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

% *Date of Judgment: 30th August, 2019*

+ **W.P.(C) 9472/2019**

RAJAT VARSHNEY

..... Petitioner

Through: Mr.Saurabh Ahuja, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Bharati Raju, CGSC for R-1/UOI.
Mr.Naresh Kaushik and Ms.Vibhuti
Tyagi, Advts. for UPSC/R-2.
Mr.Shadan Farasat, Ms.Warisha
Farasat and Ms.Rudrakshi Deo, Advts.
for R-3/caveator.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM. APPL 38960/2019 (Exemption)

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

CAVEAT NO.872/2019

3. Counsel for the caveat enters appearance. Accordingly, the caveat stands disposed of.

W.P.(C) 9472/2019

4. With consent of the parties, the matter is taken up for final hearing and disposal.
5. The petitioner is aggrieved by the order dated 05.08.2019 passed by the Central Administrative Tribunal (Tribunal), by which O.A. filed by respondent No.3 herein has been allowed and the O.A. filed by the

petitioner herein has been dismissed.

6. Some necessary facts, which gave rise to filing of the O.As. before the CAT, which are required to be noticed for disposal of this writ petition are that :

- (a) The respondent No.2/UPSC had issued an advertisement to fill-up number of vacancies in different Departments/Ministries of Government of India.
- (b) Three vacancies of Assistant Director, C.C.S. National Institute of Animal Health, Baghpat (U.P.), Department of Animal Husbandry Dairying and Fisheries, Ministry of Agriculture and Farmers Welfare were advertised in April, 2018. Out of three aforesaid vacancies, two were meant for unreserved category and one for reserved category.
- (c) In September, 2018, the U.P.S.C. notified a shortlisting criteria, including details of the shortlisted candidates. The name of the petitioner was also included in the list of shortlisted candidates. The case of the petitioner is that on the basis of qualifications possessed by him, the petitioner was found to be eligible by the competent authority and this was brought to the notice of the UPSC.
- (d) the petitioner vide e-mail dated 15.10.2018 was called for an interview, scheduled on 26.11.2018. The petitioner was directed to bring his Ph.D. degree/certificate on the date of the interview. Admittedly, the petitioner produced his provisional Ph.D. degree dated 03.08.2018. It is also the case of the petitioner that the provisional degree was duly accepted and considered by the department and it is only thereafter that he was allowed to

- participate in the interview along with other candidates.
- (e) The petitioner vide letter dated 30.11.2018 was informed about his selection for appointment to the post of Assistant Director in the unreserved category. Reliance is placed on a letter dated 30.11.2018 by which, post the declaration of the result, the UPSC sent its recommendations to respondent No.1/Ministry of Agriculture and Farmers Welfare for appointment of the petitioner as an Assistant Director.
 - (f) Upon receipt of the said recommendations, respondent no.1 also informed the petitioner about his nomination for the post of Assistant Director and asked the details of hospitals regarding medical examination. The petitioner also acted promptly and sent the details of the hospitals.
7. Although the petitioner was required to be medically examined for the appointment along with other successful candidates, the other two candidates were appointed but there was no information regarding the fate of the petitioner herein. Resultantly, the petitioner was forced to file an O.A. whereupon a communication dated 26.02.2019 was served upon him informing that he did not fulfil the shortlisting criteria on account of which his candidature was cancelled. The Tribunal however allowed the O.A. filed by respondent No.3, the next candidate in line to the post; but dismissed the O.A. filed by the petitioner herein.
8. Mr.Sourabh Ahuja, learned counsel appearing for the petitioner submits that the petitioner fulfilled the basic criteria and the educational qualifications detailed in the advertisement and in view thereof the petitioner cannot be denied appointment. He submits that the 'basic

qualification' was not Ph.D. and thereafter mere possession of Ph.D. degree by successful candidates cannot be a ground to reject the case of the petitioner. Reliance is placed on the decision rendered by the Apex Court in **K.V. Subba Rao v. Govt. of A.P.** reported at (1988) 2 SCC 201, para 9 of which is reproduced as under:

