

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

% Judgment Reserved on : **May 3, 2011**
Judgment Delivered on: **May 16, 2011**

+ **W.P.(C) No.2889/2011**

Union Public Service Commission Petitioner
Through: Mr. Naresh Kaushik and Ms.Aditi Gupta,
Advocates.

Versus

Gyan Prakash Srivastava Respondent
Through: Mr. Rakesh Tikku, Sr. Advocate with Mr.
Vinay Kumar, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. | Whether reporters of the local papers be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | NO |
| 3 | Whether the judgment should be reported in the Digest? | NO |

DIPAK MISRA, CJ

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner – Union Public Service Commission (UPSC) has called in question the legal propriety of the order dated 11.3.2011

passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the tribunal') in O.A. No.2656/2010.

2. The facts which are essential to be stated are that the respondent applied for the post of Legal Advisor-cum-Standing Counsel in the Land and Building Department, Govt. of NCT of Delhi but he was not called for interview scheduled to be held on 23.8.2010. Being dissatisfied with the said action of the UPSC, he knocked at the doors of the tribunal seeking a direction to the petitioner to call the respondent for interview. The tribunal by its order dated 13.8.2010, while issuing notice, passed an interim direction that the respondent should be interviewed on 23.8.2010 provisionally, subject to the outcome of the original application.

3. The tribunal subsequently enquired from the UPSC with regard to the performance of the respondent and found that he had stood first in the interview and thereafter proceeded to delve into the merits whether the respondent should have been called for the interview or not.

4. It is noteworthy that the respondent was enrolled as an Advocate with the Bar Council of Uttar Pradesh in September, 1980 after passing the Bachelor of Law degree from University of Allahabad for the examination of

1979. Thereafter, he practised as an Advocate in the High Court of Allahabad from September 1986. As is evident from the order, he worked as Assistant (Legal) in the Ministry of Law & Justice till 26.2.1991. Thereafter, he held many posts, namely, for which Bachelor of Law degree and experience was imperative.

5. The UPSC, as the factual matrix uncurtains, advertised and invited applications for the post of Legal Advisor-cum-Standing Counsel vide advertisement No.11 in the Employment News dated 13 - 19 September, 2009. The requisite qualification for the said post was degree in law from a recognized University / institution and experience of 12 years as an Advocate, or as member of a State Judicial Service or equivalent service in the legal departments of Central / State Governments/ UTCS. The respondent submitted his application on 30.6.2009 making a declaration that he was having the essential educational qualification and requisite experience. He enclosed a statement in form of Annexure-A giving details of his educational qualification in a statement format where the year of passing, and name of the institution/University from where the qualification was acquired were mentioned. Despite compliance of every aspect, he was not informed and

called for interview by the UPSC. He submitted a representation and eventually approached the tribunal.

6. The stand of the UPSC before the tribunal was that the applicant/respondent was not short-listed as his application was rejected as an 'incomplete applications' for failure to furnish the law degree certificate along with the application. Before the tribunal, the UPSC relied on the decisions of this Court in *Dr. Vineet Ralhan v. UPSC [WP(C)No.13451/2009]* decided on 13.1.2010 and *UPSC & ors. v. Govt. of NCT of Delhi & ors. [W.P.(C) No.10058/2009]* decided on 25.1.2010.

7. The tribunal referred to Column 7 of the advertisement and referred to the form of the respondent herein and came to hold that when the respondent had attached the enrollment certificate and had been selected for various posts from time to time by the UPSC for which essential educational qualification was a degree of law. The respondent had submitted that his case would be covered by the decisions rendered in *Charles K. Skaria v. Dr. C. Mathew*, AIR 1980 SC 1231 and *Dolly Chhanda v. Chairman, JEE and others*, (2005) 9 SCC 779 and accordingly distinguished the decision in *Dr. Vineet Ralhan* (supra) on the ground that in the said case the certificates

mentioned in the advertisement were not enclosed including the matriculation certificate, the MBBS degree and the Post Graduation degree. Be it noted, the tribunal also referred to Notes III and IV appended to Column 7 and expressed the view that strict adherence so far as the production of degree in law is concerned was not the requirement. It is worth noting that the tribunal distinguished the decision rendered in W.P.(C) No.10058/2009 on facts. While distinguishing the said decision the tribunal has opined thus:

“The facts of the case aforesaid thus reveal that there were two stages leading to selection and appointment of candidates. The first stage was the recruitment test. The second stage started with filling up of the Detailed Application Form (DAF) which was meant only for those who had passed the recruitment test. In the first stage the requirement as regards attaching of certificates is exactly the same as in the present case. In that regard, it has been mentioned, “Degree or Diploma or other certificates (emphasis supplied) in support of their educational qualifications”. It is absolutely clear that despite the fact that the concerned candidates had not attached the LLB degree, but had submitted their Bar Council certificates, they were allowed to appear in the recruitment test. They had cleared the written test for being called for interview. Along with the letter in that regard, a DAF was enclosed, which was required to be submitted by the respondents to UPSC within fifteen days. A perusal of the DAF would make it clear that it had to be sent along with all requisite certificates and documents, originals of which were required to be produced at the time of interview. The

respondents before the High Court submitted that they submitted DAF within time but they were not called for interview and their candidature was cancelled. There were different reasons with regard to different persons, but we are concerned with those who had not furnished LLB degree certificate with the DAF. For not furnishing the law degree certificate, the common explanation of the respondents in all the cases was that the same was not made available by the concerned university and, therefore, it could not be furnished with the DAF, but it was urged on their behalf that since they had been enrolled with the Bar Council, that by itself would be sufficient proof of their having passed the LLB examination. The enclosures which the candidates were supposed to send to the Commission were clearly mentioned in the DAF. Column 12 of the DAF deals with the enclosures to the application form to be sent to the Commission by the candidates, clause (ii) whereof reads as follows:

“(ii) An attested/certified copy of the certificate of educational qualification Registration & Experience.”

The facts, as mentioned above, would thus reveal that when initially applications were invited, the requirement was to attach degree or diploma certificate or other certificates in support of educational qualifications. As mentioned above, even though they had only attached the certificates issued by the Bar Council of their having been enrolled as advocates and not the degree in law, but they were all called to take the recruitment test. Then came the second stage when they had cleared the recruitment test. At that stage, they were sent a detailed application form requiring them to send or attach all requisite certificates requiring them to send or attach all requisite certificates and documents, originals of which could, however, be produced at the time of interview. Attaching attested/certified copies of certificates of educational

qualifications was a necessary requirement. In the present case, there was only one stage, as surely, after short-listing the candidates from whom applications had been received, only interview was to be held. All those who answered the eligibility criteria as fixed by short-listing, were to be called for interview. There is nothing like that those who were short-listed were required to fill up a DAF as was required in the case before the Hon'ble High Court. We repeat and reiterate that whereas the requirement in the present case was of attaching degree or diploma certificate or other certificates in support of educational qualifications, in the case before the High Court, one had to attach only attested/certified copy of the certificate of educational qualification. There was nothing like that other certificates in support of educational qualifications could also be submitted."

[Emphasis added]

8. The tribunal further proceeded to distinguish the said decisions holding that in other cases the Court had emphasized that what was required to be attached was a valid LLB degree certificate and nothing more or less, but the facts in the present case are different. In this regard, we may profitably reproduce the finding recorded by the tribunal which are as follows:

"In the present case, it is not that the candidates were required to attach LLB degree certificate, nothing more or less. As mentioned above, it was permissible for them to either attach the LLB degree certificate or other certificates in support of their educational qualifications. We may again mention that in the case before the Hon'ble High

Court when the requirement was not strictly to only produce the LLB degree certificate, and the requirement was similar to the one as in the case in hand, at the first stage where candidates could either produce the LLB degree certificate or other certificates in support of their educational qualifications, they were allowed to appear in the recruitment test. In the same very judgment, some of the writ petitions arising from the common judgment were dismissed, wherein the rejection of the candidature was only on the ground that the concerned candidates had not produced a certificate stating that they had three years experience at the Bar. Inasmuch as, such was not the requirement in the DAF, it became a conceded position before the High Court that it was not a valid ground for rejection of their candidature. Actually, it is this part of the judgment of the Hon'ble High Court which would be akin to the facts of the present case. On the basis of distinction on material facts, as enumerated above, which may have entirely different result, there would be no need to refer to other facts that may be distinguishable. However, we may mention that in the case before the High Court, in response to the advertisement 3011 applications were received, which would be roughly 90 applications per post. Out of these applicants, 2765 were admitted for written examination for which 1885 actually appeared. The total number of candidates who qualified for interview was 134. In the facts and circumstances as mentioned above, it was held, "With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it". Such is not the position in the present case. As mentioned above, against one post, 187 applications were received, and after applying the criteria of short-listing, only 11 were short-listed. Before we may part with the judgment passed by the Hon'ble High Court, we may mention that the

