

\$~17

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

%

Judgment delivered on: 01.04.2014

+

W.P.(C) 1387/2012

PRATAP SINGH BIST

..... Petitioner

versus

UNIVERSITY OF DELHI AND ANR

..... Respondents

Advocates who appeared in this case:

For the petitioner: Mr. Pankaj Sinha, Ms. Nupur Grover and Ms. Sharika Surendran,
Advocates

For the respondents: Mr. Sourabh Banerjee, Adv. for-1
Mr. Ravinder Kumar, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The short question which arises for consideration in the writ petition is, whether relaxation in the essential eligibility criteria for appointment to the post of Assistant Director, Directorate Hindi Medium Implementation, could have been granted in favour of respondent no.2 when the petitioner, who met the essential eligibility criteria, was available for appointment.

2. This matter was heard at length on 27.03.2014. The matter could not, however, be concluded on account of the fact that there was little clarity in the affidavit filed on behalf of respondent no.1 as to whether the respondent no.2's case for appointment was considered by the Selection Committee under the first limb of the essential qualifications prescribed (to which

reference will be made in the later part of my judgment), i.e., the requirement of having three years' teaching experience, or under the second limb of the eligibility criteria prescribed, which required him to have research work experience.

2.1 Respondent no.1 has, accordingly, filed an additional affidavit dated 31.03.2014. Before I deal with the additional affidavit, let me begin by extracting the order passed by me, on 27.03.2014, only to avoid repetition.

“....1. This is a writ petition in which the following prayers are sought by the petitioner :-

(i). that the appointment of respondent no.2 as Assistant Director, Directorate of Hindi Medium Implementation (in short DHMI) be set aside;

(ii). issue a mandamus to the respondents (which should read respondent no.1 i.e., University of Delhi) to appoint the petitioner to the post of Assistant Director, DHMI.

2. The controversy in the present case falls within a narrow compass.

3. The counsels are agreed that essentially the controversy veers around the issue as to whether respondent no.2, who did not have the requisite experience, of three years as stipulated in the advertisement in issue i.e., advertisement dated 31.05.2011, could have been appointed to the aforementioned post by taking recourse to clause 4 of the very same advertisement, or in the alternative, respondent no. 2's appointment could be sustained on the ground that he had requisite research experience.

4. It may, therefore, be relevant to sketch out the following broad facts, which are important for adjudication of the present writ petition:-

4.1 Respondent no.1 took out an advertisement for two posts of Assistant Director, DHMI vide advertisement dated 13.04.2010. Out of the two, one post fell in the unreserved

category, while the other was reserved for visually handicapped persons.

4.2 I am told that certain directions were issued by this court, whereby the post reserved for a visually handicapped candidate was re-advertised vide the advertisement in issue i.e., advertisement dated 31.05.2011.

4.3 As per the stand taken by respondent no.1, in its counter affidavit in respect of advertisement dated 13.04.2010, twenty six (26) applications were received, out of which twenty three (23) applications, related to unreserved category, while three (3) were relatable to visually handicapped category.

4.4 Against this advertisement, the Screening Committee shortlisted seven (7) candidates, out of which six (6) related to the unreserved category, while one (1) related to visually handicapped category.

4.5 In respect of advertisement dated 31.05.2011, only three (3) applications were received. The Screening Committee thus, shortlisted two candidates for interview. It is not in dispute that the two candidates shortlisted against the advertisement dated 31.05.2011 were; the petitioner and respondent no.2.

4.6 I may also note that respondent no.1, in its counter affidavit has taken the stand that in so far as advertisement dated 13.04.2010 was concerned, one Ms. Afsana Bee was also called for an interview by the Screening Committee (sic) after recommendations had been made for relaxation of essential qualification qua her, subject to approval of the Vice Chancellor.

4.7 Notably, in the case of respondent no.2 as well, this power of relaxation was exercised by the Selection Committee; albeit once again, subject to approval of the Vice Chancellor.

4.8 As per the stand of respondent no.1, as reflected in its counter affidavit, four (4) candidates were called for

interview for the post of Assistant Director (DHMI), in the visually handicapped category.

4.9 It is the stand of respondent no.1 that, only three (3) candidates appeared in the interview. The four (4) candidates, who were shortlisted for interview vis-a-vis the aforementioned two advertisements were : Ms. Afsana Bee; Dr. Om Mishra; Mr. Pratap Singh Bist (petitioner); and Mr. Shambhu Sharan Mishra (Respondent no.2)

4.10 While, Ms. Afsana Bee and Mr. Om Mishra, were called for interview against advertisement dated 13.04.2010; the petitioner and respondent no.2 were called for interview against advertisement dated 31.05.2011. I am informed by the learned counsel for respondent no.1 that Ms. Afsana Bee, did not appear for the interview, and that, only Dr. Om Mishra appeared in the interview against advertisement dated 13.04.2010. The present case, however, concerns the petitioner and respondent no.2.