“9. Though Rule 3(b) fixes the ratio as 1:1 in respect of substantive vacancies, the recruitment has not been regular and systematic. We have come across several instances where the State Governments do not take steps to give effect to their own rules and, therefore, though there is one mode of prescription, in action a different situation is brought about. Rules have binding effect and they bind the State and the citizens alike once they are in force. In order that law may regulate conduct, the State has to feel bound by its own laws and by willingly abiding by the law exhibit an ideal situation for the citizens to emulate. We disapprove of the callous conduct of the State and direct that the rule shall henceforth be followed scrupulously by effecting recruitment at regular intervals according to the scheme of the rule. The State shall within four months from today compute the substantive vacancies in the cadre and determine the quota of direct recruits to the rank of Deputy Tehsildars and after working out the vacancies available to be filled by the direct recruitment on the basis of 50 per cent of the total number, fill up the same by making direct recruitment within a period of four months thereafter. Once that is done and regular recruitment is effected, the impasse which has now been created would not continue. The State is directed to draw up the seniority list on the basis of Rule 4(e) on or before December 31, 1988. We have given a long time to eliminate the scope for making of an application for extension.”

9. Counsel for the petitioner has also placed reliance on **Secy. (Health) Deptt. of Health & F.W. v. Anita Puri (Dr)**, (1996) 6 SCC 282, more particularly para 7, which is reproduced as under:

“7. Admittedly, in the advertisement which was published

calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.”

10. Counsel further submits that a vested right has been created in favour of the petitioner, which is evident from the fact that his name was forwarded by the UPSC to the User Department and even the User Department informed him and sought the names of the hospitals from him. Although, the final date was not notified, the petitioner was also called upon to undergo medical examination. Mr. Ahuja has highlighted the fact that at the relevant time, when the shortlisting criteria was fixed, the petitioner had obtained a Ph.D. degree and thus, according to him, it is this date, which is relevant as the petitioner had a Ph.D. degree. Mr. Ahuja further submits that in case the shortlisting criteria were not formulated on 14.09.2018, the petitioner would have no grievance but once the criteria were formulated then the qualification of the candidates should be looked into on the date when such shortlisting criteria were formulated.
11. Per contra, Mr. Naresh Kaushik, learned counsel appearing for respondent no.2/UPSC submits that there is no infirmity in the impugned order and the present petition is liable to be dismissed. It is submitted that at the time when the advertisement was published, the essential qualifications were set out in paragraph 2 of the advertisement, which is reproduced below:

“2. (Vacancy No. 18040802128) Three Assistant Director, C.C.S. National Institute of Animal Health, Baghpat (U.P.), Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture and Farmers Welfare (OBC-01, UR-02). The post is Temporary but likely to continue. Pay Scale: Level-10 in the pay matrix as per the 7th CPC. General Central Service Group ‘A’, Gazetted Non-Ministerial. Age: 35 years.

QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL: (i)

B.V. Sc or B.V. Sc and Animal Husbandry Degree from a recognized University or equivalent as mentioned in Schedule I or Schedule II of the Indian Veterinary Council Act, 1984 (52 of 1984). (ii) M.V. Sc in Medicine or Virology or Pathology or Bacteriology or Microbiology or Immunology or Parasitology or Veterinary Public Health from a recognized University or equivalent. (iii) Should be registered with Veterinary Council of India or State Veterinary Council.

DESIRABLE: (i) Experience in research or training or manufacture or regulation or quality control in the field of vaccines and other biologicals in a concern of repute.

NOTE:-I: The crucial date for determining the age limit shall be the closing date for receipt of applications.

NOTE:-II: The Qualification are relaxable at the discretion of the Union Public Service Commission, for reasons to be recorded in writing, in case of candidates otherwise well qualified.

NOTE:-III: The Qualification(s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission, for reason to be recorded in writing, in case of candidates belonging to Scheduled Castes/Scheduled Tribes, if at any stage of selection the Union Public Service Commission is of the opinion that sufficient numbers of candidates from these communities possessing the requisite experience are not likely to be available to fill up the post reserved for them.

DUTIES: Responsible for testing of viral/bacterial vaccines/biological for use in ruminants, canines, felines, porcine, equines etc. Also responsible for processing of tissues from experimental animal house and maintenance of seed cultures and healthy cell lines. Management of animal house and experimental animal house, animal testing of biological and production of hyper immune sera and testing of livestock and poultry products. HQ: New Delhi with All India Service Liability.”

12. Mr. Kaushik relying upon the criterion of minimum essential qualifications as mentioned in the advertisement, submits that the

petitioner was well aware of the same. Further, reliance is placed on paragraph 3 of the advertisement, which is reproduced below:

“3. MINIMUM ESSENTIAL QUALIFICATIONS: All applicants must fulfill the essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for various posts. No enquiry asking for advice as to eligibility will be entertained.

NOTE-I: The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview.

