

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

Judgment reserved on August 24, 2015
Judgment delivered on September 10, 2015

+ **W.P.(C) 9365/2014**

SHALU Petitioner

Through: Mr.N.S.Dalal, Adv.

versus

PRAGATI POWER CORPORATION LIMITED Respondent

Through: Mr.Vinay Sabharwal, Adv.
with Mr.Neha Sahbarwal,
Adv.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this petition is to the order dated September 8, 2014 whereby the services of the petitioner as Executive Trainee (Finance) were terminated and to the order dated November 21, 2014 whereby the appeal filed by the petitioner against termination of her services as Executive Trainee (Finance) was dismissed.

2. Some of the relevant facts are that an advertisement was issued on August 26, 2009 for making appointment to different posts including Executive Trainee (Finance). The advertisement did not prescribe the number of posts of Executive Trainee (Finance) against which appointment was to be made. It is the case of the petitioner in the writ

petition that the petitioner having fulfilled the requisite conditions applied for the said post in the category of 'Scheduled Caste'. On December 19, 2010, National Power Training Institute, a body under the Ministry of Power, Government of India conducted the written test on behalf of respondent and prepared a merit list. In April, 2011, the petitioner was called for interview and having been declared successful was given an offer of appointment as Executive Trainee (Finance) on June 07, 2011. Pursuant thereto, after appearing in the medical test, the petitioner joined the said post. According to her, she has been discharging her duties since then to the best of her ability and received appreciation and commendation letters from the authorities.

3. On September 08, 2014 the petitioner was served with an order whereby her services were terminated under decision 2 of Rule 11 of CCS (CCA) Rules, 1965 ('Rules' in short). The petitioner filed Writ Petition (Civil) No.6227/2014 wherein, according to the petitioner, this Court in its order dated September 16, 2014 asked the petitioner to file an appeal which the petitioner did on September 23, 2014. The appeal was dismissed vide one of the impugned orders dated November 11, 2014.

4. The case of the respondent as pleaded in the reply is that the Vigilance Department of the respondent had carried out investigation on

the complaints received regarding irregularity in the recruitment of Executive Trainee (Finance) in the respondent organisation. During investigation, it was observed that the respondent had engaged NPTI to conduct written test for recruitment to various posts including two posts of Executive Trainee (Finance) vide letter dated April 12, 2010. Initially NPTI was intimated vide letters dated April 12, 2010 that there are two vacancies of Executive Trainee (Finance), one for Unreserved and another for OBC. NPTI conducted written test on December 19, 2010. Pursuant thereto, it vide letter dated December 22, 2010 proposed to prepare a merit list for interview in the ratio of 1:5 for General and OBC category candidates. However, some changes were effected in the category-wise vacancies and the vacancy of OBC was later on changed to SC category under the garb of revising the reservation roster. The respondent had pointed out that the then Deputy Manager (HR), Recruitment submitted a note dated December 27, 2010 to GM (HR) through the then DGM (Incharge) HR proposing to call General category candidates in the ratio of 1:5 and SC category candidates in the ratio of 1:10 for interview. While proposing the ratio of 1:10 in respect of SC category in his note dated December 27, 2010, he made a reference of DoPT OM dated January 06, 2006 pertaining to fixing of zone of consideration in the case of promotions and further, in his note dated

December 30, 2010 he submitted that the same ratio was being followed in other PSUs and the fact, the same has been recommended by NPTI. According to the respondent, the DoPT OM dated January 06, 2006 is applicable in the matter of promotions. Even the OM stipulates that for each vacancy either in General or SC category, the zone of consideration is 1:5 and the NPTI had never recommended the ratio of 1:10 for SC candidates in its letter dated December 22, 2010. It was their case that the then Deputy Manager (HR), Recruitment misguided/misled the management by quoting wrong facts that NPTI had also recommended zone of consideration as 1:10 in respect of SC/ST candidates, though actually NPTI in its letter dated December 22, 2010 proposed to prepare a merit list in the ratio of 1:5 in respect of General and OBC category only. The NPTI had never recommended the ratio of 1:10 for SC candidates. Thereafter NPTI was requested vide letter dated January 29, 2011 to send the merit list of written test in the ratio of 1:5 in the case of General Category candidates and in the ratio of 1:10 in the case of SC category candidates. The NPTI forwarded the list of 11 candidates belonging to SC category, as the candidates at serial Nos.10 and 11 were having equal marks in the written test. The petitioner was at serial No.8 in the merit list for written test. The candidate at serial No.2 in the merit list of written test was having 94 marks, whereas the petitioner in the

