

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

+ **WRIT PETITION (CIVIL) No. 3696/2014**

% **Reserved on: 17th March, 2016**
Date of Decision: 30th May, 2016

BALRAM SAHU

....Petitioner

Through Ms. Jyoti Singh, Sr. Advocate
with Mr. Sameer Sharma, Ms.
Tinu Bajwa and Mr. Amandeep
Joshi, Advocates.

Versus

UNION OF INDIA & OTHERS.

.....Respondents

Through Mr. Jasmeet Singh, CGSC & Mr.
Srivats Kaushal, Advocate for
respondent Nos. 1 and 2.
Mr. Naresh Kaushik & Ms.
Megha Singh, Advocates for
respondent No. 3-UPSC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

1. Balram Sahu in this writ petition impugns order dated 20th March, 2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) whereby his OA No. 1414/2012 questioning the

appointment of S. Mani Vannan as Deputy Drug Controller (India) has been dismissed.

2. A number of contentions were raised by the petitioner before the Tribunal, albeit the contention raised before us is rather concise. Before we deal with the said contention, the factual matrix may be noticed. Applications were invited by the Union Public Service Commission for filling up five posts of Deputy Drug Controller (India), including one post each for Scheduled Caste and Other Backward Category Candidates. Balram Sahu, the petitioner, and S. Mani Vannan, the fourth respondent, were Other Backward Caste candidates who had applied and the later stands appointed to the said post. The appointment of the fourth respondent is under challenge.

3. The essential qualifications as prescribed and mentioned in the advertisement, read as under:-

“A. EDUCATIONAL: Master’s degree in Chemistry/Pharmaceutical Chemistry / Bio-Chemistry / Pharmacy / Pharmacology of a recognized university or equivalent.

B. EXPERIENCE: Twelve years experience in dealing with problems connected with drug standardization and control of drug standards or in the manufacturer or testing of drugs.

DESIRABLE: Experience of administration of the Drugs and Cosmetics Act and the rules thereunder and /or of

manufacture and testing of drugs and/or dealing with problems connected with Import and Export of drugs.”

Thus, the candidates were required to have a Masters’ degree in Chemistry/Pharmaceutical Chemistry/BioChemistry/Pharmacy/Pharmacology from a recognized university or equivalent. Experience of twelve years in dealing with problems connected with drugs standardization and control of drug standards or in the manufacture or testing of drugs was mandated. The desirable qualification mentioned was experience in the administration of the Drugs and Cosmetics Act and the rules thereunder or manufacture and testing of drugs or dealing with problems connected with the import and export of drugs.

4. On the question of qualifications of the fourth respondent-S. Mani Vannan, it is an undisputed fact that he is a diploma holder, graduate and post graduate in Pharmacy. His educational qualifications as mentioned in the application form of the fourth respondent, which are not under challenge, read:-

“

Level	Exam passed/Degree Trg.	Division/Grade % of	Year of passing	Duration of the Degree/Dipl	Board /Univ.	Subject	Subject of Specialization
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PG	M. Pharmacy	First	2008	Two Years	The Tamil Nadu Dr. M.G.R. Medical University		Pharmaceutics
UG	B. Pharmacy	First	1989	Four Years	Anna University	Pharmaceutical Sciences	N.A.
Diploma	D. Pharmacy	First	1985	One Year	Anna University	Pharmaceutical Sciences	N.A.

”

5. The same application form relating to experience of the fourth respondent states:-

“

Office/Instt. Firm	Post held	Part time/Contract Basis/ad hoc/regular/Temp/pmt.	Exact dates to be given (indicate day, month & year)		Total Period (in years)			Scale of pay	Nature of duties
			From	To	Years	Months	Days		
O/o Assistant Drug Controller (India), CDSCO, U.B. Zone, Bangalore	Drugs Inspector	Permanent	03/09/1998	Till Date	Eleven	Six	One	Rs.19,980/- (Basic) + Rs.4800/- (Grade Pay)	As per Section 21 of D&C Act, 1940 and Rules 52 of D&C Rules,

									1945
Wockhardt Health Care Limited, Alathur, Chennai	Technical Officer	Permanent	10/09/1992	31/08/98	Five	Eleven	Twenty	Rs.6519/-	Incharge of Quality Control Functions
Nicholas Laboratory India Limited Mumbai	Apprentice Trainee	Temporary	17/09/1990	16/09/1991	One	-	-	Rs.1000/- (consolidated)	Trainee Chemist in Quality Control