NOTE-II: IN THE EVENT OF NUMBER OF APPLICATIONS BEING LARGE, COMMISSION WILL ADOPT SHORT LISTING CRITERIA TO RESTRICT THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW TO A REASONABLE NUMBER BY ANY OR MORE OF THE FOLLOWING METHODS:

- (a) “On the basis of Desirable Qualification (DQ) or any one or all of the DQs if more than one DQ is prescribed”.
- (b) On the basis of higher educational qualifications than the minimum prescribed in the advertisement.
- (c) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement.
- (d) By counting experience before or after the acquisition of essential qualifications.
- (e) By invoking experience even in cases where there is no experience mentioned either as Essential Qualification (EQ) or as Desirable Qualification (DQ).
- (f) By holding a Recruitment Test.

THE CANDIDATE SHOULD, THEREFORE, MENTION ALL HIS/HER QUALIFICATIONS AND EXPERIENCE IN THE RELEVANT FIELD OVER AND ABOVE THE MINIMUM QUALIFICATIONS.”

13. While relying on the aforementioned para 3 of the advertisement, Mr. Kaushik highlights the fact that shortlisting criteria were factored into

the advertisement itself and it was made clear that in the event of the number of applications being large, the commission would adopt shortlisting criteria to restrict the number of candidates before calling candidates for interview. He submits that the method of shortlisting on the basis of higher education was also one of the factors; and thus the cut-off date would not be 14.09.2018 but would be 17.05.2018, which was the last date for submission of the application forms. Mr.Kaushik submits that it is the admitted position that on the date when the application form was submitted, the petitioner did not possess a Ph.D. degree. Mr.Kaushik has also drawn the attention of the Court to the relevant paragraphs of the counter affidavit filed by him before the Tribunal. Reliance has been placed on paragraph Nos.7 and 12 of the counter affidavit, which are reproduced below:

“7. That the interview was fixed on 26.11.2018 when 03-OBC candidates and 09-UR candidates attended the interview. On the day of interview, Dr.Rajat Varshney did not have the original Ph.D. degree. He only produced provisional certificate for Ph.D. degree and when asked about the date of completion of his Ph.D. degree, he gave self-undertaking that he has completed Ph.D. degree before closing date of advertisement. On the basis of the self-undertaking, he was allowed to appear before the interview board.

12. That in the light of the clarification received from the ICAR, Indian Veterinary Research Institute (IVRI), the candidature of Dr.Rajat Varshney (Roll No.105) for the subject post was re-examined in the Commission. Since the ICAR, IVRI has clarified that he was eligible for award of his Ph.D. degree from 31.7.2018 onwards only, which is after the closing date of the advertisement, he doesn't fulfil the short-listing criteria adopted for recruitment to the aforesaid post. Accordingly, his candidature for the post was cancelled by the Commission and the Commission's intimation letter dated 30.11.2018 was cancelled and withdrawn. The Ministry was informed vide letter

dated 26.2.2019.”

(emphasis added)

14. Mr.Kaushik has also relied upon *M.P. Public Service Commission vs Navnit Kumar Potdar* reported as (1994) 6 SCC 293 wherein the Apex Court has relied on two other judgments of the Supreme Court in the case of *Union of India vs. T. Sundararaman*, (1997) 4 SCC 664 and *B.Ramakichenin vs. Union of India*, (2008) 1 SCC 362. Paragraph Nos. 16 & 17 of the *B.Ramakichenin*’s case are reproduced as under:

16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.

17. However, for valid shortlisting there have to be two requirements — (i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a BSc degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in BSc and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention that only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates; (ii) if a prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed.”

15. In support of his submission, Mr. Kaushik places reliance upon the decision of the Apex Court passed in the case of *UOI vs. A.K.Narula*, (2007) 11 SCC 10 which says that in exercise of the power of judicial review of constitutional obligations discharged by the Commission, the Court shall review not the decision but the decision making process; and only in case it is conclusively established that the said decision making process is vitiated by arbitrariness, bias or mala fides, the Courts would interfere in the decision making process.
16. Reliance is also placed by Mr. Kaushik on *UPSC vs. Jaganath Mishra*, (2003) 9 SCC 237 wherein it has been held by the Apex Court that it is a settled proposition of law that findings of an expert body are not ordinarily interfered with by the Hon'ble Courts in exercise of their power of judicial review.
17. Counsel for the respondent has placed reliance on a decision rendered in the case of *Charles K.Skaria and Others vs. Dr.C.Mathew and Others* reported at (1980) 2 SCC 752, more particularly, paragraph 20, which reads as under:

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof

thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application.”

