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

Date of decision: 13.08.2019

+ W.P.(C) 9671/2017 & CM APPL. 39384/2017

THIRUPATHI KODARI & ANR Petitioners

Through Mr.Kushagra Bansal, Adv.

versus

UNION OF INDIA & ANR Respondents

Through Mr.Anil Dabas, Adv. for R-1.
Mr.Rajiv Shukla, Adv. with
Ms.Shivani Kapoor & Mr.Rahul
Thapliyal, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby setting aside the final result dated 17.04.2017 issued by the Respondent no.2 and directing the said Respondent to renotify the recruitment process for the post of 'Junior Technical Assistant'.

2. The brief facts of the case are that respondent no.2 on 20.09.2016 vide its advertisement no.CWC/1-Manpower/DR/Rectt/2016/02 invited online applications for various posts in its framework. Accordingly, the petitioners applied for the said post as provided on the website of respondent no.2. As

per the advertisement, the selection process for the post of 'Junior Technical Assistant' involves Online Test as well as Document Verification. Thereafter, the applicant shall be provided with the appointment letter in case he/she fulfils all the requisite essential requirements as per the advertisement. The Petitioners after carefully going through the aforesaid advertisement filled the online application form and were provided with the relevant details such as Roll Numbers, Applied Category, Centre number etc. As per the prescribed selection process, the examination for the post of '*Junior Technical Assistant*' was held on 18.11.2016 and the Petitioners duly appeared in the same. Thereafter, the Petitioners waited for the result and the same was declared in the mid of the month of December, 2016. The Petitioners cleared the first stage of the selection process and were further called upon for the second stage i.e. Documents Verification from 26.12.2016 to 29.12.2016 at Warehousing Bhawan, Institutional Area at New Delhi. From 26.12.2016 to 29.12.2016, both the petitioners reached the aforesaid centre for their documents verifications and after the completion of the process, the officials of the Respondent no. 2 told the Petitioners that they would receive the final result latest by April, 2017. On 17.04.2017, the Respondent no. 2 uploaded the final result of all the qualified applicants.

However, to utter surprise of the Petitioners, the Respondent no. 2 wrongly dismissed the applications of the Petitioners by stating that the Petitioners are not empanelled as they are not meeting the essentials qualification criteria for the above-mentioned post.

3. The case of the respondent no.2 as made out in the counter affidavit is that more than 250 candidates have already been appointed after the selection and have joined the Respondent Corporation and as such entertaining the prayer of quashing would displace them of their lawfully acquired position. The advertisement dated 20.09.2016 specifically mentioned in its clause B that mere shortlisting of the candidate would not imply that a candidate is empanelled for appointment in CWC. The Petitioners could not assert a right which never accrued to them and the writ jurisdiction of the Court could not be invoked under such circumstances. The job profile of Junior Technical Assistant demands that the candidate should have enough exposure to the subjects as mentioned in the recruitment rules and accordingly the answering respondent has been recruiting the candidates for the post of JTA, who have a Degree in Agriculture or who have studied the required subjects i.e. Chemistry, Zoology or Bio-Chemistry during all semesters/ years in their curriculum. Neither the studying of

subjects in a few semesters as subsidiary subject nor having the terms like zoology, chemistry or bio-chemistry as suffix or prefix to some other subjects shall render the purpose of the advertisement fruitful and any deviation from the norm could not be entertained.

4. The educational qualification of petitioners are Bachelor in Pharmacy.

5. In addition to above, the petitioner no.1 studied the following subjects as mentioned in the table:

(a) First Year:

Ist Semester (a) Phar. Inorganic Chemistry

(b) Phar. Inorganic Chemistry (Prac.)

(b) Second Year:

Ist Semester (a) Pharma Organic Chemistry – I

(b) Pharma Organic Chemistry (Prac.)

IInd Semester (a) Pharma Organic Chemistry – II

(b) Pharma Biochemistry

(c) Pharma Organic Chemistry-II (Prac.)

(d) Pharma Biochemistry (Pract.)

(c) Third year:

Ist Semester (a) Medicinal Chemistry– I

IInd Semester (a) Pharmaceutical Chemistry

(b) Pharma Chemistry (Practical)

(d) Fourth year:

Ist Semester (a) Medicinal Chemistry– II

(b) Medicinal Chemistry– II (Prac.)

