

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

+ **W.P.(C) No. 977/2015**

% **2nd February, 2015**

MRS. RITU BHATIA

..... Petitioner

Through: Mr. Shameet Mukherjee, Senior
Advocate with Mr. O.P. Aggarwal,
Advocate.

Versus

MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS, AND
PUBLIC DISTRIBUTION & OTHERS

..... Respondents

Through: Mr. Saurav Aggarwal, Advocate for
respondent Nos.2 and 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner impugns the order of the respondent no.2/employer dated 2.1.2015 terminating the services of the petitioner on the ground that her initial appointment itself was flawed because petitioner who was required to have five years experience as a Company Secretary as on

30.11.2013 did not have the necessary experience of five years. The impugned order dated 2.1.2015 reads as under:-

“MEMORANDUM

Whereas, online applications from eligible candidates were invited through All India Management Association (AIMA) for recruitment of one post of Company Secretary besides, other posts advertised in Employment News dt. 26.10.2013 – 01.11.2013.

Whereas, educational qualification and experience for the post of Company Secretary was fixed as – ACS, five years post qualification, experience as Company Secretary in PSU / Private Company of repute as on 30.11.2013. Online registration commenced from 26.10.2013 and last date for online registration ended on 16.11.2013.

Whereas, Smt. Ritu Bhatia had given undertaking at the time of applying for the post of Company Secretary in her application dated 05.11.2013 that-

- (a) She has read the provision given in the advertisement.
- (b) She further, declared that she fulfils all the condition of eligibility regarding age, education, professional / technical qualification, etc. prescribed for the post applied.
- (c) She has gone through the advertisement and the General conditions mentioned therein and fulfils all the conditions / requirements specified therein.

Further at the time of her interview as Company Secretary in CRWC, she again submitted an undertaking on 13.02.2014 that all the information provided in the application is true to the best of her knowledge and belief. If any material suppression of facts comes to notice at any point of her application's processing or career, she understand that she shall be liable for disciplinary action or to be

terminated. On the basis of this undertaking she appeared in the interview.

Whereas, Smt. Ritu Bhatia claimed to have experience with following details, as on the date of application:-

Sl. No.	Institute	From	To	Experience	Remarks
1.	Oil & Natural Gas Corporation Ltd., India Chowk, New Delhi	01.05.2003	30.06.2004	One year & two months	Experience Certificate (EC). Dt. 30.06.2004 (As management training prescribed by Institute of company Secretaries)
2.	Delhi stock Exchange Association Ltd., Asaf Ali Road, New Delhi	06.04.2005	01.06.2006	One year & 57 days	EC dt. 01.06.2006 (As Management Trainee)
3.	Bharat Bhusan Share & Commodity Brokers Ltd., Jhandewalan Extension, New Delhi	06.11.2006	31.03.2007	4 months & 25 days	EC dt. 01.05.2007 (As Company secretary)
4.	Utkal investment Ltd. Connaught Place, New Delhi	27.06.2008	15.05.2010	One year, 10 months & 18 days	EC dt. 15.05.2010 (As assistant company secretary).
5.	CRWC Ltd., Corporate Office New	04.07.2011	6.11.2013	2 Years, 4 months & 2 days	EC dt. 06.11.2013 (As Company secretary)

	Delhi				
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1. Experience as management trainee worked out as two years & approx. 4 months.
2. Experience as assistant company secretary worked out as -1 year, 10 months & 18 days
3. **Experience as company secretary worked out as – 2 years, 8 months & 27 days or 2 years & 9 months only (rounded off figure) as on 30.11.2013**

Whereas, it has come to notice of the Company that the claim of Smt. Ritu Bhatia of possessing required post qualification experience of five years is not commensurate for the post of Company Secretary as per advertisement.

Whereas, it also came to the notice of the Company that norms (1:5) for calling candidates for interview, have also been violated in making appointment of Smt. Ritu Bhatia.

Whereas, after investigation and examination of the case, show cause notice was issued to Smt. Ritu Bhatia, Company Secretary, CRWC Ltd., CO, New Delhi vide letter no. CRWC-III/Est./PF- 105/14-15/3870 dtd. 01.11.2014, intimating that she did not possess requisite experience of five years as Company Secretary as on 30.11.2013. Smt. Ritu Bhatia submitted her reply to the showcause notice which was taken into consideration by Competent Authority and found unsatisfactory.

