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

Date of decision: 31st May, 2016

+ W.P.(C) 5224/2016

ANJU BHARTI

..... Petitioner

Through Ms.Jyoti Singh, Sr.Adv. with
Mr.Sameer Sharma and Mr.L.K.Giri,
Advs.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through Mr.Devesh Singh, ASC with
Mr.Vinod Kumar Bhati, Adv. for
GNCTD.

Mr.Naresh Kaushik, Ms.Joymati
Mize, Advs. for R-3/UPSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.(ORAL)

1. The petitioner impugns the order dated 16th May, 2016 whereby O.A.No. 446/2014 has been dismissed.
2. The petitioner had made an online application for appointment to the post of Assistant Public Prosecutor (APP). The petitioner who has a Bachelor's degree and Masters degree in law, was not short-listed, as in the online form she had failed to mention that she had an LLM degree.
3. When the petitioner came to know the short-listing criteria adopted by the Union Public Service Commission, and that she was excluded for failure

to mention that she had an LL.M degree, she made a representation and then filed the aforesaid O.A.

4. The impugned order is detailed and refers to several judgments of the High Court wherein candidates who had failed to fill up and enter the requisite details in the online application form, were held to be ineligible, even when they had essential qualification or fulfilled the short-listing criteria. We shall refer to the said judgments subsequently.

5. The petitioner submits that the candidates who had given details of the LL.M degree under the heading/column “desirable qualification” were not disqualified. We perceive and believe that these cases are not comparable. The online application forms in these cases required the relevant details under heading “desirable qualifications”.

6. We have also examined the online application form of the petitioner, enclosed as annexure A-5. The relevant columns as filled up by the petitioner under the heading “educational qualification(s)” read as under:-

“

Educational Qualification (s) :									
Qualification type	Degree	Subject	Qualification level	Specialization/ Mandatory Subject	University/ college	Duration from to	Date of Notification of Result/Issue of Final Marksheet	Division/ Class	Result Type/Result Score
Essential	LLB	Law	Graduation Law	LAW	Ch. Charan Singh University/ Meerut/ LLOYD LAW COLLEGE	Nov 2005 – Nov 2008	25-11-2008	1 st	Percentage/ 61

”

As is clear from the heading, the form required the petitioner to give details

of educational qualification(s), under specific columns:- qualification type, subject, qualification level, specialization/mandatory subject, university/college, date of notification of results and degree etc. The contention of the petitioner is that the word “essential” referred to in column No. 1 under the head “qualification type” was a default marker. Even if we assume that this contention is correct, the petitioner should have given details of other educational qualifications. The heading required the candidates to give details of his/her educational qualification(s) and was not restricted to furnishing details of the minimum or eligibility qualification. The heading was descriptive and required the candidate applying should give full details of his/her educational qualification.

7. More pertinent and specific is note 1 and the warning given to the candidates. For the sake of convenience, we would like to reproduce the same:-

“3. MINIMUM ESSENTIAL QUALIFICATIONS: All applicants must fulfil essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possesses at least the essential qualifications laid down for various posts. No enquiry asking for advice as to eligibility will be entertained.

NOTE-1 *IN THE EVEN OF NUMBER OF APPLICATIONS BEING LARGE, COMMISISON WILL ADOPT SHORT LISTING CRITERIA TO RESTRICT THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW TO A REASONABLE NUMBER BY ANY OR MORE OF THE FOLLOWING METHODS:*

- (a) On the basis of desirable Qualification (DQ) or any one or all of the DQs if more than one DQ is prescribed.*
- (b) On the basis of higher educational qualifications than the minimum prescribed in the advertisement.*

- (c) On the basis of higher experience in the relevant fields than the minimum prescribed in the advertisement.*
- (d) By counting experience before or after the acquisition of essential qualifications.*
- (e) By holding a Recruitment Test.*

THE CANDIDATES SHOULD, THEREFORE MENTION ALL HIS/HER QUALIFICATIONS AND EXPERIENCE IN THE RELEVANT FIELD OVER AND ABOVE THE MINIMUM QUALIFICATIONS

“WARNING”

CANDIDATES WILL BE SHORTLISTED FOR INTERVIEW ON THE BASIS OF THE INFORMATION PROVIDED BY THEM IN THEIR ONLINE APPLICATIONS. THEY MUST ENSURE THAT SUCH INFORMATION IS TRUE. IF AT ANY SUBSEQUENT STATE OR AT THE TIME OF INTERVIEW ANY INFORMATION GIVEN BY THEM OR ANY CLAIM MADE BY THEM IN THEIR ONLINE APPLICATION IS FOUND TO BE FALSE THEIR CANDIDATURE WILL BE LIABLE TO BE REJECTED AS THEY MAY ALSO BE DEBARRED EITHER PERMANENTLY OR FOR A SPECIFIED PERIOD BY THE COMMISSION FROM ANY EXAMINATION OR SELECTION HELD BY THEM. CENTRAL GOVERNMENT, FROM ANY EMPLOYMENT UNDER THEM.”

