

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

+ **W.P.(C) 4733/2013**

Reserved on: 24.07.2014
Date of decision: 28.08.2014

IN THE MATTER OF:

HITESH BABBAR

..... Petitioner

Through: Mr. Sameer Jain and
Mr. Siddharth Jain, Advocates

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Rajat Arora, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner seeks directions to the respondent/Punjab National Bank (hereinafter referred to as the '**Bank**') for his appointment to the post of Manager (Credit).

2. The facts of the case lie in a narrow compass. On 1.8.2012, the respondent/Bank had issued an advertisement inviting online applications for ten posts, including that of Manager (Credit). As per the aforesaid advertisement, the applicants were to register online between 1.8.2012 to 17.8.2012. The tentative date of the written examination was fixed as 14.10.2012 and the written test was to be followed by a personal interview.

The educational qualification prescribed for the post of Manager (Credit) was as follows :-

“Any of the following :-

- a) CA/ICWA
OR
- b) MBA/PGDM with specialization in Finance only with minimum of 75% marks in aggregate and consistent 60% or above marks from Sr. Secondary onwards.

The MBA/PDGM course should be :-

- From the University recognized by Govt. of India/AICTE approved.
- Regular and not from Distance Education Mode.
- With single specialization.”

3. It is an undisputed position that the petitioner had qualified in the written examination and was called by the respondent/Bank for a personal interview on 5.12.2012. However, the respondent/Bank did not declare the petitioner as one of the successful candidates. Adopting the RTI route, the petitioner sought information from the respondent/Bank as to the total number of marks scored by him in the written test, the marks obtained in the personal interview and the reason for his disqualification.

4. Vide letter dated 28.5.2013, the respondent/Bank conveyed the marks that were scored by the petitioner in the written test and the personal interview, and stated that the reason for turning down his candidature for the post of Manager (Credit) was that he was ineligible as he possessed a

Post Graduate Diploma in Management (PGDM) with dual specialization in Finance and Marketing. In other words, as against the educational qualification prescribed for a candidate applying for the post of Manager (Credit), i.e., "MBA/PGDM with specialization in Finance only", the petitioner's specialization was in "Finance and Marketing". Aggrieved by the refusal on the part of the respondent/Bank to appoint him to the post of Manager (Credit), the present petition has been filed.

5. Mr. Sameer Jain, learned counsel for the petitioner argued that refusal on the part of the respondent/Bank to appoint the petitioner to the post of Manager (Credit) is on account of gross non-application of mind inasmuch as the Bank had failed to take into consideration the fact that when undertaking the course of Post Graduate Diploma in Management, the petitioner had studied more subjects of Finance than a person holding a single specialization in Finance had studied. For purposes of comparison, he had referred to the petitioner's mark sheet along with the Curriculum of the subjects studied by him in the course of PGDM (Annexure-P-5 (colly)), vis-à-vis the sample marksheet of a student by the name of Atishay Jain, having a single specialization in Finance from the very same Institute/University. He also pointed out that despite the fact that a candidate by the name of Ms. Meenu Gajrani, who had undertaken PGDM course from Punjab Technical University, Jalandhar had a dual specialization in Finance and Marketing

just as the petitioner herein, she had been selected to the post of Manager (Credit). It was thus contended that the respondent/Bank had willfully discriminated against the petitioner and on 21.8.2013, a false statement had been made in Court to the effect that no candidate having specialization in both, Finance and Marketing, was selected, which is incorrect.

6. It was further argued by learned counsel for the petitioner that if the respondent/Bank was of the opinion that the petitioner was ineligible on the basis of his educational qualifications, then he ought not to have been permitted to sit for the written test and subsequently, participate in the personal interview, as it had raised false hopes. It was lastly asserted that the petitioner possesses dual qualification in Finance and Marketing and the respondent/Bank could not have rejected his candidature merely because of his over qualification. In support of the said submission, learned counsel had relied on the decision of the High Court of Karnataka in the case of Prabhu vs. Life Insurance Corporation of India, reported as **ILR 1995 Kar. 155**.

