

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5151 OF 2018

Amrita Chowdhury	...Petitioner
Versus	
Union of India & Anr.	...Respondents

Mr. Vicky A. Nagrani for Petitioner.
Mr. Vinod Joshi for Respondent No. 2.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 04 JUNE 2018**

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 21st February 2018 made by the Central Administrative Tribunal (CAT) dismissing Original Application No. 238 of 2017 instituted by the petitioner seeking *inter alia* a declaration that she possesses more than 3 years experience in legal practice and is therefore eligible to be considered for the post of “examiner”. No other

substantive relief was applied for by the petitioner in OA No. 238 of 2017, which came to be since dismissed by the impugned judgment and order dated 14th February 2018.

4] Mr. Nagrani, the learned counsel for the petitioner however submitted that the recruitment rules of 2016 make no provision for experience in legal practice and to that extent, the advertisement dated 14th February 2017, by which applications were invited for the post of examiner, is itself null and void. In the alternate, Mr. Nagrani submitted that the period for which the petitioner had enrolled herself for LLM course must also be regarded as experience in legal practice. In support of this later contention, Mr. Nagrani relied upon decisions of the Hon'ble High Court of Kerala in ***S. Preetha vs. The Secretary, Kerala Public Service Commission & Anr. in WA No. 947 of 2011 decided on 19th January 2012*** and Hon'ble High Court of Jammu & Kashmir at Srinagar in ***Tahir Ahmad Dar vs. State of J & K & Ors. in SWP No. 1127/2016 decided on 7th September 2017***. Mr. Nagrani also submitted that the respondents were not at all justified in applying a short listing criteria of 3 years experience in legal practice when

the advertisement prescribed experience of only 2 years. Mr. Nagrani submitted that by applying such short listing criteria, hardly 7 candidates out of the 600 applicants were left out of consideration. For all these reasons, Mr. Nagrani contended that the impugned judgment and order made by the CAT may be set aside and the reliefs applied for by the petitioner in the OA be granted.

5] Mr. Joshi, the learned counsel for the respondent no. 2 submits that all the contentions raised by and on behalf of the petitioner lack merit and there is absolutely no jurisdictional error in the impugned judgment and order. He submits that there is no variance between the advertisement and the recruitment rules as applicable on the date of the vacancies. He submits that the petitioner took her chance in the selection post and even stated in her application form that she possesses 2 years experience in legal practice, when in fact, she did not possess any such experience. He submits that the period whilst the petitioner was undergoing the LLM course can never be regarded as experience of legal practice, particularly since it was not even the case of the petitioner that she was simultaneously

undertaking legal practice. In any case, no material was produced by the petitioner in support of experience of even 2 years, let alone experience of 3 years. Mr. Joshi submits that the short listing criteria adopted was both legal and valid. For all these reasons, Mr. Joshi submits that this petition may be dismissed with costs.

6] The rival contentions now fall for our determination.

7] As noted at the outset, the only substantive relief applied for by the petitioner in her OA No. 238 of 2017 reads as follows :

“a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, hold and declare that the Applicant has completed more than 3 Years of experience and is therefore eligible to be considered for the post of Examiner.”

8] From the aforesaid, it is quite clear that the petitioner had not challenged the advertisement no. 05 of 2016, either on the ground that the requirements set out in such advertisement were in variance with the recruitment rules or on any other ground. Further, the petitioner, in pursuance of the advertisement, submitted her application

for consideration of her candidature to the post of examiner. In the application, the applicant, herself stated that she has 2 years and 10 months experience in legal practice. In determining the period of 2 years and 10 months, the petitioner, included the period during which she had enrolled herself in the LLM course. At this stage therefore, it is not possible to entertain the petitioner's contention that the very advertisement, in pursuance to which she applied for selection without any demur, was illegal, null and void.

9] In any case, the petitioner has not placed any material on record to establish that the advertised posts arose only after the 2016 rules came into force. Admittedly, in terms of the earlier recruitment rules experience of 2 years had been provided and it is such experience which is reflected in the advertisement no. 05 of 2016. The petitioner did not seem to have any grievance as regards the prescription of such experience because, in her application in pursuance of such advertisement she stated that she has experience of 2 years and 10 months. The petitioner, in such circumstances, cannot be permitted to set up a new case either before the CAT or this Court. In any case, the petitioner has not been

able to make good such new case so as to warrant any interference with the impugned judgment and order.

10] There is nothing illegal or arbitrary in the adoption of a short listing criteria based upon 3 years experience, even though, the recruitment rules may have referred to experience of only 2 years. When the number of applicants are quite large, it is always open to the selecting authority to apply a short listing criteria, based no doubt, upon some cogent principles. In this case, we agree with the CAT with the short listing criteria prescribed by the selecting authority was both legal and valid and did not suffer from any arbitrariness or unreasonableness. Admittedly, the petitioner, on her own say, did not meet with the short listing criteria. Therefore, there is no legal infirmity in her non selection to the post of examiner.

11] Even if the short listing criteria i.e. experience of 3 years is kept aside, there is really no cogent material on record to establish that the petitioner possessed 2 years experience in legal practice. The blanket proposition that the period spent for undergoing the LLM course is also to be

regarded as the period spent in legal practice deserves no acceptance. There is no material on record to establish that the petitioner, whilst pursuing her LLM course was also involved in legal practice, whether by way of consultancy, drafting or otherwise. In fact, the learned counsel for the petitioner, accepted that whilst the petitioner was undertaking LLM course at Symbiosis College in Pune, she was not involved in legal practice. The petitioner, is bent upon misconstruing the decisions of the two High Courts. The two decisions, do not lay down a blanket proposition that the period spent for the LLM course must, in every case, be treated as experience in legal practice. Accordingly, we see no legal infirmity in the view taken by the CAT.

12] For the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order made by the CAT. This petition is therefore dismissed. Interim order, if any, stands vacated. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA