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21.12.2022
S.D.

W.P.A. 25259 of 2022

**Biman Singha
Vs.
Union of India & Ors.**

Mr. Amit Ranjan Pati
Mr. Sanayan Ghosh
Ms. Rashmi Mukherjee

...For the petitioner

Mr. Soumya Majumder
Mrs. S. Ghosh
Mr. S. Bhattacharya
Mr. V. Chatterjee
Mr. B. Basak

...For the Respondent Nos. 3 to 5

Mr. Subhadip Paramanik

...For the U.O.I.

The petitioner is an ex-service man who rendered his service in the Indian Army from June 2005 till September 2020. After voluntary retirement from the army, the petitioner applied pursuant to an advertisement dated January 24, 2022 for recruitment for filling the non-executive vacancies in the Pipelines Division, Eastern Region Pipelines. The petitioner applied for the post of Technical Attendant in Salary Grade-I. The eligibility criteria for Technical Attendant, Grade-I was advertized as Matric/10th pass and ITI pass from a Government recognized Institute in the specified ITI Trades and duration as mentioned in the advertisement from a

Government recognized Institute/Board. The candidates were required to possess Trade Certificate/National Trade Certificate (NTC) issued by SCVT/NCVT. The petitioner qualified in the written examination. The petitioner was called for document verification on March 28, 2022. However, the petitioner was not selected and the said rejection was notified to the petitioner on April 22, 2022. The reason for which the petitioner was not selected was that the petitioner acquired higher qualifications than prescribed at the induction level qualifications for the advertized post. The said information was received by the petitioner on October 6, 2022 pursuant to an application made under the Right to Information Act, 2005.

The petitioner attempted for the second time for the same post pursuant to another advertisement dated September 12, 2022. The petitioner qualified again in the written examination. Thereafter, the petitioner was called for document verification on November 8, 2022. The petitioner was again not selected. When the petitioner requested for the reason of rejection of the candidature of the petitioner, the respondent authorities replied to the petitioner stating that the petitioner was found to be over qualified for the post that he applied to since the petitioner acquired a Bachelor of Arts

degree in 2004 prior to joining of Indian Army. Furthermore, the petitioner had acquired the Masters degree and in the light of the same, he was held to be over qualified. The petitioner did not submit the documents showing his subsequent qualifications in the Bachelor of Arts degree and/or Masters degree during the document verification held on November 8, 2022.

Mr. Pati, learned counsel appearing on behalf of the petitioner submits that there was a provision of considering candidates who possess higher degree of qualifications as opposed to the induction level qualifications in the event such candidates belonged to ex-servicemen category. He refers to Clause 14.4.b of the conditions of the advertisement applicable for recruitment of non-executive staff applicable to candidates in the General category. Clause 14.4.b is set out herein below:-

***“14.4.b - For the post of Technical attendant in Salary Grade I, in addition to the higher qualifications mentioned at point no 14.0, 4(a) above, candidates having qualifications of Diploma in Engineering, Graduation and above in any discipline, need not apply as they have higher qualifications than the prescribed induction level qualifications for the advertised posts. However, the aforesaid list of higher qualifications mentioned at 14.0 4a and 4b above is not exhaustive. Management may determine any other qualification as a higher qualification which is/are not listed at 14.0 4a and 4b above. The decision of the management in this regard shall be final and no further enquiry shall be entertained in this respect.*”**

He contends that the petitioner does not fall in the General category of candidates. He falls under the ex-servicemen category and is governed by Clause 14.7 of the conditions of recruitment notice/advertisement. Clause 14.7 is set out herein below:-

14.7- Ex-servicemen candidates who, in addition to induction level qualification prescribed for the notified post, possess additional/higher qualification certificate issued by the Armed Forces during service with them, will be considered for appearing in Written Test and further selection process provided they give a declaration to the effect that he/she will not make any claim for availing any benefit on the basis of additional/higher qualification certificate issued to him by the Armed Forces.”

Relying on Clause 14.7, he submits that in the event an ex-serviceman candidate acquires higher qualifications still his candidature should be considered for recruitment to the said post of Technical Attendant, Salary Grade-I.

