

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

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Date of decision: 24th May, 2011

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WP(C) NO.10720/2009

DIPIN ARORA

..... Petitioner

Through: Mr. Ashim Vachher with Mr. Rohit Nagpal, Advocates

Versus

SHIVAJI COLLEGE & ORS

..... Respondents

Through: Mr. Anurag Mathur, Advocate for R-1&2.
Mr. Amit Bansal, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The respondent no.1 College, affiliated to the respondent no.3 University of Delhi, on 13th May, 2008 published an advertisement inviting applications, *inter alia*, for the post of Administrative Officer of the College. The advertisement required reference to the website of the College for

detailed information about qualification / eligibility criteria for the post. It is not in dispute that the qualification / eligibility criteria for the post of Administrative Officer was

“Good academic record plus master’s Degree with at least 55% of the marks or its equivalent Grade B in the UGC Seven point scale.”

2. The petitioner in his application for the said post disclosed his qualification as Graduation from Delhi University and Post Graduate Diploma in Business Administration (PGDBA) from Symbiosis Centre for Distance Learning with specialization in Marketing with 57% marks. The petitioner was issued the Admit Card for the written test to be held for the said post and was subsequently called for interview by the Selection Committee constituted for the said purpose and selected for and offered the said post on 29th December, 2008 and which was accepted by the petitioner and the petitioner joined the employment of the respondent no.1 College as Administrative Officer on 30th December, 2008. The appointment of the petitioner was “subject to the approval of the Governing Body of the College and the respondent no.3 University of Delhi”. Upon approval of the University being sought, the University vide its letter dated 16/19th June, 2009 impugned in this petition found the appointment of the petitioner to be

“not in order” as he did not possess the Master’s Degree with 55% marks. The University accordingly asked the College to dispense with the services of the petitioner after issuing suitable show cause notice to the petitioner.

3. Notice of the petition was issued and vide order dated 7th August, 2009 *status quo* regarding the service of the petitioner directed to be maintained. Counter affidavits have been filed by the College and the University and to which rejoinders have been filed by the petitioner. The matter was listed last on 12th May, 2011 when adjournment was sought on behalf of the petitioner. Finding that the petitioner, after obtaining the interim order and under which he is continuing employment of the College and drawing salary, the matter was directed to be posted for today. The counsels have been heard.

4. The University in its counter affidavit has stated that the respondent no.1 College is a constituent of the University and substantially funded to the extent of 95% by the University Grants Commission; therefore the minimum qualifications as prescribed by the UGC are mandatory on the College; that the minimum qualification aforesaid prescribed for the post of Administrative Officer is based on the directions contained in the Policy

Guidelines issued under letter dated 2nd November, 1988 of the Government of India, Ministry of Human Resource Development, and such minimum qualifications have also been included in the Recruitment Rules (Non Teaching Employees), 2008 framed by the respondent University; that PGDBA qualification of the petitioner is not equivalent to a Master's Degree and the petitioner is thus not qualified for the post and the appointment of the petitioner cannot be approved.

5. The College in its counter affidavit has also stated that the University having not approved the appointment and which appointment was subject to such approval, the petitioner has no right to continue.

6. The question which thus arises for consideration is whether the qualification by the petitioner of PGDBA can be treated as equivalent to a Master's Degree.

7. However, before adverting to the said question, certain other contentions of the counsel for the petitioner may be dealt with. He has contended that no show cause notice as directed by the University also has been issued; that since for the higher post of Deputy Registrar (the post of

Administrative Officer is equivalent to that of Assistant Registrar) PGDBA is a “desirable” qualification, it should be treated as equivalent to the Master’s Degree also; that his application where full disclosure of qualification was made was scrutinized and only thereafter Admit Card was issued to him and that his qualifications were studied into by the Selection Committee comprising of high officials including nominees of the University and who were satisfied of his qualification of PGDBA being equivalent to a Master’s Degree and the decision of the University now is biased.

