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

% *Judgment reserved on: 01.10.2018*
Judgment delivered on: 3 May, 2019

+ **LPA 170/2017**

NAMITA SINGH

..... Appellant

Through: Mr. K.K. Sharma, Sr. Adv with Mr.
Amit Kumar Singh, Mr. Abhishek
Pandey and Mr. Brijpal Singh, Advs.

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal and Mr.
Prang Newmai, Advs for University
of Delhi.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The present appeal has been filed against the judgment dated 01.12.2016 passed by a learned Single Judge of this Court.
2. The necessary facts to be noticed for the disposal of this appeal are that the appellant applied for the post of Assistant Professor, Department of History with the respondent No.2/College on 17.02.2014. The advertisement was republished on 28.04.2015. Post the subsequent publication of the advertisement, the respondent No. 2 published a list of candidates who were shortlisted along with the schedule for the interview on 24.07.2015.

3. The appellant admittedly appeared for the interview on 01.08.2015 and secured the first position for being selected to the post of Assistant Professor, Department of History. It is the case of the appellant that she was issued an appointment letter on 05.08.2015. Thereafter, the appellant completed the mandatory process and submitted her joining report on 08.08.2015. It is also the case of the appellant that her appointment was cleared in the General Body Meeting No. 167 and 168 of the Governing Body. It is also submitted before us that post 10.08.2015; the appellant started attending the college. By a communication dated 17.09.2015, the appellant called upon the respondent to release her salary, however, she was informed by a letter dated 22.09.2015 that the appointment made was subject to verification of documents and since no appointment letter was issued, the question of release of salary did not arise.

4. Another grievance of the appellant is that she was humiliated on account of a public notice displayed on the notice board of the college and on the college gate, as per which she would not be allowed to enter or trespass into the college building.

5. The appellant has filed the writ petition seeking the following prayers:

- “i. issue a writ of mandamus and/or any other appropriate writ, order and/or direction, directing the respondents to set aside and quash the highly stigmatic, humiliating and demanding impugned public notice 14.10.2015 and impugned personal letter dated 14.10.2015 and related processes.*
- ii. issue a writ, order or direction commanding the respondent No. 2 to release the salary of the petitioner.*

- iii. *issue a writ, order or direction commanding call for records pertaining to action taken in persuasion to governing body meeting dated 11.08.2015.*
- iv. *issue a writ of mandamus and/or any other appropriate writ, order and/or direction, directing the respondent No. 2 to follow the instructions of communication / letter dated 10.08.2015 and 11.08.2015 in letter and spirit.*
- v. *issue a writ of mandamus and/or any other appropriate writ, order and/or direction, directing the respondents to give all consequential benefits and reliefs to the petitioner.*
- vi. *issue a writ of mandamus and/or any other appropriate writ, order and/or direction, directing the respondents to pay the cost of litigation to the petitioner.*
- vii. *issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case."*

6. Mr. Sharma, learned senior counsel for the appellant has relied upon the following communications in support of his submissions that a regular appointment was made in favour of the appellant:-

- i. *The Minutes of the Meeting dated 30th, 31st July and 01st August, 2015 in support of his submission that the appellant stood at the first position.*
- ii. *The communication of 05.08.2015 being the appointment letter.*
- iii. *The communication dated 10.08.2015 from the Chairman of the Governing Body to the Principal directing the Principal to allow the seven candidates who had been selected by the duly constituted Selection Committees for appointment as Asst. Professor in different subjects to join on duty today and compliance may please be reported to the undersigned immediately.*

- iv. *The minutes of meeting dated 11.08.2015, more particularly, the internal page No. 8 of the minutes to show that the names of the persons approved were recommended for probation.*

7. Mr. Sharma further contends that in the light of the aforesaid communications, it leaves no room for doubt that the appellant was offered regular employment to the post of Assistant Professor, in the Department of History. Appointment letter was issued and she was recommended for probation, however, she was not allowed to teach. No communication was addressed to her informing her in any manner that her appointment was cancelled. No show cause notice was issued and to add insult to injury a public notice/communication dated 14.10.2015 was issued warning and informing her that her entry in the college was banned and prohibited. Mr. Sharma also contends that simultaneously an office order dated 14.10.2015 was also issued, copy of which was marked to the Attendant Staff Room, Care Takers and *Chowkidars* that the appellant was never appointed in the college and her entry in the institution is banned and prohibited and would amount to trespassing.

8. Additionally, Mr. Sharma contends that since the appointment was made by the Governing Body on the basis of the recommendations of the Screening Committee, the matter should have been placed before the same Screening Committee to take any further decision.

