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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 2307/2014

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8th April, 2015

SANJAY

..... Petitioner

Through: Mr. Sanjay Sharawat, Mr. Balraj
Singh Malik and Mr. Ratish Kumar,
Advocates.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Yashraj Singh Deora and Ms.
Shreya Agrawal, Adv. for R-1.

Mr. Anurag Mathur, Adv. for R-2.

Mr. Bhupesh Saini, Adv. for R-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, petitioner has sought cancellation of the appointment of respondent no.3 to the post of Section Officer (Accounts) of the respondent no.2/ Shivaji College (affiliated to the University of Delhi, the respondent no.1 herein). Respondent no.3 was appointed pursuant to the selection process

initiated in terms of the advertisement dated 9.2.2013. As per the cause of

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action laid in the writ petition, respondent no.3's appointment is sought to be quashed on the ground that respondent no.3 did not have the eligibility criteria of 50% marks in the graduation/post-graduation level, inasmuch as, respondent no.3 is pleaded to have only 48% marks in the graduation level.

2. Respondent no.2/College appointed respondent no.3 by giving relaxation of 5% because the post in question was a reserved category post for an SC candidate, and according to the Screening Committee of the respondent no.2/College, respondent no.3 in accordance with the applicable rules for appointment to the post of Section Officer (Accounts) was bound to be given 5% relaxation of marks inasmuch this relaxation was also given for the post of Administrative Officer of the respondent no.2/College. It may of course be noted that respondent no.3 has not filed any circular or any other rule of the University which mandates that an SC candidate/reserved category candidate must be given relaxation of 5% marks.

3. During the course of hearing, however it transpires that the respondent no.3 need not have been given relaxation of 5%, inasmuch as, respondent no.3 has secured 52.13% marks in his Chartered Accountant's Degree. The marks in graduation of 48% and in the Chartered Accountant Examination at 52.13% are found to be stated in the application for selection filed by the respondent no.3 before the respondent no.2/College, and which document

has been filed by the respondent no.2/College alongwith its counter-affidavit as Annexure R-2. Counsel for the respondent no.3 during the course of hearing has filed before this Court the marks-sheet of the Chartered Accountant's Examination of the respondent no.3 and which shows that respondent no.3 has secured 417 marks out of a total of 800 marks ie more than 50%. The statement therefore made in the application by the respondent no.3 to the respondent no.2/College for the job in question of the respondent no.3 having more than 50% marks in the Chartered Accountant's Examination has been substantiated by filing the marks-sheet/result of the Chartered Accountant's Examination of the respondent no.3 before this Court today.

4. In view of the fact that respondent no.3 has more than 50% marks in the Chartered Accountant's Examination, there would be no need for the respondent no.3 being granted relaxation of 5% which was given by the selection committee.

5. Counsel for the petitioner argued, and *prima facie* rightly, that the Selection Committee has given the appointment to respondent no.3 giving relaxation of 5% and not because respondent no.3 had 50% marks at the post graduation level, and therefore, it was at the first blush the petitioner did have basis to argue that the selection of respondent no.3 was not proper,

however, once now it has come on record that the respondent no.3 did indeed have more than 50% marks in the Chartered Accountant's examination, I cannot grant the relief of quashing the appointment of respondent no.3 because grant of relief by this Court would mean that respondent no.3 who was otherwise qualified, and who need not have been given relaxation of 5% marks being an SC candidate, his appointment will have to be quashed, and which appointment being not illegal in view of the facts stated above cannot be quashed.

6. Powers cannot be exercised by me, much less in exercise of power under Article 226 of the Constitution of India, to quash an appointment, once the appointment otherwise is in accordance with the eligibility criteria of having more than 50% marks in the graduation/ post graduation level.

7. Learned counsel for the petitioner then sought to argue that the Chartered Accountant's Degree cannot be said to be a graduate or a post graduate degree, however, this argument merits rejection without even any further consideration because in the opinion of this Court it is quite simply absurd to argue that a Chartered Accountant's Degree is not even a graduation degree.

8. Learned counsel for the petitioner finally sought to argue that respondent no.3 should in fact be held disqualified because respondent no.3

did not meet the eligibility criteria of having 3 years post qualification experience in handling educational administration etc as required by para 2 under the head of Essential Eligibility Criteria of the subject advertisement, however, counsels for the respondents have rightly argued that this is not even the case of the petitioner in the writ petition for seeking cancellation of the appointment of the respondent no.3. Therefore, at this stage, once no cause of action is pleaded, petitioner cannot be granted relief on that basis. Relief can only be granted on the basis of a case which is specifically pleaded, and in case, the respondent no.3 does not meet the eligibility criteria of para 2 of the essential conditions of an appointment, then, on the basis of that fresh/additional cause of action, petitioner in accordance with law can always seek to challenge the appointment, and to which aspect on merits this Court does not observe in one way or the other and the same will be decided in the appropriate case which the petitioner may choose to file.

9. In view of the above, the writ petition is without any merit, and is accordingly dismissed.

APRIL 08, 2015
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VALMIKI J. MEHTA, J.