

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

+ **RSA No. 121/2016**

% **28th July, 2017**

PAWAN KUMAR Appellant

Through: Mr. V.K. Goel, Advocate.

versus

DELHI POWER COMPANY LTD. & ORS. Respondents

Through: Mr. S.K. Chaturvedi, Advocate
for R-1 and 2.

Ms. Shrey Chathly, proxy
Advocate for R-3 and 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the concurrent judgments of the courts below; of the trial court dated 31.8.2013 and the first appellate court dated 27.1.2016; by which the suit filed by the appellant/plaintiff seeking his appointment to the post of Senior/Station Attendant, Grade-II, has been dismissed. Appointment as per the plaint was sought with the

erstwhile Delhi Vidut Board (DVB) and whose successor entity after unbundling of DVB is the respondent no.1/defendant no.1.

2. The case of the appellant/plaintiff was that appointment to the post in question was only by means of qualifying the written examination and that the appellant/plaintiff had cleared the written examination and hence was entitled to the appointment. Defendant in the written statement did not dispute that appointment was to be in terms of the written examination, however, it was pleaded that in the present case the appointment process was left to Delhi Subordinate Services Selection Board ('DSSSB'), and DSSSB decided to conduct an interview in addition to holding of the written examination for declaring candidates successful for appointment to the post in question and the appellant/plaintiff did not qualify after the interview.

3. As will be seen from the later discussion in this judgment that this litigation has unnecessarily continued now for around 18 years since the year 1999 inasmuch as the posts in question were 40 and after the written examination the position of the appellant/plaintiff in the merit list was at serial no. 87, and thus the appellant/plaintiff was not entitled to appointment.

4. On behalf of the appellant/plaintiff three aspects are argued. Firstly, it is argued that once the appointments when advertised to be made were only appointments to be made as subject to the written examination, and therefore the subsequent additional criteria of interview could not have been added by the DSSSB. The second aspect which is argued is that the Chairman of Delhi Vidyut Board (DVB) had written to DSSSB his letter dated 16.7.1998/ Ex.PW1/4, that all existing vacancies be permitted to be filled in in terms of the result of the written examination and hence appellant/plaintiff should get appointment. The third aspect which is argued is that though there were only 40 posts and in the evidence it has come out that the name of the appellant/plaintiff was only at serial no. 87 in the merit list of the examination, however, this plea of the appellant/plaintiff being hence disentitled to appointment as he was low down in the merit list, was not a part of the pleadings of the respondents/defendants and hence could not be looked into.

5. Ordinarily, after commencement of recruitment process no fresh criteria for selection could have been added. Rules of the game cannot be changed midway, however, equally the law is that

rules of the game cannot be changed arbitrarily and to the prejudice of a candidate. It is found in this case that the requirement of conducting interview is not arbitrary because all the candidates were subjected to interview process before being selected. Trial court therefore held that once the process is uniformly applied there is no arbitrariness and hence there cannot be illegality in the action of DSSSB conducting interviews for the post. It is noted that there is no case which is laid out on behalf of the appellant/plaintiff of any prejudice to him because of adding the requirement of the interview process, and which aspect of prejudice would not have succeeded because there is no allegation of any illegalities in the interview process conducted by the DSSSB, and so held by the trial court. In my opinion, therefore in the peculiar facts of this case the appellant/plaintiff cannot argue that holding of interview by DSSSB was illegal. It may also be noted that the trial court has rightly observed that the appellant/plaintiff did not protest to holding of the interview immediately after the receipt of the call letter but the appellant/plaintiff waited for the results of the interview and finding himself to be unsuccessful in the process only thereafter approached the court by filing the subject suit, and therefore in the

opinion of this Court the appellant/plaintiff is estopped from challenging the selection process. The relevant and exhaustive observations of the trial court as per its judgment dated 31.8.2013 are paras 15 to 25, and these paras read as under:-

“15. Since it is also not in dispute that the plaintiff had cleared the written examination, the only point in contention in the present matter is whether the holding of interview was an arbitrary and unauthorized action on the part of the defendants.

16. The DSSSB is not created under any statute but is a creation of the Government of NCT of Delhi in exercise of the executive powers vested in the Government, its status therefore being akin to that of a Government department. Thus its mandate would be as per the relevant office orders or notifications issued by the Government and the powers vested in it would be executive powers. The legal position of the DSSSB is that of an agency to conduct interviews/tests and prepare a select panel and forward the same to the user department. However, it would not be answerable if disputes relate to issues other than the actual selection process, including disputes pertaining to number of vacancies, category in which they fall etc. which would be for the user department to deal with.

