

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

% Judgment delivered on 24.02.2012

+ W.P.(C) 1004/2012 and CM 2212/2012

DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANR

..... Petitioners

versus

NEERAJ KUMAR AND ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Zubeda Begum

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED (ORAL)

1. The respondent had applied for the post of Teacher (Primary) in the Municipal Corporation of Delhi. The application was pursuant to an advertisement by the Delhi Subordinate Services Selection Board (DSSSB). Clause 8 of the advertisement prescribed the conditions for invalid applications. It was indicated in the advertisement that the application with any of the deficiencies specified in clause (a) to (o) in the said clause 8 would be treated as invalid and would be summarily rejected. In the present case, clause 8(e) is relevant and that reads as under:-

“e. Signature in block capital letters in English or in different languages and in different style/mode.”

2. The respondent had applied in response to the said advertisement. The respondent belongs to the OBC category. He had submitted his application within time. A Roll

Number was also issued to him being 01623760 and he appeared in the examination on 15.02.2009 for selection. The petitioner prepared the merit list and the respondent's name also appeared in the same. The respondent was shown to have secured 118 marks. The last selected OBC candidate had secured 101 marks. It is also the case of the respondent that he had secured more marks than even the last selected candidate under the general category. Despite this, in the final list issued on 07.10.2009, the name of the respondent did not appear.

3. An application under the Right to Information Act, 2005 was moved by the respondent to enquire as to why his name had not been included in the Select List. In response to that application, the DSSSB by a letter dated 30.10.2009 informed the respondent that his application has been rejected as being invalid on the ground that he had signed the application in capital letters in English. It is for this reason that his result was not processed for selection. The relevant portion of the said letter dated 30.10.2009 reads as under:-

“As per terms and condition of Advertisement, applications not signed or signed in English capital letters are categorized as invalid applications. Applicant's case falls in that category as such his result was not processed for selection with other identical cases.”

4. Being aggrieved by this action on the part of the petitioner, the respondent filed an Original Application being OA No. 3095/2010 which has been disposed of by the order dated 16.09.2011 which is impugned before us. By virtue of the impugned order, the petitioner herein was directed to verify and compare the signatures of the respondent in

the original application form with his signatures in other documents available with them and if it was found to be genuine, to declare his result and offer him appointment as Teacher (Primary) in the MCD with all consequential benefits except back wages. The said directions were to be complied with within a period of two months from the date of receipt of a copy of the order. The petitioner being aggrieved by the said decision of the Tribunal has filed the present writ petition.

5. We have heard the learned counsel for the petitioner at length on the issue at hand. Two questions arise for consideration. The first question is as to whether there has at all been a violation of clause 8(e) of the advertisement and the second is as to whether that condition is mandatory or merely directory.

6. The learned counsel for the petitioner submitted that on both counts the decision of the Tribunal ought to have been rendered in favour of the petitioner. According to her, the respondent has not followed the instructions of not signing in block capital letters in English and, as a result, clause 8(e) of the advertisement got triggered and the application was liable to be rejected summarily. She also submitted that there is no scrutiny done at the stage of issuance of Admit Cards. It is only after the examination is conducted and if a candidate falls within the zone of consideration, that his application is scrutinized. At that stage, the petitioner came to know that the respondent had not complied with the stipulation as regards signatures prescribed in the advertisement.

7. In so far as the second issue is concerned, the learned counsel submitted that the condition of signing in block capital letters in English was a mandatory condition and once this is recognized there cannot be any deviation from this. She placed reliance on

paragraph 3 of *Karnataka Public Service Commission and others v. B.M. Vijaya*

Shankar and others JT 1992 (4) SC 348, which reads as under:-

“It is not disputed and it was found, even, by the tribunal that it was printed on the first page of every, answer book. Its observance was mandatory and its disregard was punishable is clear from instruction (xii) and (xiii) of General Instructions to the candidates which are extracted below:

(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the Examination.

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and/or such other punishment as the Commission may deem fit to impose.”

In the above referred case, the relevant clause of ‘Instructions to Candidates’ required candidates not to write their names or register numbers or sign anywhere in the answer book or on any loose sheet such as precis sheets, maps, graph papers etc. The objective behind the instruction was to ensure that no attempt is made by the candidate to identify himself by writing his roll number at any place other than the space specifically provided in the answer book for this purpose. The instruction, therefore, was intended to minimize any chance of the abuse of the examination process and was found to be in larger public interest. The respondents before Supreme Court had written their roll numbers also at places other than the space provided for this purpose in disregard of the instructions issued by the Karnataka Public Service Commission. In an OA filed by the respondents, the Tribunal was of the view that the action of the Commission was

arbitrary, since it had not afforded an opportunity to the candidates to explain their bona fides. The issue before the Supreme Court therefore was as to whether opportunity of hearing is required to be given in matters of this nature. The Court was of the view that absence of any expectation of hearing in matters which do not affect any interest and call for immediate action where it would have delayed declaration of list of other candidates, which would have been more unfair and unjust, is a recognized exception to the rule of natural justice.

