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

Date of decision: 21st March, 2014

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W.P.(C) 1869/2014

PREETESH RAMAN SINGH Petitioner
Through Mr. Rakesh Tikku, Sr. Advocate
with Mr. Vivek Ojha, Advocate.

versus

DELHI HIGH COURT THROUGH REGISTRAR GENERAL
..... Respondent
Through Ms. Rekha Palli and Ms. Punam
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SURESH KAIT

SANJIV KHANNA, J.

Rule 14 of Delhi Judicial Service Rules, 1970 reads as

under:-

“14. A candidate shall be eligible to appear at the examination, if he is:-

- a) a citizen of India;
- b) a person practicing as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961; and
- c) not more than **32 years of age on the 1st day of January following the date of commencement of the examination.”

2. Learned counsel for the petitioner submits that the petitioner, who is pursuing LLB course from the National Law University, Jodhpur and is presently in the 10th semester (final

year) of the BA LLB (Hons.), should be permitted and allowed to appear in Delhi Judicial Service Examination, 2014, notified on 18th February, 2014. He submits that the requirements stipulated in clause 'b' of Rule 14 should be read along with the requirements stipulated in clause 'c' of Rule 14. Accordingly, the petitioner should be allowed and permitted to appear in the said examination as he would have qualified to be admitted as an Advocate under the Advocates Act, 1961 on or before the first day of January following the date of commencement of the examination. It is further submitted that in all probability the petitioner would be eligible for enrolling and admitted as an Advocate as on 1st June, 2014, i.e. the date on which the first or preliminary examination is to be held.

3. Learned counsel for the petitioner has relied upon an interim order passed by the High Court of Andhra Pradesh in W.P. 5845/2014 titled ***Gummalla Bhasker Reddy & Others Vs. High Court of Andhra Pradesh and Another*** in which the respondents therein were directed to receive applications from candidates without insisting for bachelor's degree in law as prescribed in the notification.

4. We have quoted above Rule 14 of the applicable rules.

The advertisement for Delhi Judicial Examination, 2014 was

published on 18th February, 2014 and the relevant portion relating to eligibility norms/requirements reads as under:-

“.....A candidate shall be eligible to appear in the examination if he / she is (a) a citizen of India; (b) a person practising as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961; and (c) not more than 32 years of age as on 1st January, 2015 i.e. on the 1st day of January following the date of commencement of the examination. In the case of candidates belonging to Scheduled Castes / Tribes, the upper age limit is relaxable by 5 years. The upper age limit is also relaxable maximum by 5 years in the case of Ex-Servicemen including Emergency Commissioned Officers and Short Service Commissioned Officers who have rendered at least 5 years military service and have been released on completion of assignment (including those whose assignment is due to be completed within 6 months) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, or on account of physical disability attributable to military service or on invalidment.”

5. The question raised in the present writ petition is whether a candidate should meet the eligibility norms/requirements prescribed in clause ‘b’ to Rule 14 at the time of submission of application or at the time when the first or preliminary examination is to be held. The second submission is that the eligibility date for the purpose of clause ‘b’ should be the same as stipulated in clause ‘c’ of Rule 14.

6. On the first aspect, we have decision of the Supreme Court in *Rekha Chaturvedi Vs. University of Rajasthan and*

Others, 1993 Supp (3) SCC 168, wherein similar contention with regard to cut off date to determine eligibility criteria, with reference to the date of selection, date of making of application etc. was examined and it was held as under:-

“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are

liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 4 SLR 235 : (1990) 13 ATC 708] and *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 4 SLR 237 : (1990) 14 ATC 766].”

(emphasis supplied)

7. In ***Rakesh Kumar Sharma Vs. Govt. Of NCT of Delhi & Ors.***,

2013 (10) SCALE 42 it has been observed:-

6. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

7. In *U.P. Public Service Commission, U.P., Allahabad and Anr. v. Alpana*, (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

8. A three Judge Bench of this Court, in *Dr. M. V. Nair v. Union of India and Ors.*, (1993) 2 SCC 429, held as under:

It is well settled that suitability and eligibility have to be considered *with reference to the last date for receiving the applications*, unless, of course, the

notification calling for applications itself specifies such a date.

(Emphasis added)

9. In Smt. HarpalKaurChahal **v.** Director, Punjab Instructions, Punjab and Anr., 1995 (Suppl) 4 SCC 706, this Court held:

It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, *who possessed of all the qualifications as on that date, alone are eligible to apply* for and to be considered for recruitment according to Rules.

(Emphasis added).

10. x x x x x x

11. x x x x x x

12. x x x x x x

13. In Bhupinderpal Singh **v.** State of Punjab AIR 2000 SC 2011, this Court placing reliance on various earlier judgments of this Court held:

The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied *by reference to the last date appointed by which the applications have to be received by the competent authority*. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.

(Emphasis added)

14. This Court lately in State of Gujarat **v.** Arvind **Kumar** T. Tiwari AIR 2012 SC 3281 held:

A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that *his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any*

stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (Sec Prit Singh v. S.K. Mangal 1993 Supp (1) SCC 714 and Pramod Kumar v. U.P. Secondary Education Services Commission (2008) 7 SCC 153.)
(Emphasis added)

8. After referring to these judgments, the Supreme Court in Rakesh Kumar Sharma (supra) expounded:-

“17. It also needs to be noted that like the present Appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the Appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance. The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed.”