6. The petitioner no.2 studied the following subjects as mentioned in the table:

Part – I Exam, May, 2008 (Page 34)

101 - Pharmaceutical Chemistry – I

104 - Pharmaceutical Chemistry – II

Part – II Exam, April 2009: (Page 35)

205 - Pharmaceutical Chemistry –3 (Ph- Biochem)

206 - Pharmaceutical Chemistry –4 (Ph-Ph- Biochem)

207 - Pharmaceutical Chemistry –5 (Ph- Anal-I)

209 - Pharmaceutical Chemistry –6 (HET-C&NP)

Part – III Exam, April 2010: (Page 36)

307 - Pharmaceutical Chemistry –7 (MED-Chem-1)

Part – IV Exam, April 2011: (Page 37)

407 - Pharmaceutical Chemistry –8 (Med-Chem-2)

408 - Pharmaceutical Chemistry –9 (Pha-Anal-2)

7. Similar issue came up before this court in W.P.(C) 3993/2017 wherein held as under:

“2. The petitioner no.1 is a graduate holding First Class Degree of Bachelor of Science (Hons.) in Botany from the University of Delhi.

3. The petitioner no.2 is a post graduate degree holder who had pursued her studies from Ranchi University and Punjab University. After completing her Bachelors of

Science in Biotechnology Honours in First division from Ranchi University in 2013 pursued her post graduation i.e. Master of Science (Microbial Biotechnology) from Punjab University and further completed the same in the year 2014.

4. The petitioner no.3 pursued his engineering B.Tech in Biotechnology from Amity University Rajasthan with a CGPA of 6.71 and completed the same in 2014.

5. The petitioner no.4 had pursued his Bachelors of Science in Microbiology as the principal subject and Chemistry and Botany as the subsidiary subjects. After completing his Bachelor's Degree, the petitioner no.4 pursued M.Sc. in Bioinformatics from the University of Pune."

6. It is not in dispute that in the aforementioned writ petition, the advertisement dated 20.09.2016 is also the subject matter of the present petition. As per the advertisement dated 20.09.2016, the education qualification required for the post of Junior Technical Assistant is Degree in Agriculture or a Degree with Zoology, Chemistry or Bio-Chemistry as one of the subjects. It was never clarified by respondent no.2 that the applicants required a degree in Zoology, Chemistry or Bio-Chemistry before reply dated 26.04.2017 to the representation of petitioner no.2 therein.

7. It is pertinent to mention here that the interview was not the criteria whereas in the advertisement in question, apart from the written test, the interview was also to be conducted.

8. But the fact remains that the petitioners not only qualified the written examination but also qualified the interview conducted by respondent no.2. Therefore, I do not find any substance in the arguments advanced by counsel for respondent no.2, therefore, the Junior Technical Assistant were appointed on a different educational qualification criteria.

9. Based upon the above facts and the judgments, a similar issue came before the *High Court of Gujarat at Ahmedabad in case of Mamta A Ghodasara & 2 Ors. vs. State of Gujarat through Principal Secretary & 2 Ors.* which was decided on 17.02.2011 in a *Special Civil Petition No.526/2011* whereby it is held as under:

“20. It would be relevant to consider the specific language and the words used in the Rules. It is stated that a candidate must possess a Bachelor's degree of any recognized University with one of the subjects named therein, such as Botany, Chemistry, Physics and Zoology. If Rule 4(b) of the ACF Rules is read carefully, it is seen that the first portion thereof envisages that the candidate should possess a Bachelor's Degree with one of the specified subjects, whereas the latter portion stipulates that a candidate should possess a Bachelor's Degree in Animal Husbandry and Veterinary Science or a Bachelor's Degree in Agriculture, or a Bachelor's Degree in Forestry or a Bachelor's Degree in Engineering, or possess an equivalent qualification recognized as such by the Government for this purpose. From the words used while framing the Rule, it is clear that it provides for a Bachelor's Degree with the subjects of Botany, Chemistry, etc. or Bachelor's Degree in Animal

Husbandry and Veterinary Science, Agriculture, Forestry, or Engineering; meaning thereby that the Bachelor's Degree envisaged by the Rules should be with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology. Admittedly, the petitioners have studied Botany, Chemistry, Mathematics, Physics, and Zoology in their Higher Secondary and also in their First and Second Years of the B.Sc. Degree course, though the subject of Microbiology is their principal or special subject. Therefore, they have a Degree of Bachelor of Science with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, as stated in the Rules. As such, there is no ambiguity in the Rules which would lead to a different interpretation or meaning.