17. After going through the evidence on record and the documents, the court is of the considered view that there was no illegal or arbitrary exercise of power on the part of the defendants in holding interview despite there being no mandate to it do the same. The recruitment process, method of recruitment, laying down of eligibility criteria, creation/abolition of posts etc. are all matters relating to executive policy decisions and in the absence of any statutory rule/law, it is the executive decisions which hold the fort and the Courts must not encroach into the executive or legislative domain except in rare and exceptional cases. Also, it is the settled law that the Courts ought not to interfere in public policy merely because the Court feels that another decision would be fairer or wiser or more logical.

18. Also the court is of the opinion that even if it is assumed that the name of the plaintiff figured in the select list, he did not acquire any indefeasible right of selection to the post merely because he took the examinations and that it would still be open for the Government/prospective employer not to make any selections at all for bonafide reasons if it is satisfied that the results of the candidates are not up to the mark.

19. Even if there is no rule providing for holding any interview or shortlisting nor any mention of it in the advertisement calling

for applications for the post, the Selection Body can resort to a short-listing procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to recruit all of them. There is nothing shown by the plaintiff which bars the defendants from introducing certain methods for achieving the objective of selecting the best talent available and maintaining a high professional standards so as to achieve efficiency and competence.

20. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection.

21. It is an administrative function of the appointing/appropriate authority to take a decision as to which method should be adopted for recruitment on any particular post. It may depend on various factors relevant for the purpose e.g. status of the post, its responsibilities and job requirement, the suitable qualifications as well as the age as may be desirable may also be taken into consideration while making such an administrative decision. The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for the judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.

22. Thus apart from the Recruitment Rules prescribing the minimum eligible qualification, it is competent for the defendant no.3/DSSSB, as a Selection Board, to prescribe the minimum qualifying standards and restrict the zone of selection to candidates with merit. This is for the reason that as long as there is rational formula carved out with the object of achieving higher standards of professionals and the said formula is applied uniformly to all, then it cannot be said to be tainted with malafides. The plaintiff has failed to establish that the selection process adopted by the defendants was perverse or showed any arbitrariness/malafides/violation of law/rules or gross irrationality.

23. It is reiterated that in the absence of any arbitrariness, malafides, demonstrable violation of laws/ rules, the Courts in exercise of judicial review ought to refrain from probing deep into the recruitment process as any such attempt shall amount to substituting the opinion of an expert body, with its own.

24. It is also not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit,

the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State or the prospective employer is under no legal duty to fill up all or any of the vacancies. Needless to say, such short-listing must be on a rational basis and not discriminatory. In this case, the plaintiff has only alleged discrimination, but has failed to prove it.

25. Further, when the plaintiff appeared for the interview, he was fully aware of the situation. However, he did not choose to challenge the said interview as illegal or arbitrary instead, the plaintiff waited for the interview result and only when he was not selected did he approach this Court by making a grievance that the examinations/ interview was held in violation of the prescribed norms. The principles of estoppel therefore come into play and the plaintiff having taken his chances in the interview, knowing fully well the procedure laid down by the defendants, is not entitled to question the same.”

6. I accordingly agree with the aforesaid discussion, reasoning and conclusion of the trial court that the appellant/plaintiff cannot complain with respect to addition of the criteria of interview in the facts of the present case. The first argument of the appellant/plaintiff is therefore rejected.

7. So far as the second argument is concerned, the courts below have rightly held that the mere request of a Chairman of DVB in terms of his letter dated 16.7.1998, Ex.PW1/4, will not confer a legal entitlement on the appellant/plaintiff, more so, because the letter dated 16.7.1998 of the Chairman DVB was only a request and this

request was not acceded to by the competent authority. The second argument of the appellant/plaintiff is also therefore rejected.

8. The third argument of the appellant/plaintiff being entitled to appointment although he was at serial no.87 in the merit list for appointment to the 40 posts is equally misconceived and only a desperate attempt to somehow get relief in the suit because once an admitted fact comes on record that appellant/plaintiff was only at serial no. 87 on the merit list and there were 40 posts and therefore the appellant/plaintiff as per the merit list prepared after the written examination was not entitled to appointment even if results only of the written examination are to be seen. Hence the courts below have committed no illegality in denying the appointment to the appellant/plaintiff in terms of the admitted facts that even as per the results of the written examination the appellant/plaintiff was at serial no. 87 in the merit list and there were only 40 posts which had to be filled in.

9. No substantial question of law arises. Dismissed.

JULY 28, 2017

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VALMIKI J. MEHTA, J