4.11 The advertisement, admittedly, amongst others, provided for the following essential qualifications for being appointed to the post of Assistant Director, DHMI :-

“..At least three years’ teaching experience or research work relating to the field of promotion of Hindi language / high standard translation / book publishing work in Hindi...”

4.12 The Selection Committee, however, after examining the comparative merit and upon exercising its power of relaxation, subject, however to, the approval of the Vice-Chancellor, recommended respondent no.2 for appointment to the post of Assistant Director, DHMI. I am informed that respondent no.2 has been appointed to said post pursuant to his selection.

5. The petitioner, being aggrieved, filed the captioned petition, in which notice was issued on 07.03.2012. A perusal of the record would show that there was no interim order granted, in favour of the petitioner.

6. Arguments on behalf of the petitioner have been advanced by Mr. Sinha, while on behalf of respondent no.1,

arguments have been advanced by Mr. Banerjee. Respondent no.2, is represented by Mr. Ravinder Kumar.

7. Mr. Sinha, the learned counsel for the petitioner submits that the appointment is contrary to the essential eligibility criteria stipulated in the advertisement. It is his submission that respondent no.2 does not have the requisite three year's experience in teaching or in research work relating to the field of promotion of Hindi language / high standard translation / book publishing work in Hindi. It is Mr. Sinha's contention that while there is a power to relax the experience, the said power can only be exercised in terms of the Government instructions issued in that behalf. For this purpose, Mr. Sinha has relied upon the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, office memorandum dated 29.12.2005.

7.1 It is Mr. Sinha's contention that relaxation if, at all, could have been given in terms of clause 22 of the said office memorandum. It is his submission that the said clause confers the power of relaxation only if, sufficient number of persons with disabilities are not available on the basis of general standard to fill all the vacancies reserved for them. Mr. Sinha says that since, the petitioner, who had the requisite qualifications, was available no power of relaxation could have been exercised in favour of respondent no.2.

7.2 It is Mr. Sinha's contention that not only exercise of power is illegal but has also created discrimination inter-se two differently abled persons.

7.3 It is also Mr. Sinha's contention that, as a matter of fact, respondent no.2 does not have the requisite qualification leave alone the experience. For this purpose, he has drawn my attention to Annexure P-3 appended to the rejoinder filed on behalf of the petitioner. It is contended by the learned counsel based on the document, that the experience that the petitioner has, is not relevant to the experience referred to in the advertisement; which requires respondent no.2 to have experience as a Teacher or in

research work relating to field of promotion of Hindi language or having carried out a high standard translation or publishing a book in Hindi.

7.4 It is also Mr. Sinha's contention; albeit in alternative that respondent no.1 has not obtained the requisite approval of the Vice Chancellor, while exercising the power of relaxation. Mr. Sinha has drawn my attention to the relevant paragraphs in its rejoinder.

8. Mr. Banerjee, on the other hand, says that Selection Committee has carried out an assessment of comparative merit and, on such assessment found respondent no.2, who had a better academic record suitable for the post. It is Mr. Banerjee's contention that power of relaxation is provided in the advertisement itself, and that, the Selection Committee having exercised the power of relaxation, no fault can be found with the selection of respondent no.2.

8.1 To be noted Mr. Banerjee was asked by me, as to whether approval of the Vice Chancellor had been obtained. The learned counsel says that he would get requisite instructions in the matter. According to me, respondent no.1 should have appended with its counter affidavit, the relevant document indicating the approval of the Vice Chancellor as, it was the stand of respondent no.1 in its counter affidavit, that appointment was made subject to the approval of the Vice Chancellor.

8.2 The petitioner, in the rejoinder, only raised an objection qua the fact that no such approval is available; perhaps for the reason no document in that behalf was filed. Therefore, in my opinion, respondent no.1 should have filed the relevant documents, reflecting the approval of the Vice Chancellor.

9. In so far as counsel for respondent no.2 is concerned, he largely adopts the arguments and the stand taken by respondent no.1 in the counter affidavit. Mr. Kumar, the learned counsel for respondent no.2, however, re-emphasises that since, the power of relaxation has been exercised in favour of respondent no.2, this court could not interdict the appointment of the said respondent.