Therefore, in view of above facts and reply of Smt. Ritu Bhatia dt. 12.11.2014, it is concluded that contention of Smt. Ritu Bhatia of having requisite experience for the said post has no basis, whatsoever, and her appointment has been found to be done in violation of selection norms advertised on 26.10.2013. Accordingly, services of Smt. Ritu Bhatia are hereby terminated with immediate effect.” (underlining added)

2. Petitioner urges before this Court the following grounds to impugn the termination order:-

(i) Petitioner never concealed any aspect when she was appointed as a Company Secretary with the respondent no.2 and the petitioner has consequently worked, originally as a probationer and thereafter as a regular employee, with the respondent no.2, and therefore, petitioner at this stage, cannot be held to have been lacking in experience as on 30.11.2013 of five years working as a Company Secretary. Additionally it is urged that relaxation was permissible and was granted to the petitioner as regards her years of experience.

(ii) The impugned order dated 2.1.2015 is a non-speaking order and therefore liable to be set aside for this very reason.

(iii) Even if there was deficiency in experience in working as a Company Secretary of the petitioner as on 30.11.2013, petitioner has worked with the respondent no.2 as a Company Secretary from 9.4.2014 till 2.1.2015 and which period also should be counted and consequently the petitioner should be held to have the requisite experience of five years.

3. Let us take up each of the arguments which have been urged on behalf of the petitioner and deal with the same.

4. The first argument urged on behalf of the petitioner that petitioner is not guilty of concealment of facts and since the respondent no.2 accepted the experience of the petitioner as a Company Secretary and so stated in the chart in the impugned termination letter dated 2.1.2015, and thereafter appointed the petitioner as a Company Secretary, now the petitioner cannot be held to have been lacking in experience. It is also urged that related to this argument is that once the petitioner has qualified as a Company Secretary, her work thereafter necessarily has to be of a Company Secretary even if the petitioner was working only as a management trainee and not at the post of a Company Secretary. Petitioner also pleads that even assuming she was not qualified because she did not have five years experience, the relaxation in her favour is deemed to have been granted at the time when she was appointed by applying paras 8.3.1 and 8.3.2 of the recruitment rules which entitle the Managing Director of the respondent no.2 to relax the requirement for the post, and it is argued that petitioner in fact was given the relaxation. Petitioner has raised a question in her writ petition that once the petitioner has worked satisfactorily for a number of months by discharging the duties of a Company Secretary, and had been granted the benefit of waiver/relaxation within the ambit of the rules by the then Managing Director of the respondent no. 2, whether the relaxation granted can be

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revoked by the successor Managing Director and which is alleged to be with a pre-mediated intention to terminate the services of the petitioner. Petitioner also claims that allegations against the earlier Managing Director of the respondent no.2 and which Managing Director was associated with the screening and selection of applications for appointment to several posts including that of Company Secretary, cannot be the basis of the foundation of action against the petitioner. The aspects with respect to the relaxation/waiver being given to the petitioner by the earlier Managing Director and wrong allegations against the Managing Director have been given in Questions of Law (B) and (N) of the writ petition.

5(i). At the first blush, the argument urged on behalf of the petitioner did seem to have substance because after all there is no case against the petitioner that petitioner had concealed facts at the time she took appointment as a Company Secretary with the respondent no.2 inasmuch as this is not the case of the respondent no.2 that the petitioner is guilty of concealment of facts with respect to her experience, however, on a deeper examination of the matter, I am of the opinion that this Court should not set aside such termination orders which will have the effect of creating a situation whereby there is overlooking of the applicable qualification/requirement of appointment and effected by one erstwhile

Managing Director of the respondent no.2, and which if permitted would have the effect that high authorities working in public sector undertakings/ governmental organizations will as per their own convenience overlook the applicable terms of recruitment of a person to a post and thereafter an unqualified employee who knew that she was unqualified can effectively claim estoppel against termination of services. After all there can be no estoppel once a person knew the correct facts of her inadequate experience. No doubt, petitioner was appointed but the petitioner obviously took appointment with open eyes knowing very well that her experience though had been not questioned at the time of her appointment by the respondent no.2 through its Managing Director/Screening Committee, it could be very much possible that the experience of the petitioner of five years working as a Company Secretary since the same does not meet the recruitment requirement, appointment of the petitioner may at some later point of time be validly questioned.

(ii). It is undisputed that in terms of the relevant recruitment rules to the post of a Company Secretary of the respondent no.2, the requirement which was prescribed for appointment of a Company Secretary was five years experience **as a Company Secretary**, and therefore there cannot be

any doubt that experience is of working as a Company Secretary in a post
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and not simply because a person has the qualification of a Company Secretary. If a person after being qualified as a Company Secretary, thereafter works, it cannot be said that such working necessarily and automatically is at the post of a Company Secretary. A person who qualifies as a Company Secretary may work after being qualified not necessarily as a Company Secretary i.e at the posts other than that of a Company Secretary, and such periods of working of a person not as a Company Secretary cannot be taken as work at the post of a Company Secretary.

