

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

% Judgment delivered on: 10.03.2014

+ W.P.(C) 2656/2013 and CM No.5029/2013 (stay)

ABHISHEK YADAV

..... PETITIONER

VERSUS

**ORIENTAL INSURANCE COMPANY LTD
AND ANR**

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. M.K. Bhardwaj and Mr. Anuj Kumar,
Advocates

For the Respondents: Mr. Rahul Ranjan Verma and Mr. Sandip
Chaudhary, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. In the present writ petition, following substantive prayers have been sought for :-

“(i). to declare the action of respondents in not treating the petitioner as eligible for appointment to the post of Administrative Officer (Scale-1), Generalist, Group I in OBC category as illegal, arbitrary and unjustified;

(ii). To issue writ of mandamus to the respondents for giving appointment to the petitioner to the post of Administrative Officer (Scale-1), Generalist, Group ‘I’ with all consequential benefits including arrears of pay..”

2. The writ petition came to be filed on account of the fact that the petitioner had been denied appointment to the post of Administrative Officer (Scale-1), Generalist, in Group 'I'. The respondents herein had issued an advertisement sometime in January, 2012 for inviting applications in respect of 477 vacancies in the post of an Administrative Officer, Scale-I. Since vacancies arose in various streams, such as : Marketing, Accounts, Legal, Engineering, Librarian and Generalist, each applicant was permitted to apply according to his or her qualification.

2.1 As indicated hereinabove, the petitioner applied for the post of Administrative Officer, Scale-1 in Group 'I', which dealt with Generalist. This application was preferred by the petitioner in February, 2012. The petitioner was issued an admit card and, accordingly, took the written examination on 08.04.2012.

2.2 Upon the petitioner being declared successful in the written examination, he was called for an interview, in respect of which, a call letter dated 27.07.2012 was issued. There is no dispute that the petitioner appeared in the interview alongwith all original documents to establish his eligibility for the aforementioned post. The interview, undisputedly, was held on 21.11.2012.

2.3 It may be noted that the petitioner had applied in the category of OBC in respect of which 141 vacancies were earmarked out of total vacancies numbering 477.

2.4 The petitioner, however, was not intimated thereafter, as to whether or not he had qualified for appointment to the aforementioned post.

2.5 Since, the petitioner, was expecting to be appointed, he filed an application under the Right to Information Act, 2005 (in short RTI Act), with the respondents, on 19.12.2012.

2.6 Resultantly, on 18.01.2013, it was communicated to the petitioner that the last candidate in the OBC category under the Generalist stream had obtained 108 marks as against 128 marks, which the petitioner had obtained.

2.7 The petitioner has averred that, on having obtained a response from the respondents through RTI route, he made enquiries with the respondents whereupon, he was verbally informed that he was not selected for the aforementioned posts since, he did not possess the requisite qualification, which was, a Masters degree with minimum 55% marks.

2.8 The petitioner, thereafter, did the next best thing, which is, he approached the Association of Indian Universities (AIU) to obtain an answer to his query, as to whether the Post Graduate Diploma in Management (PGDM); a qualification which had been obtained by him from Jagan Institute of Management Studies (in short the Institute) was equivalent to a MBA degree conferred by an Indian University.

2.9 The AIU vide letter dated 01.02.2013 confirmed that the two years full time Post Graduate Diploma in Management pursued by the petitioner from the said Institute had been equated by it, with a MBA degree of an Indian University.

2.10 The said communication also indicated that the equivalence was granted to the said Institute in the year 2004 by an AIU which, had continued till that date i.e., the date when the communication was issued.

2.11 Since, the petitioner, did not obtained a suitable reply, he filed yet another RTI application dated 04.02.2013, raising further queries, which generally veered around answers to queries as to why the petitioner had not been selected.

2.12 Vide a response dated 05.03.2013, the respondents conveyed to the petitioner that he had scored more marks and, that, it was possible, despite a candidate securing more marks than the cut off marks stipulated, his

candidature could be rejected in case the concerned candidate fails to meet either the prescribed eligibility criteria or achieve medical fitness or does not produce authentic testimonials, etc.

2.13 The petitioner has averred that having received the aforementioned response, since he had obtained a letter of equivalence from AIU, he approached the officers of the respondents, so that his grievance, could be addressed.

2.14 In view of the fact that the petitioner's grievance was not addressed, the petitioner approached this court by way of the captioned writ petition.

3. Notice in this petition was issued on 26.04.2013. Since then, pleadings in the matter have been completed. The learned counsels have also filed their written synopsis.

4. I have heard the learned counsel for the petitioner as well as the respondents. On behalf of the petitioner, Mr. Bhardwaj has submitted that the only issue, which arises in the petition is, with regard to the equivalence of the qualification, which, has been obtained by the petitioner, which is, PGDM with a degree in MBA, being the eligibility condition stipulated in the advertisement issued by the respondents. The attendant condition that a minimum 55% marks ought to have been secured, is an aspect which is not in issue, since petitioner meets that criteria.

4.1 Mr. Bhardwaj has contended based on the letter of the AIU dated 01.02.2013 and, the certificate issued by the said Institute that the two degrees are equivalent; therefore, there was no good reason for the respondents to deny appointment to the petitioner to the post of Administrative Officer, Scale -1.