merit list was having 76 marks in the written test. In the interview, the candidate at serial No.2 in the merit list was awarded only 18 marks by the Interview Panel and the petitioner was awarded 34 marks. Infact the marks awarded to the petitioner were the highest amongst the nine candidates, who appeared in the interview in the SC category for the post of Executive Trainee (Finance). Hence, the enlargement of zone of consideration from 1:5 to 1:10 by misrepresenting/quoting wrong facts has resulted into calling of the petitioner for interview, who was at serial No.8 in the merit list of SC category in the written test and she is a daughter of senior level officer of the company. She was finally got selected for the post of Executive Trainee (Finance) in SC category and was appointed as Executive Trainee (Finance) in the SC category. The respondent had also referred to the fact that the matter was referred to CVC for advice. The Commission in its OM dated April 08, 2013 and OM dated July 10, 2013 was of the view that the ward of a senior officer of the company was accommodated out of way by extending the zone of consideration from 1:5 to 1:10 without any precedence and by misrepresenting the facts before the competent authority. The Commission recommended detail enquiry under the major penalty procedures against three officers involved in the process of recruitment. The respondent has stated that they have penalised one officer by

imposing a penalty of “Censure”, whereas against two officers, charge-sheet under Rule 14 of the Rules are pending.

5. Mr.N.S. Dalal, learned counsel for the petitioner would at the outset submit that the Rule which has been invoked in terminating the services of the petitioner i.e. decision No.2 under Rule 11 of the Rules is not applicable. According to him, the said Rule contemplates, whenever it is found that a Government servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is probationer or a temporary government servant, he should be discharged or his services should be terminated and the impugned orders need to be set aside on this ground only. According to him, the petitioner had not suppressed any fact. In other words, she has not misrepresented to the authorities any fact. It is not a case where the petitioner does not fulfil the requisite conditions to the post, nor a case where the petitioner did not pass the written examination, which is must for the Interview. He would state, the petitioner had faced the Interview and she had proved her merit by doing well in the Interview and on that basis, she has been selected. It is also his submission that in a case of direct recruitment, the zone of consideration should be more so that the best candidate can

be selected. He has stated, there is no rule that against one vacancy, only five candidates need to be called. He would rely upon the judgment of the Supreme Court reported as **(1985) 4 SCC 417 Ashok Kumar Yadav & Ors. Vs. State of Haryana and Ors. and connected civil appeals**, more specifically, para 21 wherein the Supreme Court has held that selection cannot be said to be vitiated, merely 1300 or more candidates representing more than twenty times the number of available vacancies, were called for the Interview. He in his submission has justified the calling of the petitioner for Interview, even if her position is at merit position No. 8 in the written examination. He also, placed reliance on the judgment of the Punjab and Haryana High Court reported as **2015(1) SLR 290 (P&H), Mukesh Bala Vs. State of Haryana and Ors.** and **2015 (2) SLR 111** to contend that merely because the candidates who secured more marks than the petitioner in the written examination but had secured less marks in the Interview would not *ipso facto* lead to the conclusion that the exercise has been done intentionally, to favour the petitioner. He would also state that none of the persons belonging to Scheduled Caste who appeared in Test and who successfully passed the Test and also appeared in the Interview had any grievance, and there is also no dispute that there is one vacancy/post reserved for the candidate of SC category. According to him, the reasoning of the respondents in

the impugned orders that the father of the petitioner is working in the company and would have been instrumental in allowing extended zone of consideration, is incorrect. The likelihood of the father of the petitioner would have been instrumental in increasing the zone of consideration, is not borne out from the record. He states, the father of the petitioner was not remotely connected to the selection process. The father is holding a post of a much lower level than that of the competent authority, on whose decision the petitioner was appointed.