(iii). As per the chart contained in the impugned order, and which is an admitted chart of work experience of the petitioner as on 30.11.2013, the period from 1.5.2003 to 30.6.2004 of one year and two months is only as a Management Trainee and so also the period of work from 6.4.2005 to 1.6.2006 as a Management Trainee, and which periods are respectively with ONGC and Delhi Stock Exchange Association Ltd. If these periods are deducted from the five years experience as a Company Secretary as claimed by the petitioner, petitioner will not have the requisite experience of five years as a Company Secretary. In my opinion, working as a Management Trainee is not working as a Company Secretary because working as a Company Secretary is at the post of a Company Secretary inasmuch as the experience required is of working as a Company Secretary. Thus, working as

a Company Secretary necessarily has to mean having the experience of working in the post of a Company Secretary, and which is so required by the subject advertisement for appointment to the subject post of a Company Secretary with the respondent no.2.

(iv) In fact, there is a third period from 27.6.2008 to 15.5.2010 of 1 year, 10 months and 18 days of the petitioner working as an Assistant Company Secretary with Utkal Investment Ltd and which experience also is not as a Company Secretary but only as an Assistant Company Secretary.

(v). Really therefore, out of the total period of five years experience required of working as a Company Secretary as on 30.11.2013, period of four years, two months and fifteen days is in fact not as a Company Secretary but the periods of work as a Company Secretary are only of 4 months and 25 days with Bharat Bhushan Share and Commodity Brokers Ltd and with the respondent no.2 for a period of two years, four months and two days viz a total experience of Company Secretary of 2 years, 8 months and 27 days as compared to the requirement in terms of the advertisement of having worked for five years as a Company Secretary. Petitioner therefore undoubtedly lacked the requisite experience of working as a Company Secretary.

(vi). Article 14 of the Constitution of India cannot be pressed in aid for enforcing an illegality because Article 14 of the Constitution of India is a positive concept. Once the petitioner is found to be deficient in her requirement, if this Court allows petitioner who had grossly deficient experience for the post of a Company Secretary as on 30.11.2013, the effect would be that this Court would be asked to permit and put its imprimatur on an illegality, and which this Court cannot do.

6(i). The related argument urged on behalf of the petitioner by relying upon the Recruitment Rules 8.3.1 and 8.3.2 of granting relaxation in the requirement of petitioner need not having the five years experience, this argument is also misconceived because when we read the recruitment rules, the said rules deal with the relaxation of requirement with respect to internal candidates. Petitioner as on the date of appointment with the respondent no.2 was contractually working with the respondent no.2 and therefore was not a regular employee of the respondent no.2 and hence not an internal candidate.

(ii). In any case, I do not find any order of the Managing Director of the respondent no.2 which is placed on record, much less specifically qua the petitioner, and which gave the relaxation to the petitioner and as is being claimed by the petitioner in the writ petition. It is rightly argued by the

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counsel for the respondent no.2 before this Court that there is no order of relaxation qua work experience of the petitioner and therefore no such order, much less passed by a competent authority, has been filed by the petitioner. Therefore, I do not find any merit in argument of relaxation urged on behalf of the petitioner.

7. The second argument which is urged on behalf of the petitioner that the impugned order is a non-speaking order, is again an argument without merit because the impugned order dated 2.1.2015, which has been reproduced above, is in fact a speaking order which shows that what is the experience of the petitioner as on 30.11.2013 and which experience therefore fell short of the requisite experience of five years as a Company Secretary and which therefore showed that the initial appointment of the petitioner itself was not justified and consequently services of the petitioner have been terminated on account of initial defect in the appointment of the petitioner and which appointment was allegedly given because of what is stated by the petitioner that the petitioner was granted relaxation by the then Managing Director of the respondent no.2.

8. The third argument of the petitioner will stand decided against the petitioner in terms of the first argument, both in fact and in law.

9. No doubt the facts of the present case show that present is a hard case, however, persons who take employments with the knowledge that they may not have the requisite qualification in terms of the recruitment qualifications prescribed for being appointed to the post, such persons take the risk that their appointments can be called into question at the subsequent stage. If the initial appointment itself is found to be without any valid basis the appointment itself goes, and the petitioner therefore on the ground of equity or the fact that she did not conceal any aspect cannot claim that her employment which was defective at the outset. The petitioner cannot claim that she should be protected by this Court. Also, it is not as if the petitioner had worked in the subject post to which she was appointed for many many years with the respondent no.2, because the petitioner has worked for but a few months from 9.4.2014 to 2.1.2015 in the respondent no.2/company. Also, because the earlier post of a Company Secretary to which the petitioner was appointed in the respondent no.2/company was only contractual in nature.

10. Dismissed.

FEBRUARY 02, 2015

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