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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8811 OF 2016

Smt.Usha Uttamrao Sonune ...Petitioner
vs.
The State of Maharashtra
and another ...Respondents

Mr.Pradeep J. Thorat for the Petitioner
Mr.P.G.Sawant, AGP for the respondent Nos.1 and 2.

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : SEPTEMBER 12, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Notice for final disposal at admission stage was already issued. Forthwith taken up for final disposal. An advertisement was published by the State Government inviting applications for various posts. The petitioner accordingly applied for the post of Audio and Speech Therapist. The qualifications laid down in the advertisement were a Degree or Diploma in Speech and Audiology. Other condition was that the candidate should be possess a certificate of registration of the Rehabilitation Council of India (for short "RCI"). At the relevant time, the petitioner was possessing a Diploma in Hearing Language and Speech issued by Ali Yavar Jung National Institute. The petitioner was possessing a registration granted by RCI as Speech and Hearing Technician. In the said certificate, it is mentioned

that the rehabilitation qualification possessed by the petitioner is a Diploma in "Hearing Language and Speech".

2 The petitioner applied for appointment pursuant to the advertisement published inviting applications to the post of Audio and Speech Therapists. The petitioner was appointed to the said post. It appears that a show cause notice was issued to the petitioner by the respondents. The petitioner was appointed under the order dated 29th April 2010. The show cause notice dated 28th November 2011 was issued on the ground that the petitioner was not possessing requisite qualifications. In the said notice, it was stated that the petitioner was not possessing a Degree or Diploma as mentioned in the advertisement and that the registration of the petitioner with RCI is not as Audiologist and Speech Therapist but Speech and Hearing Technician. The petitioner was called upon to show cause as to why her appointment should not be terminated. It appears that the petitioner submitted a reply and after considering the reply, by the order dated 16th August 2013, the Commissioner of Disabilities terminated the employment of the petitioner on the ground that the petitioner was not possessing a Degree of BEC in Speech and Audiology or Diploma as well as RCI certificate and accordingly, an order of termination was passed. The petitioner filed Original Application before the Maharashtra Administrative Tribunal for challenging the said order. The

Original Application filed by the petitioner was rejected. However, it was observed that the rejection of the application will not prevent the respondents from accepting the request from the petitioner of appointed as a Technician subject to a condition of being found fit and possessing eligibility for that post.

3 The learned counsel for the petitioner firstly submitted that certain persons possessing the same Diploma as held by the petitioner were granted appointments to the same post by relying upon the documents. Considering the list of RCI approved training programmes even a person holding BEC Degree in Speech and Hearing is qualified for registering as Audiologist and Speech Therapist. He submitted that the petitioner is possessing a Diploma in Hearing and Speech. His submission is that a person holding BEC Degree in Speech and Hearing qualifies himself for registration as an Audiologist and Speech Therapist with RCI. His submission is that as the persons possessing the same qualifications as the petitioner have been appointed to the same post, the petitioner cannot be discriminated. He submitted that a Diploma Course in Audiology is not available throughout the State. He pointed out that Audiology is one of the subjects for the Diploma Course of the petitioner in Hearing and Speech. He would, therefore, submit that the action of terminating the employment of the petitioner is completely illegal and arbitrary.

4 We have considered the submissions. The post advertised to which the petitioner was appointed was of "Speech and Audiology Therapist". The Advertisement mentioned the qualifications for the said post as "BEC in Speech and Audiology Degree or Diploma and possessing a certificate issued by RCI". The certificate issued to the petitioner on 18th August 2006 by Ali Yavar Jung National Institute shows that the petitioner has undergone a training course in Hearing Language and Speech and has been declared to have been passed a Diploma in Hearing Language and Speech. Though the said Diploma Course may have a subject of Audiology, it cannot be said that the Diploma was in Audiology and Speech.

5 Therefore, going by the qualification prescribed by the Advertisement on the basis of which the petitioner applied, the petitioner was neither possessing a Diploma nor a Degree in Speech and Audiology. In paragraph 15 of the impugned order, the Tribunal has referred to the clarification issued by the Director of Ali Yavar Jung National Institute in response to a letter from the District Handicapped Rehabilitation Centre, Virar. It is stated in the said clarification that BEC Speech Therapy and Audiology Programme is of four years duration which includes one year internship. It is stated that the Diploma in Hearing Language and Speech is a one year programme.

It is pointed out that such Diploma Holder is not equivalent and should not be recruited for the post of Audiologist and Speech Therapist and the Diploma holder can work as an Assistant to the Audiologist and Speech Therapist. Even this clarification issued by the Institution from which the petitioner has taken a Diploma is completely against the petitioner. Even assuming that the persons who are possessing the same qualifications as the petitioner were appointed elsewhere in the State on the same post, it will not create any right in favour of the petitioner in as much as it can be said that even those persons were wrongly appointed. Other submission is that there is no Diploma Course available in Audiology. Even this submission is completely irrelevant as the question before us is whether the petitioner fulfills the criteria and qualifications mentioned in the Advertisement. The petitioner had never challenged the qualifications mentioned therein. We find that the Tribunal was right in holding that the petitioner has never fulfilled the qualifications prescribed by the advertisement. The petitioner has filed an affidavit claiming that in June 2015, she has acquired the necessary qualification. Even assuming that she has done so, it is nearly two years after her termination.

6 Therefore, there is no merit in the petition at all. In paragraph 21 of the impugned Judgment, the Tribunal has granted liberty which reads thus:

“21....But it is made clear that the dismissal hereof will not pre-se prevent the respondent to accept the request of the applicant in the nature of some kind of an alternative request to be appointed as a technician subject to her being found fit in all aspects inter-alia including her eligibility even for that post. Such a decision be taken within eight weeks from today.”

7 Notwithstanding the impugned order and this order, the petitioner can always make a request for grant of employment/appointment as observed in the impugned order by pointing out that now she is holding a Degree. If such application is made, the same shall be decided by Appropriate Authority within a period of two months from the receipt of the same in accordance with law.

8 Subject to above directions, Writ Petition is disposed of. Rule is discharged.

(M.S.SONAK,J.)

(A.S.OKA,J.)