

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

+ W.P.(C) 7662/2009 & C.M. No.3837/2009(Stay)

% Judgment reserved on: 29th February, 2012
Judgment delivered on: 03rd July, 2012

PAWAN KUMAR Petitioner

Through: Mr. Gigi C. George, Adv.

versus

J.N.U. & ORS. Respondents

Through: Mr. S.C. Dhanda, Adv. for
respondent no.1.

Mr. Hari Narayan Takkar, Adv.
for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioner is seeking direction for quashing the appointment of respondent no. 2 to the Post of System Analyst (E-Governance Cell). Consequently, respondent no. 1 be directed to issue appointment letter in respect of the aforesaid post in favour of the petitioner.

2. In brief, the facts of the case are that vide advertisement in the edition of the Employment News dated 22.03.2008 to 28.03.2008 respondent no. 1 invited applications from the interested candidates for the post of System Analyst (E-Governance Cell) in the Scale of 8000-275-13500 among other posts.

3. The essential qualifications prescribed in the advertisement for the said post were as under:-

1. *Post Graduation in Science / B. Tech / MCA with minimum 55% marks.*
2. *Knowledge of structured systems analysis & Design Methodology.*
3. *Proven Knowledge of relational database management software such as MS SQL Server and ORACLE or*
4. *Proven knowledge of designing and developing client / server applications; or*
5. *Experience in system administration of servers working on operating systems such as MS Window 2000/2003 and Linux/Unix;*
6. *Proven knowledge of troubleshooting Local Area networks.*

4. The petitioner is Science Graduate from Delhi University and has got First Class with 66.1% marks for Graduation with Maths, Physics and Electronics as his Elective Subjects. The petitioner also holds a Post Graduate Diploma in Computer Science and Applications (PGCSA) from Punjab University, Chandigarh, with Computer Science as a subject and has secured 70.3 % marks for the said educational qualification. The petitioner also holds an MCA Degree from Punjab University, Chandigarh, which is the Educational Qualification as per the advertisement mentioned above. Besides the above narrated qualifications, petitioner also holds a Diploma in IPR Laws from Indian Law Institute, Delhi and has secured 63% marks for the above Diploma Course.

5. Since he met all the eligible criterion, respondent no. 1 vide its

letter dated 10.11.2008, asked the petitioner to appear for a Written Test and Interview to be held at Jawaharlal Nehru University on 06.12.2008. Accordingly, petitioner appeared for the Written Test and secured 67 marks in the Written Test and stood first among all the aspirants. Whereas, respondent no. 2 has secured only 57 marks and was way behind the petitioner. In total, 161 candidates appeared for the aforesaid Post including the petitioner, out of which 8 candidates were called for the interview and the petitioner stood first in the order of merit and his name reflected at Serial no. 1 in the list of candidates called for the Interview in the unreserved category.

6. It is evident from the minutes / recommendations of Selection Committee held on 06.12.2008 at 3 PM in the Chamber of Vice Chancellor that the petitioner stood first in the unreserved category and respondent no. 2 stood at merit list no. 2, despite, he was not selected.

7. On the other hand, in the case of SC candidates, the person who stood first in the merit list i.e. Sh. Dupinder Kumar was recommended for appointment and in the unreserved category, the petitioner was sidelined and the respondent no. 2 was arbitrarily appointed.

8. The petitioner was not even put in the waiting list and another candidate namely Prashant Chahar (Roll No. 129), who secured only 56 marks was short listed as General Category waiting list candidate.

9. Ld. Counsel for the petitioner submitted that there was a conscious and well-planned effort to sidestep the petitioner who stood first in the merit list by the Selection Committee. The petitioner has

also heard even prior to Interview that respondent no.2 Mr. Amogh Batra was already selected as one of the Interview Board Members Dr. Rekha Malhotra was his ex-teacher and she was in favour of the Selection of respondent no. 2.

10. He further submitted that the petitioner made representation addressed to Vice-Chancellor of the University on 14.12.2008, but the same was not replied by the said Office. The petitioner sought for the following information vide Query no. 12 through his RTI application dated 14.12.2008 under the RTI Act and same was reply has follows:-

Query no. 12: - What was the weightage of the written test and interview in the said recruitment process i.e. how many marks were attributed to interview and how many to the written test? What was the formula used?

Reply: As already stated no marks are awarded for the interview by the selection committee members separately. The written test conducted for the post of System Analyst was not a merit test but only to shortlist the candidates out of the large number of candidates applied for the posts. Selection process is based on the academic / professional qualification, experience personality and content replies given by the candidate in the interview”

11. Vide the instant petition, the following question of law has been raised:-

1. Whether the appointment of respondent no. 2 is arbitrary and illegal since the same has been made by the respondent no. 1 ignoring the merit and the marks secured by the petitioner who stood first in the order of merit as well as stood first in the written test?

2. Whether it was permissible for the respondent no.

1 to appoint respondent o. 2 when the petitioner had all the requisite qualifications and also stood first in the written test?