8. The counsel for the University has contended that the aforesaid arguments are no longer open to the petitioner when the appointment letter of the petitioner was subject to approval of Delhi University; it is contended that even if there has been any oversight by the College in appointing the petitioner, the University was entitled to correct the said error; it is further contended that the University has appointed its nominee on the Selection Committee only for the purposes of conducting the interview and not to scrutinize the qualifications and the Interview Board / Selection Committee was to only judge the performance in the interview and presumed that

whosoever had been called for the interview had the requisite qualification; with reference to the Minutes of the Meeting of the Selection Committee it is shown that there was no discussion whatsoever therein as to whether the petitioner's qualification was equivalent to Master's Degree or not.

9. The counsel for the College has also contended that the petitioner has falsely represented that no show cause notice was given to him; that a show cause notice dated 23rd June, 2009 was issued, to which replies dated 1st July, 2009 and 14th September, 2009 were given by the petitioner. It is contended that the petitioner is guilty of concealment and misrepresentation and the writ petition is liable to be dismissed on this ground. It is further contended that the petitioner at the time of advertisement and submission of application etc. was working on a temporary basis as the Administrative Officer of the College and in fact was in the said capacity processing the various applications received and took advantage of his said position in issuance of the Admit Card to himself leading to his selection.

10. The argument of the counsel for the petitioner of his qualification of PGDBA being equivalent to Master's Degree for the reason of being a desirable qualification for a higher post, is misconceived. The essential

eligibility for the post of Deputy Registrar also is of Post Graduate Degree and in addition to the said essential qualification, a Post Graduate Diploma in Management is mentioned as a desirable qualification. Merely because the said qualification is mentioned as a desirable qualification for a higher post would not mean that for the post for which the petitioner had applied the same would substitute the “essential” qualification.

11. No merit is found in any of the aforesaid submissions of the counsel for the petitioner. If it is found that the petitioner is not eligible or qualified for the post, the petitioner cannot be allowed to retain the same merely because an error has been committed in appointment of the petitioner and which appointment being subject to approval of the University, the University was definitely within its right to set right the said error. It is not urged that the Selection Committee was authorized to waive the minimum qualifications laid down in the Recruitment Rules.

12. That brings me to the core issue aforesaid as to whether the PGDBA qualification of the petitioner is equivalent to Master’s Degree or not. At the outset it can be stated that it is neither the job of this Court nor is this Court

competent to determine whether one qualification is equivalent to the other or not.

13. The Calendar of the University provides for an Equivalence Committee to be constituted by the University and which is comprised of experts, who on an analysis of the course contents, method of teaching, method of examination etc., are to decide whether one qualification can be treated as equivalent to the other or not. Once the University has taken a stand that PGDBA is not equivalent to a Master's Degree, it has but to be presumed that the said Equivalence Committee of the University does not treat the same as equivalent. The petitioner has also not brought any material whatsoever before this Court to show that PGDBA has anywhere been considered as equivalent to Master's Degree. The counsel for the University also in this regard has relied upon ***Basic Education Board, UP v. Upendra Rai*** (2008) 3 SCC 432 laying down that grant of equivalence is an administrative decision which is in the sole discretion of the authority concerned and the Courts do not have expertise in such matter.

14. Even otherwise the nomenclature of the qualification of the petitioner itself indicates the same to be a Post Graduate Diploma while the

requirement of the Rules is of a Post Graduate Degree. A Diploma can never be equivalent to a Degree. Reference in this regard may be made to ***Tirath Raj v. MCD*** 68 (1997) DLT 635 noticing several dicta of the Apex Court on difference between a Degree and a Diploma. The said distinction was reiterated in ***Shailendra Dania v. S.P. Dubey*** (2007) 5 SCC 535.

