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

+ W.P.(C) 7048/2015

% ***Judgment dated 16.12.2015***

UNION PUBLIC SERVICE COMMISSION Petitioner

Through : Mr.Naresh Kaushik, Ms.Aditi Gupta and
Ms.Krtika Sharma, Advs.

versus

DR. SMITA RAMACHANDRAN AND ANR Respondents

Through : Mr.Anoop Bagai, Sr. Adv. with Mr.L.R.
Luthra and Mr.Amitesh Kumar, Advs. for
respondent no.1.
Mr.Sandeep Mohapatra, Adv. for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner-UPSC under Articles 226 and 227 of the Constitution of India seeking a direction to quash the impugned order dated 1.4.2015 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') whereby the O.A. filed by respondent no.1 was allowed and the petitioner was directed to reconsider the application of respondent no.1 for the post of Assistant Professor (Paediatrics).
2. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
3. The necessary facts, to be noticed for disposal of the present writ petition,

are that on 8.6.2013 an advertisement was published by the petitioner inviting applications for filling up various posts including 31 posts (04 SC, 02 ST, 09 OBC and 16 UR) of Assistant Professor (Paediatrics) in the Ministry of Health and Family Welfare, Central Health Services. The closing date for receiving online application was 27.6.2013. The eligibility criteria and experience as per the advertisement read as under:

“A. EDUCATIONAL

(i) A recognized medical qualification included in the First or the Second Schedule of Part-II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956.

(ii) Post Graduate degree qualification in the concerned speciality i.e. M D (Paediatrics) or equivalent.

B. EXPERIENCE : At least three years' teaching experience in the concerned speciality as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Post graduate degree qualification.”

4. Pursuant to the aforesaid advertisement, the petitioner applied for the aforesaid Post, however, the application form of respondent no.1 was rejected on the ground that she did not properly fill the essential qualification in the online application form, which led to the filing of the O.A.No.4247/2013 by respondent no.1 before the Tribunal, wherein on 6.12.2013 a direction was issued to the petitioner to dispose of the representation dated 17.9.2013 of respondent no.1. Pursuant to the direction passed by the Tribunal, the matter was reconsidered and examined by the petitioner, however, the representation of respondent no.1 was rejected vide order dated 9.12.2013. Meanwhile the petitioner

invited 131 candidates for interview. The result was declared on 20.1.2014 subject to the final outcome of the O.A. and accordingly partial recommendation letters, recommending the names of 25 recommended candidates, were issued. On 1.4.2015, the Tribunal disposed of O.A. 4247/2013 filed by respondent no.1, in favour of respondent no.1, with the following direction:

“13. In view of above facts and circumstances, the OA is disposed of with the direction to the respondents to reconsider the application of the applicant for the post of Assistant Professor (Paediatrics), keeping in view the fact that in the column under heading “Qualification Level” the applicant had mentioned as Post-graduate and under the head “Specialization/Mandatory Subject” she mentioned i.e. Paediatrics as per the requirement of columns and there was no such details of minimum essential qualification as MD (Paediatrics). This exercise shall be completed within a period of three months from the date of receipt of a copy of this Order under intimation to the applicant. No costs.”

5. Mr.Kaushik, learned counsel appearing on behalf of the petitioner, submits that the Tribunal has exceeded its jurisdiction while allowing the O.A. filed by respondent no.1 and also failed to consider that respondent no.1 did not fill up the online application form as per the advertisement published by the petitioner. Mr.Kaushik further submits that the finding of the learned Tribunal is erroneous as respondent no.1 has wrongly equated her MBBS qualification with PG qualification i.e. MD (Paediatrics). Counsel also submits that the Tribunal has failed to take into account that during the pendency of the matter the Tribunal had directed the UPSC to dispose of the representation dated 17.9.2013 of respondent no.1 before 9.12.2013, which was examined and rejected for the reason that respondent no.1 failed to fill up the details of MD (Paediatrics)

qualification in the online application and, thus, she could not be considered as a valid candidate. Counsel also contends that the Tribunal has failed to consider that the Commission receives a large number of applications and it was not practical to physically scrutinise each and every application so as to decide the eligibility. It is also explained by the learned counsel for the petitioner that after the introduction of the Online Recruitment Application (ORA), the computer system generates a scrutiny report for the purpose of Pre-Preliminary Scrutiny of applications, which is based on the information provided by the candidate under '*Degree*' and '*Subject*' columns of Educational Qualification Module of online application system.