21. The language of the above-mentioned Rule is clear and unambiguous. The word 'with' connotes inclusion and not exclusion and the intention of the Legislature is clearly demonstrated. The word 'in' had been used in the latter portion of the Rule. Had it been the intention of the Legislature that the Bachelor's Degree should specifically be 'in' Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, the said word would have been used instead of 'with', as has been done in the case of the subjects of Animal Husbandry and Veterinary Science, Agriculture and Forestry or Engineering. The Legislature is presumed to have used the language it actually intends to use, keeping in view the Legislative intent. The words used have to be understood in their normal, ordinary sense. The word 'with' is to be understood in its ordinary sense, therefore, proper effect should be given to its meaning. The only prudent and rational connotation and interpretation of the word 'with' would be an inclusive one and not an exclusive one, whereas the connotation of the word 'in' is specific. Had the word 'in' been used instead of 'with', it would have meant that candidates would have to possess a Bachelor's

Degree in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not with the said subjects. However, this has not been done which demonstrates the intention of the Legislature.

24. Applying the principles of law laid down in the decisions referred to above, to the relevant Rule, the only clear and natural meaning that emerges is that the candidate should possess a Bachelor's Degree along with one of the specified subjects. The interpretation being resorted to by the respondents that the subjects mentioned in the Rule should be the principal or special subject only, is not borne out from the language employed by the Legislature while framing the Rules. Moreover, the Rule nowhere states that the marksheets of only the Third Year of Bachelor of the B.Sc. course should be scrutinized to ascertain whether the candidate has the necessary qualification with one of the specified subjects. Such a construction is clearly a distortion of the Rule and cannot be read into it, as is sought to be done by the learned Assistant Government Pleader."

10. In addition to above, this court in the case of ***P. Ranjitha vs. University Grants Commission & Ors. in Civil Writ Petition No.2679/1989*** and 4093/1989, held as under:

"(3) The petitioner is a B. Com. Graduate with Economics as one of the subjects from Osmania University and has secured 81.08% marks. After having come to Delhi in pursuit of higher studies, she applied for M.Sc. in Agricultural Economics to respondent No. 2 being eligible for such a course according to the Prospectus (Information Bulletin) issued by the I.A.R.I. and also the advertisement. The minimum qualification of eligibility as laid down in the prospectus has been given in para 9 of the petition. Accordingly a candidate must

satisfy the minimum eligibility of qualification of Social Science (Economics) and one of the special qualifications of the discipline of Agricultural Economics as "B. Sc. (Ag.), or Bachelor's degree (with Economics as one of the subjects)". Admittedly, the petitioner possessed a Bachelor's degree in Commerce with Economics as one of the subjects and as such she applied for admission to the course of Agricultural Economics. According to the petitioner, as per para 6.24 of the Calendar issued by I.A.R.I. the application of the petitioner for M.Sc. course was screened and she was found eligible for the said course and as such she was allotted Roll No. 101-0005 for the written entrance test scheduled to be held on August 20, 1989 at 9.30 A.M. The petitioner topped in the written entrance test and was selected by the Academic Council for admission to the said course. Consequently vide letter dated September 1, 1989, annexure 'F' to the petition, she was asked to deposit dues up to September 11, 1989 as also to comply with other formalities which she did and as such she was admitted to the course. However, the petitioner received the impugned letter dated September 12, 1989 informing her that her admission has been kept in abeyance pending decision by the competent authority with regard to her eligibility. In fact, during the course of arguments, Mr. Jaitley, learned Addl. Solicitor General appearing for respondents, informed the court that the decision has been taken by the Academic Council and the petitioner has been found 'not eligible'.