A reading of the aforesaid would show that the candidates were informed that they should fulfil the essential qualifications. In the event of the number of applications being large, the Commission could adopt a short-listing criteria to restrict the number of candidates being called for the interview. One of the criteria for short-listing could be higher educational qualification than the one prescribed in the application. The candidates were required to mention all qualifications and experience in the relevant field, over and above the minimum qualification. The warning had cautioned that

the short-listed candidates would be selected on the basis of his/her qualification and experience mentioned in the online form. Thus, the candidates were informed, told and warned that the essential minimum qualification and all other educational qualifications and experience must be mentioned in the online form.

8. The petitioner had signed the declaration to the said form, to the following effect:-

“I understand that in the event of number of applications being large, commission will adopt Short Listing criteria to restrict the number of candidates to be called for interview to a reasonable number, only from amongst eligible candidates by any or more of the following methods:

(a) On the basis of higher qualifications than the minimum prescribed in the advertisement.

(b) On the basis of higher experience in the relevant fields than the minimum prescribed in the advertisement.

(c) By counting experience before or after the acquisition of essential qualifications.

(d) By holding a Recruitment Test.

I also understand that if at any subsequent stage or at the time of interview any information given by me or any claim made by me in my online application(s) is found to be false, my candidature will be liable to be rejected and I may also be debarred either permanently or for a specific period by the

(a) Commission from any examination or selection held by them.

(b) Central government, from any employment under them.”

I hereby declare that all the statements made in the application are true and complete to the best of my knowledge and belief. I understand that action can be taken against me by the Commission if I am directed by them to be guilty of any type for misconduct mentioned herein. I have informed my Head Office/Deptt. In writing that I am

applying for this selection.

Dated 14-08-2014

Sd/-

Signature of the Candidate

Application No. 11906489314”

(emphasis supplied)

9. Thus, in the present case the candidates were forewarned and cautioned that they must mention the higher qualification other than the minimum or essential qualification in the online application. The note and the declaration were lucid and categorical. The heading “educational qualification(s)” clearly reflected and notified that full qualifications of the candidate were to be mentioned.

10. On the basis of the duly filled up online applications, 54 Scheduled Caste candidates, 81 Other Backward Category candidates and 75 general category candidates with LLM degrees were short-listed and called for interview. A large number of candidates on reading the online application form had furnished details of their educational qualification including LLM degree. Seven differently abled candidates with Locomotive disability were also short-listed on the same criteria.

11. We would not accept the argument that the application form was confusing. This submission is a cover up for the lapse and error made. The petitioner had failed to carefully read the form and in the facts of the present case, the error which have been inadvertent, would deny her any relief.

12. The petitioner submits that this is an extraordinary and peculiar case for the petitioner was allowed to participate in the interview and has secured the 7th rank in the order of merit. She is a deserving candidate. The

aforesaid argument has to be rejected for the petitioner was not short-listed. As per the online application form the petitioner had only an LLB degree. She would not and did not qualify for being called for the interview.

13. Similar plea was raised and rejected in W.P.(C) No. 9949/2009, ***Union Public Service Commission vs. Government of NCT of Delhi*** decided on 25.01.2010, with the following observations:-

“ 25. With such a large numbr 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 examination 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 bread 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.