applicants had sought to defend the orders passed by the Tribunal on the basis of judgment of the Hon'ble Supreme Court in *Charles K. Skaria* (supra), but the same was distinguished on facts by observing that the facts of the case before the Supreme Court were such where the controversy was only with respect to three seats and six candidates, whereas in the case before the High Court the large number of contenders in the "musical chair scenario" would run into a couple of thousands. The judgment of the Apex Court has been distinguished on facts. However, it would be relevant to mention as to the law laid down by the Supreme Court on the issue."

[Underlining is ours]

9. After so stating, the tribunal placed reliance on decisions rendered in *Charles K. Skaria* (supra) and *Dolly Chhanda* (supra) and eventually opined as follows:

"The applicant, in addition to attaching the certificate issued by the Bar Council of his enrolment 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 appointed 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. It is, however, not the case of the respondent that the applicant could not be short-listed as per such criteria. The impressive array of the facts as given by the applicant, it appears to us, would bring him within the criteria for short-listing. However, we express no opinion on this issue."

[Emphasis supplied]

10. Being of this view, the tribunal directed that the candidature of the applicant/respondent is valid, and if he answers the criteria for short-listing, UPSC should consider him for appointment on the post aforesaid.

11. We have heard Mr. Naresh Kaushik, learned counsel appearing for the petitioner and Mr. Rakesh Tikku, learned senior counsel appearing for the respondent.

12. It is submitted by Mr. Kaushik that the respondent's application was incomplete and correctly not short listed by the UPSC and the tribunal has erroneously referred to certain other documents to hold that the candidature was valid.

13. Mr.Tiku, learned senior counsel, per-contra, submitted that the tribunal has appositely interpreted the terms of the advertisement and expressed the view that the respondent was eligible for consideration and the reasons ascribed by the tribunal being cogent and germane withstand close scrutiny, the order does not warrant any interference.

14. To appreciate the rivalised submissions, we may profitably refer to Column 7 of the advertisement which reads as follows:

“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;
- (iii) If the qualification possessed by the candidate is equivalent, then the authority (with number and date) under which it has been so treated must be indicated;
- (iv) Certificate(s) from the Head(s) of the Organisation(s)/Department(s) for the entire experience claimed, clearly mentioning the duration of employment (date, month & year) indicating the basic pay and consolidated pay. The certificate(s) should also mention the nature of duties performed/experience obtained in the post(s) with

duration (s). These certificates should be issued on Letter Head or duly stamped by the Competent Authority;

- (v) A candidate who claims to belong to one of the Scheduled Castes or Scheduled Tribes has to submit, in support of his claim, an attested copy of a certificate in the prescribed form issued by the competent authority (original to be produced at the time of interview)."

[Emphasis added]

15. The notes III and IV appended to Clause 7 are as follows:

"NOTE-III: In regard to Educational Qualifications, the mark sheet in lieu of Educational Certificates will not be accepted by the Commission.

NOTE-IV: The provisional claim whatsoever in regard to eligibility to the post will not be accepted by the Commission."