9. *Per contra*, Mr. Rupal, learned counsel appearing for the college submits that the appellant did apply for the post of Assistant Professor and by a communication dated 05.08.2015 she was informed that her name had been recommended by the Selection Committee. The Committee decided to

offer an appointment to her as an Assistant Professor in the Department of History on various terms and conditions as detailed in the said communication including that the appointment was subject to verification of qualifications etc., as mentioned in the application. Mr. Rupal submits that even though an offer letter was issued to the appellant, the appellant was not appointed as an Assistant Professor. No formal appointment letter was issued for the reason that upon verification of her qualifications/certificates, it was concluded by the Screening Committee that inadvertently she had been allotted 10 marks in excess, thus making her appointment illegal on the face of it. Mr. Rupal further submits that one of the reasons for the Screening Committee to have been misled was that the appellant had incorrectly filled in the column related to Academic Qualifications. In the column M.Phil., she had indicated that she had completed the same in the year 2011 with the subjects Turkish and Economics Reviso. In the column of School/College attended, it was marked as AUD Delhi. In the column of University, it was also marked as AUD, whereas admittedly on the date of the filling up an application form, the appellant did not have a degree of M.Phil. Mr. Rupal also submits that the appellant was informed in response to her communication by a letter dated 22.09.2015 which reads as under:-

***“SHYAMA PRASAD MUKHERJI COLLEGE (For Women)
(University of Delhi)***

PUNJABI BAGH (WEST), NEW DELHI – 110026

Ref.No. SPMC/2015/759

Dated 22.09.2015

*Ms Namita Singh,
E-88, First Floor,
Kirti Nagar,
New Delhi-15*

Madam,

With reference to your letter dated 17th September, 2015 regarding the release of salary. In this connection I would like to inform you that the letter issued to you was an Offer letter given by the college subject to the verification of your qualifications/certificates and fulfilling other conditions.

No Appointment letter was issued to you by the College as Assistant Professor in History Department. Therefore the question of Joining/Salary does not arise.

Sd/-

PRINCIPAL”

(Emphasis Supplied)

10. Mr. Rupal submits that despite the aforesaid communication dated 22.09.2015, the appellant addressed another communication dated 11.10.2015 to the respondent/college which reads as under:-

*“Principal
Shyama Prasad Mukherji College,
University of Delhi,
Punjabi Bagh,
New Delhi – 110026*

Date: 11th October 2015

Subject: Re: Release of Salary

Dear Ma'am

This is in consequence to the reply (bearing “Ref. No. SPMC/2015/759” dated 22.09.2015) to my letter to you dated 17th September 2015. The said reply stated that offer letter issued to me by the college was subject to verification of my qualifications / certificates and fulfilling other conditions.

I humbly request you to please complete the verification of my qualifications/Certificates along with other condition as soon as possible and issue me the Appointment letter and salary as I had joined the college on 10th August, by completing all necessary

procedures and have been reporting to duty every day since then. The delay is unnecessary as the same procedure has been duly completed with others who joined with me. Maám, please try to understand that Delhi is an expensive city and survival costs involved are very high. Please take required steps and complete related steps as soon as possible.

With due regards,

Sd/-

*Namita Singh
Assistant Professor
Shyama Prasad Mukherji College,
University of Delhi,
Punjabi Bgh,
New Delhi – 110026*

*Residence at
E-88, first Floor,
Kirti Nagar,
New Delhi
Delhi
Contact – 9711749306”*

11. Mr. Rupal submits that despite the aforesaid communication dated 22.09.2015, the appellant acted in an irrational manner which is not expected from an educated person and barged into the Staff Council Meeting on 13.10.2015 and illegally marked her attendance which was brought to the notice of the Principal by Dr. Nirmala Tiwari, Secretary Staff Council. An endorsement was also made on the attendance sheet, copy whereof has been placed on record which shows that the appellant had marked her name at the bottom of the list and appended her signatures. Mr. Rupal submits that having regard to the conduct of the appellant, the Principal of the college in order to maintain discipline, had issued the communication to the appellant

and also placed the same on the notice board to avoid any untoward incident. Mr. Rupal further submits that since the appellant was not issued an appointment letter there was no question of issuing a show cause notice to her or granting her an opportunity of hearing. He further submits that since appointment letter was not issued, the college did not inform the appellant directly except on the basis of three letters which are in response to the letters issued by the appellant.

12. In response to the submission regarding placing the matter back before the Screening Committee, Mr. Rupal submits that it was not necessary to remand the matter back to the Screening Committee. Reliance is placed on the final list of candidates dated 24.07.2015, more particularly, clause 4 of the endorsement, which is reproduced below:-

“4. The selection of Candidates are purely ‘Provisional’, subject to actual verification of degree/certificates etc.

Important:-

DURING THE VERIFICATION OF DOCUMENTS/CERTIFICATES AT ANY STAGE IF ANY INFORMATION GIVEN BY YOU OR ANY CLAIM MADE BY YOU IN YOUR APPLICATION IS FOUND TO BE FALSE YOU’RE CANDIDATURE SHALL BE REJECTED.”

