

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

% **Date of decision: 3rd March, 2021**

+ **W.P.(C) 2835/2021**

PRASHANT YADAV

..... Petitioner

Through: Mr. Karanjot Singh Mainee,
Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Awadhesh Kumar Singh,
Advocate for R-1/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

CM APPL. 8525/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The application stands disposed of.

W.P.(C) 2835/2021 CM APPL. 8526/2021 (for stay)

3. The petition impugns the order dated 8th February, 2021 of dismissal of OA No. 279/2021 preferred by the petitioner. The said OA was filed by the petitioner, impugning (a) the communication dated 28th September, 2020 of the respondent No.2 National Highway Authority of India (NHAI), of provisional appointment of the petitioner to the post of Deputy Manager (Technical), to the extent, the said provisional appointment was made subject to the petitioner producing original Bachelor's Degree certificate or provisional certificate/degree in Civil Engineering and specified that the petitioner should have passed the Bachelor's Degree in Civil Engineering, on or before 22nd June, 2020, being the last date of receipt of applications

for the said post; and, (b) the communication dated 5th November, 2020 of NHAI, of cancellation of candidature of the petitioner on the ground that the provisional certificate and mark-sheet issued by Institute of Engineering & Technology, Lucknow, (IE&T) of B.Tech in Civil Engineering, produced by the petitioner, was dated 5th October, 2020 and 28th September, 2020 i.e. after the last date for submission of applications for the post.

4. CAT, in the impugned order has reasoned that since in the advertisement inviting applications it was expressly provided (i) that the candidate must fulfil essential requirement for the post stipulated in the advertisement; (ii) that the candidate must upload the provisional degree in support of passing degree in Civil Engineering along with the online application; and, (iii) that the crucial date for determination of eligibility was the last date prescribed for the receipt of application and the petitioner admittedly was not issued the B.Tech Civil Engineering degree/provisional certificate before the last date prescribed for receipt of applications, the petitioner did not fulfil the advertisement conditions and his candidature had been rightly rejected.

5. The counsel for the petitioner has drawn our attention to the notice dated 15th June, 2020 issued by NHAI in the wake of Covid-19 pandemic, exempting the clause for uploading of essential educational qualification documents along with the online application and providing that the same will be required to be submitted by the candidates before final selection. It is argued that the petitioner, by the date of the final selection, was having the provisional certificate and mark-sheet of having completed his B.Tech Civil Engineering.

6. We have considered the aforesaid contention. Vide notice dated 15th June, 2020, only the requirement of uploading the essential educational qualification documents along with the online application was dispensed with but the crucial date of eligibility was not changed and remained the same and the petitioner admittedly was not eligible by the said date.

7. The counsel for the petitioner has then drawn our attention to the 'UGC Revised Guidelines on Examinations and Academic Calendar for the Universities in view of the COVID-19 Pandemic and Subsequent Lockdown', and has contended that final examination of B.Tech Civil Engineering course which the petitioner was undertaking, was delayed on account thereof and was permitted by the University Grants Commission (UGC) to be conducted later, in the wake of the pandemic and the petitioner should be extended the benefit thereof to the appointment to the post, also.

8. The petitioner, neither in the OA nor in this writ petition has made UGC or IE&T a party, though on our stating so, attention is drawn to para 3.12 of the petition and grounds B and F, where the factum of delay because of the revised UGC guidelines has been pleaded.

9. We, in our own wisdom, cannot keep on changing the conditions laid down by the employers for appointment and it cannot be lost sight of that sympathy shown to the petitioner in the present case would be at the cost of someone else. Recently, in ***Hirandra Kumar Vs. High Court of Judicature at Allahabad*** MANU/SC/0191/2019 it was reiterated that the power to fix a cut-off date is incidental to the regulatory control which an authority exercises over the selection process; a certain degree of arbitrariness may appear on the face of any cut-off which is prescribed, since the candidate on the wrong side of the line may stand excluded as a consequence; that

however is no reason to hold that the cut-off date which is prescribed, is arbitrary; in order to declare that a cut-off date is arbitrary and *ultra vires*, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution. It was further held that a choice of date cannot be dubbed as arbitrary, even if no particular reason is forthcoming for the same, unless it is shown to be capricious or whimsical or wide off the reasonable mark and that choice of date for advertising the posts has to depend on several factors, viz. number of vacancies in different discipline, need to fill up the posts and the availability of candidate.

10. No ground for interference is made out.

11. The petition is dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 03, 2021

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