9. In the light of the aforesaid judgments, we are not inclined to accept the submission made. We are also inclined to give any interim

direction as was given in the case of ***Gummalla Bhasker Reddy & Others (supra)***. At this stage, it would be appropriate here to refer to the decision dated 15th January, 2013 of Punjab and Haryana High Court at Chandigarh in ***Payel Mehta Vs. State of Haryana and Others***. The applicable eligibility norm in the said case was:-

"9. Essential Qualifications:-

No person shall be eligible to be appointed a Civil Judge (Junior Division) unless he holds a degree of Bachelor of Laws from a University established by the law and approved/recognized by the Bar Council of India.

The expression "Degree of Bachelor of Laws" means a degree entitling a candidate to be enrolled as an Advocate under the Advocates Act, 1961, and the rules made thereunder

The candidate should hold a degree of Bachelor of Laws on the last date of receipt of application form i.e. 17.01.2013."

10. The Division Bench referred to an earlier decision in CWP 10105 of 2010, ***Pawandeep Singh Dhaliwal Vs. The State of Punjab and Others*** decided on 28th July, 2010, wherein it was held:-

"Having heard the learned counsel for the parties and perusing the various paper books, we are of the view that there is no merit in these petitions. The fixation of cut off date is necessarily a policy matter which in the present case has been fixed by the Cadre Controlling Authority under Article 235 of the Constitution by the Punjab and Haryana High Court. The fixation of cut off date brings certainty and avoids any futile exercise - a factor which appears to have weighed with the Punjab and Haryana High Court as

well as the Commission, who are jointly making recruitment to PCS (Judicial Branch). The last date of receipt application has always been considered as the cut off date of determining the eligibility as has been held by Hon'ble the Supreme court in the cases of Rekha Chaturvedi (supra) and Ashok Kumar Sonkar (supra). In the absence of any cut off date an atmosphere of uncertainty would prevail and the employer would be flooded with the applications of ineligible candidates. Moreover, some breathing time is given to the High Court and the Commission who are to process the huge number of applications for determining the eligibility of such candidates. In the present case 17.6.2010 is the cut off date and for the preliminary test is slated for 8.8.2010. The Commission might have to deal with thousands of applications and leaving the determination of eligibility to any later date may not be conducive in the absence of any policy decision to the contrary. In that regard, reliance may be placed on para 20 of the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sonkar (supra), which reads thus:-

"20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail,, the employer would be flooded with applications of ineligible candidates. A cut off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."

We are further of the view that prescription of any cut off date would attract similar argument as has been rightly contended because if a cut off date of 11.10.2010 as suggested on behalf of the petitioners is kept when the main examination is to commence or the cut off date of commencement of viva voce of 27.12.2010 is fixed then there might be candidates who may argue that they have taken re-appear examination in one/two papers of LL.B. (Final Year) and they would be eligible either on the date of commencement of the main examination or on the date of commencement of viva voce on 11.10.2010 and 27.12.2010 respectively. It is because of the aforesaid reason that Hon'ble the

Supreme Court in various judgments has held that even in the absence of any cut off date announced by the appointing authority or by recruiting agency like the Commission, the last date of receipt of applications form would be deemed to be the cut off date for determining the eligibility of a candidate. It is not disputed that on 17.6.2010 the petitioners did not have the professional degree of LL.B. to their credit which may entitle them to be enrolled as an Advocate under the Advocates Act, 1961. Therefore, the writ petitions are liable to be dismissed."

(emphasis supplied)

11. Thus, the first contention of the petitioner has no merit. After the petitioner becomes eligible, he will have opportunity and right to appear in the selection examination. Presently, he does not meet the eligibility criteria, as on the last date for submission of the application, i.e. 24th March, 2014.

12. The second contention is also devoid of merit. Clause 'b' of Rule 14 refers to the educational qualification and the requirement that a candidate should be a person practicing as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961. This, as noticed above, should be satisfied on the last date of receipt/submission of the application. If the criteria or eligibility fixed in Rule 14 (b) is fulfilled after the said last date fixed for submission/receipt of applications, then eligibility requirement of clause 'b' would remain unsatisfied. Clause 'c' to Rule 14 on the other hand relates to the age. It has altogether a different purpose and

object. While fixing the maximum age of 32 years in clause 'c' to Rule 14, it has been prescribed that a candidate should not be more than 32 years of age on the first day of January following the date of commencement of the examination. The two clauses operate in their own field. We do not think that norms fixed or the cut off date fixed in clause 'c' can be read into and treated as part and parcel of clause 'b' of Rule 14.

13. In view of the aforesaid position, we do not find any merit in the present writ petition. We do not think that the petitioner, who is not eligible and would not be eligible on the last date of submission of application, can be permitted and allowed to sit in the examination.

14. The writ petition is accordingly dismissed. Dasti.

SANJIV KHANNA, J.

SURESH KAIT, J.

MARCH 21, 2014

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