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

% *Judgment delivered on: 18th July, 2012*

+ **W.P.(C) 12643/2009**

RAHUL AHLAWAT

..... Petitioner

Through: Mr.M.K. Bhardwaj, Adv.

versus

ALLAHABAD BANK

..... Respondent

Through: Mr.Ashim Vaccher and Mr. Abhilash,
Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. In pursuance to Advertisement no. REC/01/2009-10 issued by the Respondent Bank, petitioner applied for the post of Probationary Officer (JMG) SC-1 in the Pay Scale of Rs.10,000-Rs.18,240/-.
2. There were total 700 posts for the same. Minimum educational qualification for the said post was Graduate in any discipline with minimum 55% marks in aggregate from a University recognized by Government of India.
3. The petitioner is graduated in Engineering (Electronics & Communication), 2008 from University of Delhi.
4. Undisputedly, online applications for the said post were invited and petitioner had applied for the same, as had all the educational qualifications required as on 01.12.2008.
5. He qualified the written test and was called for interview on 03.06.200. He submitted all the relevant documents relating to educational

qualification to the respondent at very that time.

6. In the month of June, 2009, respondent declared the final result of the aforesaid examination, however, the name of the petitioner was not included in the list of selected candidates for the post of Probationary Officer.

7. Thereafter, petitioner submitted an application under RTI on 07.07.2009 to know the details of the selected candidates. In the said application, it is specifically requested for furnishing the details of marks obtained by the last selected candidate and marks secured by him in interview as well as in the written test.

8. In response thereto, written and interview marks of last selected candidate in general category, who finally got selected was 192.86, whereas, the petitioner secured total marks of 223.

9. The case of the petitioner is that he became Graduate in the month of June, 2008, whereas the prescribed condition for the educational qualification was on or before 01.12.2008. He submitted all the mark sheets of all the years which is evident from the VIIIth Semester mark sheets dated 25.06.2008.

10. Mr. M.K. Bhardwaj, ld. counsel has submitted that petitioner has received his Degree in the year 2009, however, the University declared the result in June, 2008.

11. Ld. Counsel has fairly conceded that in communication dated 25.03.2011 issued by Delhi Technological University, Govt. of NCT of Delhi it is mentioned as under:-

“Further as per the result notification S.No. /NOT/2010/2630 dated 25.03.2011 that “in partial modification of consolidated result notification no. S. NO./AER/2009/115 dated 22.06.2009 it is notified that

this notification no. be read with the result (VIII Semester) notification S.NO. / AER/2008/112 dated 25.06.2008. And the consolidated result notification S.NO. /AER/2008/391 dated 08.10.2008 in respect of Mr. Rahul Ahlawat and the result will remain the same as notified on 22.06.2009.”

12. Ld. Counsel for the petitioner has clarified that the date of notification given 22.06.2009 itself proves wrong with the mark sheet of VIIIth Semester, which was issued in the month of June, 2008. However, the University has wrongly mentioned this date. Further Annexure CM-1 (Degree) also proves the above communication wrong because even the final Degree was issued on 01.03.2009.

13. Ld. Counsel has relied upon a case of ***Utkarsh Sharma v. UOI and Ors. W.P.(C) 7214/2010*** decided on 18.11.2010 by the Coordinate Bench of this Court, wherein it is held as under:

“The aforesaid arguments are the same as the arguments raised by the counsel for the respondents no. 1 & 2 on the last date of hearing and dealt with in the order dated 10th November 2010. This Court in Deepika Chaudhary v. University of Delhi 64 (1996) DLT 503 held that a student exercises no control over the declaration of result and when there is no fault attributable to the student, the provision has to be benevolently interpreted and reasonably administered and having regard to the welfare of the student. It was further held that the University cannot be permitted to follow a rigid approach by depriving the petitioner of her seat for the course to which the student has been admitted on merit. To the same effect is the judgment of the Apex Court in Shalini v. Kurushetra University (2002) 2 SCC 270 also holding that a student cannot be faulted for the delay in

declaration of result.”

14. On the other hand, Id. Counsel appearing on behalf of the respondent submitted that petitioner did not have the requisite qualification to be appointed to the post of Probationary officer. As per the requirement in the Advertisement, it has been clearly mentioned that person holding minimum educational qualification of Graduate in any discipline with minimum 55% marks for general candidates in aggregate as on 01.12.2008.

15. Admittedly, petitioner qualified the written examination, and appeared in interview on 03.06.2009 on the basis of his self-declaration in the online application form. However, the University issue Decree Certificate on 18.05.2009 after the date prescribed. Therefore, he was not rightly selected for the post mentioned above.

16. Id. Counsel has relied upon a case of ***UP Public Service Commission, Allahabad & ors. v. Alpana 1994 2 SCC 723***, wherein it is held as under:

“The Uttar Pradesh Public Service Commission issued an Advertisement No. A-1/E-2/88-89 inviting applications for appearing at a competitive examination called 'the U.P. Nyayik Seva (Munsif) Examination, 1988' for selection of candidates for appointment to the said post. The total number of vacancies available at that date was 50. The qualification for appearing at the examination was that the candidate must possess on the last date fixed for receipt of applications a degree of Bachelor of Laws of a University established by law in Uttar Pradesh or any other University of India recognised for this purpose by the Governor which entitles him to practice in courts of law or be an Advocate, Vakil or Pleader on the roll of or be entitled to

practice in the High Court of Judicature at Allahabad or Courts Subordinate thereto, etc. It was further required that the application shall be accompanied by an attested copy of High School and Intermediate Certificates, Bachelor Degree and Law Degree Examination Certificates and mark sheets of each examination. The last date for receipt of the applications was stated in para 2 of the advertisement to be August 20, 1988. On a plain reading of the advertisement it becomes clear that the candidate applying in pursuance of the advertisement had to possess a Degree of Bachelor of Laws on the last date fixed for receipt of applications, such date in the instant case being August 20, 1988. Not only that, but it was further provided that the applications shall be accompanied by an attested copy, inter alia of the Law Degree Examination Certificate and mark sheet of such examination. This requirement could never have been fulfilled by those who had not passed the examination by August 20, 1988. Admittedly, the respondent herein had appeared at the law degree examination, the result whereof had not been declared till August 20, 1988. As per the advertisement, her application was, therefore, liable to be rejected. It is an undisputed fact that she had applied in pursuance of the advertisement even though she had not passed the law degree examination till August 20, 1988. She had mentioned in the application that she had appeared for the law degree examination and was awaiting her result. In the meantime, she successfully cleared the law degree examination, the result whereof was declared some time thereafter in October 1988. Aware of this position, the Public Service Commission allowed her to appear at the examination held on 3rd, 4th and 5th May 1990 and on her successfully clearing the written examination she

expected a call for the interview. As she did not receive the call she made inquiries and learnt that Public Service Commission have taken the view that since she had not passed the law degree examination on or before August 20, 1988 she was not eligible to be selected for appointment to the post in question. Thereupon, she approached the High Court by way of a Writ Petition No. 18918 of 1991 which was allowed by the order dated July 12, 1991 whereby the Public Service Commission was directed to call her for interview to be held on 15th and 16th of July, 1991. The Court, however, stated that the Public Service Commission should withhold the result until further orders. Pursuant to the said order she was interviewed and the result was kept in abeyance. Thereafter, on March 17, 1993 the High Court finally disposed of the matter by directing the Public Service Commission to declare her result and if successful to forward her name to the State Government for appointment within a month from the date of presentation of the certified copy of the High Court order. A further direction was given that in the event there was no post available a supernumerary post should be created for her and appointment made thereon. It is this order of the High Court which is challenged in this appeal by special leave.

In the facts of the present case we fail to appreciate how the ratio of the said decision of this Court can be attracted. The facts of this case reveal that the respondent was not qualified to apply since the last date fixed for receipt of applications was August 20, 1988. No rule or practice is shown to have existed which permitted entertainment of her application. The Public Service Commission was, therefore, right in refusing to call her

for interview. The High Court in Writ Petition No. 1898 of 1991 mandated the Public Service Commission to interview her but directed to withhold the result until further orders. In obedience to the directive of the High Court the Public Service Commission interviewed her but her result was kept in abeyance. Thereafter, the High Court while disposing of the matter finally directed the Public Service Commission to declare her result and, if successful, to forward her name for appointment. The High Court even went to the length of ordering the creation of a supernumerary post to accommodate her. This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal.

17. He further relied upon a case of Apex Court in case of ***Haryana and Ors. v. Anurag Srivastava and Anr. 1998 8 SCC 399*** wherein it is held as under:-

“On the last date of receipt of applications, namely, 07.01.1981, respondent no. 2 did not possess a Master’s Degree in Modern Indian History. She did possess a Master’s Degree in History, but in Group ‘A’, i.e. Medieval India. The mark-sheet which was annexed by her showed that the four papers which she had appeared in were in the group “Medieval India”. The 2nd respondent herself has stated in her letter dated 03.07.1981, addressed to the Director, Haryana State Archives, Chandigarh, that she had passed MA Examination in History (1200 AD-1787 AD) from Kurushetra University in 1978. One paper was for the period 1627 AD-1761 AD. Apart from this, she had already appeared in MA Examination in Modern Indian History (1707 AD-1947 AD) for obtaining additional qualifications and the result was awaited.

She subsequently obtained an MA in History in Group ‘B’ “Modern Indian History” on 16.07.1981. The High Court has rightly held that on 07.01.1981, the last date for submitting the application, the 2nd respondent did not possess a Master’s Degree with Modern Indian History as her subject. She obtained this qualification on 16.07.1981 subsequent to her interview and selection.”

18. After hearing Id. Counsel for parties, it is clear that petitioner specifically mentioned in the online application that he is Graduate and secure more than 55% marks in the Degree on or before December, 2008 as was the condition prescribed in the Advertisement.

19. His being Graduate, also proved from the mark sheets of all the years, which he submitted at the time of interview. However, he received the

provisional and final Degree subsequently. Therefore, the judgments cited above by the Id. Counsel for the respondent has no relevance because in the cases mentioned above, result of the petitioner declared subsequently from the cut-off date, however, the case of the petitioner is that result was declared in June, 2008. He submitted Mark-sheet of all the semesters at the time of interview as required. The last selected candidate secured 192.86 Marks, whereas, the petitioner secured total Marks of 223.

20. Petitioner filed the instant petition way back in 2009, however, the same could not be decided for one reason or the another. Therefore, deciding the instant petition after 3 years does not take the right of the petitioner.

21. Therefore, respondents are directed to appoint him as a Probationary Officer with seniority benefits. However, he shall not be entitled for the back wages.

22. I here make it clear that the direction passed by this Court shall be complied with by the respondent bank within four weeks from the date of receipt of this order.

23. Instant petition stands disposed of in the above terms.

SURESH KAIT, J

JULY 18, 2012

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