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.”

18. Learned counsels for respondent no.1 and 3 have also adopted the arguments addressed by Mr.Naresh Kaushik, counsel for respondent no.2. In addition, learned counsel for respondent no.1 relies on a communication dated 07.01.2019, wherein advice was sought from UPSC. Para 4 of the said communication is reproduced below:

“4. Copies of the certificates (as reproduced in para 3 of this letter at pre-page received from the three candidates are enclosed for reference/consideration. The recommendation/advice of the UPSC is solicited as to whether the process for issue of offer of appointment may be initiated by this Ministry on the basis of the aforementioned certificates together with the provisional degree certificates for PhD furnished by the candidates or this Ministry should wait for the issue of the original PhD Degree by the ICAR-Indian Veterinary Research Institute in the Convocation as and when it is held, and thereafter proceed with the process of issue of offer of appointment only after due verification of the original PhD Degree instead of the provisional degree certificate.”

19. We have heard learned counsels for the parties. We have also examined the orders passed by the Tribunal.
20. The basic facts, which we have detailed in para no.5 foregoing, are not in dispute. The short question which came up for consideration before the Tribunal was as to whether the date of the advertisement i.e. 17.05.2018 or the date of 14.09.2018 when the shortlisting criteria was invoked by the UPSC, is to be considered as the criteria for the Ph.D. degree obtained by the petitioner herein. While Mr.Ahuja has laboured hard before us to contend that when the shortlisting criteria were invoked on 14.09.2018, the petitioner herein had already obtained his Ph.D. (03.08.2018). It has also been highlighted by Mr.Ahuja that the petitioner meets the essential qualifications and merely because respondent no.3 was a Ph.D., prior in point of time, should not give him any benefit.
21. The law, in our view, is well settled that the cut-off date for application is the relevant date when a candidate must possess the relevant degree

on which reliance is placed. Admittedly, the petitioner herein was awarded his Ph.D. on 03.08.2018 while the date for submission of the application form was 17.05.2018. The terms of the advertisement gained importance for the reason that six methods of the shortlisting criteria were factored into the advertisement itself. One of the six methods of shortlisting was on the basis of higher educational qualifications than the minimum prescribed in the advertisement. The advertisement, which we reproduce at the cost of repetition, in bold letters, states that '**A CANDIDATE SHOULD THEREFORE MENTION ALL HIS/HER QUALIFICATIONS AND EXPERIENCE IN THE RELEVANT FIELD OVER AND ABOVE THE MINIMUM QUALIFICATIONS**'. This bold portion would put a candidate on notice that at the time of selection, the basic qualifications alone would not be considered; and it is not as if when the shortlisting criterion was invoked on 14.09.2018, the aspect of higher educational qualification was introduced for the first time. We may add that in case such criteria was introduced for the first time on 14.09.2018, then submissions of Mr.Ahuja would have force; however, as the advertisement itself had a provision for taking into account higher educational qualifications, we do not find any infirmity in the order of the Tribunal on the decision of the UPSC.

22. Mr. Kaushik has clarified that no doubt, UPSC/respondent no.2 had declared the name of the petitioner as a shortlisted candidate; called him for the interview; he stood at Sl.No.2; his name was forwarded to the User Department of respondent no.1 which further had enquired from him about medical examination but all of that was done for the reason

that an impression had been created by the petitioner that he had already obtained his Ph.D. degree. Mr. Ahuja submits that no such reason was provided by the respondents in any correspondence between the parties and the respondents were well aware that the petitioner had only submitted his thesis. Be that as it may, without expressing any opinion as to whether there was any concealment on behalf of the petitioner or it was a bona fide mistake on the part of the respondent no.2 that the petitioner held a Ph.D. degree on the date of application i.e. 17.05.2018, the fact remains that the thesis was submitted on or before 17.05.2018 and the Ph.D. degree was granted on 03.08.2018.

23. It would be useful to reproduce clause 6B of the advertisement hereunder:

6 (B) Candidates shortlisted for interview on the basis of the information provided in the online applications submitted by them will be required to send self-attested copies of documents/relevant certificates in support of the claims made in the application as the when demanded by the Commission.”

The effect of such a clause would be that it would again relate back to the date of application and not thereafter.

24. For the reasons stated above, we do not find any infirmity or irregularity in the order of the Tribunal and the same does not require any interference under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

C.M.38958/2019 (additional documents) and C.M.38959/2019 (interim relief)

25. In view of the order passed in the writ petition, both the applications stand disposed of.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

AUGUST 30, 2019

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