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

Date of Decision:- 31.10.2022

+ W.P.(C) 12516/2022
GEETA SHARMA

..... Petitioner

Through: Mr.Tanmay Mehta, Mr.Joby P. Verghese, Mr.Upmanyu Sharma and Mr.Shahid Akhtar, Advs.

versus

PUBLIC ENTERPRISES SELECTION BOARD & ANR.

..... Respondents

Through: Mr. Anil Soni, CGSC and Ms.Manisha Agrawal Narain, CGSC with Mr.Sandeep Singh Somaria, Ms.Rakshita Goyal, Ms.Mona Dureja, Advs. for R-1 & 3 along with Mr.Ajit Kumar, US, PESB Mr.Digvijay Rai & Mr.Archit Mishra, Advs. for R-2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who is working as Director (Finance) with M/s HLL Lifecare Limited, a Public Sector Undertaking (PSU), has approached this Court *inter alia* seeking quashing of the list of shortlisted candidates issued by the respondent no.1 for the selection of Member (Finance) in the respondent no.2 organisation/Airports Authority of India (AAI). The petitioner also seeks a consequential direction to the respondent no.1 to re-

issue the list of shortlisted candidates in accordance with the Public Enterprises Selection Board (“PESB”), so as to include her name.

2. It is the petitioner’s case that, despite fulfilling the necessary eligibility criteria for the post of Director (Finance) SAIL, as per the advertisement issued by the respondent no.1 on 05.02.2021, she has not been shortlisted for interview for the appointment to the aforesaid post, only on the ground that she is not a Chartered Accountant, but a Cost Accountant, even though, the said qualification falls within the parameters prescribed in the advertisement.

3. Before dealing with the rival submissions of the parties, the brief factual matrix as emerging from the record may be noted hereinbelow.

4. The petitioner is working as a Director (Finance) with M/s HLL Lifecare Limited, a Schedule-B Public Sector Undertaking (PSU), drawing a payscale of Rs 160000-290000 (pre-revised Rs.65,000/- to Rs.75,000/-), w.e.f. 20.08.2018, when she joined the said organisation after serving for a long number of years in Steel Authority of India (SAIL). The petitioner is a qualified Cost Accountant, and holds a PhD degree as well.

5. The respondent no.1 is the Selection Board, responsible for making Board Level appointments in Central Public Sector Enterprises (“CPSE”). The respondent no.2 is a ‘Miniratna’ (Category-1) CPSE under the administrative jurisdiction of the Ministry of Civil Aviation, primarily responsible for the development, expansion and modernisation of airports in India.

6. On 05.02.2021, the respondent no.1 issued an advertisement for selection to the post of Director (Finance), SAIL. The petitioner, being desirous of selection to the said post, submitted her application on

10.04.2021 for consideration of the same. On 17.11.2021, when the list of candidates shortlisted for the interview was released by the respondent no.1, the petitioner did not find her name therein.

7. Being aggrieved thereby, she preferred an OA No. 2556/2021 before the Central Administrative Tribunal (“CAT”). By taking into consideration the petitioner’s plea that the shortlisting was done in violation of the laid down PESB guidelines as her seniority, payscale and experience were ignored by respondent no.1 while preparing the list of shortlisted candidates, the learned Tribunal, vide its order dated 17.11.2021, while issuing notice in the OA, directed that any selection to the post of Director (Finance) at the respondent no.1, would be subject to the outcome of the OA. The said OA is still pending adjudication before the learned Tribunal.

8. In the meanwhile, the respondent no.1, on 17.01.2022, issued an advertisement inviting applications for selection to the post of Member (Finance) in the respondent no.2, who was to be in overall charge of the financial operation of the organisation, and was also to be responsible for formulating policies and strategies for the growth of the organisation. The advertisement further stipulated that the applicant for the said post should be a full-time functional Director in the Board of a CPSE, or an employee of the Central Government, including the Armed Forces of the Union and All India Services, with a further qualification that the applicant should be a Chartered Accountant or a Cost Accountant, or should have been pursuing full time MBA/PGDM course with specialization in finance. In the advertisement it was also specified that preference would be given to Chartered Accountants. The petitioner, who fulfilled the necessary eligibility criteria, applied for the post on 24.03.2022. When the list of eight shortlisted

candidates for interview was released in/or around 22.07.2022, the petitioner realised that she had been excluded, even though, she was drawing a higher pay scale than all other selected candidates. Being aggrieved, the petitioner made a representation to the said respondent on 21.08.2022, which representation did not elicit any response till date, compelling her to approach this Court.