He further submits that no material suppression has been made by the petitioner in not disclosing his qualifications with regard to obtaining Bachelor/Masters degree pursuant to the second recruitment Notification since such qualifications were not relevant for the purpose of considering the candidature of the petitioner.

Mr. Majumder, learned counsel appearing on behalf of the respondent nos. 3 to 5 submits that Clause 14.7 of the recruitment Notification only relates to candidates who possess additional/higher qualifications certificates issued by

the Armed Forces during service with a declaration that he or she will not make claims for benefits on the basis of the higher qualification certificates issued by the Armed Forces. The post for Technical Attendant in Salary Grade-I was specifically barred for candidates having qualifications a diploma in Engineering, Graduation and above in any discipline. It was specifically mentioned in the advertisement that such candidates with higher qualifications need not apply for the advertised post.

This is a policy decision of respondent nos. 3 to 5 having regard to the fact that candidates of different stature in the society with different educational qualifications should be permitted to apply for various posts in the recruitment process. As such, the said policy decision has not been challenged by the writ petitioner in the present writ petition.

Mr. Paramanick, learned counsel appears for the Union of India and submits that pursuant to an application made by the Indian Oil Corporation Limited under Right to Information Act, 2005, the Indian Oil Corporation Limited was informed by a reply dated October 6, 2022 that they cannot be informed as to whether a candidate who is over qualified can be barred from applying to a particular post in the recruitment process.

Having considered the rival submissions of the parties and the materials placed on record this Court finds

- (a) Clause 14.4.b categorically debarred candidates having qualifications of diploma in Engineering, Graduation and above in any discipline from applying to the post of Technical Attendant, Salary Grade-I.
- (b) The ex-servicemen candidates who possess additional/higher qualifications certificate issued by Armed Forces while in service were the candidates eligible to apply as long as a declaration was given by them that no claim would be made by them on the basis of additional/higher qualifications certificate issued to them by the Armed Forces.
- (c) There is no provision in the said recruitment notice/advertisement for candidates possessing higher qualifications like diploma in Engineering, Graduation and above in any discipline to apply to the post of Technical Attendant, Salary Grade-I. The candidates with higher qualifications have been specifically debarred from applying in terms of the advertisement.

- (d) The petitioner has applied in terms of the recruitment notice/advertisement dated September 20, 2022 and relies on the Clauses of the said advertisement for the purpose of showing that he is an eligible candidate.
- (e) The petitioner relies on Clause 4.7 of the said recruitment notice to show his eligibility, but Clause 4.7 only makes an exception for additional/higher qualifications certificates issued by the Armed Forces during service.
- (f) The petitioner was initially disqualified for having higher qualification pursuant to the advertisement dated January 24, 2022 and, therefore, attempted to apply again pursuant to the advertisement dated September 12, 2022 without disclosing the fact that he possesses higher qualifications than was required for the said post of Technical Attendant, Grade-I.
- (g) Such a non-disclosure by the petitioner is a material one and is not appreciated by this Court.
- (h) Hence, the contention that the petitioner has only submitted relevant documents during the

document verification on November 8, 2022 cannot be accepted by this Court.

This Court places reliance on recent three Bench Judgment of the Hon'ble Supreme Court of India reported in **2020 SCC online SC 897 (Chief Manager, Punjab National Bank and Another Vs. Anit Kumar Das)**. On similar facts the Hon'ble Supreme Court quashed and set aside the order of appointment of a Peon who despite having higher qualifications was appointed. The relevant paragraphs of the Judgment in **Anit Kumar Das** (supra) are set out herein below:-

20. That thereafter it is observed in para 27 as under: 27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.

21. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is

a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12 standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

22. Even on the ground that respondent - original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent - original writ petitioner to discharge his duties as a Peon. In the application/bio-data, the respondent-original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent - original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of Ram Ratan Yadav (supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent - original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his

candidature and rightly did not permit him to resume his duty.

Without going into the discussion whether as a matter of policy, over qualified candidates can be debarred from applying to a particular post since the said policy is not under challenge in the present writ petition, this Court holds that the petitioner being over qualified is clearly barred from applying under Clause 14.4.b of the advertisement.

In the light of the discussions above, **W.P.A. 25259 of 2022** is **dismissed** without any order as to costs.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained therein are deemed not to have been admitted.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)