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

+ W.P.(C) 462/2014

Date of Decision : 5th December, 2016

KAMAL CHAUHAN

Through

..... Petitioner
Mr. M. K. Bhardwaj, Ms. Priyanka
M. Bhardwaj, Ms. Ankita Bhardwaj,
Advocates

versus

UNION OF INDIA & ORS.

Through

..... Respondents
Mr. Rajesh Gogna, Advocate for R-1
& R-2
Mr. Naresh Kaushik and Ms. Joymotz
Mize, Advocate for UPSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. The petitioner- Kamal Chauhan- had applied for selection as Senior Scientific Officer Grade II (Biology) in the Central Forensic Science Laboratory, Central Bureau of Investigation, Ministry of Home Affairs, in response to advertisement No.17/2011 published by the Union Public Service Commission/respondent No.3 ('UPSC' for short).

2. The petitioner was not issued a call letter for the interview, perceptibly, for lacking the essential educational qualification. The petitioner then filed O.A. No. 1918/2012 and by the interim order dated 05.06.2012, was provisionally permitted to participate in the

interview, subject to the condition that his result would not be published or disclosed.

3. Consequently, the petitioner was interviewed by the Selection Board which included a Member of the UPSC as the Chairman of the Board and two experts.

4. Paragraph 17 of the impugned order dated 06.01.2014 records and holds that the petitioner, though selected, was not eligible notwithstanding that he was a Ph.D. in DNA Finger printing.

5. The short issue before us is whether the petitioner fulfils and meets the mandated essential educational qualification as prescribed in advertisement No. 17/201, the relevant portion of which reads as under:-

“QUALIFICATION : ESSENTIAL: (i) M.Sc. Zoology, or Anthropology (Physical) or Botany from a recognized University or equivalent. (ii) Three years experience in Biological Laboratory. DESIRABLE & DUTIES Same as in Item No. 02 above”.

6. The petitioner, it is accepted and admitted, is B.Sc. (Hons.) in Botany, M.Sc in Bio Chemistry and Ph.D. in DNA Finger printing.

7. The UPSC asserts and submits that equivalence in Masters’ degree was permitted, albeit M.Sc. in Bio-Chemistry was not equivalent to the three eligible degrees prescribed, i.e. a Master’s degree in Bio Chemistry was not equivalent to a Master’s degree in Anthropology (Physical), Zoology or Botany.

8. The impugned order upholds this contention of the UPSC and also observes that the Tribunal, would refrain and not substitute their opinion for that of experts constituted for the specific purpose of

deciding equivalence of degrees.

9. The aforesaid legal proposition cannot be doubted and challenged. However, the Tribunal has failed to examine whether there is/was any error or mistake in the decision making process, while examining and deciding the question of equivalence. The Tribunal can examine whether the UPSC had delved into, and examined, the question of equivalence at the first instance, what was the opinion expressed by the experts, and whether the relevant aspects and parameters had been applied or ignored by relying upon irrelevant considerations.

10. It would be appropriate to notice and record that the UPSC did not initially appoint an expert Equivalence Committee or seek expert opinion. The Expert Committee was constituted vide order dated 28.11.2014, after the OA was filed had been dismissed vide the impugned order dated 06.01.2014. The Committee consisting of Prof. Iqbal Parwez, Professor, Department of Zoology, Aligarh Muslim University and Professor Sushma Bohra Rathaur, Professor & Head, Department of Biochemistry, Banaras Hindu University, Varanasi (U.P.) vide report dated 04.12.2014 had opined that, academically, a Postgraduate Degree in Bio-Chemistry cannot be treated as equivalent to a Postgraduate Degree in Zoology/Botany/Anthropology (Physical). The petitioner was therefore not eligible. This Committee was informed and aware, that the petitioner's application was rejected by the UPSC on the ground that he lacked the essential educational qualification.

11. On the other hand, there are contra opinions. Letter dated

13.06.2012 of Dr. C. N. Bhattacharya, Director, Central Forensic Science Laboratory, Central Bureau of Investigation reads:-

“With reference to the above, the undersigned has been directed to certify to the UPSC that M.Sc. Biochemistry is to be considered as an equivalent educational qualification for the post of Senior Scientific Officer, Grade –II (Biology) in Central Forensic Science Laboratory (CBI), New Delhi advertised by UPSC vide Advt. No. 17/2011.

In view of the above, I am here with certifying that “M.Sc. Biochemistry is considered as an equivalent educational qualification for the post of Senior Scientific Officer, Grade - II (Biology) in Central Forensic Science Laboratory (CBI), New Delhi”.

M.Sc. Biochemistry has already been included as essential qualification for the post of SSO, Gr. II (Biology) being advertised for the CFSLs of Directorate of Forensic Science Services, MHA, New Delhi which is the nodal agency for all matters related to forensic science (copy attached).

Submitted for necessary consideration please”.

The aforesaid opinion records that M.Sc Bio-Chemistry had already been included as an essential qualification for the post of SSO, Grade II (Biology) in the Central Forensic Science Laboratory, Ministry of Home Affairs, which is the nodal agency in all forensic science related matters.

12. Another letter dated 17.08.2012, written by the Deputy Secretary, UPSC for the recruitment of two posts of Senior Scientific Officer, Grade I (Biology) in the CFSL, reads:-

“I am directed to refer to correspondence resting with the Commission’s letter of even number dated 15.6.2012 on the above mentioned subject and to say that

while scrutinizing the applications received for the subject post, it was felt that the educational qualifications prescribed for the post need a thorough review. The M.Sc. degree in Zoology, Botany and Anthropology (Physical) have been prescribed for the post but M.Sc. degree in Microbiology, Molecular Biology and Human Genetics, Bio Chemistry etc, which also appear to be closely relevant to the post, have not been prescribed. It is also felt that M.Sc. degree in Botany in this case is not that relevant as the person selected for the post is required to carry out tests of Blood/DNA etc. It is, therefore, requested that the educational qualifications for the post of Senior Scientific Officer Gr. II (Biology may be reviewed for carrying out necessary amendments”.