9. On 30.08.2022, when the present petition was taken for preliminary consideration, this Court, by taking into account the petitioner's grievance that officers junior to her in the same organisation had been shortlisted by excluding her, had, while issuing notice, restrained the respondents from finalising the result of the interview. Consequently, as on date, the impugned list of shortlisted candidates has not attained finality, as the selection process is still underway.

10. In support of the petition, Mr. Tanmay Mehta, learned counsel for the petitioner, at the outset, submits that the action of the respondent no.1 in not including the name of the petitioner in the list of shortlisted candidates for the post of Member (Finance) is wholly without any basis, as the same is contrary to the provisions of the advertisement issued by the said respondent on 17.01.2022. He submits that, although, Clause 3(1) of the advertisement dated 05.02.2021 stipulates that the applicant who is a Chartered Accountant, would be given preference for appointment to the post of Member (Finance), the same cannot be construed in a manner so as to ignore qualified candidates holding higher posts and drawing higher pay scales in other PSUs, merely because they are not Chartered Accountants. He contends that the term 'preference would be given to Chartered Accountant' in the said

clause, could only mean that, all other things being equal, preference would be given to Chartered Accountants.

11. Mr. Mehta further submits that when the guidelines issued by the respondent no.1 itself envisages that the inter-se seniority amongst the sectoral and external candidates for the purpose of shortlisting, would be determined on the basis of a higher-pay scale, as prescribed by the PESB, and further specifies that preference would be given to the applicants holding a higher pay-scale, the respondent could not exclude the petitioner, who, admittedly holds not only a Board level position, but is also drawing a higher pay-scale than all other shortlisted candidates, not only in the external category, to which she belongs, but also in fact, vis-à-vis the candidates in the internal category, who are drawing a lower pay-scale of Rs 150000-300000. This, in fact, has resulted in a situation whereby two General Managers in two different CPSEs have been shortlisted despite not being Board level officers and drawing a payscale lower than that of the petitioner. The petitioner's exclusion from the shortlisted candidate, he contends, is *malafide* and arbitrary and only an attempt on the part of respondent no.1 for penalising her for earlier approaching the Tribunal by way of OA No.2556/2021.

12. On the other hand, the petition is vehemently opposed by Ms.Manisha Agrawal Narain, learned counsel for the respondent no.1, and Mr.AnilSoni, learned counsel for respondent no.3. They contend that once, the advertisement itself made it clear that preference will be given to Chartered Accountants, the petitioner admittedly not being a Chartered Accountant, insists that she must be shortlisted. They submit that all the candidates in the external category, to which category the petitioner belongs, including the

General Manager from the same organisation as her, are all Chartered Accountants and therefore, urge that the respondent no.1 have acted strictly in the terms of the advertisement.

13. They submit that the shortlisting for interview was done by placing the candidates in four categories namely (a) internal (from the same CPSE or its subsidiary), (b) sectoral (from CPSEs of the same cognate group as defined by DPE), (c) external (from any other CPSE), and (d) Central Government/Private Sector/State PSEs. The petitioner, who belongs to the category of 'external candidates', could compare herself only with the candidates in the same category. The other two candidates, i.e. candidates at serial no.6 and 7 of the impugned list, are the only candidates who belong to the same category as that of the petitioner, and since both of them are qualified Chartered Accountants, the petitioner was rightly not shortlisted when there were sufficient number of qualified Chartered Accountants in the pool of candidates in her category.

14. By placing reliance on the decisions of the Apex Court in *National Institute of Mental Health and Neuro Sciences vs. Dr.K.Kalyana Raman &Ors.* AIR 1992 SC 1806 and on a decision of the Telangana High Court in *Hanmath Ashok vs. State of Telangana &Anr.* W.A. No. 260 of 2021, they urge that the function of the Selection Committee is neither judicial nor adjudicatory, and is purely administrative, and it is, therefore, not expected to give any reasons for its decisions regarding appointments. They contend that it is not for the Court to consider whether a particular candidate should be selected or shortlisted by the Selection Committee. They, therefore, pray that the writ petition be dismissed.