[Underlining is by us]

16. As is evincible, the tribunal has referred to the two statements as regards educational and other professional qualifications. We think it appropriate to reproduce the same:

"7. ALL EDUCATIONAL/OTHER PROFESSIONAL QUALIFICATIONS:

LEVEL	EXAM PASSED	DIV/ GRADE	YEAR OF PASSING	DURATION OF COURSE	BOARD/UN IV/INSTITUTION	SUBJECT	Subject of Specialization
Xth	High	IInd	1970		U.P.BOARD	Hindi,	NIL

	School					English, Maths, Science, Geo., Art	
GRADUATE	B.A.	IInd	1976	Two years	Allahabad University	Pol.Science, Anct. History, Eco, General English	NIL
LAW	LL.B	IInd	1979	Three years	-do-	All Compulsory subjects with labour law and taxation as optional subject	NIL

8. DETAILS OF EMPLOYEMENT IN CHRONOLOGICAL ORDER:

Office/ Instt/ Firm	Post held	Part time/contr act basis/ad Hon'ble Court/ regular/ temp./ Pmt.	Exact dates to be given (ncluding day, month & year		Total period (in years)			Scale of pay	Nature of duties
			From	To	Year	Month	Days		
Allahabad High Court	Advocate	Practiced as Advocate	19.9.80	28.9.86	06	0	09	No fixed income	To appear in the cases as private practitioner in civil side dealing with property matters
M/o Law & Justice, Department . Of Legal Affairs, New Delhi	Assistant (Legal)	Permanent	29.9.86	26.2.91	04	04	27	6500- 10500 (PR)	To deal with Supreme Court litigation & provided precedents and assistants to govt. advocates in disposing of matters of legal advice/ conduct of

									litigation before hon. Supreme Court.
Land & Building Deptt., GNCTD	Law Officer	Permanent	27.2.91 1.10.99 1.2.03	20.9.94 28.6.01 9.9.03	03 01 05	06 08 07	23 27 08	6500-10500 (PR)	1.) Monitored litigation in relation to land acquisition/compensation cases before the High Court & Supreme Court. 2.) Provided legal advice to the Deptt. On legal issues in acquisition and revenue matters. 3.) Appointed to appear before Estate Officer in place of got. Counsel.
Director of Estates, Ministry of Urban Dev., New Delhi	Asstt. Director of Estates (Litigation)	Deputation	21.9.94	30.9.99	05	0	09	6500-10500 (PR)	1.) Assigned with the work of litigation on behalf of Directorate of Estates on all the law courts in govt. properties cases. 2.) Appointed as Estate Officer under Public Premises Act. 3.) Nominated as govt. counsel by Min. of Law & Justice to appear on behalf of Directorate.
Land & Dev. Office, M/o Urban Dev., New Delhi	Vigilance-cum-Legal Officer	Deputation Group 'A'	29.6.01	31.1.03	01	07	02	8000-13500 (PR)	1.) The Court cases of the deptt. Before the law courts. 2.) Verification

									of legal documents in property matters. 3.)Tendering legal advice 4.) Appointed as Estate Officer under Public Premises Act. 5.) Worked as Vigilance Officer of the Deptt.
Land & Building Deptt., GNCTD	Officer on Special Duty (Litigation)	Permanent	10.9.03	Still working	05 *On closing date	09	22	15600-39100 (Revised) GP 6600	1.) In charge of conduct of litigation related to land acquisition / compensation / alternative plots / administrative & other cases of Deptt. before Hon. High Court 2). Tendering legal advice on the legal issues pertaining to land acquisition/ revenue/ other matter 3). Briefing to Sr. advocates/ Solicitor General/ Additional. Solicitor General appearing for deptt. In land acquisition cases. 4). In-charge of the computer cell & nodal officer (IT) for monitoring court case

									monitoring system.
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17. In this context, we may refer with profit to *Charles K. Skaria* (supra), wherein it has been held thus:

“24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in Administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. The Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a

prospectus is not scripture and commonsense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks."

[Emphasis added]

18. In *Dolly Chhanda* (supra) the Apex Court has ruled thus:

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

[Underlining is by us]

19. It is also apposite to reproduce the decision rendered in *Manoj Kumar v. Govt. of NCT of Delhi and others*, (2010) 11 SCC 702, wherein their Lordships have held as follows:

“8. There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information.”

20. The said observation was made as false information was given. In our considered opinion, the tribunal has correctly distinguished the decisions of this Court and regard being had to the tenor and requirement of advertisement and has rightly relied on *Charles K. Skaria* (supra) and *Dolly Chhanda* (supra) and, hence, we do not find any error in the order passed by the tribunal.

21. Resultantly, the writ petition, being devoid of merit, stands dismissed without any order as to costs.

CHIEF JUSTICE

MAY 16, 2011
dk

SANJIV KHANNA, J.