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

+ W.P.(C) 11274/2016 & CM 44092/2016

NORTH DELHI MUNICIPAL CORPORATION..... Petitioner

Through: Ms. Biji Rajesh, Advocate

versus

KAVINDER & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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29.11.2016

1. North Delhi Municipal Corporation, by this writ petition, impugns the order dated 20.5.2016 passed by the Central Administrative Tribunal ('Tribunal'), whereby OA No.1492/2013 filed by the Kulvinder/respondent No.1 has been allowed, with a direction that he should be appointed as Labour Welfare Superintendent in a vacant post. In case there was no vacant post, then the petitioner would revise the select list as per merit by replacing the private respondent lower in the merit list.

2. It is an undisputed position that the respondent No.1 had participated in the selection process for the post of Labour Welfare Superintendent under post code 56/09, pursuant to an advertisement published by the Delhi

Subordinate Services Selection Board in November, 2009. Respondent No.1 had cleared Part-I (Objective) Examination and answer-sheets for Part-II (Descriptive) papers were also checked.

3. The respondent No.1 had topped the merit list with 142 marks.

4. Respondent No.1, however, was not appointed on the ground that he did not fulfil the essential qualifications as per Recruitment Rules. The relevant portion of the RRs for the aforesaid post reads:-

“Essential Qualifications: (1) Degree of a recognized University or Equivalent

(2) Post-Graduate Degree/Diploma in Social Work or Labour Welfare of Industrial Relations or Personal Management or in any other allied subject of recognized University/Institution or equivalent.

Desirable: (1) Degree in Law of a recognized University or equivalent.

(2) Experience in the field of responsible capacity of Labour Welfare/Industrial Relations/Personal Management and/or in allied fields.”

5. Respondent No.1 has a B.Sc. degree and, therefore, clearly satisfies the first condition. Respondent No.1 is also a Master of Business Administration from Maharishi Dayanand University (‘MDU’), Rohtak. The second essential qualification in the RRs is post-graduate degree or diploma

in Social Work or Labour Welfare or Industrial Relations or Personal Management or in any other allied subject of recognized university or equivalent. MDRU is a recognised university. The second essential condition, as stipulated, refers to a very wide field. It not only refers to a degree, but also a diploma, which is of a much smaller duration. The Tribunal, after examining the subjects studied by respondent No.1 in the MBA course, has clearly opined that respondent No.1 had studied personal management, including the subjects, like Industrial Relations, Labour Welfare etc. He had also studied Human Resource Management.

6. Looking at the aforesaid facts, which were not taken into consideration by the petitioner corporation, the Tribunal has held as under:

“16. Applicant does not claim that he had a diploma in Social Work but on Labour Welfare. He states that in 4th Semester, there was indeed a paper on industrial relations and labour legislation. Now, clearly labour legislation relates to labour welfare. Similarly, industrial relations is included as a subject. The applicant also points that in semester II, the subject of Human Resource Management was covered. We are of the opinion that Personal Management is nothing but a different nomenclature for Human Resource Management and, therefore, the diploma included the subject Personal Management. Therefore, prima facie, we are of the opinion that the MBA done

by the applicant certainly covers labour welfare, industrial relations and personal management and respondents ignoring this and concluding that the candidate did not have the essential qualification, in our view, was not a correct stand. It was wrong on the part of the respondents not to appoint the applicant, though he received higher marks than the private respondents.

17. We, therefore, allow this OA. In as much as the recruitments have been closed in 2008 and private respondents already appointed, we feel that the substantive justice would be granted to the applicant by directing the respondents to declare that the applicant possessed the essential qualifications as per rules and the advertisement. Accordingly, we direct the respondents to appoint the applicant to the post of LWS. We are informed that at least one post of LWS is still vacant and, therefore, the respondents would not feel any difficulty in appointing the applicant. In case no post is vacant, then the respondents are directed to revise the list of selected candidates as per their merit and appoint the applicant by replacing the private respondent who was lower in merit list. The respondents shall implement this order within a period of three months of the receipt of a certified copy of this order. No costs.”

7. During the course of arguments, learned counsel for the petitioner has pointed out that out of five posts advertised, only two candidates were selected in the general category. Respondent No.1 was the topper and had

secured the highest marks in the merit list.

8. We are entirely in agreement with the reasoning of the Tribunal. It is a case where the petitioner corporation did not scrutinise the subjects which were studied by respondent No.1 in the Post Graduate Degree Course. The Tribunal is justified in the findings, as recorded above.

9. The writ petition has not merit and is dismissed. CM 44092/2016 is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 29, 2016
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