7. On the other hand, Mr. Rajat Arora, learned counsel for the respondent/Bank opposed the present petition and sought to justify the decision of the Bank to turn down the candidature of the petitioner for the post of Manager (Credit) on the ground that he did not possess the requisite educational qualification in terms of the advertisement dated 1.8.2012. He

stated that as per the documents submitted by the petitioner, in the year 2010-12, he had undertaken a PGDM course at the Institute of Management Technology, Nagpur, where his specialization was in Marketing and Finance and while completing the said course, he had spent time in studying both the subjects, i.e., Finance and Marketing and not Finance alone. Thus half of his time was spent on studying the subject of Marketing and the remaining time in studying Finance, whereas a candidate, who has a specialization in Finance only, would have studied the subject of Finance exclusively during the said period. He referred to the mark-sheet of one Atishay Jain enclosed with the writ petition as a sample marksheet, to contend that the said candidate had a total of 120 credits in the subject of Finance, vis-à-vis the petitioner herein who has 120 credits in the subjects of Finance and Marketing and this itself would bear a testimony to his submission that the former had more specialization in subjects relating to Finance, which was the qualification prescribed by the respondent/Bank for the subject post.

8. It was next submitted on behalf of the respondent/Bank that the specialization certificate issued by the concerned University/Institute, that mentions the field/specialization of a candidate, is a document that is considered as authentic and is accepted by the respondent/Bank and on its own, the Bank does not scrutinize the marksheet of each candidate to verify as to whether his/her specialization is in a particular field or not. Nor does

the respondent/Bank question the certificate issued by the concerned institute.

9. As for the reference made by the petitioner in his additional affidavit dated 20.1.2014, to Ms. Meenu Gajrani, a candidate selected by the respondent/Bank for appointment to the post of Manager (Credit), learned counsel for the respondent/Bank pointed out that the said candidate had completed her MBA with specialization in Finance and the said fact is duly reflected from the certificate issued in her favour by the Punjab Technical University, Jalandhar, which was duly accepted by the Bank. He argued that the petitioner himself claims that in the last Trimesters of the PGDM course, he had the option to choose fifteen specialization courses and when exercising the said option, he had opted for ten courses in finance and five courses in marketing, which would reinforce the respondent's stand that the petitioner's specialization was not in Finance exclusively as claimed by him.

10. Great stress was laid by the learned counsel for the respondent/Bank on the words used in the column of "educational qualification" in the advertisement issued for inviting applications for the post of Manager(Credit), where the requirement stated was of a candidate having undergone "MBA/PGDM course with specialization in Finance only". He stated that when the Bank had specifically mentioned that the educational qualification required for the post of Manager (Credit) was "CA/ICWA or

MBA/PGDM with specialization in Finance only”, the petitioner cannot claim that he is “overqualified” for the job and instead, it is a case where he does not meet the criteria laid down in the advertisement and therefore, his candidature for the post in question was rightly rejected by the Bank.

11. In support of his submission that the Court cannot overlook the requirements specified by the selecting authority and that such a matter ought to be left to the employer, who would be the best judge to examine the eligibility of a person to be appointed to a specialized post, learned counsel for the respondent/Bank had cited a decision of the Supreme Court in the case of Rajya Sabha Secretariat & Ors. Vs. Subhash Baloda & Ors., reported as **2013 LAB. I.C. 2612 (SC)**.

12. The Court has perused the records, heard learned counsels for the parties and carefully considered the arguments advanced by them. The limited issue raised in the present case is that when the educational qualification prescribed by the selecting authority for the post of Manager (Credit) is “MBA/PGDM with specialization in Finance only”, whether a dual specialization in Finance and Marketing, as possessed by the petitioner herein, can be treated as a specialization in Finance for claiming entitlement to be appointed to the subject post advertized by the respondent/Bank.

