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

% *Date of Judgment: 3rd August, 2018*

+ LPA 383/2018

RIMJHIM

..... Appellant

Through: Mr.Ravindra Raizada, Sr.Adv. with
Ms.Archana Pathak Dave, Ms.Ankita
Chaudhary and Mr.Santosh Kumar,
Advocates.

versus

FOOD CORPORATION OF INDIA

..... Respondent

Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Rishi K.Awasthi, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. With the consent of parties, the present appeal is taken up for final hearing and disposal.
2. The present appeal is directed against the judgment dated 03.05.2018 passed by a learned Single Judge of this Court.
3. The necessary facts to be noticed for disposal of this appeal are that the respondent had published an advertisement inviting candidates for the post of Assistant Grade-II (Hindi) on 14.02.2015. The appellant claimed to be fully eligible and qualified for the said post had applied on 16.03.2015. Her application form was accepted and she was issued an admission card for the written test to be conducted by the respondent. The written test was held on 04.10.2015. The appellant was shortlisted. The appellant was ranked-6 in the merit list. A call letter was issued to her on 31.12.2015 and she was asked to report to the respondent on 18.01.2016 at their zonal office for verification of

documents. The appellant appeared on 18.01.2016 produced her original documents, which were retained by the respondent and after verification, the same were returned, but she did not receive a final letter for appointment. The list of selected candidates was published on the website on 02.05.2016. A representation filed by her on 06.05.2016 was not considered, which led to the filing of a writ petition. In the counter affidavit so filed before the learned Single Judge for the first time, it was disclosed that the appellant was not finally selected as she did not produce an experience certificate to show that she had one year's experience of translation from English to Hindi and vice-versa. The learned Single Judge has dismissed the writ petition holding that since the appellant did not have the requisite experience of one year for translation work from English to Hindi and vice-versa, the respondent was justified in denying her employment. Counsel for the appellant relies on two certificates, which have been issued to her by her previous employer. The aforesaid experience certificates are reproduced below :

"14-01-15

To whom it may concern

This is to certify that Rimjhim, Emp Code-11715, worked in our Hindustan Hindi editorial deptt. from 09-04-12 to 12-07-14 as staff reporter. During the period, she used to do editing, news collection translation and other editorial work assigned to her which she did successfully. During her stint at Hindustan Media Ventures Ltd., we found her sincere & punctual.

We wish her every success in her entire future endeavor.

(Regional HR Head)"

4. Another certificate was issued subsequently, which reads as under :

“18-07-16

To whom it may concern

This refers to our letter issued in favour of Rimjhim, Emp Code-11715 on 14-01-15. In continuation to said letter, it is clarified that translation means she used to do translation from English to Hindi & vice versa.

(Regional HR Head)”

5. Counsel for the appellant has strongly urged before this Court that although, she did not produce the aforesaid two certificates at the time of submission of her application form but having regard to the fact that she has cleared the written examination which included paper-IV of 90 minutes duration wherein two passages, one each from Hindi to English and vice-versa and two essays each in Hindi and English formed part of the paper which she cleared which would clearly establish that she was capable of translation from Hindi to English and vice-versa. Counsel further submits that not filing the certificates was a mere irregularity and having regard to the fact that she was ranked-6 in the merit list and having cleared all the written examinations which would show that she was capable of translation from Hindi to English and vice-versa and thus, counsel prays that a direction be issued to the respondent to accept the certificates and grant employment to the appellant.
6. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the respondent has opposed this appeal on the ground that at the time of submission of the form, the appellant had only submitted a relieving-cum-experience letter dated 27.08.2014, which we reproduce below :

“27th August 2014

**11715
Rimjhim
HH Editorial
Patna**

Subject : Relieving Cum Experience Letter.

Dear Rimjhim,

This is to inform you that you are hereby stand relieved from the services of Hindustan Media Ventures Ltd., in the closing hours of (12.07.2014). Your full and final account has been processed and settled.

Please note your Basic Information as maintained in the HR records at the time of your separation.

**Name : Rimjhim
Employee Code : 11715
Period Served : From 09.04.2012 To
12.07.2014
Last Designation Held : Staff Reporter**

We wish you all the best in all your future endeavours.

Warm Regards

For Hindustan Media Ventures Ltd.

**Rakesh Singh Gautam
(Authorized Signatory)”**

7. Mr. Nandrajog further submits that the respondent cannot be faulted for the reason that admittedly no certificate of her experience for translation from English to Hindi and vice-versa was produced by her

either alongwith the application form or at the time of verification of the document.