We asked the learned counsel for the petitioners as to what was the objective behind insisting upon signature in capital letters alone. The answer given to us was that signatures in capital letters being easy to copy, the purpose behind this instruction was to ensure that no one is able to impersonate the person who is shown as the applicant in the application form. Admittedly, it was obligatory for all the applicants to affix their photographs on the application forms. The photographs of the candidates were also affixed by the petitioners on the roll numbers/admit cards issued to them. The requirement of affixing a photograph on the application form followed by issuance of the roll number/admit card containing the photograph of the candidate would ensure that only the person whose photograph is affixed on the application form appears in the examination. We also notice that the photograph of the respondent is also found on the Class X certificate issued to him by Central Board of Secondary Education as well as on the OBC Certificate issued to him by Deputy Commissioner, Delhi. In these circumstances, it is difficult for us to accept the contention that the purpose behind this instruction was to rule out any possibility of impersonation. In fact, merely signing in

capital letters in English does not rule out the possibility of impersonation, which can be ensured only by safeguards such as the requirement of affixing a photograph of the applicant on the application form followed by affixation of his photograph on the roll number/admit card issued to him. Therefore, the said decision of Supreme Court does not advance the case of the petitioner.

8. She also placed reliance on **Bedanga Talukdar v. Saifudaullah Khan and Ors.**

JT 2011 (11), SCC 367 and in particular on paragraphs 28 and 29 thereof, which reads as under:-

“We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.”

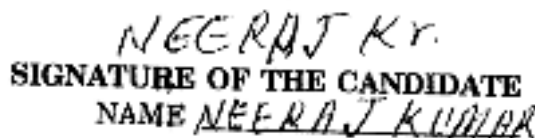
In the above referred case, advertisement was issued by Public Service Commission inviting applications for one post in Assam Civil Service Class-I (Junior Grade) from persons suffering from Locomotor Disability in connection with conduct of combined Competitive (Preliminary) Examination 2006 for screening candidates for the Main examination for the post which were mentioned in an earlier advertisement. It was stipulated in the advertisement that the candidates with Locomotor disability must produce supporting documents in the office of Assam Public Service Commission or in the examination hall before commencement of the examination. Respondent No.1 did not submit the mandatory document to substantiate his candidature for the seat reserved for Locomotor disability on or before the last date for submission of application. He did not submit these mandatory documents even at the time when he appeared in the preliminary examination. He therefore appeared in the examination, as a general candidate. The appellant before the Supreme Court was another person with Locomotor disability who had also applied in the said examination. The appellant as well respondent No.1 successfully participated in the Preliminary examination. Respondent No.1 was permitted to appear in the Main examination and both the appellant as well as respondent

No.1 were called for interview. Respondent No.1 before Supreme Court submitted that the certificate with respect to Locomotor disability issued by District Medical Board, Dhubri produced at the time of interview. The name of respondent No.1 however, did not appear in the select list. He later on came to know that the marks secured by him were higher than the marks obtained by the Appellant. It transpired that the said respondent No.1 had not been declared successful on the ground that the above referred mandatory documents were not submitted by him in time. The case of the Commission before the Court was that the documents, which respondent No.1 had failed to submit in time, were vital to support his claim to be considered for the post reserved for candidates with Locomotor disability and therefore his candidature was rejected for non-fulfillment of an essential condition. In fact, the ID card had not been submitted by respondent No.1 even till after interview and by the time he submitted the ID card the select list had already been published. It was contended on behalf of the Commission that there can be no variation in the conditions of eligibility as laid down in the advertisement, unless a specific stipulation is made about any particular condition being relaxable at the discretion of the concerned authority. It was on these facts that the above quoted observations were made by Supreme Court.

However, the case before us is not a case of the candidate failing to submit documents which were essential for verifying his eligibility. As observed earlier, the identity of the candidate could be established from the photograph which he was required to affix on the application form as well as from the roll number/admit card issued to him

by the petitioners and the signature in capital letters would, therefore, have not been of much use for achieving the objective of verifying the identity of the candidate.

9. Furthermore, in order to ascertain as to whether there was any violation of the conditions stipulated in the advertisement with regard to signing in English in block capital letters, we directed the learned counsel for the petitioner on the previous occasion to place before us a copy of the very application form, submitted by the respondent. That copy is available with us and we find that the respondent has not signed in block capital letters in English as whole of his signature is not in capital letters. This is apparent from the fact that below the space provided for signature of the candidate, there is space indicated for giving name of the candidate: Whereas the name has been written entirely in block capital letters in English in the form “NEERAJ KUMAR”, the signature of the candidate, above it, is in the following form “NEERAJ Kr.” It so happens that this is the way in which the respondent signs normally and in order to make this clearer, an image of the signature and name, as given in the application form is reproduced hereinbelow:-


SIGNATURE OF THE CANDIDATE
NAME NEERAJ KUMAR

10. It is absolutely clear that the signature of the candidate is different from the manner in which his name has been written which is entirely in block capital letters in English. Therefore, in our view, it cannot be said that the respondent has signed the application in block capital letters in English.

11. Even otherwise, we are of the opinion that since the identity of the candidate could

be established from his photograph on the application form as well as the photograph affixed on the roll number issued to him by the petitioners, the stipulation with regard to the invalidity of an application on the ground that the applicant's signature is in block capital letters in English is merely directory and not mandatory. The decisions cited by the learned counsel for the petitioner are clearly distinguishable.

In view of the foregoing although we have taken slightly different view as regards the first issue from that of the Tribunal, we see no reason to interfere with the ultimate conclusion of the Tribunal.

Accordingly, the writ petition is disposed of.

BADAR DURREZ AHMED, J

V. K. JAIN, J

FEBRUARY 24, 2012
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