28. *The matter may be looked at from another point of view. The UPSC has rejected the candidature of 45 persons due to non-submission of the required documents and/or submission of documents in the wrong format. If any relief is granted to the Respondents before us, surely it would be appropriate to grant a similar relief to other similarly placed candidates, some of whom may not have approached the Tribunal for relief. If this exercise were to be undertaken, perhaps the entire examination would require to be cancelled. In our opinion this is neither in the interest of the candidates who have qualified nor is it in the public interest to cancel the entire examination for the sake of accommodating a few persons, such as the Respondents.*

29. *The facts of this case are singular and we are of the opinion that given the very large number of applications received and the number of candidates involved, we must give the benefit of the necessity of sticking to procedural requirements to the UPSC.”*

14. In ***Dr. Vineet Relhan vs. Union Public Service Commission and another***, W.P.(C) 13451/2009 decided on 13.01.2010 it was held that the petitioner would not succeed as she has not submitted the relevant

documents. Dismissing the petition the High Court had observed :-

“10. In so far as the present case is concerned, there is nothing on record to suggest that the Petitioner submitted the requisite documents at the appropriate time. That apart, it is not as if the Petitioner is uneducated or could not have filled the form intelligibly. He claims to hold a degree of M.D. (Dermatology) and he ought to have been clear about the fact that the requisite certificates must be furnished alongwith the application form. For his failure to do so, the Petitioner has only himself to blame.

11. From the counter affidavit filed before us, it appears that the candidature of some other candidates were also rejected on the ground that they failed to submit the requisite certificate of educational qualifications, experience, community, etc. It has also been mentioned in the counter affidavit that the UPSC had clearly mentioned in the advertisement that no provisional claim would be accepted and the requisite certificates must be filed along with the application form. Given these facts, we are not inclined to re-open the selection process or interfere with the impugned order.”

15. In ***Union Public Service Commission vs. Dheerender Singh Paliwal***, W.P.(C) No. 2734/2010 decided on 30.09.2010, the judgment of the Tribunal was reversed and set aside, for the following reasons:

“11. The reasoning of the Tribunal is that the respondent had a Master’s degree in Zoology, photocopy whereof was submitted by him after attesting the same and since the prerequisite to undertake the Master’s course was a graduation degree, it could safely be inferred that the petitioner had Zoology as a subject at the graduation level.

12. UPSC has questioned the logic and the reasoning of the Tribunal by urging that today it is possible to switch disciplines at the graduation level and due to inter-

disciplinary relationship it is possible to obtain a Master's degree in a discipline having no direct relationship with the same discipline at the graduation level. In any case, urges UPSC, it conducts thousands of entrance tests in which lakhs of candidates apply and that UPSC is not to conduct inquisitorial or deductive exercises; the candidates have to strictly comply with the letter of the advertisement. With reference to the advertisement in question, UPSC highlights that what more could it do other than to repeatedly highlight to the candidates the requirement of submitting the necessary attested copies of the certificates establishing the eligibility of the candidate. If the candidate chose to remain negligent, he had to suffer.

13. A similar issue had arisen before the Tribunal when various Original Applications filed by Lawyers were allowed. Pertaining to the post of Assistant Public Prosecutor the advertisement concerned clearly stipulated that minimum educational qualification was a Degree in Law from a recognized University. Three years experience at the Bar was also stipulated as an eligibility condition. The applicants before the Tribunal had furnished self-attested photocopies of enrolment certificates issued by the State Bar Council. They did not submit self-attested photocopies of L.LB degree which they claimed to possess and urged before the Tribunal that it was known to one and all that the prerequisite of enrolment with the State Bar Council was a Degree in Law. The Tribunal held in their favour. By and under judgment and order dated 25.1.2010 WP(C) No.10058/2009 and connected writ petitions were allowed by a Division Bench of this Court holding that the letter of the advertisement had to be complied with and since UPSC conducts a large number of exams, it is impracticable to expect UPSC to give a go by the instructions that have been categorically and specifically mentioned in the advertisement. The plea that procedure is the hand made of justice was repelled by holding that in practical life, to give procedure a complete go by would

mean that nobody would be obliged to follow the procedure resulting in unmanageable situations. It was observed that if UPSC was compelled to accept procedurally incomplete applications there would be serious practical difficulties that it would have to encounter and this may well lead to a break down in the system.

14. We respectfully concur.

15. We have highlighted herein above the repeated emphasis at different places in the advertisement repeatedly cautioning the candidates to strictly comply with each and every requirement of the advertisement. The respondent must suffer for being negligent.

16. As regards the plea of discrimination, Shri Naresh Kaushik learned counsel for UPSC informs us that applications were invited for 37 disciplines, as detailed in the advertisement, and the same were processed discipline-wise by different Under Secretaries at UPSC and that one Under Secretary wrongly accepted applications of two persons, but not in the discipline in which the respondent had applied, but this would not entitle the respondent to any relief.

17. We concur. Equality in the negative is not recognized by law. There cannot be equality in a wrong."

16. In view of the aforesaid factual and legal position, we do not find any merit in the writ petition. The petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 31, 2016/mr