6. Learned counsel for the petitioner contends that respondent no.1 had filled up MBBS degree in the 'degree and subject' column of education qualification although the essential qualification was MD. Thus in the absence of essential qualification having been correctly filled up by respondent no.1, petitioner cannot be blamed. Counsel also contends that in case the instructions are not followed by the candidates for filling up online recruitment applications as available on the website of the Commission including the qualifications, the petitioner cannot be blamed as the package is programmed by specialists and there cannot be individual interference as the same would lead to bias, tampering and the whole procedure would become endless as in some of the examinations lakhs of candidates apply. It is further submitted that the very purpose of introduction of ORA system would be defeated if after the pre-scrutiny is carried out by the computer, physical examination is conducted for each form. Learned counsel also submits that the judgment passed by the Coordinate Bench of the Tribunal in the case of Poonam Gupta would be applicable on all force to the facts of the present case as in the aforesaid

case the form was incomplete and respondent no.1 cannot take advantage of her own shortcoming. Reliance is placed by the counsel on ***Union Public Service Commission And Anr. v. Government of NCT of Delhi & Ors.***, W.P.(C) 100587/2009, more particularly paras 25 to 27, wherein a Division Bench of this Court has recognised the fact that it would be highly impracticable for UPSC to give a go-by to the instructions, which have been categorically and specifically mentioned in the advertisement. Paras 25 to 27 of the judgment read as under:

“25. With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it. It is one thing to say that procedure is a handmaid of justice but it is another thing, in practical life, to give procedure a complete go by for the sake of accommodating a few people. If this is done, then there would be no obligation on anybody to follow any procedure resulting in a completely unmanageable situation.

26. If the submission made by learned counsel for the Respondents is placed on a larger canvas (since the UPSC conducts dozens of such examinations annually), one can well imagine the resultant chaos. For example, it is well known that the UPSC receives lakhs of applications for the Central Civil Services Examination. If every such applicant submits an incomplete application, that is to say that the relevant information is not submitted along with the application, the processing time for the UPSC would take several months and would, in the long run, be completely counterproductive. Consequently, in our opinion while it is true that procedure is the handmaid of justice, it is not possible to ignore practical difficulties that may arise in a given case.

27. The present case is such a case where, because of a very large number of applications received by the UPSC, if it is compelled to

accept procedurally incomplete applications, there would be serious practical difficulties that it would have to encounter and this may very well lead to a break down in the system. We also cannot overlook the fact that the applicants/Respondents are all highly educated persons claiming to have an LLB degree and three years experience at the Bar. Therefore, it must be assumed that they fully understood the contents of the advertisements and the DAF. There was a duty cast on them to correctly fill up the DAF and they cannot be allowed to contend that despite this, their application should be accepted even if it is incomplete only because procedure is the handmaid of justice.

7. It is also contended by the learned counsel for the petitioner that if the directions of the Tribunal are accepted and UPSC is compelled to accept incomplete applications then it would lead to serious practical difficulties, a complete breakdown of the system and would also severely affect various recruitment processes. Reliance is placed by the learned counsel on the directions contained in the judgment rendered by the Calcutta High Court in W.P.(C) 49/2012 wherein it was held as under:

“14. A process for selection and appointment to a public office should be absolutely transparent and there should be no deviation from the terms and conditions of the employment notice and the rules applicable to the process in any manner whatsoever, for a deviation for a particular candidate amounts to gross injustice to other candidates not knowing the fact of deviation benefiting only one or a few. The procedure should be same for all the candidates. In our opinion, the Tribunal rightly dismissed the petitioner’s OA.”

8. Mr.Bagai, learned senior counsel appearing on behalf of respondent no.1, submits that the candidate cannot be blamed if an appropriate software is loaded on the computer. Strong reliance is placed by Mr.Bagai on the terms of the advertisement wherein the word ‘post-graduate’ is used:

“12. (Vacancy No.13060812108)

Thirty-one Assistant Professor (Paediatrics) in Ministry of Health and Family Welfare. Of the thirty-one posts, four posts are reserved for Scheduled Castes Candidates, two posts are reserved for Scheduled Tribes Candidates, nine posts are reserved for Other Backward Classes Candidates and remaining sixteen posts are Unreserved. QUALIFICATIONS: A. EDUCATIONAL: (I) A recognized medical qualification included in the first or the Second Schedule or Part-II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part-II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of the Indian Medical Council Act, 1956. (II) Post Graduate degree qualification in the concerned speciality i.e. M D (Paediatrics) or equivalent. The candidates holding DNB qualifications _____uld need to get their qualification verified by NBE as to whether it is as per the requirement of the Gazette notification No.MCI-12(2)/2010-Med.Misc. dated 11.6.2012 and produce such verification certificate at the time of interview. B. EXPERIENCE, NOTE, DUTIES, HQ and ANY OTHER CONDITIONS Same as in item No.10 above.”

9. Learned senior counsel further submits that an MD, DNB or DM all would be covered under the umbrella of a post-graduate. It is further contended that a careful examination of the relevant column of the form would show that respondent no.1 had filled up ‘post-graduation’ under the column ‘qualification level’ and in the column of ‘specialty’, ‘Paediatrics’ has been filled up. Thus, there was no lapse on the part of respondent no.1 and in case the information has not been supplied in the manner as expected by the petitioner that by itself cannot be a ground to reject the case of respondent no.1. Learned senior counsel further submits that in the proceedings under Article 226 of the Constitution of India, the petitioners are unable to show that the order passed by the Tribunal is either perverse,

illegal or unreasonable.