The aforesaid letter by the UPSC accepts that they had received a number of applications for the post of Senior Scientific Officer, Grade I (Biology) and on scrutiny it was felt that the educational qualifications of M.Sc. degrees in Zoology, Botany and Anthropology (Physical) were prescribed and that M.Sc. degrees in Microbiology, Molecular Biology and Human Genetics, Bio Chemistry, etc. were closely relevant had not been prescribed. Further M.Sc. degree in Botany might not have relevance, as a selected candidate had to carry out tests of Blood/DNA etc.

13. Dr. Rajinder Singh, another Director of the Central Forensic Scientific Laboratory, Central Bureau of Investigation had also examined the issue of equivalence and vide the communication dated 20.09.2011, had recorded:-

“Dr. Kamal Chauhan has completed M.Sc. in Biochemistry from M.D. University Rohtak in the year 1998. The said course was carried out under the Deptt. Of Biosciences with Genetics & Evolutionary Biology,

Cell & Molecular Biology, Environmental Biology, Microbiology & Biotechnology, Biochemistry, Plant Biochemistry, Medical Biochemistry & Immunology, Basic & Applied Enzymology, Metabolism and Vitamins, Minerals & Hormones as subjects. M.Sc. Biochemistry has already been included as essential qualification for the post of SSO (Biology) being advertised for the CFSLs of DFSS, MHA, New Delhi which entertains the same nature of duties. Hence, M.Sc. (Biochemistry) may be treated as equivalent educational qualification w.r.t. UPSC Advertisement No. 17/2011 for the post of Senior Scientific Officer, Grade-II (Biology) in Central Forensic Science Laboratory (CBI), New Delhi as published in Employment News dated 10th -16th September, 2011.

This certificate is being issued to Dr. Kamal Chauhan, Laboratory Assistant (Biology), CFSL (CBI), New Delhi for applying for the post of SSO-II (Biology) vide UPSC advertisement as mentioned above”.

14. After filing of the present petition, the Ministry of Home Affairs had constituted a committee of Professor R. M. Sharma, Department of Forensic Science, Punjabi University, Patiala, Professor Rajan Gaur, Department of Anthropology, Punjab University, Chandigarh, and Dr. I Haque, Sr. Scientific Officer Gr. I (FS), DFSS HQs, New Delhi to examine the question of equivalence.

The Committee considering the question had opined:-

“Sh. B. K. Mohapatra, SSO, CFSL-CBI put before the Committee, the relevant documents, forwarded by CFSL-CBI.

Having gone through all the relevant papers and the Judgment of Hon’ble Court & extensive discussion; the Committee is of the view that the person having degree of M.Sc. (Bio Chemistry) can work in Biology Division of Forensic Science Laboratory, since Bio-

Chemistry is one of the Biological Sciences and thus, relevant to Forensic Biology field. More so, in view of the recent modifications of Recruitment Rules done by Directorate of Forensic Science Services, a nodal agency of MHA: under FCS in its six CFSLs, vide gazette notification No. 629, Schedule 7(b) Dated December 30, 2013; M.Sc. (Bio Chemistry) has been included as one of the essential qualifications for the post of Senior Scientific Officer Gr. II (Biology)”.

The aforesaid opinion reflects and holds that persons having a degree in M.Sc. (Bio Chemistry) could work in the Biology Division of the Forensic Science Laboratory since Bio-Chemistry was one of the Biological Sciences and, was relevant to the field of Forensic Biology. The Committee referred to the modification in the Recruitment Rules be made by the Directorate of Forensic Science Services to include the degree of M.Sc. (Bio Chemistry) as one of the essential qualifications for the post of Senior Scientific Officer Gr. II (Biology).

15. Notwithstanding the aforesaid reports, the Ministry of Home Affairs has taken an ambivalent stand that the Committee was of the view that M.Sc. (Bio Chemistry) was not equivalent and the petitioner under the extant Recruitment Rules could not have been appointed. The relevant portion of the affidavit reads as under:-

“The petitioner does not meet the required qualification as per existing Recruitment Rules of CFSL (CBI). However, the committee in its report dated 20.04.2014 (sic.2015) was of the view that the person having degree of M.Sc. (Bio Chemistry) can work in Biology Division of Forensic Science Laboratory, since Bio Chemistry is one of the Biological Sciences and thus,

relevant to Forensic Biology Field”.

16. We are afraid that the said affidavit does not in fact reflect the opinion of the Committee dated 20.04.2015 which have been quoted above. The affidavit overlooks and negates the affirmative opinion of the expert committee. Equivalence is not examined in vacuum but with reference to the requirements and need for the work to be undertaken while on the post.

17. The question of equivalence in the light of the aforesaid reports including the acknowledgment of the Department that the degree of M.Sc. (Bio Chemistry) is an equivalent and relevant degree for the next higher post of Senior Scientific Grade I, the issue must be answered in favour of the petitioner.

18. Accordingly, the present writ petition is allowed and the impugned order dated 06.01.2014 is set aside. We direct the respondents to consider the M.Sc. (Bio Chemistry) degree as an equivalent degree which is essential for the post of Senior Scientific Officer, Grade II (Biology) and accordingly, the petitioner's qualification would be considered. We, however, clarify that the petitioner will not be entitled to the arrears of pay and appointment to the said post would take effect from the date so appointed. The respondents would complete the aforesaid exercise within a period of two months after receiving a copy of this order. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

DECEMBER 05, 2016/b