8. We have heard learned counsel for the parties and have considered their rival submissions. The relevant part of the advertisement reads as under :

“AG-II (Hindi)	D	Essential : 1. Degree of a recognized University with Hindi as the main subject. 2. Proficiency in English. 3. <u>One year experience of translation from English to Hindi and vice-versa.</u> Desirable :- Post Graduate qualification in Hindi.
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(emphasis added)

9. We also deem it appropriate to reproduce certain parts of this advertisement, which read as under :

“Paper-III (Duration-90 minutes)

120 Multiple Choice Questions on General Hindi, General English, General Awareness, General Intelligence and Computer Knowledge for candidates applying for the Post Code D {Assistant Grade-II (Hindi)} and Post Code E {Typist (Hindi)}.

Paper-IV (Duration-90 minutes):

Translation – 2 Passages, one each from Hindi to English and vice-versa and two essays each in Hindi & English for candidates applying for the Post Code De {Assistant Grade-II (Hindi)}.

..... iii. Candidates applying for AG-II (Hindi) posts will be shortlisted for evaluation of Paper-IV, based on their marks in Paper-III; and Paper-IV of only the shortlisted candidates will be evaluated. There

will be a minimum qualifying marks for Paper-IV, only those candidates who secure the minimum qualifying marks will be considered for final selection. Final selection will be on the basis of marks secured by the candidates in Paper-III and Paper-IV, subject to securing the minimum qualifying marks in paper-IV.”

10. Some relevant clause of this advertisement are also being reproduced below, which would be necessary for deciding the present appeal :

“28. Candidate must ensure to have fulfilled all the eligibility criteria, viz., qualification, experience, age, etc. as on **01/01/2015**. Candidates should satisfy themselves that they fulfill the required qualification, experience and age etc., before applying for the post. In case it is found that the information furnished by a candidate is defective in any manner or has been deliberately suppressed, the candidature will be summarily rejected as and when it comes to the notice of the Management. The candidates are advised to satisfy themselves fully about the correctness of the information furnished. The candidature would be rejected if found ineligible at any stage.

32. No original Certificates / Documents are required to be sent in connection with the Application unless directed to do so. Candidates may also note that Self-attested Photostat copies of requisite Certificates/Documents shall be required to be sent / uploaded at the designated address / website in case of their shortlisting on the basis of the written Examination / Skill Test which shall be informed / notified through the designated website (www.fcijobsportal.com). Original certificates will, however, be scrutinized / verified at the time of Document verification state.

33. Management reserves the right to conduct additional examination / skill test or call for any additional documentary evidence in support of educational qualification & experience of the applicant.

35. Issue of Admit Card for the Written Test or shortlisting for Document verification does not confer any right of acceptance of candidature and should not be construed as an acknowledgment of fulfilling the eligibility criteria for the post. It does not give indefeasible right to an individual for employment with FCI.

37. In case of any clarification on recruitment process, please email at fciquery@fcijobsportal.com. No other form or communication shall be entertained. However, pendency of any such query will not effect in extension of scheduled dates of the recruitment process.

11. A complete reading of the advertisement, copy whereof has been placed on record, more particularly, the clause highlighted above in the foregoing paragraphs, would show that the following three conditions were essential for being eligible to the post of AG-II (Hindi) :

- (i) Having a degree of a recognized University with Hindi as the main subject;
- (ii) Proficiency in English and;
- (iii) One year experience of translation from English to Hindi and vice-versa.

12. The purpose of highlighting the aforesaid clause is that we are primarily concerned with the third clause i.e. experience of translation. Admittedly, the advertisement does not say in clear terms that a candidate must furnish at the time of submission of an application any certificate regarding the aforesaid three conditions.

13. Mr. Sudhir Nandrajog, learned Senior Counsel for the respondent has, however, submitted that submission of certificates in support of the above three clause would be tacit. A copy of the original form which had been submitted has been produced before us. We are informed

that this application has been rejected as the third condition was not satisfied as no certificate was filed. During the course of hearing, we have asked the learned Senior Counsel for the respondent with regard to the second condition (being proficiency in English), no certificate was either annexed or called for in relation to the appellant or any other candidate. The object of raising this query is in the backdrop that a simple answer in the positive in the application form was taken as acceptable by the respondents but with respect to the clause 3, the respondent had expected submission of a certificate. No doubt, the appellant had not produced the certificates dated 14.01.2015 and 18.07.2016 (filed along with this appeal), even at the time of submission of original documents and for which, in our view, the respondent cannot be faulted.

14. The counsel for the appellant, however, submits that had the respondent raised such an issue at the time of submission of original documents, she would have lent clarification as is provided as per clause 37 extracted above. Counsel further submits that had the appellant been put to notice, the appellant would have provided the requisite information. The appellant has strongly urged before this Court that on account of a mere irregularity, the appellant should not be deprived of an opportunity of employment especially when she has cleared her written examination and the written examination consisting of Paper-IV, which deals with translation. The Paper-IV would comprise of the following :

“Translation – 2 passages, one each from Hindi to English and vice-versa and two essays each in Hindi &

English for candidates applying for the Post Code D {Assistant Grade-II (Hindi)}.”