10. We have heard learned counsel for the parties, considered their rival submissions and also examined the order passed by the Tribunal, by which the O.A. filed by the respondent herein stands allowed. It is not in dispute that pursuant to an advertisement published in the year 2013, inviting applications for filling up various posts of Assistant Professor (Paediatrics). It is the case of the respondent that despite filling up the application form correctly the respondent was not called to produce the original documents and, thus, she sought reasons from the petitioner for not processing her application. The respondent was informed that her application form was deficient as she has not indicated her qualifications in the second row, fourth column under the Heading Educational Qualifications. Respondent thereafter made a representation to the petitioner herein. As the representation of the respondent did not yield favourable results, she approached the Tribunal by filing an O.A.
11. Mr.Naresh Kaushik, learned counsel for the petitioner, has submitted that the petitioner receives a large number of applications for recruitment and in case application form is not correctly filled up it is not possible for the petitioner to scrutinize each and every application form individually and, thus, in the absence of the respondent having filled up the form correctly, the petitioner is well within its right to reject the application.
12. The stand taken by the petitioner before the Tribunal in the counter affidavit reads as under:

“That as the Commission receives a large number of applications for recruitment to various posts, and it is not practical to physically scrutinized each and every application to decide the eligibility. Therefore, after introduction of Online Recruitment Application (ORA), on the basis of the information filled in the online application by the candidates, the computer system

generates a scrutiny report for the purpose of Preliminary Scrutiny of applications. The scrutiny report contains the essential information like Name, Roll No. of the candidate, Educational Qualification claimed by the candidate, the quantum of experience (in years, months and days). Pre-Preliminary Scrutiny is done on the basis of the Scrutiny Report generated by the Computer System as per the information filled in by the candidates in the online application form. Thus, the application of the candidates who do not claim the minimum essential qualification in the online application is rejected straightway without at the printout of the applications.”

13. We may note that the representation made by the respondent before the petitioner herein was rejected by an order dated 9.12.2013, which reads as under:

“I am directed to refer to your representation dated 12/9/2013 regarding consideration of your application for the above mentioned recruitment case. The matter has been examined when it is noted that have not filled up the details of minimum essential qualifications; EQA (ii) i.e., MD(Paediatric) in the online application. Since, such incomplete applications are summarily rejected; your representation for consideration of your application cannot be acceded to.”

14. Since the bone of contention between the parties is the application form, the relevant part of the application form, as filled up by the respondent, is reproduced as under:

Qualifica- tion	Degree	Subject	Qualification Level	Specialization /Mandatory Subject	University/ College	Duration From-to	Date of Notification	Division/Class	Result Type/ Result Score	Date of Degree
Essential	MBBS	MBBS	Post Graduate Medical/ Denta Vet/Ahush	Paediatrics	Ch. Charan Singh University, Meerut Santosh Medical College and Hospital	May 2007 To May 2010	06.06.2010			12.02.2011

15. It is the contention of Mr.Kaushik, counsel for the petitioner, that in the column 'Qualification Level' the respondent has filled up Post-Graduate instead of MD, DNB or DM and since the application form was filled up on-line and the expected qualification as per the requirement of the on-line application form was not met, the application form of the respondent was rightly rejected. Mr.Kaushik has relied upon various judgments in support of his submission that Courts have repeatedly recognized the fact that the Commission (petitioner herein) receives large number of applications for recruitment to various posts and it is not practical to physically scrutinize each and every application to decide the eligibility. The Courts have also recognized that the computer system generates a scrutiny report and in case a scrutiny report contains the essential information and since on-line application of the respondent did not contain the minimum essential qualification, the same was rejected.
16. While there is no quarrel to the proposition, sought to be urged by Mr.Kaushik, and we respectfully agree by the views expressed by the judgments rendered by this Court and as relied upon by the counsel for the petitioner, but in our view the said judgments are not applicable to the facts of the present case.
17. In paragraph 3 foregoing, we have extracted Clause A of the advertisement, which talks of a post-graduate degree qualification in the concerned specialty i.e. MD (Paediatrics) or an equivalent. Even in paragraph 12 of the advertisement, extracted in paragraph 8 foregoing, reference has been made to a post-graduate degree qualification in the concerned specialty. The application form, as filled up by the respondent, extracted in para 14 foregoing, would show that in the column of Qualification level, the respondent has entered 'Post-Graduate'. In the

column 'Specialization/Mandatory Subject', the respondent has rightly filled up 'Paediatrics', which was a requirement. To say that instead of the words 'Post-Graduate', 'MD' should have been filled up in the application form, is not acceptable and in case the computer had been programmed in such a manner then the advertisement should have specifically stated that for Post-Graduates, the word MD should be stated. An MD is a post-graduate qualification. The requirement was Post-Graduate, the respondent filled up the Post-Graduate in the application form and the application form thus cannot be held to be incomplete. Resultantly, we find no infirmity in the order passed by the Tribunal, which would require interference in the proceedings under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

CM APPL. 12906/2015 (STAY)

18. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 16, 2015

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