15. Before dealing with the rival submissions of the parties, it would be apposite to first note the relevant extracts of the advertisement in question, which lays down the mandatory qualifications for appointment to the post of Member (Finance) in respondent no.2. Para III (3) of the advertisement reads as under:

“Eligibility

1. AGE : On the date of occurrence of vacancy (DOV)

<i>Age of superannuation 60 years</i>			
<i>Internal</i>		<i>Others</i>	
<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>
<i>45</i>	<i>2 years residual service as on the date of vacancy w.r.t. the date of superannuation</i>	<i>45</i>	<i>3 years residual service as on the date of vacancy w.r.t. the date of superannuation.</i>

2. EMPLOYMENT STATUS:

The applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity – and not in a contractual/ad-hoc capacity – in one of the followings:-

(a) Central Public Sector Enterprise (CPSE) (including a full-time functional Director in the Board of a CPSE);

(b) Central Government including the Armed Forces of the Union and All India Services;

*(c) State Public Sector Enterprise (SPSE) where the annual turnover is *Rs 2000 crore or more;*

*(d) Private Sector in company where the annual turnover is *Rs 2000 crore or more. Preference would be given to candidates from listed companies.*

(The average audited annual turnover of three financial years preceding the calendar year in which the post is advertised shall be considered for applying the approved limits)*

3. QUALIFICATION:

(i) The applicant should be a Chartered Accountant or Cost Accountant or a full time MBA/PGDM course having specialization

in Finance with good academic record from a recognized University/Institution. Preference would be given to Chartered Accountant.

(ii) Officers of Organized Group 'A' Accounts Services [i.e. Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Railway Accounts Service, Indian Civil Accounts Service, Indian P&T Accounts & Finance Service and Indian Cost Accounts Service] working in the appropriate level are exempted from these educational qualifications.

(iii) Further, applicants from the Central Govt./Armed Forces of the Union/All India Services, will also be exempted from the educational qualifications as per (i) above provided the applicants have 'the relevant experience' as mentioned in Para 4(iii) below.

In respect of applicants from Organized Group 'A' Accounts Services/Central Government/Armed Forces of the Union/All India Services, Chartered Accountant/Cost Accountant/MBA/PGDM will be a desirable educational qualification.

4. EXPERIENCE:

(i) The applicant should have at least five years of cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management/Corporate Accounts in an organization of repute.

(ii) Applicants from Organized Group 'A' Accounts Services should have at least five years cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management/Corporate Accounts.

(iii) 'The relevant experience' in respect of applicants from Central Government/Armed Forces of the Union/All India Services would include at least seven years of cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management/Corporate Accounts.

5. PAY SCALE:

*(a) Central Public Sector Enterprises-
Eligible Scale of Pay*

(i) Rs. 7250-8250 (IDA) Pre 01/01/1992

(ii) Rs. 9500-11500 (IDA) Post 01/01/1992

(iii) Rs. 20500-26500 (IDA) Post 01/01/1997

(iv) Rs. 51300-73000 (IDA) Post 01/01/2007

(v) Rs. 120000-280000 (IDA) Post 01.01.2017

(vi) Rs. 18400-22400 (CDA) Pre-revised post 01.01.1996

(vii) Rs. 37400-67000 + GP 10000 (CDA) post 01.01.2006

(viii) Rs. 144200-218200 (Level 14) CDA post 01.01.2016

The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on the date of vacancy.

(b)

(i) Applicants from Central Government / All India Services should be holding a post of the level of Joint Secretary in Government of India or carrying equivalent scale of pay on the date of application.

(ii) Applicants from the Armed forces of the Union should be holding a post of the level of Major General in the Army or equivalent rank in Navy/Air Force on the date of application.

(c)

Applicants from State Public Sector Enterprises/ Private Sector should be working at Board level position or at least a post of the level immediately below the Board level on the date of application on the date of application.

6. CONDITION OF IMMEDIATE ABSORPTION FOR CENTRAL GOVERNMENT OFFICERS

Central Government Officers, including those of the Armed Forces of the Union and the All India Services, will be eligible for consideration only on immediate absorption basis.”