15. We find force in the submission made by the counsel for the appellant as reading of the entire form does not show that requirement was to provide a certificate regarding proficiency in English or any certificate of one year experience of translation from English to Hindi and vice-versa. In case, providing such a certificate was mandatory, either the form should have been explicit or else when the appellant was called to provide original documents, she should have been given an opportunity to provide the same whereas the appellant was only informed about the deficiency in her application form in the counter affidavit filed to the writ petition. There is no explanation whatsoever as to why the appellant was not informed about the deficiency in her application despite the appellant making representation.
16. Having regard to the above reasons and also taking into account that the appellant has ranked-6 in the examination, she has cleared the written examinations including the Paper-IV which was for a duration of 90 minutes and it included translation of two passages each from Hindi to English and vice versa, two essays each in Hindi and English and taking into consideration clause 33 of the advertisement where the management has reserved its right to take additional examination/skill test or call for any documentary evidence in support of educational qualification and experience of the applicant.
17. In our view, the respondents before rejecting the case of the appellant should have sought for additional documentary evidence which is provided in clause 33 which we reproduce again.

“Management reserves the right to conduct additional examination/skill test or call for any additional documentary evidence in support of educational qualification & experience of the applicant.”

18. Mr. Nandrajog, learned Senior Counsel for the appellant has relied upon ***Gainilung Panmei vs Food Corporation of India & Ors***, LPA 664/2013 dated 12.11.2013. The relevant paragraphs relied upon read as under :

“The learned Single Judge has also observed that once the recruitment process was complete the writ petitioner could not unsettle the process by claiming after the selection process was over that he met the requisite experience.

Learned Single Judge has rightly observed that all the documents were required to be submitted along with the application for appointment.

Therefore, we are not inclined to accept the prayer of the appellant for taking on record in this appeal additional documents which, according to him, would show that he did possess the requisite experience of appearances in five different matters during the year 2006 also. In fact, we find from the copies of various proceedings in court cases sought to be placed on record now is also an attempt to mislead the Court inasmuch as those order sheets show that the appellant had not appeared in those cases independently.

Learned counsel for the appellant cited three judgments of the Hon'ble Supreme Court passed in the cases of **Dolly Chandra vs Chairman JEE, (2005) 9 SCC 779, A.P. Public Service Commission, Hyderabad and Anr. V. B. Sarat Chandra and Ors. (1990) 2 SCC 669 and Charles K. Skaria and Ors. v. Dr. C. Mathew and Ors., (1980) 2 SCC 752** and one judgment dated 16.05.2011 of a Division Bench of this Court in

W.P.C(C) No. 2889/2011. However, we find that these judgments do not advance the case of the appellant since in the present case the admitted position is that the appellant had not furnished the requisite proof of his appearances in the court matters which was one of the essential requirements for appointment to the post of Assistant General Manager (Legal).

Appellant having been permitted to take written exam and his being interviewed will also not make any difference since the appellant himself is not disputing now, contrary to the stand taken in the writ petition that he had furnished entire proof, that he had not furnished full proof of experience at bar and also that it was made clear to him at all stages including in the interview call letter that if anything prescribed in the advertisement would be found missing at any stage his candidature would be cancelled.

19. In our view, the aforesaid judgment would not apply to the facts of the present case for the reason that in the aforesaid matter, the candidate did not have the requisite number of appearances which were required and also that all documents were required to be submitted along with the application for appointment whereas in the present case, we find that there was no such requirement. In case there was a requirement, the case of the appellant would have also been rejected for non-supply of any certificate showing proficiency in English. In fact, on examination of the application form which had been submitted, copy whereof has been handed over in Court, nowhere it is provided that the certificates should be enclosed alongwith the application form. Column 16(a) is reproduced below :

“16. Educational Qualification

(a) Name of Academic/

Professional Degree/Diploma
(which makes you eligible) :

**Degree of a recognized
University with Hindi as one
of the Main Subjects**

Do you have :	1. Proficiency in English	Yes
	2. ONE year Experience of translation from English to Hindi and vice-versa	Yes
	3. Post Graduation Qualification in Hindi	Yes

20. Accordingly, the appeal is allowed. The action of the respondent rejecting the case of the appellant is set aside. We are informed that during the pendency of the writ petition, one post was kept vacant. Accordingly, the respondent is directed to issue an appointment letter in favour of the appellant, if all other conditions stand satisfied.

21. With these directions, the appeal stands disposed of.

CM APPL 28226/2018 (stay)

22. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 03, 2018/ck