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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1120 OF 2021

Dhartiben Kanubhai Kurkutia

..Petitioner

VS.

Union of India & ors.

..Respondents

Mr. Ajeet Manwani a/w. Faisal Vora i/b. A and A Legal for
petitioner.

Mr. H.S. Venegaonkar for respondents – UOI.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: SEPTEMBER 8, 2021

P.C. :

1. The Union Territory of Dadra & Nagar Haveli and Daman & Diu issued an advertisement dated August 29, 2018 inviting online applications from eligible candidates for recruitment on the post of Statistical Investigator. The educational qualification mentioned in such advertisement reads as follows:

Education & other qualifications

Essential

Essential :

Graduate in any Discipline of Recognized University with Statistics as one of Subject.

Skill Test norms on computer :

English Typing @ 35 w.p.m. or Hindi Typing @ 30 w.p.m. (Time allowed 10 mts)(35 w.p.m. and 30 w.p.m. correspond to 10500 KDPH/9000 KDPH on an average of 5 key depression of each word.)

2. The petitioner, pursuant to such advertisement, offered her candidature. By a communication dated December 4, 2020, the Joint Secretary, Staff Selection Board, informed the petitioner that she was not eligible for consideration since she did not have 'Statistics' as one of the subjects at the graduation level. Incidentally, the petitioner is the holder of a degree in Master of Science in Microbiology (five years integrated programmer) with 'Bio-statistics' as one of the subjects.

3. Aggrieved by the communication dated December 4, 2020, the petitioner approached the Central Administrative Tribunal, Mumbai Bench, contending that major portion of the syllabus that she studied while succeeding in 'Bio-statistics' is covered by the syllabus of 'Statistics' at the graduation level. The contention of the petitioner, however, did not find favour with the Tribunal. By its short order

dated February 11, 2021, the Tribunal rejected the contention of the petitioner holding that she had no cause of action for invoking its jurisdiction.

4. It is this order of February 11, 2021 of the Tribunal that forms the subject matter of challenge in this writ petition.

5. We have heard Mr. Manwani, learned counsel for the petitioner and Mr. Venegaonkar, learned counsel for the respondents.

6. Mr. Manwani has placed reliance on the decision of the Supreme Court reported in (2015) 17 SCC 709 (**Parvaiz Ahmad Parry vs. State of Jammu and Kashmir and others**) and invited our attention to paragraph 13 thereof to contend that the Tribunal erroneously dismissed the original application.

7. We have perused the decision in **Parvaiz Ahmad Parry** (supra) and see no applicability of its ratio in the facts of the circumstances of the present case. There, the eligibility qualification was mentioned as "B.Sc.(Forestry) or equivalent from any university recognized by ICAR". On

facts, the Supreme Court arrived at the finding that the appellant before it did satisfy the eligibility criteria. The advertisement to which the petitioner responded did not have the words "or equivalent" as suffix to "Statistics" and, therefore, the decision is distinguishable.

8. At this stage, we may refer to the decision of the Supreme Court reported in (1990) 3 SCC 655 (**District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M. Tripura Sundari Devi**). There, the Supreme Court held that any appointment made in disregard of the qualifications mentioned in the advertisement amounts to a fraud on the public unless, of course, the qualifications are relaxable. The principle is that the recruiting authority is bound by the terms of the advertisement, since it is a representation to the public to offer their candidature based on the qualifications mentioned therein. It could be so that candidates, more meritorious than the petitioner, having 'Bio-statistics' at the Master's level, did not apply perceiving that they were not qualified; however, if any candidate, like

the petitioner, who does not have the qualifications advertised but applies, takes a chance of selection, is ultimately selected and appointed on the post in disregard of the advertisement, the same would be illegal and in clear violation of Article 14 of the Constitution of India. Being a Constitutional court, we cannot issue a mandamus and direct the respondents to act contrary to law.

9. Even otherwise, whether or not the subject of 'Bio-statistics' that the petitioner studied at the Master's level could be recognized as equivalent to 'Statistics' is purely an academic issue over which neither the Tribunal nor this Court has any expertise. The petitioner, instead of relying on the syllabus of 'Bio-statistics', ought to have placed before the Tribunal any decision of an academic body of repute, comprising of experts in the relevant field, who could have commented on the equivalence of the two subjects. Importantly, no such material has been placed before the Tribunal.

10. Further, law is well settled that it is not for the Court to provide the equivalence relating to educational

qualifications. Reference in this regard may be made to the decision of the Supreme Court reported in (1975) 3 SCC 76 **[Mohammad Shujat Ali & Ors. Vs. Union of India & Ors.]**, wherein it is held that equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body possessing the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. Such decision has been followed by the Supreme Court in a decision of recent origin, reported in (2019) 8 SCC 586 **[Zonal Manager, Bank of India & Ors. Vs. Aarya K. Babu & Anr]**.

11. We, thus, see no reason to hold that the petitioner had set up a meritorious claim before the Tribunal for interference.

12. For reasons different from the one assigned by the Tribunal in rejecting the contention of the petitioner, we uphold the order under challenge.

13. There is no merit in the writ petition. The same stands dismissed, without costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)