9.1 Mr. Kumar, being asked as to whether respondent no.2 had filed any other document to show that the said respondent had relevant research work experience – he was unable to refer to any document on record which demonstrate acquisition of relevant research work.

10. I have heard the learned counsel for the parties and perused the record. What clearly emerges, is that, for this court to sustain the appointment of respondent no.2 that he would have to show that he had the relevant research work experience.

10.1 The reason for this is that admittedly respondent no.2 does not have requisite three (3) years teaching experience. The power of relaxation referred to in clause 4 of advertisement dated 31.05.2011 clearly stated that it was to be exercised in consonance with Government instructions. The aforesaid is established upon a bare reading of clause 4 which is extracted hereinbelow for the sake of convenience :-

“..Experience can be relaxed for deserving PWD candidates as per Govt. of India instructions..”

10.2 Therefore when clause 4 of the advertisement in issue is read with clause 22 of the OM dated 29.12.2005, it logically follows that power of relaxation can only be exercised if based on general standards, suitable candidates are not available in reserved category. The petitioner, who is a visually handicapped, had the requisite teaching experience of three years.

10.3 The argument sought to be advanced that the petitioner taught students of grade 10 while respondent no.2 taught students of higher grade and thus had better comparative merit would not cut much ice as no such qualification is provided in the eligibility criteria stipulated in the advertisement. In order to appreciate this line of reasoning one would have to peruse clause 22 of the OM dated 29.12.2005; which is accordingly extracted for convenience :-

“..22. RELAXATION OF STANDARD OF SUITABILITY : If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to fitness of these candidates for appointment to the post / posts in question...”

10.4 Having regard to the above, respondent no.2 cannot be given benefit of the first limb of eligibility criteria, which required three years minimum experience in teaching. The power of relaxation could not have been exercised in his favour, as the petitioner with requisite teaching experience was available for selection.

11. Which brings me to the question whether respondent no.2 had the relevant research work experience?

11.1 There is nothing on record to show that respondent no.2 has any such research work experience. Neither respondent no.1 nor respondent no.2 has filed any material in that behalf.

11.2 On the contrary, the petitioner has filed a document as Annexure P-3, which shows that respondent no.2, if at all, was engaged in preparing children, who were, admitted to National Association for Blind for integration in Main stream Education. It is not disputed before me that respondent no.2 has been engaged in this activity as a resource teacher, that too for a period of two years.

11.3 There is, however, one difficulty, in proceeding further, which is that, learned counsel for respondent no.1 has not been able to shed any light as to whether respondent no.2 was considered by the Selection Committee under the first limb of the essential qualification i.e., having three (3) years teaching experience or the second limb which required

research work experience. The counter affidavit on behalf of respondent no.1 filed obfuscates this point.

11.3 In these circumstances, respondent no.1 is directed to file an affidavit within two days, clearly delineating this aspect. The affidavit will indicate in no uncertain terms, as to under which limb, respondent no.2's case was considered by the Selection Committee. The affidavit will also state as to whether approval of the Vice Chancellor was obtained, and if so, whether, the relevant documents are available on record, to demonstrate the same.

12. Respondent no.1, will bring the relevant record to court, on the next date of hearing.

13. List on 01.04.2014.....”

3. A perusal of the additional affidavit filed on behalf of respondent no.1 would show that it has now taken a categorical stand that respondent no.2 was considered under the first limb of the essential eligibility criteria prescribed for appointment to the post of Asstt. Director, DHMI. Mr Banerjee, learned counsel for respondent no.1, has specifically affirmed this position. He has thus stated before me that the Selection Committee, in recommending the appointment of respondent no.2 to the aforementioned post had taken into account the fact that respondent no.3 had worked as a resource teacher in the National Association for Blind for a period of two years commencing from July, 2000 and ending on 17.11.2002. Mr Banerjee thus reiterated that since the eligibility criteria required a minimum teaching experience of three years, the Selection Committee recommended relaxation in favour of the petitioner in so far as the period of experience was concerned, for which necessary approval of the Vice Chancellor was taken. For this purpose, he relied upon the office note marked as Annexure R-5, appended to the additional affidavit, filed on behalf of respondent no.1.

3.1 As regards the aspect, as to whether the Selection Committee could have exercised the power of relaxation in favour of respondent no.2, when petitioner, who was otherwise eligible, was available for appointment, has been already dealt with, by me, in paragraphs 10 to 10.4 of my order dated 27.03.2014. In view of what has been recorded there, it is my considered opinion that, however, harsh it may seem, the power of relaxation could not have been exercised in favour of respondent no.2 in view of the provisions of clause 22 of OM dated 29.12.2005 read with clause 4 of the advertisement dated 31.05.2011. Clause 4 of the advertisement itself provided that power of relaxation could be exercised only in consonance with Government instructions. It is not disputed before me by the respondents that the only Government instruction on the point is one dated 29.12.2005.