16. At this stage, reference is also deemed necessary to the impugned list of the eight shortlisted candidates. However, in order to avoid any prejudice to any of these candidates, reference to their names, although mentioned in the counter affidavit, is being deliberately omitted. The relevant extract of the impugned list of shortlisted candidates reads as follows:

“8. Job description states that the Board reserves the right to shortlist candidates for interview. Further, in IM dated 19.08.2021(p/36-40/c), the Board decided the following for the post of Director(Finance) across all CPSEs:

“with reference to all the Director(Finance) posts across CPSEs, the Board was of the view that under Qualification, preference

should be given to Chartered Accountant and should also be mentioned in the JD. It was also decided that while examining the applications for shortlisting for Director(Finance) posts across CPSEs, the top 3 Internal candidates will be shortlisted based on seniority and experience provided they fulfil the mandatory experience. For the next lot of applicants, preference will be given for shortlisting to those with qualification of Chartered Accountant. Preference will be given to applicants with Chartered Accountancy in respect of Sectoral/External/SPSE/Private Sector candidates. The shortlisting of applicants from Central Government category will be governed by ACC communication dated 1/11/2018".

The following line was also added in the qualification column at para III(3) of the JD:

"Preference would be given to Chartered Accountant"

The following 8 applicant(s) may be shortlisted from the various category:

- a. **Internal:** 5
- b. **Sectoral/Cognate Group:** 0
- c. **External:** 2
- d. **Central Government:** 0
- e. **SPSE:** 1
- f. **Private:** 0

S. No.	Name/DoB/Designation/Organisation	Education Qual.	Current Pay Scale & Exp./ATO	Category/Residual Service/Lien/Deputation	Appl. No./Date of Receipt
1.	Mr... 30/01/1965	Others(AICWA), Others(B.Com)(Hons.) Executive Director, Airports Authority of India(AAI)	Rs.150000-300000(IDA) Post 01/01/2017 01/07/2022	Internal	(1)/48106 Mar
2.	Mrs. 20/06/1967 Executive	Other (Cost Accountant), Others	Rs.150000-300000(IDA) Post	Internal	

	Director, Airports Authority of India(AAI)	(Master of Commerce)	01/01/2017 01/07/2022		
3.	Mr. 26/10/1973, General Manager, Airports Authority of India(AAI)	Master of Business Administratio n (Finance), Others (Cost Accountant)	Rs.120000- 280000(ID A) Post 01.01.2017 22.05.2015	Internal	
4.	Mr. 14.05.1968 General Manager, Airport Authority of India(AAI)	Others(M.Phi l), Others (Master of Finance and Control (Equivalent to MBA Finance)	Rs.120000- 280000(ID A) Post 01.01.2017 22.05.2015	Internal	
5.	Mr 11.05.1966 Chief Financial Officer, AAICLAS	Others(B.Co m) Others (Chartered Accountant), Others(PGD M Finance, Others (PGDM Human Resource)	Rs.120000- 280000(ID A) Post 01.01.2017 01.01.2018	Internal On deputation from AAI w.e.f. 07.10.2020	
6.	Mr. 25.12.1967 General Manager, Noida Metro Rail Corporation Limited	Bachelor of Commerce (Hons)(Com merce), Chartered Accountant (Finance & Accounts), Cost Accountant(C osting)	Rs.120000- 280000(ID A) Post 01.01.2017 30.06.2012	External On deputation from Central Electronics Limited w.e.f. 01.09.2020	
7.	Mr.	Bachelor of	Rs.120000-	External	

	29.04.1966 General Manager, Electronics Corporation of India Ltd.(ECIL)	Commerce (General) (Finance & Accounts) Chartered Accountant(F inance & Accounts)	280000(ID A) Post 01.01.2017 30.06.2013		
8.	Mr 23.06.1972 General Manager (F & A) & CFO, Gujarat Energy Transmission Corporation Limited	Others(B.Co m), Others(CA), Others(CS)	Rs.4087.00 Crores	SPSE On deputation from Gujarat Urja Vikas Nigam Limited w.e.f. 24.11.2016	

17. Upon consideration of the rival submissions of the parties, what emerges is that, as per the advertisement issued by the respondent no.1, the applicant could either be a Chartered Accountant or a Cost Accountant, or hold a full time MBA/PGDM with specialisation in Finance from a recognised university. The advertisement further specified that preference would be given to chartered accountants. Though, the advertisement also granted exemption to certain categories of applicant, including officers of organised Group 'A' Accounts Services working at the appropriate level, these exemptions are not relevant for the issue for consideration in the present case.