4.2 Mr. Bhardwaj further submitted that it is also not in dispute that, in the OBC category, the last candidate, who has secured an appointment, has obtained marks, less than, that of the petitioner. In support of his

submission, the learned counsel for the petitioner has relied upon two Division Bench judgments : the first judgment is dated : **26.11.2012** and is passed in a batch of writ petitions, in which the lead petition is numbered as : **WP(C) 6100/2012**, and is titled as : **Ms. Nisha Vs. Union of India and Ors.** The second judgment is dated : **23.05.2013**; is passed in **WP (C) 2916/2013** and, is titled as : **Khushbu Sharma Vs. Union of India and Ors.**

5. Mr. Rahul Ranjan Verma, who appears for the respondents has opposed the writ petition. It is his case that the petitioner has indulged in misrepresentation. This argument is sought to be supported by reference to the petitioner's on-line application, in which, the petitioner has indicated that he had a Masters' degree with specialization in Marketing. It is also argued by the learned counsel for the respondents that PGDM qualification obtained by the petitioner is not the relevant qualification as stipulated in the advertisement as, the advertisement itself indicated that only those Graduation and Post Graduation degrees would be considered, which were obtained from a recognized University.

5.1 Based on the aforesaid, the learned counsel for the respondents submits that the respondents as empowered under clause 9 of the advertisement, could have rejected the petitioner's candidature at any stage. It was the submission of the learned counsel for the respondents that the mis-representation perpetuated by the petitioner was discovered at the stage of interview when, his testimonials were checked by the interviewers, appointed by the respondents.

5.2 In these circumstances, the learned counsel for the respondents sought dismissal of the writ petition.

6. I have heard the learned counsels for the parties and perused the record. Upon perusal of the record, what is clearly emerges is as follows :-

- (i). the petitioner had applied against the advertisement issued by the respondents in January, 2012;
- (ii). the petitioner, who had applied under the OBC category, in the Generalist stream, for appointment to the post of Administrative Officer Scale-1, had obtained 128 marks, whereas the last candidate, who admittedly has secured appointment to the said post has, secured 108 marks;
- (iii). the certificate issued by the said Institute clearly bears out that the PGDM awarded by it, has the approval of the All India Council for Technical Education (AICTE), Ministry of Human Resource Development, Government of India;
- (iv). the said certificate clearly bears out the fact that PGDM awarded by the said Institute, has been accorded MBA equivalence by the AIU and, is accredited, by the National Board of Accreditation, Delhi; and
- (v). lastly, AIU has issued a letter dated 01.02.2013 which, as indicated hereinabove, clearly states that the PGDM course conducted by the said Institute is equated with MBA course of an Indian University, and that, such equivalence accorded by AIU, has continued since 2004.

7. Having regard to the above, in my view, the argument of the respondents that the petitioner misrepresented the fact that he had obtained a Masters degree in MBA is not sustainable, for the following reasons :-

7.1. First, the application which the petitioner was required to file was an on-line application, which did not leave scope for the petitioner to enter the fact that PGDM had been awarded to him by the said Institute. The petitioner did the next best thing, which was to indicate that he had a Masters degree and, I would assume that this fact was mentioned, based on his understanding, that the PGDM awarded to him is equivalent to MBA.

7.2 Second, the petitioner could not have possibly stated so to mislead respondent no.1 as he knew he was required to carry his testimonials in

original at the time of interview; which he admittedly carried to the interview in the instant case.

8. The other argument advanced by the learned counsel for the respondents, which is that, the said Institute was not a recognized University, is also flawed, for two reasons :-

(i). First, this is not a defence, which is taken in the pleadings. The learned counsel for the respondents, appears to have taken this defence, for the first time, at the bar. The only defence, which the respondents have taken in their counter affidavit is, that the petitioner had misrepresented that the degree which he had acquired was a Masters degree.

(ii). Apart from the above, there is yet another reason why this defence cannot be entertained as, entertaining such a defence, would actually amount to begging the question. The issue really is : as to whether PGDM awarded to the petitioner is equivalent to a MBA degree conferred by a recognized University. The learned counsels for both parties are ad idem that a MBA degree is issued / awarded by Universities. The entire purpose of the equivalence exercise carried out by AIU was : as to whether PDGM awarded by the said Institute was equivalent to a MBA conferred by Indian Universities. Vide letter dated 01.02.2013, this issue has been set at rest by AIU, which is admittedly, an expert appointed for this purpose. The fact that AIU is an expert is borne out from the documents appended by the petitioner alongwith the rejoinder, which is marked as Annexure RJ-1. AIU has been entrusted, inter alia, with the authority to examine the equivalence of degrees issued by various Universities / Institutions in India and abroad. The relevant extracts to this effect as contained in the said document is, noted hereinbelow :-

“..AIU is the only recognized body in India for granting academic equivalence of degrees / diplomas not only within the country but also to other similar bodies in foreign countries..”

9. In these circumstances, the only conclusion, which I can arrive at, is, that the PGDM awarded to the petitioner by the said Institute is equivalent to a MBA degree awarded by an Indian University. There being no dispute about the fact that the petitioner had obtained more marks in the OBC category than, the last candidate, who was appointed to the aforementioned post in the Generalist stream; the petitioner's writ petition would have to be allowed. It is ordered accordingly.

9.1 I am informed by the learned counsel for the respondents that though posts in the relevant year i.e., 2011-2012 have been filled, the exercise for appointing Administrative Officers Scale-1 for the year 2012-2013 is on and, that, it has reached the interview stage. In view of the fact that the present writ petition has been allowed, the respondents will make available one post for the petitioner. No further orders are called for.

9.2 Needless to say, the needful will be done at the earliest.

10. With the aforesaid directions in place, the writ petition and the pending application for stay are disposed of.

RAJIV SHAKDHER, J

MARCH 10, 2014

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