

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

Date of decision: October 23, 2017

+ **W.P.(C) 9234/2017**

NAVEEN KUMAR

..... Petitioner

Through: Mr. Mohd. Atif & Mr. Chinmoy
Roy, Advocates with petitioner in person

Versus

COMPETITION COMMISSION OF INDIA Respondent

Through: Mr. Sanjay Jain, Additional
Solicitor General, with Ms. Rhea Verma,
Ms. Medha Tandon, Mr. Ajay Tandon & Mr.
Avijit Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

C.M. 37754/2017 (u/S 151 CPC)

Allowed subject to all just exceptions.

W.P.(C) 9234/2014 & C.M. 37753/2017 (for stay)

1. Respondent's Notice *Annexure P-5*, (said to have been published on 5th October, 2017) containing list of eligible / ineligible candidates for the written test to be held on 29th October, 2017 for various posts, is under challenge in this writ petition. Petitioner is a Chartered Accountant, who is partner in Dahiya Yadav & Company. He had applied for the post of Deputy Director (Financial Analysis) on 18th August, 2017. Petitioner is shown to be in the list of ineligible candidates in Notice (*Annexure P-5*) at Serial No. 482. He has been declared ineligible for lack of proof of

date of birth. Quashing of impugned Notice (*Annexure P-5*) with direction to respondent to allow petitioner to appear in written examination on 29th October, 2017, is sought on the premise that along with the application form, petitioner had enclosed his age proof as well. A copy of petitioner's application (*Annexure P-2*), though incomplete one, reveals that petitioner had attached a copy of his matriculation examination mark sheet (*Annexure P-4*). Petitioner's stand in the writ petition is that respondent has acted negligently in handling petitioner's application form and has inadvertently misplaced copy of his matriculation certificate and so, petitioner cannot be made to suffer for the mistake of respondent.

2. Learned counsel for petitioner submits that impugned Notice (*Annexure P-5*) had provided that if there is any discrepancy in the Provisional Eligible List, then it be intimated to the respondent on or before 10th October, 2017 and petitioner vide application and email (*Annexure P-6*) had intimated respondent that he had already enclosed a copy of his matriculation mark sheet along with his application form as proof of his date of birth. It is further submitted that in application (*Annexure P-6*) petitioner had stated that if petitioner's matriculation mark sheet is not traceable, then petitioner be permitted to send attested/notarized copy of his mark sheet, so that he can appear in the examination in question. Reliance is placed by petitioner's counsel upon Supreme Court's decision in *Dheerender Singh Paliwal Vs. UPSC* 2016 SCC OnLine SC 607 to submit that equity ought to overpower technicality where human justice is at stake and so, it is submitted that it is a fit case where petitioner ought to be permitted to appear in the written

examination for the post of Deputy Director (Financial Analysis) slated for 29th October, 2017.

3. Mr. Sanjay Jain, learned Additional Solicitor General appearing on behalf of respondent has produced petitioner's original application form to show that in Column No.16, which is of "*Educational Qualifications*", there is no whisper of petitioner's matriculation certificate and had the petitioner attached a copy of his matriculation certificate, its reference would have been there in the Column of "*Educational Qualifications*". Learned Additional Solicitor General draws the attention of this Court to the Advertisement (*Annexure P-1*) to show that it is clearly stated therein that matriculation certificate or equivalent certificate in support of declaration of age is to be attached and since petitioner had not attached the said certificate, therefore, he has been declared to be ineligible. It is pointed out that in the Advertisement (*Annexure P-1*), it was made clear that if copy of essential certificates, which includes the certificate of age proof, are not received with the application, it will be rejected and no appeal against its rejection will be entertained.

4. To distinguish the afore-referred decision in *Dheerender Singh (Supra)*, learned Additional Solicitor General submits that it was a case of in-house candidate and so, submission of essential qualification documents was not insisted upon because record was very much available with the UPSC. Learned Additional Solicitor General drew the attention of this Court to a Division Bench decision of this Court in *Dr. Vineet Relhan Vs. Union Public Service Commission* 2010 SCC OnLine Del 127 to submit that where essential certificates are not produced, then in such a case, there is no justification in allowing a candidate to participate in the

examination. Reliance was also placed by learned Additional Solicitor General upon a Division Bench decision of this Court in *Union Public Service Commission Vs. Govt. of NCT of Delhi* 2010 SCC Online Del 293 to submit that where there is rejection of a number of candidates due to non submission of required documents, then grant of relief to any such candidate, would adversely affect similarly placed candidates and the entire examination may have to be cancelled for accommodating a candidate, which is inappropriate. So, dismissal of their petition is sought.

5. Upon considering the submissions advanced by both the sides and on perusal of impugned Notice, petitioner's original application form and the decisions cited, I find that petitioner, instead of owning his mistake, has cunningly tried to put the blame on respondent of having misplaced copy of his matriculation mark sheet. It is being so said because had petitioner appended copy of matriculation mark sheet with the application form, then its reference would have been definitely there in the application form. Pertinently, petitioner's original application form is silent about his matriculation mark sheet being attached. It is no doubt true that equity takes precedence over a technicality but not in a case like the instant one where petitioner has cleverly tried to put the blame on respondent. The ratio of Supreme Court's decision in *Dheerender Singh Paliwal (Supra)* would not apply to the instant case, as the said case was of in service candidates and since the record was already available with the UPSC, therefore, filing of copy of such record was found to be inconsequential. Whereas in the instant case, proof of age was mandatorily required to be submitted and in its absence, petitioner has

been rightly put in the category of ineligible candidates. The Advertisement (*Annexure P-1*) clearly provides that if matriculation or equivalent certificate in support of declaration of age is not received with the application, then the said application would be rejected.

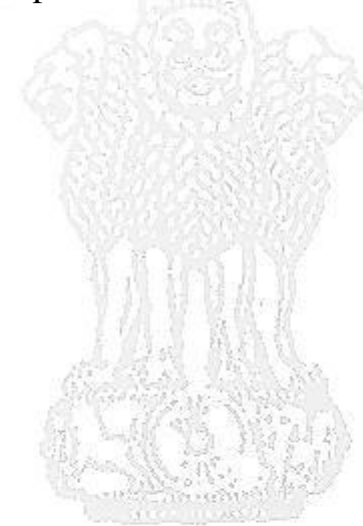
6. After having perused petitioner's application form, it becomes clear that petitioner had not filed his age proof and so his candidature has been rightly rejected by putting him in the list of ineligible candidates.

7. Consequently, finding no substance in this petition, it is dismissed *in limine* while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

October 23, 2017

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