18. Learned counsel for the petitioner has vehemently urged that the phrase 'preference would be given to Chartered Accountant' as used in the advertisement, cannot imply that all other factors, including the post on

which the applicant is presently working as also his/her payscale, must be ignored. On the other hand, learned counsel for respondent nos.1 and 3 have urged that once, sufficient number of Chartered Accountants were available in the external category, from which category only two candidates were required to be shortlisted, the respondents were justified in giving preference to the two Chartered Accountants, who have been placed at serial nos.6 and 7, even though they are drawing lower payscale vis-à-vis the petitioner, who is admittedly not a Chartered Accountant. The short question before this Court, therefore, is as to what is the implication of the term ‘preference’ as used in the advertisement. Does it imply that every applicant who is a Chartered Accountant will be given preference vis-à-vis a non-chartered accountant, irrespective of the post held, or the payscale drawn by the applicant?

19. Having given my thoughtful consideration to this issue, I am of the opinion that, while determining what the term ‘preference’ as used in the advertisement would mean, it would be also necessary to consider the guidelines issued by the respondent no.1 itself for determining the inter-se seniority of the applicants in the same pay scale for purposes of shortlisting. I may, therefore, now refer to the PESB guidelines regarding Board Level Appointments in CPSEs. The relevant extract of the PESB guidelines titled as “Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of CPSE”, reads as under:

“Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of CPSE

The practice in the PESB for determining inter-se seniority of the applicants in the same pay scale for the purposes of shortlisting in external and sectoral categories of CPSEs that amongst eligible

candidates under each category, preference is given to number of years of working in a higher pay scale. After reviewing this practice, with effect from 31.05.2017, the following practice was adopted:

a. Preference will be given to applicants holding a higher pay-scale.

b. If pay scale of the applicants is same then -

(i) Board level applicants will be given preference over applicants who are below the Board level.

(ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se-seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.

c. Similarly, if pay scale of two or more applicants is same then applicants working just below the Board (e.g. Executive Director in a schedule 'A' CPSE) would get preference over the applicants working at other levels. If two just below Board level executives are holding the same pay scale then inter-se seniority will be determined with respect to date of holding the same pay scale.

d. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale.

2. The policy (para c above) was put in place to give preference to senior-most candidates in the below Board level but while implementing the provision, it has been observed that information of candidates working at ranks just below the Board is not available with the PESB as also that ranks at below Board varies from CPSEs to CPSEs. Difficulties are also being encountered in receiving timely and accurate information in this regard from CPSEs leading to delays and ambiguity in shortlisting.

3. The policy regarding determination of the inter-se seniority of the applicants for the purpose of shortlisting of executives holding the same pay scale in the sectoral/external category have now been revisited and it was decided that-

a. Preference will be given to applicants holding a higher pay-scale.

b. If pay scale of the applicants is same then –

(ii) Board level applicants will be given preference over applicants who are below the Board level.

(ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se-seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.

c. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale. If date of holding pay scale is same, then the inter-se seniority will be determined w.r.t. date of birth i.e. older getting preference over the younger applicant."

20. A perusal of paragraph 'a' of the aforesaid guideline clearly shows that preference has to be given to the applicants drawing a higher pay scale. Similarly, paragraph 'b (i)' of these guidelines clearly prescribes that, if payscale of the applicants under consideration is same, then Board level applicants will be given preference over the applicants who are below the Board level. Thus, these guidelines also envisage granting of preference to applicants in certain situations. Firstly, preference is to be given to candidates having higher pay scale and, secondly, preference is to be given to board level applicants vis-à-vis applicants who are below the board level.

21. In the present case, it is undisputed that the petitioner is not only drawing the payscale of Rs.1,60,000/- to Rs. 2,90,000/- which is higher than the payscale of both the other candidates in the external category, who are drawing the pay scale of Rs. 1,20,000/- to Rs.2,80,000/-. It is also admitted that, while the petitioner is holding a Board level post of Director in a Schedule-B CPSE, the two shortlisted candidates in the external category are working as General Managers, one in the Noida Metro Rail Corporation Limited, and the other in Electronics Corporation of India Ltd. Thus, if the

preference as envisaged in the guidelines, which the respondents do not deny are equally applicable for shortlisting of candidates for the post of Member (Finance) in respondent no.2, are applied to the present case, it is evident that the petitioner was entitled to get preference not only by the virtue of her higher payscale, but also by virtue of her holding a Board level position since August 2018.