13. The ancillary issue is as to whether in exercise of its powers of judicial review, the Court should accept the certification of the petitioner as awarded

by the concerned Institute/University or go behind the same to scrutinize the details of the courses opted by him in all the six terms, for arriving at a conclusion as to whether his qualification would meet the norms for the subject post, as prescribed by the respondent/Bank.

14. It is an undisputed position that in the Institute of Management Technology, Nagpur, from where the petitioner had studied, out of six Trimesters in the MBA/PGDM course, the first three trimesters have a common course content and it is only in the last three Trimesters that a student is given an option to choose fifteen specialization courses. As per the Curriculum of the subject course, in Term-IV, a student is required to choose a total of seven elective courses from the options available, as per the area of his specialization; in Term-V, a student is required to choose a total of five elective courses from the options available, as per the area of his specialization and in the last and final semester, i.e., in Term-VI, a total of three elective courses are required to be chosen from the list, as per specialization. Under the head of "Specialization Courses", the Curriculum mentions that a student is required to specialize in any of the areas mentioned under Terms IV, V and VI and he needs to take at least five full credit courses in the respective chosen areas.

15. Learned counsel for the petitioner had also referred to the petitioner's marksheets a perusal whereof reveals that in Term-IV, out of eight courses,

he had opted for five courses in Finance, two in Management and one in Corporate Governance, in Term-V, out of seven courses, he had elected to undergo four courses in Finance, two in Management and one in Corporate Governance and in Term-VI, out of three courses, he had selected one course in Finance, one in Management and one in Corporate Governance. Thus, out of fifteen specialized courses (Term-VI=7, Term-V=5 and Term-VI=3), the petitioner had opted for ten courses in Finance and five in Marketing.

16. When the curriculum of the subject course is examined closely, it transpires that in Term-IV, where a student had an option of choosing seven elective courses from the subject of Finance, the petitioner had chosen five courses in Finance; in Term-V, out of a total of five elective courses offered in Finance, the petitioner had elected four courses in Finance and in Term-VI, where a student could have opted for three elective courses in Finance, the petitioner had opted for only one course in Finance. In other words, when there were options available to the petitioner in Terms-IV, V and VI to select fifteen courses in Finance, he had opted to select ten courses in Finance and the remaining in the other subject specializations. Based on the specializations opted for by the petitioner, the Institute had awarded him dual specialization in Finance and Marketing. In direct contrast to the above, the mark-sheet of Atishay Jain, who had undergone PGDMA from the very

same Institute, reveals that in Terms-IV, V and VI, the said student had opted for eight courses in Finance, three in Operation and Management and four in Marketing and yet the Institute had ranked his specialization as Finance.

17. It has been consistently held by the Supreme Court and different High Courts that it is the employer, who is entitled to specify the educational qualifications or the qualifying standards for appointment or recruitment to be made by it and the discretion exercised by the employer in stipulating such norms and standards cannot be assailed. In the case of J. Ranga Swamy vs. Government of Andhra Pradesh and Ors. reported as **(1990) 1 SCC 288**, the question that arose for consideration before the Supreme Court was with regard to appointment to the post of Professor in Radiological Physics. The appellant before the Supreme Court possessed a Diploma in Radiological Physics from Bhabha Atomic Research Centre and claimed that his was the better qualification than that of Doctorate in Nuclear Physics, which was prescribed as the qualification for the said post by the appointing authority. The Supreme Court had repelled the aforesaid contention of the appellant and held that it is not for the Court to consider the relevance of qualifications prescribed for various posts or to assess comparative merits of such a doctorate and the BARC Diploma held by the appellant, for deciding or directing as to what should be the qualifications to be prescribed for the

subject post. Rather, it was for the concerned authority to consider and take a final decision in the matter. Resultantly, the claim of the appellant therein was negated on the ground that he did not possess the requisite qualifications.