(6) We have carefully considered the contention of the learned counsel for the petitioner and we find good deal of force in her submission. The eligibility criteria laid down in the prospectus as well as in the advertisement clearly stipulates that for the purpose of admission to M.Sc. (Agricultural Economics) a candidate must possess Bachelor's degree with a minimum of 55% marks in Social Science (Economics) and for a discipline of Agricultural Economics, a Bachelor's degree with

Economics as one of the subjects. It is nowhere mentioned that a Bachelor's degree in Social Science (Economics) should be a degree with Economics as principal subject or the Honours in Economics. Furthermore, it does not provide that a student who has got a degree in Social Science (Economics) or Bachelor's degree (with Economics as one of the subjects) must have mathematics compulsory paper. The eligibility criteria laid down in the prospectus as well as in the advertisement only provide that candidate must possess the Bachelor's degree with Economics as one of the subjects and not a Bachelor's degree with Economics as principal subject or Honours in Economics or compulsory paper in Mathematics. Therefore, since the petitioner holds a Bachelor's degree in Social Science with Economics as one of subjects, in our view, she no doubt possesses the requisite qualification and she is Fully eligible to be admitted to the M.Sc. (Agricultural Economics)."

11. The word 'with' connotes inclusion and not exclusion whereas the word 'in' connotes specific enclosure. The intention of the legislatures were quite clear while drafting of the rules. The word 'in' had been used in the former portion of the Rules. Had it been the intention of the legislature that the Degree should specifically be 'in' Zoology, Chemistry or Bio-chemistry, the said word would have been used instead of 'with' as has been done in case of the subject of Agriculture. Thus, respondent no.2 clearly failed to apply doctrine of literal interpretation in the instant matter. The legislature is presumed to have used the language it actually intends to use, keeping in

view the legislative intent. The use of words in the rule/provisions had to be understood in its ordinary sense. It is quite evident from the reading of the rule that the legislature intended to use the word '*with*' in inclusive manner rather than exclusive. The use of the word '*in*' is quite specific as in the case of Degree in Agriculture. Therefore, the only clear and natural meaning that emerges is that the applicant must possess a Degree along with one of the specified subjects. Therefore, the plain and ordinary reading of the aforesaid rule makes it quite clear that the applicant must possess a Degree with Zoology, Chemistry or Bio-chemistry as one of the subjects. Hence, respondent no.2 had issued the final result without appreciating the aforesaid interpretation of the rule in question.

12. As per clause C (1)(4) of the advertisement, the applicant has to undergo test namely Reasoning, English Language, Numerical Ability, General Awareness and Professional Knowledge. The syllabus of the test under the head of 'Professional Knowledge' is provided in the advertisement only. It is quite evident from the same that respondent no.2 would test the educational knowledge of the applicant before calling the applicants for document verification. The petitioners in the instant case have cleared the cut off marks in the category of '*professional knowledge*' and became

eligible for the post in question, therefore, respondent no.2 had wrongly relied upon the contents of its reply dated 26.04.2017.

13. The petitioners had already undergone the test of their technical knowledge under the head of '*Professional Knowledge*' and cleared the cut off marks. Therefore, there is not an iota of doubt that the petitioners fully comply and satisfy the basic educational qualifications.

14. Vide the present petition, the petitioners seek direction thereby setting aside the recruitment process for the post of '*Junior Technical Assistant*' and the final result dated 17.04.2017 issued by respondent no.2. The said prayer is made due to the reasons that the petitioners despite having required educational qualifications could not get selection. Since this Court is of the view that the petitioners are qualified for the post in question, therefore, instead of setting aside the recruitment process and final result dated 17.04.2017, justice would be met by giving directions to the respondents to give appointments to the petitioners.

15. In view of above discussion and the facts and circumstances of this case, I hereby allow the present petition by directing the respondents to issue appointment letters to the petitioners for the post of '*Junior Technical Assistant*' within two weeks from the receipt of this order, if the petitioners

are otherwise eligible.

16. It is made clear that the petitioners are entitled for all benefits including seniority except the past wages.

17. The petition is allowed and disposed of, accordingly.

18. Pending application stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 13, 2019
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