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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25.07.2019

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LPA 481/2019 and C.M.Appl. No. 32993/2019

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through

Ms. Maninder Acharya, ASG with
Mr. Vaibhav Kalra, Advocate.

versus

NEERAJ YADAV

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

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G.S. SISTANI, J. (ORAL)

CM APPL 32995/2019 (Exemption)

1. Exemption is allowed subject to just exceptions.
2. Application stands disposed of.

CM APPL 32996/2019 (delay in filing)

3. This is an application filed by the applicant/appellant under Section 5 of Limitation Act seeking condonation of 65 days delay in filing the present Letters Patent Appeal.
4. For the reasons stated in the application, the same is allowed. Delay of 65 days in filing the present appeal is condoned.

5. The application stands disposed of.

CM APPL 32994/2019 (Additional documents)

6. This is an application filed by the applicant/appellant seeking permission to place on record additional documents.

7. For the reasons stated in the application, the same is allowed. The documents are taken on record.

8. The application stands disposed of.

LPA 481/2019

9. Challenge in this appeal is to the judgment dated 16.04.2019 passed by the learned Single Judge, whereby the learned Single Judge has allowed the writ petition and has directed the appellant herein to process the case of the respondent herein for selection to the post of Junior Assistant (Fire Service) and complete the whole process within a period of two months from the date of receipt of the order.

10. Relevant facts are that in August 2016, the appellant issued an Advertisement for recruitment to the post of Junior Assistant (Fire Service) and a total of 105 vacancies were advertised. The process of selection involved an online exam, followed by physical measurement and subject to passing these two, the candidates had to appear for a driving test and the successful candidate had to finally clear the physical endurance test. The Educational Qualifications as advertised are as below:

“a) 10th Pass + 3 years approved regular Diploma in Mechanical/Automobile/Fire with minimum 50% marks,
OR

b) 12th Pass (Regular Study) with 50% marks.”

11. The respondent qualified under second part i.e. 12th pass (regular study) with 50% marks. Respondent had passed 10+2 Board exam conducted by the CBSE in the year 2011, with subjects being English, Economics, Business Studies, Accountancy, Physical Education and Mathematics. Respondent secured the following marks in six subjects:

SL. NO.	SUBJECT	MARKS
1.	English Core	60
2.	Economics	48
3.	Physical Education	63
4.	Business Studies	40
5.	Accountancy	58
6.	Mathematics	18

12. The total marks secured by the respondent in the six subjects were 287 out of 600 and the total marks secured in first five subjects is 269 out of 500. Therefore, if the percentage of marks is calculated in six subjects, the percentage is 47.83% while if best of five subjects are taken, percentage is 53.8%.

13. Pursuant to the advertisement, the respondent applied for the post of Junior Assistant (Fire Service) in the OBC category. He participated in the online exam on 15.10.2016. On 30.12.2016, the Appellant notified that the respondent was provisionally successful in the online exam and he was invited for the further process. Respondent, accordingly, reported on 21.1.2017, but was informed that he was disqualified, since his marks in 12th class were assessed as “less than 50%”.

14. Respondent then addressed a representation to the appellant on 23.01.2017 explaining that the percentage should be calculated taking into account five subjects as the sixth subject i.e. Mathematics, was an additional subject. Getting no response, the respondent sought information under RTI on 06.04.2017, seeking reason for not including his name in the list. Vide letter dated 17.04.2017, the Appellant informed the respondent, the reason for rejection of his candidature “less than 50% marks in class 12th”.

15. Aggrieved by this rejection, the respondent filed a writ petition being W.P.(C) 396/2017 before the learned Single Judge. The learned Single Judge relied upon the Guidelines of the CBSE for calculation of the percentage secured by the respondent in Class 12th, more particularly, para 3(a) of the Guideline and which we reproduce hereinunder:

“(a) To pass the examination, a candidate must obtain at least Grade D-2 in all subjects of internal assessment unless the candidate is exempted and 33% marks or

Grade D-2 in each of the five subjects of external examination.”

16. The learned Single Judge held that as per the Regulations of the CBSE, in order to pass Class 12th examination, a student was only required to pass in five subjects of the external examination, which could be either two languages and three electives or one language and four electives. Therefore, by excluding Mathematics, which was an additional subject, the marks obtained by the respondent were 269 out of 500, which is 53.8%. Thus, according to the learned Single Judge the respondent having percentage higher than the required percentage of 50%, was qualified for the post in question and thus allowed the writ petition, directing the Appellant to complete the process of selection.

17. Ms. Maninder Acharya, learned ASG appearing on behalf of the Appellant contends that the requirement of 50% in class 12th for the purposes of the post in question will have to be determined on the basis of all the six subjects taken by the students in class 12th and not on the basis of five subjects. She submits that while it is true that as per the CBSE regulations, five subjects have to be taken into account for considering whether a student has passed or not, but the same formula may not apply for Boards other than the CBSE. She, therefore, contends that the recruitment in question being on All India basis, it was decided to follow the formula of six subjects, uniformly, for all the Boards.

18. The short question which arises for consideration before us is as to whether the best of five subjects of the external examination, are to be taken into account for calculating the qualifying percentage of 50% or all the 6 subjects have to be taken in which the candidate had appeared in class 12th. We have examined Regulation 3(a) of the CBSE Regulations. As per the said Regulation, it is only the best of five subjects which had to be taken into account for declaring the student as 'passed' in Class 12th examination. Going by the analogy, in our view, the learned Single Judge has rightly held that for calculating the 50% required under the heading of 'Educational Qualification' in the present advertisement, the best of five subjects would have to be taken and not the sixth subject, which is considered as an additional subject. Thus, in the case of the respondent, Mathematics being an additional subject, he has rightly calculated his percentage of marks based on the best of five subjects. The respondent was thus qualified to appear in the online examination with the appellant. The reasoning of the learned Single Judge which finds mention in paras 18 to 21 of the judgment, has no infirmity and is in consonance with the CBSE Regulations. We thus find no error or infirmity in the impugned judgment.

19. The learned ASG submits that one seat had been kept vacant for the respondent and all other appointments have been made. Since a seat has been kept vacant for the respondent, we direct the appellant to call the respondent for the remaining selection process and complete the same within two months from today. We make it clear that since

the selection process is over, the direction given by us today would apply only to the case of the present respondent.

20. There is no merit in the present appeal and the same is accordingly dismissed along with all pending applications.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 25, 2019
ck/rd



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