6. One of the issues raised by the petitioner before the Tribunal was that work experience of the fourth respondent before he had acquired the post graduate degree in Pharmacy in 2008, cannot be counted. The said contention has not been raised and pressed before us. The contention was rejected relying on decisions in *M.B. Joshi versus Satish Kumar Pandey & Others*, (1993) Supp. 2 SCC 419 and *D. Stephen Joseph versus Union of India*, (1997) 4 SCC 753, wherein the Supreme Court has held that in the absence of rules to the contrary, work experience would include service or experience of the required nature prior to acquisition of the educational qualification. Reference was also made by the respondents to *Santosh Pal Meena versus UPSC & Others*, (2014) 213 DLT 218. As already noted, this contention was not pressed before us.

7. The submission of the petitioner was that the fourth respondent had concealed facts and had not specifically disclosed that he had included in his work experience the period of two years when he was studying for a post graduate degree in Pharmacy from 2006 to 2008. This study period of two years cannot be counted and included in the requisite work experience. Our attention was drawn to column 3 of the application form of the fourth respondent which has been reproduced above. The fourth respondent had included in the experience period, the two year term when the said respondent was studying for the post graduate degree of Masters in Pharmacy. The said contention in our opinion, should be rejected for the fourth respondent had specifically stated that he had studied and obtained a post graduate degree in Pharmacy in the year 2008 and the duration of the course was two years. This fact was not concealed, but disclosed and stated in the application form. The petitioner had also noticed and ascertained this fact from the application form. This information has not been gathered from a third source. Once facts were stated, it was for the authorities thereafter to decide whether to exclude or include this period from work experience. It is apparent that while undergoing the post graduate course, the fourth respondent was in employment. The fourth respondent may have wrongly included the period of two years when he was studying for the post graduate degree in the work

experience period, but this error and mistake would not result in rejection of his application for concealment or suppression of facts, for several reasons. Firstly, he had given and furnished full details of period of study for the post graduation degree. Secondly, whether or not this period of employment should be counted in work experience is a matter of perception and capable of two views. Once full details and facts were stated, the authorities had to examine and make a call. Lastly, even if we exclude this period of two years, the fourth respondent still had work experience of more than twelve years, i.e., the minimum eligibility requirement mentioned in the advertisement and the recruitment rules. The respondent had worked as a Drug Inspector for 9 years and 6 months (after excluding period of two years), for 5 years and 11 months as a Technical Officer in Wockhardt Health Care Limited, Alathur, Chennai and one year from 17.9.1990 to 16.09.1991 in Nicholas Laboratory Ltd., Mumbai. The work experience was in the relevant field and this is not debated and disputed.

8. The principal contention of the petitioner before us is that the UPSC had received a large number of applications for appointment to the post of Deputy Drug Controller (India) and had resorted to short-listing by fixing work experience of 16 years as the criteria. Our attention was drawn to the

information furnished to the petitioner under the Right to Information Act, 2005. We have examined the relevant papers obtained by the petitioner under the Right to Information Act and after considering the same, find the contention has no merit and has to be rejected. The file notings of the UPSC would indicate that the posts advertised included posts reserved for Scheduled Castes and Other Backward Category. As a large number of applications had been received, it was decided to adopt a short-listing criteria. Initially, two criterias were suggested; (i) educational qualification be raised to Ph.d. and requisite experience to 13 years or (ii) in the alternative, educational qualification should be retained as advertised and requisite work experience should be raised to 16 years. The second suggestion was accepted with one modification that the work experience for the Scheduled Castes and the Other Backward Category candidates was reduced to 15 years instead of 16 years. We had also seen the original file which was produced by the counsel for the UPSC before us and do not find anything to indicate that the reduction of work experience for short-listing of candidates belonging to Scheduled Castes and Other Backward Category has been interpolated or changed subsequently. Noticeably, this plea was not specifically raised by the petitioner before the Tribunal. Since both the petitioner and fourth respondent are OBC candidates, the short-listing criteria would be the same, i.e., 15 years. The fourth

respondent certainly meets the aforesaid requirement of work experience of 15 years, even if we exclude two years from the aforesaid work experience for the said respondent was studying for the post graduate degree in Pharmacy from 2006-2008. The total work experience as mentioned by him, after excluding the said period of two years, would still be more than fifteen years in the relevant field.

9. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 30, 2016
VKR