

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

+ **LPA 160/2015 & CMs 5244/2015, 7650/2015**

Reserved on: 4th July, 2017
Date of decision : 31st July, 2017

RITU BHATIA

..... Appellant

Through: Mr.S.Mukherjee and Mr.Avijit Singh,
Advs.

versus

MINISTRY OF CIVIL SUPPLIES CONSUMER AFFAIRS &
PUBLIC DISTRIBUTION & ANR

..... Respondents

Through: Mr.Dev P.Bhardwaj, CGSC with
Mr.Satya Prakash Singh, Adv. for R-
1/UOI
Mr.Saurav Agarwal, Mr.A.Tiwari,
Advs. for R-2-3

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The Appellant, by way of the present Appeal has challenged the Judgment/Order dated 02.02.2015 passed by the Single Judge of this Court in WP(C) 977/2015 dismissing the aforesaid Writ Petition.
2. In the aforesaid Writ Petition, the appellant had impugned the Order dated 02.01.2015 passed by the Respondent No.2, terminating the service of the Appellant on the ground that her appointment was done in violation of selection norms which were advertised on 26.10.2013.

3. The Respondent No.2 issued the aforesaid advertisement for seeking applications *inter-alia* for the post of Company Secretary. The said advertisement mandated five years post-qualification experience as a Company Secretary as on 31.11.2013 in a PSU/Private Company of repute. The Appellant applied for the post of Company Secretary and in her application she stated that she had post qualification experience of 7 years and 3 months. The relevant portion of the application, reads:

Total Post Qualification Experience in relevant filed 7 year(s) 3 month(s)

Duration of employment		Organization name	Organization type	Post held	Job Profile	Pay Scale/CT C
From	To					
Jul-2011	Nov-2013	Central Railside Warehouse Company Ltd.	PSU	Company Secretary	Conducting the Board, AGM & Sub Committees meetings, compiling the minutes of the meetings. Compliances with guidelines of DPE. Implementation of MOU signed with the parent company. Work relating to introduction of PMS. WMS & ISO certification.	36,000/- p.m.

					Formulation of corporate plan, Grant of Miniratna Status proposal, upgradation from Sch C to B Company.	
Jun-2008	May-2010	Utkal Investments Pvt. Ltd.	Private	Assistant Company Secretary	Vetting of legal and joint venture agreement. Handled corporate law matters related to conducting of Annual General, BOD and Sub-committee meetings, incorporation of Companies, increase & consolidation of Share Capital, allotment of shares, alteration of MOA and AOA, preparation of Annual Reports and filing of Annual Returns & Fin.Stat. with ROC	28,000/- p.m.
Nov-2006	May-2007	Bharat Bhushan Shares & Commodity Brokers Ltd.	Private	Company Secretary	Compliance work under the provisions of Companies Act including compliances of listed company	15,000/- p.m.

					with stock exchanges. Compliance with SEBI guidelines including Takeover Code and prevention of insider trading compliance with NCDEX norms.	
Apr-2005	May-2006	The Delhi Stock Exchange Association Ltd.	Private	Management Trainee	Secretarial and legal work relating to listing of regional and non-regional Companies at BSE-Indo next platform and change in the name and address of Reg. Offices of Co. Monitoring all the compliances related to the listed companies. Compliance with SEBI guidelines including Takeover Code and prevention of Insider Trading and Corporate Governance.	8,100/- p.m.
May-2003	Jun-2004	Oil and Natural Gas Corporation Ltd	PSU	Management Trainee	Secretarial work related to preparation of Board meeting notices & agendas, holding of Annual	2,500/- p.m.

					General Meeting and drafting of minutes. Coordinating and liaising with RTA, SEBI, ROC, Stock exchanges and depositions (NSDL and CDSL). Assisting in the documentation related to offer of sales.	
Feb.2003	Feb. 2003	NIRC of the ICSI	Autonomous Bodies	Management Trainee	Handled the secretarial work and activities related to research and analysis of corporate law.	2,500/- p.m.

4. The Appellant duly participated in the selection process and was appointed as Company Secretary by the Respondent No.2 vide Memorandum dated 13.03.2014. Thereafter, she was appointed on regular basis to the post of Company Secretary vide Office Order dated 22.04.2014. A Show Cause Notice dated 01.11.2014 was issued by the Respondent No.2 calling upon the Appellant to explain why her services should not be terminated, as she did not have the requisite five years of experience for the post of Company Secretary. The Appellant submitted her reply to the above Show Cause Notice. However, the Respondent No.2 vide its Order dated 02.01.2015 terminated the services of the Appellant. This Order was challenged

by the Appellant before the Single Judge by way of WP (C) 977/2015 and the said Petition was dismissed vide Order dated 02.02.2015, which is impugned before us.