18. In the case of Govt. of Orissa vs. Hanichal Roy and Ors. reported as **(1998) 6 SCC 626**, the Recruitment Rules in question empowered the State Government to relax the provisions of the said Rules. Instead of directing the State Government to consider the matter of relaxation in terms of the powers vested in it, the Orissa Administrative Tribunal had proceeded to relax the provisions of law. While examining the decision of the Tribunal, the Supreme Court held that the question of relaxation of the provisions of law did not fall within the domain of the Tribunal and it was the State Government, which was the competent authority to consider such a relaxation. As a result, the order of the Tribunal was set aside and the State Government was directed to consider the question of relaxation.

19. Thus, it would be seen that the settled legal position is that when the qualifications are prescribed by the employer or the concerned Recruitment Rules provide for a requisite qualification and a question arises as to whether any other qualification is equivalent to the qualification prescribed or not, then such a question has to be decided by the competent authority and the

Court cannot amend/modify the rules or the prescribed qualification for the simple reason that the power of judicial review in such matters is very limited.

20. In the present case, learned counsel for the petitioner had referred to the Curriculum of the subject course and the petitioner's mark-sheet and insisted that the subject specialization of Finance and Marketing as was certified by the Institute, where he had undertaken PGDM course should be recognized as equivalent to specialization in Finance. While advancing the aforesaid arguments, learned counsel has overlooked a vital point which is that showing equivalence by way of comparison is not enough. What is of relevance, is being recognized as equivalent. In the case of Director of AIIMS vs. Nikhil Tandon reported as **(1996) 7 SCC 741**, the Supreme Court had emphasized that recognition of equivalence has to be by a general order/proceeding published for the information of all concerned and it could not be a matter to be decided in a given case, specifically for the purpose of the said case. On the same analogy, simply because the petitioner herein contends that he is a meritorious student and holds a double specialization in Finance and Marketing, would not be sufficient for the Court to overlook the certificate issued by the Institute, where he had undertaken the subject course. The said certificate specifies that the specialization undertaken by the petitioner was in the subjects of "Finance and Marketing" and not

“Finance exclusively”, which happens to be the prescribed educational qualification for the post of Manager (Credit).

21. The Court finds merit in the submission made by the counsel for the respondent/Bank that the Bank does not undertake the process of scrutinizing the mark-sheet of each and every candidate for verifying his specialization in a particular field and instead, unqualifiedly accepts the specialization certificate issued by the concerned University/Institute. In the opinion of this Court, any other method adopted by the respondent/Bank to satisfy itself with regard to the prescribed educational qualification of a candidate would have given rise to illegalities as in such an eventuality, it would be left to the subjective satisfaction of the respondent/Bank to interpret the mark-sheet of each candidate or to compare the same with the mark-sheet of other candidates, which would have its own perils and pitfalls.

22. In the opinion of this Court, the judgment in the case of Prabhu (supra) relied upon by the learned counsel for the petitioner to urge that the petitioner's over qualification cannot disentitle him for appointment to the subject post, would not be of any assistance for the reason that in the aforesaid case, the Court was examining a situation where if the applicant is over qualified for the post for which he applies, would the employing agency be justified in rejecting the said application on the ground that the prescribed qualifications for the post were lower than those that the

applicant possessed. Unlike the facts of the aforesaid case, where the respondent/employer claimed that the petitioner therein was over qualified for the post of Sub-Staff, in the present case, it cannot be urged that the petitioner is over qualified for the subject post. Rather, it is a case of non-fulfillment of the prescribed qualifications. Here, the prescribed qualification for the post of Manager (Credit) was "MBA/PGDM with specialization in Finance only", whereas the petitioner herein holds dual specialization in Finance and Marketing, which was not in conformity with the terms of the advertisement. Therefore, the rejection of the petitioner's candidature was not on account of his being over qualified, but because he did not possess a specialization in Finance only.

