The only thing a candidate is entitled to is a proper and uniform application of the applicable rules.

14. A perusal of the impugned Award shows that the Labour Court proceeded on an erroneous assumption that the post of Technical Supervisor was a 100% promotional post from amongst the grade of Senior Lab Technicians with a minimum five years' service, and nothing more was required. It is on this assumption that the Labour Court proceeded to conclude, in paragraph 17 of the Award, that the petitioner had erred in earlier promoting the aforesaid Smt. Rajni Gaur to the post of Senior Lab Technician ahead of the respondent and thereafter had again erred in promoting her to the post of Technical Supervisor, even though the respondent was senior to her. It also erroneously concluded that simply because the respondent was directed to be appointed to the post of Senior Lab Technician with effect from the date Smt. Rajni Gaur was given that post, and since the respondent had initially joined before Smt. Rajni

Gaur, therefore, on this fact alone, the respondent was assumed to have fulfilled the necessary qualifications for promotion to the post of Technical Supervisor in preference to Smt. Rajni Gaur. Clearly, the learned Labour Court lost sight of the additional requirement of a Diploma in Medical Lab. Technology from a recognized institution, for being considered for the post of Technical Supervisor, which the respondent did not have. Counsel for the respondent has been unable to show that this requirement of a Diploma in Medical Lab. Technology from a recognized institution stands satisfied in the case of the respondent in any other way.

15. In view of the conclusion that I have reached, I am not going into the other aspect that has been raised, which is whether, in granting relief to the respondent, the Tribunal could have directed the creation of a supernumerary post, as it has done in the impugned Award. Since the respondent does not have the prescribed educational qualification, his allegation that the post in question was denied to him on account of any mala fides by the petitioner, also does not require examination.

16. In that view of the matter, the writ petition deserves to be allowed. The impugned award dated 1st July, 2006 is accordingly set aside.

SUDERSHAN KUMAR MISRA, J.

NOVEMBER 23, 2010
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