5. The short controversy involved in the present Appeal, therefore is whether the Appellant had the requisite experience of 5 years as a Company Secretary as on 30.11.2013. The claim of the Appellant with regard to the experience as set out in the application form has been reproduced hereinabove. The Appellant has further filed a chart, along with supporting documents, before us showing how she claims to possess the required experience as on 30.11.2013. The said chart is reproduced herein below:

DETAILS OF EMPLOYMENT AND TOTAL EXPERIENCE OF APPELLANT

Organization	Post held	From/to	Working period in months	Remarks
ONGC	Management Trainee	May 2003 to June 2004	14 months	Appellant is not asking for this period to be counted
The Delhi Stock Exchange Association of India (DSE)	Management Trainee	April 2005 to June 2006	14 Months as per appellant 13 Months 27 days as per respondent	The experience is to be counted in months as per the online application formal/form which is at page 9-12 with additional affidavit Dt. 20.07.2016. The appellant worked in the Secretarial

				Department of DSE, which only appoints Company Secretaries with 1 to 2 years of post qualification experience in the Secretarial Department. Unlike a single company, the Delhi Stock Exchange which deals with compliances by all the listed companies, both as regards listing requirements and also compliances after getting listed, naturally has a fairly large Secretarial Department and as such, having number of qualified Company Secretaries, is not surprising nor a reason to not treat the experience of the appellant who was also a qualified Company Secretary. The Delhi Stock Exchange has confirmed in its
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				experience certificate (at page 35 with additional affidavit dated 20.07.2016), that the appellant was executing duties of Company Secretary assigned by her HOD which included name of companies, change in registered office address and listing of companies etc. Just as an Advocate may be sometimes associated with a Senior Counsel or assisting another Advocate of longer standing or working together on a case will not disentitle the experience to be that of an Advocate.
RR financial consultants Limited	Company Secretary	June 2006 to October 2006	5	The experience is as per declaration by company in Form 32 to ROC commencement of period and cessation (at page 23-32 with additional

				affidavit dated 20.07.2016), confirms service of 5 months as Secretary. The statutory declaration is filed by the company management authorized by resolution of the Board of Directors, all much before the present dispute arose between the parties. This period, though not claimed earlier, is duly supported by statutory declarations about 7-8 years before the present dispute arose in 2014.
Bharat Bhushan Shares and Commodity Limited	Company Secretary	November 2006 to June 2007	8 Months as per appellant 4 months 25 days as per respondent	The experience has to be rounded off in months as explained above. Respondent disputes that period be counted only upto May 2007, which is not correct since the declaration by Company in Form

				32 to ROC regarding cessation of period (at page 20-22) with additional affidavit dated 20.07.2016), shows service to be upt 29.06.2007 and the statutory declaration is filed by the Company management authorized by resolution of the Board of Directors, all much before the present dispute arose between the parties. The respondent seems to be basing its stand on form 16 Income Tax which is always upto end of concerned Financial Year i.e. 31.03.2007.
Utkal Investments Limited (UIL)	Assistant company Secretary	June 2008 to may 2010	24 Months as per appellant 1 year 10 m & 18 days as per respondent	The experience has to be rounded off in months as explained above. Declaration by Company in form 32 to ROC dated 09.06.2010 much prior to present dispute, confirms

				that appellant was the Secretary as per company law.
Central Railside Warehouse Company Limited (CRWC)	Company Secretary	July 2011 to Nov. 2013	29 months as per appellant 28 months as per respondent who has taken upto 6 th NOV, only	The experience is to be counted in months as per the online application format/form which is at page 9-12 with additional affidavit dated 20.07.2016, and the period has to be till 30.11.2013 (and not date of submitting application as wrongly taken by respondent).
Total			80	The total experience of 80 months is much more than the required experience of 60 months (5 years)

PERIOD AFTER 30.11.2013 BUT BEFORE TERMINATION

Organization	Post held	From/to	Working period in months	Remarks
Central Railside Warehouse Company Ltd.(CRWC)	Company Secretary	December 2013 to January 2015 (01.12.2013 to 02.01.2015)	14 months	Additional experience after 30.11.2013 till the termination

Grand Total			94	The total experience of 94 months is much more than the required experience of 60 months (5 years)
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6. Counsel for the Appellant has been unable to show how the experience gained while working at ONGC as a “Management Trainee” between May, 2003 to June, 2004 can be counted as experience as a “Company Secretary” as prescribed in the Advertisement. This period has to be excluded, as it is not to be connected as experience as a Company Secretary.