3.2 Since respondent no.1 has now claimed that respondent no.2 was not considered under the second limb of the eligibility criteria, which required him to have research experience, no further discussion is required in respect of the same.

3.3 Faced with this situation, Mr Banerjee, learned counsel for respondent no.1, came up with a completely new case which is that the selection committee had exercised the power of relaxation both in favour of the petitioner as well as respondent no.2, and since they were similarly placed, in a sense the provisions of OM dated 29.12.2005 were fulfilled. The relaxation, which according to Mr Banerjee had been accorded in favour of the petitioner, was with regard to the minimum percentage of marks prescribed qua educational qualifications. Mr Banerjee said that the petitioner had acquired a degree in M.A. (History) with 52% marks. Since, the petitioner, belonged to the PWD category, he was granted a remission of

3% as for a similarly placed candidate in the general category would have had secured a minimum of 55% marks.

3.4 Crucially, neither was this stand taken in the counter affidavit filed, in the first instance, on behalf of respondent no.1 nor, was any such argument advanced by Mr Banerjee, on 27.03.2014. This averment has been slipped in, for the first time, in the additional affidavit, when a direction was issued by me for filing an affidavit qua two specific issues. First, with regard to which limb of the eligibility criteria respondent no.2 was considered. Second, as to whether approval of the Vice Chancellor had been taken with regard to the recommendation made for relaxation in the condition of eligibility provided in the advertisement. The respondents cannot be permitted to bring about a material change in their defence.

3.5 The above apart, even otherwise, according to me, this argument would have to fail for two reasons. First, that in so far as the minimum percentage of marks, which a candidate was required to obtain, were set out in the advertisement; albeit category wise. While, candidates falling in the general category were required to have a master's degree in Hindi or English or Sanskrit or any of the Social Science subjects with minimum of 55% marks or equivalent grade B in the seven point scale with letter grade O, A, B, C, D, E & F; the candidates falling in SC or ST or PWD category were required to have a minimum of 50% marks as, the bandwidth of relaxation qua marks was set at 5%. The relaxation having already been factored-in, the petitioner, who had secured 52% marks in M.A. (History), was eligible for consideration. The Selection Committee, therefore, was not required to make any recommendation for consideration.

3.6 A perusal of the office note produced by respondent no.1 clearly bears out this point. The relevant portion of the office note (annexure R-5) is extracted hereinbelow:

“....The Screening Committee has given recommendations in the following manner:

1. The Committee has recommended the following candidates to be called for interview by relaxing the essential qualification as mentioned at No.2 in the Advt. No. 225/2011 dated 31.05.2011 which is quoted below:

Appl. No.	Name of candidate	Category
1	Sh. Pratap Singh Bist	VH
2	Sh. Shambhu Sharan Mishra	VH

Essential Qualification recommended for relaxation by the Screening Committee subject to approval of the Vice-Chancellor:

“At least three years’ teaching experience or research work relating to the field of promotion of Hindi language/ High Standard Translation/ Book Publishing work in Hindi”.

As mentioned in the above said advertisement, the experience can be relaxed to deserving PWD candidates as per the Government of India instructions....”

3.7 A reading of the extracts make it obvious that no recommendation was made by the Selection Committee for seeking relaxation in the percentage of the marks.

3.8 Therefore, this submission of respondent no.1 being untenable is rejected.

4. By the very same measure, the argument of Mr Sinha, learned counsel for the petitioner, that there was no approval of the Vice Chancellor with respect to relaxation, on facts, does not appear to be correct. I may only note that in view of the fact that the office note appended to the additional affidavit, which is marked as Annexure R-5, is reflective of the fact that due approval of the Vice Chancellor was obtained with regard to the

recommendation made by the selection committee for relaxation in the period of experience, the objection in that behalf raised by Mr Sinha, will have to be rejected.

5. However, having regard to my discussion above, the necessary consequences that would follow, would be that, the relaxation accorded to respondent no.2 with regard to minimum teaching experience, which was stipulated as three years, was wrongly accorded, being contrary to OM dated 29.12.2005.

6. Accordingly, the result would be that the appointment of respondent no.2 would have to be quashed. It is ordered accordingly. The petitioner, being otherwise eligible and, the only other candidate in the fray, shall stand appointed to the post of Assistant Director, DHMI, subject to fulfilment of necessary formalities. The writ petition is, accordingly, disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 31, 2014

kk