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

% *Date of Decision : July 28, 2015*

+ **LPA 705/2013**

SANJAY Appellant

Represented by: Mr.M.K.Singh, Advocate

versus

RAMESH KUMAR & ORS Respondents

Represented by: Mr.Avadh Kaushik, Adv. for
R-1
Mr.Kailash Vasdev,
Sr.Advocate instructed by
Mr.Shreyans Singhvi Ms.Ekta
Mehta, Advocates for R-2
Mr.Bhagwan Swarup Shukla,
Advocate for R-3.

LPA 720/2013

VETERINARY COUNCIL OF INDIA Appellant

Represented by: Mr.Kailash Vasdev,
Sr.Advocate instructed by
Mr.Shreyans Singhvi Ms.Ekta
Mehta, Advocates

versus

RAMESH KUMAR & ORS Respondents

Represented by: Mr.Avadh Kaushik, Advocate
for R-1.
Mr.Bhagwan Swarup Shukla,
Advocate for R-2.
Mr.M.K.Singh, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Ramesh Kumar, the respondent No.1 in the two appeals, was the writ petitioner of WP(C) 5865/2012. Union of India and the Veterinary Council of India were impleaded as respondents No.1 and 2 in the writ petition. Sanjay, the appellant of LPA No.705/2013 was impleaded as respondent No.3.

2. Issue related to respondent No.3 being appointed as a Peon with the Veterinary Council of India.

3. Case of Ramesh Kumar pleaded in the writ petition was that neither the advertisement nor the applicable service rules permitted any weightage of marks to be given for experience while selecting the eligible candidates as a Peon by the Veterinary Council of India. As per him, the applicable advertisement simply stipulated the essential qualification to be a 10th pass from a recognized Board.

4. As per the Veterinary Council of India the advertisement in question did indicate that there would be some weightage to professional qualifications as also experience, and for which the Veterinary Council of India relied upon point No.4 in the advertisement which reads as under:-

“4. Candidate should attach passport size photograph and attested copies of certificates in support of Educational/Professional Qualification/Experience.”

5. The view taken by the learned Single Judge is, an expression of wonder, as to what could be an experience for having worked as Peon (refer

para 4 of the impugned decision).

6. The learned Single Judge has held that since the advertisement nor any rule permitted any weightage to be given for experience, the appointment of Sanjay as a Peon was vitiated and hence the appointment was struck down. Expressing shock at what the Management of the Veterinary Council did, the learned Single Judge has directed an inquiry to be held regarding Sanjay's appointment and report to be filed in Court in compliance.

7. The counter affidavit filed by Veterinary Council of India before the learned Single Judge clearly pleaded that being a statutory body under the administrative control of the Ministry of Agriculture, Union of India, appointments were being made on the basis of a recommendation of a Selection Committee to the various posts under the Council and in conformity with the past practice in the instant case selection criteria adopted was : (i) 80% weightage to the marks obtained in the written/screening test; (ii) 5% weightage for work experience in a public sector; and (iii) 15% weightage to an interview.

8. It is pleaded that whereas 80% weightage for the written test resulted in Sanjay obtaining 63.20 marks, 8 marks at the interview and Nil for past experience, Ramesh Kumar obtained 56.60 marks at the written test, 14 at the interview and 5 for working experience in Government sector . The overall marks obtained by Sanjay being more he was given the employment.

9. Having heard learned counsel for the parties we agree with the submissions made by learned counsel for the appellant that the learned Single Judge has misapplied the law.

10. The settled legal position is that a selection committee is free to adopt

a selection procedure and prescribed criteria which is fair and reasonable; but before commencing the selection process, for the reason it inspires confidence and rules out possibility of favouritism by changing the rules of the game once the selection process starts.

11. We may only cite one such decision. It is reported as (2008) 7 SCC 11 Hemani Malhotra vs. High Court of Delhi. In para 15 it was observed as under:-

“There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

12. The decision of the Supreme Court brings out that it is permissible to regulate the selection process by rules, and in the absence of rules by the Selection Committee prescribing the selection criteria before commencing the selection process.

13. Under the circumstances it makes no difference whether the advertisement did nor did not indicate the selection criteria. It is irrelevant whether or not rules framed by the Council governed the field.

14. The two appeals are accordingly allowed. Impugned judgment and order dated August 27, 2013 is set aside. WP(C) 5865/2012 filed by Ramesh Kumar, the first respondent in both appeals is dismissed.

15. Parties shall bear their own costs all throughout.

CM No.15003/2013 in LPA No.705/2013
CM No.15451/2013 in LPA No.720/2013

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 28, 2015
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