7. A bare perusal of the above chart would show that as far as the claim of the Appellant with respect to her working as a “Management Trainee” with Delhi Stock Exchange Association of India for the period April 2005 to June 2006 is concerned, though the Appellant may have been discharging certain or some function/duties which are undertaken by Company Secretary, she was not appointed and worked as “Company Secretary”, she was working as a Management Trainee. Therefore, this period cannot be counted as the requisite experience for the post. “Company Secretary”, under the Companies Act, is an “Officer” of the Company not only charged with various duties but also open to penalty etc. in case of defaults. The responsibilities, statutory duties and obligations are different. It is for this reason that special declaration is also to be filed with Registrar of Companies

while appointing Company Secretary. Merely because a person, for administrative reason/convenience, discharges some similar functions which otherwise may be the functions of a Company Secretary, does not make such person the Company Secretary of such Company. We, therefore, agree with the Single Judge that experience gained by the Appellant while in employment of Delhi Stock Exchange, cannot be counted as the experience required under the Advertisement dated 26.10.2013.

8. As far as claims of experience with RR Financial Consultant Limited for the period June 2006 to October, 2006 is concerned, it is to be noticed that the Appellant had made no such claim in the application submitted by her while applying for the post. Faced with this situation, Learned Counsel appearing for the Appellant had fairly submitted that he would not rely upon the work experience with RR Financial Consultant Limited as recorded in the Order dated 27.09.2016 passed in the present Appeal. The relevant portion of the Order is reproduced herein under:

“During the course of hearing, learned counsel for the appellant / applicant submits that he would not rely upon the certificate and work experience in R.R. Consultants Ltd. This statement is made by counsel for the appellant in view of the objection raised by counsel for the respondent, who has drawn our attention to the online form filled up by the appellant / applicant wherein she had given details of post qualification experience (page 278 of the appeal paper book). The said details pertain to five different employments from May, 2003 till November 2013.

Learned counsel for the respondent states that he would have no objection in case the appellant /applicant relies upon the work experience mentioned in the online application form. He, however, submits that in spite of taking the said work experience, the petitioner does not qualify.

We take the statement made by counsel for the appellant / applicant and the respondents on record.”

9. This leaves us with the claim of the Appellant with respect to her experience as Company Secretary with Bharat Bhushan Shares and Commodities Ltd. for the period November 2006 to June 2007, Utkal Investments Ltd. for the period June 2008 to May 2010 and Respondent No.2 for the period July 2011 to November 2013. The Appellant in this regard has also filed documents in support of her claim for the said experience.

10. As far as Bharat Bhushan Shares and Commodity Ltd is concerned, it seems that though Form-32 filed by the Appellant (page-232) shows the date of cessation as 29.06.2007, in her application, she had claimed to have worked only till May 2007. The Respondent No.2 has also placed before us the documents submitted by the Appellant in support of her claim of experience in the application form and one of the documents is a letter dated 30.05.2007 (page 357) whereby the Appellant seems to have submitted her resignation with Bharat Bhushan Shares & Commodity Limited w.e.f. 30.05.2007 itself. In light of the same we feel that her experience can be counted only till 30.05.2007 as far as Bharat Bhushan Shares and Commodities Ltd. is concerned.

11. As far as Appellant's claim of experience with Utkal Investment Ltd. is concerned, though, the experience claimed is as "Assistant Company Secretary", Form-32 now filed before us showing her appointment as "Company Secretary" for the period 27.06.2008 (P-282) to 15.05.2010 (P-285). The Counsel for Respondent No.2 submits that the said Form-32 was not filed by the Appellant along with her application and, therefore, should not be considered by us at this stage. However, as we have eventually found that even after taking into account the experience gained by the Appellant with Utkal Investment Ltd., the Appellant still does not make the grade, we need not delve deeper on this objection.

12. As far as Appellant's claim of experience with Respondent No.2 is concerned, there is no doubt or dispute that her experience between 04.07.2011 to 30.11.2013 is to be duly counted.

13. From the above, it would be apparent that the following is to be counted as Appellant's work experience as Company Secretary till 30.11.2013:

Sl.No.	Company name	From	To	Duration
1.	Bharat Bhushan & Share Commodity Ltd.	6.11.2006	30.05.2007	6 months 25 days
2.	Utkal Investment Ltd.	27.06.2008	15.05.2010	22 months 19 days
3.	Respondent No.2	04.07.2011	30.11.2013	28 months 27 days
	TOTAL			58 months

		and 11 days or 4 years 10 months and 11 days.
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14. In view of the above, we have no option but to hold that the Appellant did not have the requisite experience as stipulated in the advertisement issued by the Respondent No.2 for the post of Company Secretary and therefore could not have been considered for the said appointment.