The counsel for the petitioner refers to

- i. ***Bimla Devi v. State of Himachal Pradesh*** MANU/SC/0781/2010;
in this case, the Selection Board which had prescribed the qualification for the post had itself selected the candidate and in such circumstances and after 11 years, interference was refused. However here, it cannot be said that Selection Committee had also framed the recruitment rules. Moreover, approval necessary for appointment has been refused.
- ii. ***Tariq Islam v. Aligarh Muslim University*** MANU/SC/0623/2001.
The said judgment rather than helping the petitioner is against the petitioner. It lays down that area of interference by the Courts would be limited to whether the appointment made by the academic body had contravened any statutory or binding rule and the Courts

should show due regard to the opinion expressed by the experts and on whose recommendations the academic body had acted. Though the counsel for the petitioner had on the basis of the said judgment sought to contend that the members of the Selection Committee are experts but they cannot be treated as experts in equivalence of qualifications.

iii. ***Rameshwar Dass Mehla v. Om Prakash Saini***

MANU/SC/0281/2002. The said judgment is a judgment on rounding off and has no application to the present case.

iv. The judgment dated 20th December, 2010 of the Division Bench of this Court in WP(C) 145/2010 titled ***AIIMS v. Dr. N.N. Sarkar*** where weightage was given to the opinions of the experts constituting the Selection Committee and the Court also forayed into itself determining equivalence. However this was a case of challenge by a contender to appointment made and not of the appointing authority itself not finding the candidate eligible as is the case in hand. It may also be added that the University as the

appointing authority is not bound by the recommendation of the Selection Committee.

v. ***Rajbir Singh Dalal v. Chaudhari Devi Lal University, Sirsa*** (2008)

9 SCC 284 where owing to there being a single department of Political Science and Public Administration, appointments made without specifying for which department were held to be valid. The said judgment again has no applicability to the facts of the present case.

15. The position in law is otherwise clear. A person who does not have the requisite qualification is not entitled to claim appointment. The petitioner cannot claim any right from the mistake. The petitioner as per the selection criteria was / is not eligible for appointment. The Supreme Court in ***Ashok Kumar Sonkar Vs. UOI*** (2007) 4 SCC 54 held that where the selection is illegal for the reason of being ineligible to be considered for appointment, the cancellation of appointment even without affording any opportunity of hearing is proper inasmuch as in such cases the hearing would be a futile exercise and a Court of law does not insist on compliance with useless formalities. Reference may also be made to ***Central Airmen***

Selection Board Vs. Surender Kumar Das (2003) 1 SCC 152 where the question of whether the principle of promissory estoppel can be invoked or not in the case of a candidate not eligible for appointment being selected by mistake contrary to the terms of the advertisement and the rules was left open, the finding having been returned of selection being illegal owing to being attributable to the misrepresentation by the candidate.

16. Reference may also be made to *Mahatma Gandhi University Vs. Gis Jose* (2008) 17 SCC 611 where it was held in the context of admission to educational institutions that a student even if wrongly admitted without being eligible should not be permitted to continue and misplaced sympathy should not be shown in total breach of rules. The Supreme Court in *Maharishi Dayanand University Vs. Surjeet Kaur* JT 2010 (7) SC 179 held that the Court has no competence to issue a direction contrary to law, nor the Court can direct an authority to act in contravention of statutory provisions. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules & Regulations. It was further held that there can be no estoppel/promissory estoppel to debar a public authority from enforcing a statutory provision. The mistake on the part of the

University in that case in allowing an applicant to appear in the examination was held to be conferring no right in the applicant if not entitled under the Rules & Regulations to pursue a course. It was held that the Rules & Regulations cannot be allowed to be defeated merely because the University erroneously allowed a candidate to appear in the examination.

17. As far as the argument of non-issuance of show cause notice is concerned, it may also be noticed that the matter having been considered in detail by this Court, the question of directing any further hearing to be given does not arise.

Accordingly, there is no merit in the petition. The same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

May 24, 2011
M.