3. Whether it was permissible for the respondent no. 1 to appoint the respondent no. 2 when no marks were awarded to both the petitioner as well as the respondent no.1 in the interview as admitted by the respondent no.1?

12. On the other hand Id. Counsel appearing on behalf of respondent no. 1 submitted that the University had advertised 03 posts i.e. 02 posts for E-Governance and 01 post for Finance Branch under open recruitment. Out of 02 posts for E-Governance, 01 post was reserved for SC Category.

13. It is further submitted that in response to the advertisement 141 applications were received for the unreserved post and 27 for SC Candidates. 30 applications were received for the post of Finance Branch. Thus in all 191 applications were received. Therefore it was not possible to interview so many candidates. In order to shortlist the candidate, the committee of four persons was appointed. The said Committee after going through the applications, came to the conclusion that it was not possible to verify the level of skill claimed by each candidate and recommended that a Written Test be held to shortlist the candidates and all those, who meet the minimum qualifications be called for test.

14. Accordingly, Screening Committee then shortlisted the candidates and recommended that 05 candidates from E-Governance (UR) and 02 candidates from SC category and 05 candidates from Finance Branch did not meet the prescribed minimum qualifications.

The Committee further recommended that rest of the candidates be invited for Written Test and subsequently for interview.

15. It was an objective type test conducted by two faculty members nominated by the Vice-Chancellor. Total 191 Candidates were invited for written test held on 06.12.2008 i.e. 161 for E-Governance and 30 for Finance Branch. 95 candidates (83 for E-Governance and 12 for Finance Branch) appeared for the test. Two Professors were requested to set the question paper. The examination was conducted in School and immediately after the test, top 10 students were directed to proceed for interview.

16. Ld. Counsel for the respondent no. 1 further submitted that the Selection Committee consisted of 08 members, out of which 04 members were outside the University including the Chancellor's nominee. The members of the Selection Committee were as under:-

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| 1. | <i>Prof. Rajendra Prasad,
Rector – I</i> | - | <i>Chairman</i> |
| 2. | <i>Prof. S.N. Malakar
SIS</i> | - | <i>Chancellor's
Nominee</i> |
| 3. | <i>Dr. V.S. Srivastav,
Head I/C
Computer Division,
IGNOU</i> | - | <i>V.C.'s Nominee</i> |
| 4. | <i>Sh. N.C. Kalra,
Associate Head, IITD,
New Delhi</i> | - | <i>V.C.'s Nominee</i> |
| 5. | <i>Dr. Rakha Mehrotra,
Reader Rajguru College
Of Applied Sciences for
Women, Delhi University,
Delhi</i> | - | <i>V.C.'s Nominee</i> |

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| 6. | <i>Prof. Abdul Nafey
SIS</i> | - | <i>Member</i> |
| 7. | <i>Mrs. Revathi Bedi,
Finance Officer,
Finance Branch, JNU</i> | - | <i>Member</i> |
| 8. | <i>Dr. A.K. Malik,
Joint Registrar,
(E-Governance Cell)
JNU</i> | - | <i>Member</i> |

17. Ld. Counsel for respondent no. 1 further submitted that the decision of the Selection Committee was unanimous. He submitted that holding a test to short list the candidates has been upheld by this Court in the case of ***Guru Gobind Singh University vide W.P.(C) No. 3473 of 2007***. In that case also the candidate who had obtained higher marks than the selected candidate did not make his grade in the interview and one below him was selected. The said selection was upheld by this Court.

18. It is submitted that all the selections were made by a Selection Committee on the basis of interview. He further submitted that the Supreme Court has also held that interview is the best way of selecting a candidate. Ld. Counsel has referred a case of ***K.H. Siraj v. High Court of Kerala (2006) 6 SCC 395*** wherein in Para 54 it has been held as under:-

“In our opinion the interview is the best mode of assessing the suitability of a candidate for particular position. While the written examination will testify the candidates academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for

discussion, ability to take decisions, qualities of leadership etc. are also essential for a judicial officer.”

19. Further submitted that again in Para 55 court has approved the following paragraph in case of ***Lila Dhar v. State of Rajasthan (1981) 4 SCC 159*** and observed as under:

“It is now well recognized that while a written examination assesses candidates knowledge and intellectual ability in interview test is valuable to assess a candidate’s overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate’s initiative, alertness, resourcefulness, dependableness, cooperativeness, effectiveness in meeting and dealing with others, adaptability, judgment, ability to take decision, ability to lead, intellectual and moral integrity”.

20. Further in Para 72-73, Hon’ble Supreme Court held as under:-

“The appellant-petitioner having participated in the interview in this back ground, it is not open to the appellant petitioner to turn round thereafter when they failed in interview and contend that the provision of a minimum mark for interview was not proper.

21. Ld. Counsel for the respondent no. 1 further submitted that in JNU and in other Universities selection for every post is being made by Selection Committee by interview only and no marks being given in interview.

