

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.01.2012

+ **W.P.(C) 140/2012**

PRABIN KESRI AND ORS

... Petitioners

versus

ARCHEOLOGICAL SURVEY OF INDIA AND ORS ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr R. Balasubramaniam

For the Respondent No.1 : Mrs Rekha Palli with Mr Himanshu Bajaj

For the Respondent No.2 : Mr Naresh Kaushik with Ms Aditi Gupta

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

BADAR DURREZ AHMED, J (ORAL)

1. The present writ petition is concerned with the appointments to the 24 posts of 'Deputy Superintending Archaeologist' at Archaeological Survey of India, which is to be done on the basis of selection. An advertisement was taken out on 10.04.2010, inviting applications for the same. The essential qualifications for the same, *inter alia*, included:-

“Qualifications : Essential : Educational : i) Master's degree in Indian History / Archaeology / Sanskrit / Persian / Prakrit / Pali / Arabic / Anthropology with knowledge of Stone age Archaeology / Geology with knowledge of Pleistocene Geology of a recognized University or equivalent. ii) Diploma in Archaeology from the

Archaeological Survey of India or equivalent OR Two years research experience in Ancient or Medieval Indian History, Archaeology, Epigraphy, Museology, Architecture or any study connected with the art and Architecture of India with specialisation in one or more of the following fields. a) Pre-history and Proto-History; b) Art and Architecture of Northern India (Early period) ; c) Medieval Monuments of Northern India and Deccan; and d) Art and Architecture of South India with special preference to Temples.”

By a corrigendum dated 13.02.2011, it was notified that the Union Public Service Commission (UPSC) had decided to conduct a recruitment test for filling up the said posts on 06.03.2011 at various centres. The said corrigendum indicated the scheme and syllabus for the recruitment test. In paragraph (c) of the said scheme, it was specifically indicated that the medium of the test would be English only.

2. The petitioners approached the Central Administrative Tribunal, Principal Bench, New Delhi, by virtue of an OA No. 913/2011, on two grounds. It was contended by them that the recruitment test ought to have been in Hindi and not in English on account of the fact that one of the essential qualifications specified in the initial advertisement, was a Master’s Degree in languages such as, Sanskrit, Persian, Prakrit, Pali, Arabic etc. The argument advanced by the learned counsel for the petitioners was that those candidates, who had post graduate degrees in languages other than English, would be put to a disadvantage by the stipulation that the medium of the test would be English only. It was

suggested that the medium of the test ought to have been Hindi because that is the official language of the Government of India.

3. The second point urged on behalf of the petitioners was based on information which they had received on an RTI enquiry. According to that, 1077 persons had applied pursuant to the said advertisement dated 10.04.2010. Out of that, 598 persons were eligible as on 29.04.2010, which was the last date for receipt of applications and, consequently, 479 were ineligible. The plea taken by the petitioners was that the eligibility should have been looked at prior to the persons being allowed to sit in the written examination and not afterwards.

4. The reply of the respondents before the Tribunal on both grounds, were as follows. Insofar as the question of medium of the test being English is concerned, it was contended on behalf of the respondents that the written test was not an essay type test, but was based on multiple choice questions and, therefore, nobody would be put to a disadvantage. It was contended by them that the test was language neutral and that anybody possessing a working knowledge of English, would be capable of undergoing the same and it is not in dispute that any of the persons did not have a working knowledge of English. It has also been contended before us that in any event, all the petitioners are working in the Archaeological Survey of India and they have been forwarding reports and ACR

forms etc. in English and it is in this backdrop that it cannot be stated that the petitioners do not have a working knowledge of English.

5. Insofar as the second point urged on behalf of the petitioners was concerned, the respondents had taken the plea that the written test was only a screening test and that the eligibility condition was to be gone into after the screening test and it is only those persons, who were found to be eligible, who would be called for the interview. In other words, the stand of the respondents was that no ineligible person would be called for the interview.

6. Considering the arguments advanced by the learned counsel for the parties, the Tribunal came to the following conclusion:-

“8. As far as medium of test being English only, it has already been stated by respondent no.1 that the written test is language neutral and that the candidate has not to write anything in any language but has to simply indicate his option.

9. In view of the above, there seems to be no discrimination to anybody who has not studied English language as no medium is being used in the written test. We also notice that all the applicants in the present OA have appeared in the written test and are now asking for it to be cancelled. In our considered opinion, in view of explanation given by respondent no.1, no case is made out as no illegality is being committed or sought to be committed by respondent no.1. A perusal of the procedure being followed by the respondents also shows no illegality or any attempt to favour or harm any candidate.

10. In view of above, we see no reason to interfere in the matter of selection for the post of DSA. But before parting with the OA, we would like to give direction to respondent no.1 to ensure that only eligible candidates are considered at the time of interview. Once that is done, no grievance survives for the applicants. OA is accordingly disposed of with the above directions. No costs.”

7. Even before us, the learned counsel for the petitioners reiterated the contentions which had been put forth before the Tribunal. Insofar as the plea with regard to the medium of the test being English is concerned, we do not see any logic for the same. The Master’s Degree in languages includes not only Sanskrit, but also other languages such as Arabic, Persian and Pali. In that case, if the reasoning of the petitioners was to be adopted, in any event, even if Hindi is taken as the medium of the test, instead of English, the candidates, who had obtained Master’s Degree in Arabic, Persian and Pali, would be at a disadvantage. Therefore, we do not see any logic in the arguments advanced by the learned counsel for the petitioners with regard to the medium of the test being English only. In any event, as observed by the Tribunal, the test was on the basis of multiple choice questions and was not based on essay type answers. Anybody having a working knowledge of English could have taken the test. The petitioners are employees in the Archaeological Survey of India and it cannot be denied by them that they have working knowledge of English. We do not find

any reason to interfere with the decision of the Tribunal on this aspect of the matter.

8. Insofar as the second point is concerned, the respondents have clarified that the question of eligibility was to be considered after the screening test, which was in the form of a written test. It is only after the persons qualified in the screening test that the condition of eligibility would be considered. The affidavit filed on behalf of the UPSC before the Tribunal specifically indicates the above position as under:-

“It is submitted that a candidate who has been issued Admission Certificate on the basis of the prima facie scrutiny of the data filled by the candidate in the Part — I of the Application Form will not be straightway called for interview on qualifying the Recruitment Test. The Part-II of the Application Form alongwith documents in support of fulfilment of the eligibility criteria will be scrutinised to ensure that the candidates who will be declared qualified on the basis of the Recruitment Test possess the eligibility criteria in respect of Essential Qualifications [EQ-I and EQ-II] etc. It is submitted that the procedure adopted in the Commission for further scrutiny of the Part-II of the Application Form as well as documents in support of the Essential Qualifications etc. of the written test qualified candidates would ensure that only eligible candidates are called for interview.”

9. Even the list of persons, who are to be called for the interview, which is placed at page 83 (Annexure P-5), is a provisional list. In that list, the Commission has listed 77 roll numbers for interview “provisionally”. According

to the learned counsel for the petitioners, this list also comprises of certain persons who are ineligible. However, the learned counsel for the respondents have assured this Court as they had assured the Tribunal that no ineligible person would, in fact, be called for the interview. We, therefore, clarify that in case there are any ineligible persons mentioned in the list of 77 persons indicated in the said provisional list, they shall not be called for interview. Their place would be given to the next eligible persons in order of merit. After that exercise is done, the respondent No. 2 shall publish the final list of persons, who are to be called for interview, on its website.

With these directions, this writ petition is disposed of.

BADAR DURREZ AHMED, J

V.K. JAIN, J

JANUARY 20, 2012
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