15. The Appellant claims that the experience should have been rounded off in terms of months and where part of a month was being claimed, the same should have been rounded off as a complete month. In support of her claim, the Appellant has drawn our attention to the application form wherein the duration of employment as sought was in terms of month/year and not days. However, we are not inclined to accept this contention of the Appellant in as much as along with the application form the candidate was required to submit documents in support of their claim for experience and such documents clearly show the exact date of appointment and cessation of such employment with each employer. Even otherwise, the Appellant had claimed a total experience of 7 years 3 months in her application form. From this if we deduct the experience claimed by her as a Management Trainee with “NIRC of the ICSI” (1 month), ONGC (14 months) and Delhi Stock Exchange Association Ltd. (14 months), she would, on her own application, fall short of the 5 years experience as Company Secretary.

16. Faced with the above, the Appellant has contended that she had not concealed or misrepresented any information in respect of her employment/experience in the application form and therefore her appointment cannot be faulted. This argument of the Appellant was rejected by the Single Judge observing as under:

“5(i). At the first blush, the argument urged on behalf of the petitioner did seem to have substance because after all there is no case against the petitioner that petitioner had concealed facts at the time she took appointment as a Company Secretary with the respondent no.2 inasmuch as this is not the case of the respondent no.2 that the petitioner is guilty of concealment of facts with respect to her experience, however, on a deeper examination of the matter, I am of the opinion that this Court should not set aside such termination orders which will have the effect of creating a situation whereby there is overlooking of the applicable qualification/requirement of appointment and effected by one erstwhile Managing Director of the respondent no.2, and which if permitted would have the effect that high authorities working in public sector undertakings/ governmental organizations will as per their own convenience overlook the applicable terms of recruitment of a person to a post and thereafter an unqualified employee who knew that she was unqualified can effectively claim estoppel against termination of services. After all there can be no estoppel once a person knew the correct facts of her inadequate experience. No doubt, petitioner was appointed but the petitioner obviously took appointment with open eyes knowing very well that her experience though had been not questioned at the time of her appointment by the respondent no.2 through its Managing Director/Screening Committee, it could be very much possible that the experience of the petitioner of five years working as a Company Secretary since the same does not meet the recruitment

requirement, appointment of the petitioner may at some later point of time be validly questioned.”

17. We agree with the Single Judge. Once we have held that the Appellant did not possess required experience, termination of her services cannot be faulted. Giving any relief to the Appellant would tantamount to appointing a person who was otherwise not qualified for the said post. The Supreme Court in the case of **Rakesh Kumar Sharma v. State (NCT of Delhi) and Ors.**, (2013) 11 SCC 58 has held as under:-

“There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible.”

18. The Learned Counsel for the Appellant further argued that the respondent No.2 enjoyed a power of relaxation of the prescribed experience qualification and as such either it exercised the said power in favour of the Appellant or should be deemed to have exercised the said power while appointing the Appellant. The said contention of the Appellant is also not acceptable inasmuch as no such relaxation is evident from the records of the case and even otherwise such relaxation would be contrary to law. The Supreme Court in the case of **Ashok Kumar Sonkar v. Chander Shekhar & Ors.**, (1997) 4 SCC 18 has held that an Advertisement/Notification issued/published calling for an application constituted a representation to the public and the

authority issuing it is bound by said representation. It cannot act contrary to it.

19. Learned counsel for the Appellant further bsought to rely upon the experience gained by the Appellant while continuing to work as Company Secretary with respondent No.2 for the period December 2013 to January 2015. The application clearly stipulated that experience of 5 years has to be processed by the candidate as on 30.11.2013 and therefore the experience gained by the Appellant for the period thereafter certainly cannot be counted to make her eligible for appointment to the said post.

20. Learned counsel for the Appellant then argued that even if her termination is upheld, as she was already working as Company Secretary with Respondent No.2, albeit on contract basis, she should be reverted to the same status. The said argument is also fallacious in as much as the said appointment, on the face of it, was contractual in nature and once her regular appointment is found illegal and is rightly terminated, no claim of reversion to status of contractual employee can be entertained by this Court. Contractual appointment ended with the regular appointment. The termination of the regular appointment would not revive the contract of employment.

21. In view of the above, we find no merit in the appeal and same is dismissed with no order as to cost.

NAVIN CHAWLA, J

SANJIV KHANNA, J

JULY 31, 2017/vp