22. Ld. Counsel has relied upon on the decision in case of ***Darpat Abasaheb Solunke v. Dr. B.S. Mahajan 1990 1 SCC 305*** wherein it is

held as under:

“It is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merit of the candidates. Whether the candidate is for a particular post or not has to be decided by the Selection Committee which has the expertise of on the subject. The court has no such expertise.”

23. On the issue raised by the petitioner that the selected candidate was a student of Dr. Rekha Mehrotra, Reader, Rajguru College of Applied Sciences for Women, Delhi University. It is not understood, how could a selected candidate be a student of a Womens' College. Therefore, the issue raised by the petitioner has no substance.

24. Ld. Counsel appearing on behalf of respondent no. 2 also supported the argument of the respondent no. 1 and submitted that the allegation of the petitioner has no substance that even prior to interview he heard that the respondent no. 2 was already selected as one of the interview members namely Dr. Rekha Mehrotra was his ex-teacher and she was in favour of the respondent no. 2. In fact, respondent no. 2 saw Dr. Rekha Mehrotra for the first time at the time of interview and she was never been his teacher. Record of the present matter shows that Dr. Rekha Mehrotra has been a teacher in the Raj Guru College of Women of Delhi University, therefore, instant petition is based on falsehood. Therefore, no relief can be given to the petitioner.

25. Ld. Counsel for the respondent no. 2 further submitted that petitioner was not any way ahead in the educational qualification. The

petitioner got 66.1% marks in B.Sc while the respondent no. 2 got 68.1% marks in Post Graduation. The petitioner got 64.9% marks in MCA, whereas respondent no. 2 got 81.6% marks in M.Sc (Computer Science). It clearly shows that respondent no. 2 hold better qualification and have more experience than the petitioner.

26. The written test wherein the petitioner secured marks and stood first was not the test for selection, however that test was arranged only to screen the candidates as the respondent no. 1 has received as many as 191 applications in total.

27. Ld. Counsel has relied upon a judgment of Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 853***, wherein their Lordships has clearly held that:

“if the case of the petitioner is based on falsehood, the same is to be thrown out at any stage of the proceedings”.

28. I heard ld. Counsel for the parties.

29. It is emerged from the submissions that in pursuance of the advertisement 191 applications were received by the respondent no. 1. It was not possible to interview so many candidates. Therefore for the purpose of shortlisted the candidates, respondent no. 1 appointed a Committee comprising of four persons to screen the applications. All the candidates who meet the minimum qualifications called for the test. Accordingly, Screening Committee shortlisted the candidates and recommended that 05 candidates from E-Governance (UR) and 02 candidates from SC category and 05 candidates from Finance Branch

did not meet the prescribed minimum qualifications.

30. The Committee further recommended that rest of the candidates be invited for Written Test and subsequently for interview conducted by two faculty members nominated by the Vice-Chancellor. Total 191 Candidates were invited for written test held on 06.12.2008. The said examination was objective type. The Selection Committee consisted of 08 members, out of which 04 members were outside the University including the Chancellor's nominee and the decision of the Committee was unanimous.

31. The allegations made by the petitioner have no base and has been proved false by the respondents. Therefore, he being a failure candidate in the process cannot interfere with the decision of the respondent no.1 as Law has been settled in the case of ***Y. Zheto Asumi & Ors. V. State of Nagaland and Ors.*** whereby the High Court of Guwahati while referring the case of ***Assam Animal Husbandary & Veterinary Service Association & Ors. v. State of Assam & Ors. 1999(2) GLJ 419*** wherein held as under:

“In the instant case, however, precisely what is objected to on behalf of the respondents is that the petitioner had participated in the interview and according to their own allegations they became aware of the alleged irregularities during the course of the selection proceedings itself. Therefore, immediately after the selection was over, it would have been proper that the petitioners had challenged the proceedings, rather to wait till result was declared and the petitioners came to know that they remained unsuccessful. It is not to be taken mechanically that since the petitioners participated in the interview that they may not be heard complaining about the same. But what is objectionable if

that they were keeping quiet after the alleged irregularities came to their knowledge till the result was out. Respondents would not be unjustified in pointing out that this period of waiting, for result to be declared, was only for the purpose of taking a chance and on being declared unsuccessful they turned round to challenge the proceedings in respect of which they did not raise objection before the result was declared.”

32. Law has also been settled in the case of ***Raj Kumar & Ors. v. Shakti Raj & Ors. AIR 1997 SC 2110*** whereby the Apex Court while referring the case of ***Madan Lal v. State of J & K : 1995 1 SCR 908*** wherein has held as under:-

“A candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection”.

33. In view of the above discussion and legal position, I find no merit in the petition.

34. The same is accordingly dismissed with no order as to cost.

C.M.No.3837/2009

In view of above order, instant application does not require further adjudication and stands disposed of.

SURESH KAIT, J

JULY 03, 2012

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