6. On the other hand, Mr. Vinay Sabharwal, apart from reiterating the stand taken by the respondents in their counter affidavit, has also filed a compilation of documents, which included the copy of the advertisement, the copy of Recruitment and Promotion Regulation for the post of Executive Trainee (Finance), copy of correspondence exchanged between the respondents and NPTI, the copy of note dated December 24/27, 2010 of Mr.G.Srikumar, DM (HR) PPCL, copy of valuation sheet of SC candidate with written test marks and Interview marks, communication issued by the CVC, advising initiation of departmental proceedings, and documents related to charge sheet issued to various officers in terms of the advice of the CVC. He has drawn my attention to a communication dated December 22, 2010 of the NPTI, wherein, the NPTI proposed to prepare the merit list for the various post

by taking ratio 1:5 and had sought the concurrence of the respondents. He has also drawn my attention to the note sheet dated December 24/27, 2010, wherein, Mr. Srikumar, the Deputy Manager (HR), had re-determined the vacancies to include one for General and one for SC, and proposed the zone of consideration for General and OBC in the ratio of 1:5, whereas for SC/ST candidate, in the ratio of 1:10 and a communication in that regard was sent by the respondent-corporation to the NPTI vide letter dated January 29, 2011. According to him, this proposal was contrary to the proposal sent by the NPTI, recommending a ratio of 1:5, which resulted in the enhancement of the zone of consideration to 10 (although 11 candidates were called) by bringing in the petitioner as well, who was at serial No. 8 of the candidates who cleared the written examination. He states that this decision to increase the zone of consideration, suggests that there was a connivance and misleading of facts on the file and preponderance indicates that had the candidate be not ward of the senior officer of the company, the zone of consideration would not have been enlarged. He states that some changes were also effected in category-wise vacancies and the vacancy of OBC was later on changed to SC category in the garb of revising the reservation roster. He would justify the stand of the respondent to terminate the services of the petitioner with effect from September 5,

2014.

7. Having heard the learned counsel for the parties, the first and foremost issue which arises for consideration is whether the respondents could have fill up the one out of two vacancies/posts by a candidate belonging to the SC category even though, as per communication dated April 12, 2010 to the NPTI by the respondent, reveals the said vacancy/post was meant to be filled by an OBC candidate. Interestingly, the advertisement issued by the respondent does not reveal the break-up/the category under which the posts/vacancies were to be filled. The advertisement is faulty to that extent inasmuch as, had the advertisement depicted the category of vacancies against which appointments have to be made, candidates who even though beyond the age limit, but entitled to the age relaxation, would have also applied. It was after the process of written examination was over, a communication was sent to the NPTI, giving the break-up of the vacancies/posts, under which the recruitment has to be done. Be that as it may, if in the earlier communication dated April 12, 2010, the respondent has communicated to the NPTI on the post-wise reservation of the different categories of posts advertised and pursuant to the said communication, the NPTI had also decided to call against one vacancy, five candidates, the subsequent communication dated January 29, 2011 to the NPTI was not only at variance with the

earlier communication dated April 12, 2010 of the respondent, but also to the communication dated December 22, 2010 of the NPTI. That apart, DM (HR) while proposing the increase in the zone of consideration, had relied upon the instructions of DoPT dated January 6, 2006, which relates to the zone of consideration in the cases of promotions. The said OM is not applicable to the direct recruitment as the perusal of the same would reveal, the same is in the nature of DPC guidelines to be followed while making promotions. Para 3(iii) of the said OM clarifies that the existing size of extended zone of consideration for SC/ST officers, viz. five times the total number of vacancies will continue to be applicable. The OM does not suggest that the zone of consideration for SC/ST candidates shall be in the ratio of 1:10.

8. Further, I note, the petitioner had made a detailed appeal to the appellate authority i.e. the Managing Director. Further the appellate authority, has in his order, highlighted the following aspects:

“(i) Initially NPTI was intimated vide letter dated 12.04.2010 and 27.07.2010 that there are two vacancies of ET(Fin.), one post for General and another for OBC.