22. In the light of this position, while candidates at serial nos.6 & 7 of the impugned list of shortlisted candidates may be entitled to get preference on account of their qualifications, the petitioner was clearly entitled to get preference on two counts, one on account of her higher payscale, and the other on account of her Board level position, as the other two candidates are admittedly holding the post of a General Manager in two other CPSEs. When these aspects are cumulatively considered, the only plausible interpretation which can be given to the term 'preference would be given to Chartered Accountant' must be read to imply "an added advantage". The 'preference would be given to a Chartered Accountant' could not be read in such a manner to ignore the higher payscale and the Board level position of the petitioner, which position the other candidates do not hold. I, therefore, find merit in Mr.Mehta's submission that the question of giving preference to candidates at serial nos.6 & 7, who are Chartered Accountants, would arise only if they were otherwise equally placed as the petitioner in all other aspects. Once, the petitioner in terms of PESB guideline, was entitled to get preference not only on account of her higher payscale, but also on account of her Board position, these two candidates could not be allowed to steal a march over her and that too, by excluding her even from the interview for the selection process.

23. In my considered view, the respondent nos.1 and 3 have clearly misinterpreted the clause envisaging preference to be given to Chartered Accountants, as laid down in the advertisement, by ignoring all other relevant and material factors. The petitioner is a highly qualified professional who has been holding a Board level position since August 2018 in a scheduled-B CPSE, and she also holds a doctorate degree. It will indeed be a travesty of justice if she is altogether excluded even from consideration for selection for the post of Member (Finance) in respondent no.2, and that too by giving preference over her to two 'below Board level officers' in the impugned list under the external category.

24. I have also considered the decisions in *National Institute of Mental Health and Neuro Sciences (supra)* and *Hanmath Ashok (supra)* relied upon by the respondents, and find that the same are not applicable to the facts of the present case. In *National Institute of Mental Health (supra)*, the Apex Court was dealing with a situation where the proceedings of the Selection Committee have been quashed on the ground that it had failed to give any reasons for arriving at its decision. In the present case, the situation is altogether different as this Court is considering the ambit of the term as envisaged in the phrase 'preference would be given to Chartered Accountant', in the advertisement, vis-à-vis 'preference' as envisaged under the PESB guidelines. In *Hanmath Ashok (supra)*, the Telangana High Court was considering as to whether the teaching experience held by the petitioner met the criteria prescribed in the advertisement therein. This decision is also, therefore, not applicable to the present case.

25. Since the very approach of the respondent no.1 while shortlisting candidates is contrary to the advertisement issued by it, as also the PESB

guidelines, this Court has no other option but to quash the entire list of shortlisted candidates, with a direction to respondent no.1 to prepare a fresh list of candidates for interview, after taking into account not only the phrase ‘preference would be given to Chartered Accountant’ as per clause III(3) of the advertisement, but also by taking into account the term ‘preference’ as envisaged under the PESB guidelines dated 29.08.2017.

26. Learned counsel for the petitioner has also vehemently urged that the respondent could not apply the term ‘preference would be given to Chartered Accountant’ in a selective manner by including four non-Chartered Accountants at serial nos.1 to 4 of the internal category list, while excluding non-Chartered Accountants like her from the external category candidates. On the other hand, learned counsel for the respondent has urged that all the four categories had to be treated separately, and shortlisting in each of the categories was dependent on the availability of qualified Chartered Accountants in each of the categories. In view of my conclusion hereinabove, that the preference which the petitioner was entitled to get by virtue of her drawing a higher payscale than the shortlisted candidates, and Board level position, could not be ignored while preparing the impugned list, I do not deem it necessary to either delve into this aspect, or the aspect of *malafide* as contended by learned counsel for the petitioner.

27. For the aforesaid reasons, the writ petition deserves to succeed and is, accordingly, allowed by quashing the impugned list of shortlisted candidates for selection to the post of Member (Finance) at respondent no.2 organisation, and directing respondent no.1 to issue a fresh list of candidates for interview.

28. It is, however, made clear that this Court has not expressed any opinion on the merit and suitability of the petitioner for appointment to the post of Member (Finance) in respondent no.2.

29. The writ petition, alongwith pending applications, is accordingly disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

OCTOBER 31, 2022
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