23. Moreover, the petitioner has not been able to demonstrate that there was any departure from the requirements advertised. The respondent/Bank had adopted a uniform procedure for recruiting all the candidates. Reference made by the learned counsel for the petitioner to the appointment of Ms. Meenu Gajrani to the post of Manager (Credit) is misplaced for the reason that the certification issued by the Punjab Technical University, Jalandhar, from where the aforesaid candidate had undertaken the course of PGDM, clearly mentions that her specialization was in the subject relating to Finance, which was duly accepted by the respondent/Bank just as it had accepted the certificate issued in the case of the petitioner herein. It is

settled law that when a uniform process has been adopted in respect of all the candidates and based thereon, selections have been made, it is not appropriate for the Court, in exercise of its powers of judicial review, to examine the matter for further details by comparing equivalence as that would tantamount to the Court imposing its own interpretation of the requirements of the selection process on the respondent/employer, which is impermissible. As was observed by the Supreme Court in the case of Subhash Baloda (supra), it is not the job of the Court to substitute what it thinks to be appropriate for that which the selecting authority has decided as desirable and while taking care of the rights of the candidates, the Court cannot lose sight of the requirements specified by the selecting authority.

24. The contention of the learned counsel for the petitioner that if the respondent/Bank was of the opinion that the petitioner was ineligible to apply on the basis of his educational qualifications, then he ought not to have been permitted to sit for the written test, much less participate in the interview, is found to be untenable. The advertisement inserted by the respondent/Bank for inviting online applications for ten posts including that of Manager (Credit) reflects that the candidates were required to submit their online forms for registration between 01.08.2012 to 17.08.2012; the tentative date of the written examination was 14.10.2012 and upon the candidates clearing the written examination, were they to be called for the

interview. It was only if a candidate was called for the interview, was he required to submit his mark-sheet and the provisional certificate/degree issued from the concerned University. At the stage of submitting the online application for registration, the respondent/Bank could not have had the opportunity to scrutinize the certificates/degrees issued in favour of the candidates. The stage for examining the said documents would arise only at the time when the candidate would be called for the interview. Thus, it cannot be urged that the petitioner was put to any disadvantage merely because he was permitted to sit for the written test and was subsequently called for the interview.

25. Another aspect that this Court must be cognizant of is that if any relief is extended to the petitioner herein, then it would cause injustice to several other faceless candidates, who are not before the Court and who did not submit their applications for being appointed to the post of Manager (Credit) on the *bonafide* belief that they did not possess the prescribed educational qualifications of MBA/PDGM with specialization in Finance only. They would thus be deprived of a chance of selection and appointment if the Court chooses to interpret the educational qualification differently for the petitioner alone. Merely because the petitioner herein has acquired dual specialization in Finance and Marketing in the PGDM course would therefore not be enough to hold that he qualifies as per requirement advertised by the selecting

authority, i.e., the respondent/ Bank. Nor would sympathy be a determinative factor or a source of guidance for interpreting the law. As was observed by the Supreme Court in the case of HUDA vs. Roochira Ceramics, reported **(1996) 6 SCC 584**, personal justice is not a ground to give relief under Article 226 of the Constitution of India and in the absence of any procedural irregularity, the Court must abstain from exercising its powers of judicial review. Admittedly, the petitioner does not possess a certification from the Institute, where he has undergone the course of PGDM, for categorizing his specialization as one in "Finance only" and the respondent/Bank did not specify specialization in Finance and Marketing for the subject post. On the prescribed qualifications as they stand, the petitioner cannot be held to be eligible for appointment to the subject post and cannot legitimately complain against his non-selection.

26. In view of the forgoing discussions, this Court is of the opinion that when it comes to examining as to whether for the subject post, the source of recruitment should be from the candidates with the prescribed qualification of CA/ICWA or MBA/PGDM with specialization in Finance only, it being a matter of recruitment policy, the same lies exclusively in the domain of the Selecting Agency. It is not for this Court to assess the comparative merits of the PDGM course with specialization in Finance vis-à-vis the specialization in Finance and Marketing as possessed by the petitioner, or to consider the

relevance of the qualifications prescribed by the respondent/Bank for the subject post to arrive at a different conclusion.

27. As a result, the present petition fails and the same is dismissed, while leaving the parties to bear their own costs.

AUGUST 28 , 2014
sk/rkb

(HIMA KOHLI)
JUDGE