(ii) NPTI vide its letter dated 22.12.2010 proposed to prepare merit list for Interview in the ratio of 1:5 for General and OBC category candidates for selection of 02 ET (Finance).

(iii) However, the vacancy of OBC was later on changed to SC category on the garb of revising the reservation roaster.

(iv) *The concerned dealing officers vide his notes dated 27.12.2010 and 30.12.2010 proposed to call the candidates for interview in SC category in the ratio of 1:10 on the basis of DoPT OM No. 22011/2/2002-Estt (D) dated 6.6.2006. The said OM pertaining to DPC even also states that for each vacancy either in General or SC category, the zone of consideration is 1:5.*

(v) *The concerned dealing officers further misguided/misled the Management by quoting wrong facts that NPTI had also recommended zone of consideration as 1:10 in respect of SC/ST candidates though actually NPTI in its letter dated 22.12.2010 proposed to prepare a merit list in the ratio of 1:5 in respect of General and OBC category only. The NPTI had never recommended the ratio of 1:10 for SC candidates.*

(vi) *The Vigilance Department of IPGCL/PPCL has also observed that zone of consideration in the SC category was extended in the recruitment process of ET (Fin) without any precedence and by misrepresenting the DoPT OM dated 6.1.2006 and by quoting wrong facts that NPTI had also recommended zone of consideration as 1:10 in respect of SC/ST candidates.*

(vii) *Ms. Shalu, who was at No. 8 in the merit list for written test, was selected by the Interview Panel by awarding maximum marks in comparison to the other candidates appeared in the Interview. The candidates who were at Sr. No. 1 to 5 of the merit list and got more marks in written test, were therefore, deprived.*

(viii) *There is preponderance of probability that the zone of consideration was enlarged in the case of SC category candidates just to accommodate her.*

(ix) *The enlargement of zone of consideration from 1:5 to 1:10 by misrepresenting/quoting wrong facts has resulted into calling of Ms. Shalu for interview, who was at Sr. No. 8 in the merit list of SC category in the written test and she is daughter of a senior level officers of the company. She was finally got selected for the post of ET (Finance) in SC category. The ward of a senior officer of the company was therefore*

facilitated to appears in the interview and finally got selected for the post of ET (Fin) whereas she was not eligible to be called for interview had the zone of consideration not been extended for SC candidate”.

9. The respondents had tried to justify the impugned action of termination on preponderance. The facts as noted above justify the said conclusion which is a sufficient yardstick (even in the cases under the Conduct Rules) to effect termination, it is not the case of the petitioner that the respondents should have held an enquiry under the Conduct Rules before effecting termination.

10. Insofar as the submission of Mr. Dalal that instruction No. 2 under Rule 11 could not have been invoked as the said instruction is applicable when a person appointed was later found to be ineligible/unqualified for initial recruitment is concerned, the said instruction further contemplate that if such an employee is probationer or temporary government servants, he should be discharged or his services should be terminated. It is not the case of the petitioner that she is a permanent employee. That apart, when the initial appointment itself could not be made, the respondents are within their right to recall the appointment by terminating the same. Even assuming the respondent could not have invoked decision No. 2 under Rule 11 of CCS (CCA) Rules, 1965, the employer is not powerless to terminate such an appointment when, the

appointment is made de-hors the procedure, otherwise, it would amount to justifying the appointment, which was illegal.

11. Insofar as the judgements relied upon by Mr. N.S.Dalal, learned counsel for the petitioner are concerned, in *Ashok Kumar Yadav & Ors.'s case (surpa)*, the Supreme Court was concerned with the recruitment made by the Haryana Public Service Commission to 61 posts in Haryana Civil Service (Executive) and other allied services. The procedure for recruitment was governed by the Punjab Civil Service (Executive Branch) as applicable in the State of Haryana. Rule 9, Clause (1) of the rules provided that a competitive test examination shall be held at any place in Haryana in or about the month of January for the purpose of selection by competition of, as many candidates for the Haryana Civil Service (Executive) and other allied services as the Governor of Haryana may determine. Rule 10 laid down the conditions for eligibility to appear in the competitive examination. The compulsory subjects included English Essay, Hindi, Hindi Essay and General Knowledge carrying the aggregate 400 marks as there was Viva-Voce. It appears that in response to the advertisement issued by the Haryana Public Service Commission, about for 6000 candidates applied for the recruitment and appeared in the written examination. Out of 6000 candidates, who appeared in written examination, about 1300 obtained