13. We have heard learned counsels for the parties and considered their rival submissions.

14. At the outset, it would be necessary to analyse the law dealing with the issue involved in the present case.

15. In the case of *Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* reported at

(1990) 3 SCC 655, the Supreme Court of India while dealing with an appeal to the order of Tribunal by which the respondent was allowed to join service and made the following observations:

“1. The admitted facts in the present case are that the respondent applied for Grade I and Grade II teacher posts (Post Graduate Teacher and Trained Graduate Teacher posts respectively) in September 1985 pursuant to a newspaper advertisement calling for applications for the said posts. Admittedly, the qualification prescribed in the advertisement for the said posts was a second class degree in MA, and the respondent held a third class degree in MA. However, it appears that on December 27, 1985, an order was issued wrongly by appellant 1 appointing her as a Post Graduate Teacher in Hindi. The order stated that her appointment was subject to the production of original certificates and to the compliance with the other necessary formalities. When pursuant to the order, the respondent approached the authorities with the certificates, it was noticed that the respondent was not qualified for the post. She was, therefore, not allowed to join the service, and was sent back.

...

4. It has been brought to our notice during the course of the arguments that the original selection was made by mistake on the presumption that the respondent had satisfied the qualification requirements as stated in the advertisement, without scrutinising the certificates copies of which were sent with her application. The Selection Committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come along with the original certificates. When the respondent approached the appellants with the originals of the certificates which were scrutinised, it was found that in fact she was short of the qualifications. It is in these circumstances, that she was not allowed to join the service. It cannot, therefore, be said that the appellants had selected the respondent with the knowledge that she was underqualified. According to us, there is a good deal of force

in this contention. It is common knowledge that sometimes either by mistake or otherwise the notes put up before the Selection Committee contain erroneous data prepared by the office, and sometimes the Selection Committee proceeds on the basis that all those who appear before it, are otherwise qualified. However, the second stage at which the documents are scrutinised is when the higher authorities go through them at the time the candidate concerned approaches them for resuming (sic assuming) duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action.

....
6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

(Emphasis Supplied)

16. In the case of ***State of U.P. v. Vijay Kumar Misra*** reported at (2017) 11 SCC 521, the Apex Court while dealing with a case where the applicant did not have the eligibility qualifications for the post at the time of submission of application but acquired subsequently held that the applicant was not eligible to be considered for the post. The relevant para 6 reads as under:

“6. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post....”

(Emphasis Supplied)

17. In ***P.M. Latha v. State of Kerala*** reported at (2003) 3 SCC 541, the Supreme Court of India dealt with the issue as to whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed qualification and held that it is a matter of recruitment policy. The relevant portion of para 13 reads as under:

“13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forgot that in extending relief on equity to BEd candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the rank list to get appointment against the available vacancies, had BEd candidates been excluded from the selections.....”

(Emphasis Supplied)

18. In the case of ***Ashok Kumar Sonkar v. Union of India*** reported at (2007) 4 SCC 54, the Apex Court has decided the appointment of the appellant as illegal and non-est in the eyes of law and rendered the appointment as nullity. The relevant para 20, 28 and 34 read as under:

“20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

....
28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

....
34. It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularised. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of the law, which renders the appointment to be a nullity.”

(Emphasis Supplied)

19. The present case is to be decided on the touch stone of law laid down by the Supreme Court of India. A reading of the communication dated 11.10.2015 extracted in the para 10 foregoing would show that the appellant was well aware that an appointment letter had not been issued. Thus, to say that post 10.08.2015, the appellant was given her joining letter and she started attending the college is factually incorrect and misleading.

20. Taking into consideration clause 4 of the endorsement extracted in para 12 foregoing, we are of the view that the selection of the candidates were purely provisional and was subject to actual verification of degrees/certificates e.t.c. In the present case, after the verification, it was found by the Screening Committee that the appellant was given 10 marks extra inadvertently. The Screening Committee was misled as the appellant had falsely stated in her application form that she has a degree of M.Phil. However, in fact she was pursuing her M.Phil on the date of filling of her application form. It is the case of the respondents that once the Screening Committee had detected the miscalculation, the appellant become unfit for the post. Additionally, the appointment letter was not issued to the appellant which has been duly admitted by the appellant in her communication dated 11.10.2015. We may also note that vide letter dated 12.10.2015 in response to the request of the appellant for release of her salary, the respondents had stated that since she had not been issued an appointment letter, the question of release of salary would not arise.

21. We find there is no infirmity in the view taken by the learned Single Judge. The appeal is devoid of any merit. Resultantly, the appeal is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 3rd, 2019

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