more than 45% marks and thus qualified for being called for Interview/Viva Voce. The Haryana Public Service Commission invited all the 1300 or more candidates who qualified for Viva Voce Test/Interview and the Interview lasted for almost a year. The number of vacancies rose during written examination as well as Viva Voce test. 119 candidates were selected and recommended by the Haryana Public Service Commission to the State Government. It seems, there were certain candidates who had obtained higher marks in the written examination, but, owing to rather poor marks obtained by them in the Viva Voce Test, they could not come within the first 119 candidates and they were consequently, not selected. Three persons out of the aggrieved persons, by the selection made by Haryana Public Service Commission, filed Writ Petition (C) 2495/1983 in the High Court challenging the validity of the selection and seeking a writ for quashing and setting aside the same. It was the case of the petitioners in the said writ petition, that marks given in the Viva Voce test should be ignored and the selection should be made only on the basis of the marks obtained by the candidates in written examination. The respondents in that case tried to justify the selection. The Division Bench of the High Court allowed the writ petition on various grounds including that the members of the Commission did not satisfy the stringent test of men being of high

integrity, calibre and qualification. The Supreme Court while considering the various pleas as urged before it, including the submission that 1300 candidates were called for the Interview, was of the view, that, merely because 1300 candidates were called for Interview, though according to the Supreme Court, was not the right course to follow and not more than twice or at the highest thrice the number of candidates, should have been called for the Interview, ultimately held on facts that the conclusion of the Division Bench vitiating the selection on the ground of arbitrariness or reasonable likelihood of bias, was not correct.

12. Suffice to state, the Supreme Court did observe upon the action of the Commission to call all 1300 candidates for Interview, it should have been limited to twice or at the most, thrice of the vacancies advertised. In any case, it is not the conclusion of the Supreme Court that in a case of direct recruitment, all the candidates who have secured the pass marks, need to be called for the Interview. In the case in hand, the decision of NPTI to call only five candidates for Interview for every category of candidates, appears to be reasonable. The judgment relied upon by Mr. N.S.Dalal was peculiar to the facts of that case and would be of no help to the petitioner. Rather, it holds the view, that only a limited number of candidates should be called for Interview.

13. Insofar as the judgment relied upon by Mr. Dalal in the case of

Gulphan Singh (supra) is concerned, in the said judgment, the Court was concerned with the case where the petitioner was appointed as Veterinary Compounder which came to be re-designated as Veterinary Life Stock Development Assistant. There was no allegation of misrepresentation levelled against the petitioner. However, the Veterinary Assistant Training Course came to be derecognized by the respondent-State vide order dated March 7, 1988 whereas the petitioner was appointed earlier to the said date, that too, on the basis of the Interview conducted by the petitioner. He was sought to be removed. The High Court relying upon the judgment of the Supreme Court in the case of ***Suresh Pal and Ors. Vs. State of Haryana and Ors. RSJ (1950-1988) Vol. I*** was of the view that when there are no allegations against the petitioner that he misrepresented about his qualification at any point of time, and the qualification duly recognized, the High Court set aside the termination. The facts as relied upon by Mr. Dalal are totally different than the case in hand and would not be applicable, particularly, keeping in view the grounds which weighed with the authorities while terminating the services of the petitioner.

14. Insofar as the case of ***Mukesh Bala (supra)*** is concerned, the same is also not applicable to the facts of this case as it is not the case of the respondent that the Interview Committee having awarded the petitioner

more marks than the candidates who had secured more marks in the written examination, a conclusion need to be drawn that exercise has been done intentionally, specially, when none of the members of the Selection Committee were impleaded as party-respondent nor specific allegation in this regard reflected in the petition.

15. In view of the discussion above, I do not find any merit in the writ petition. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 10, 2015

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