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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15.11.2022

+ W.P.(C) 26/2020
BRIJNESH DUBBY

..... Petitioner

Through: Mr. Jatin Rana, Adv.

versus

NATIONAL SCHOOL OF DRAMA AND ORS.

..... Respondent

Through: Ms. Tamali Wad, Adv. for R1
Mr. Abhay Mani Tripathi, Adv. for
R2

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

1. The petitioner, who was working as a Lower Division Clerk (LDC) in the respondent no. 1 organisation, has approached this Court being aggrieved by the order dated 11.03.2019 vide which the respondent no. 2 has been selected for appointment to the post of Upper Division Clerk (UDC) in preference to the petitioner.
2. The brief factual matrix as emerging from the record may be first noted. The respondent no.1 issued an advertisement in July, 2017 inviting applications for filling up the post of UDC. The petitioner and respondent no. 2 besides other candidates, being desirous of appointment to the said post, applied for the same as per the laid down procedure. It is an admitted case of the parties that the selection

process for the said post involved three stages. The first being an objective test which was qualifying in nature, the second stage being a subjective test, the merit wherein was the determinative factor of selection and, finally a skill test which was again qualifying in nature.

3. As both the petitioner and respondent no.2 qualified the skill test, they were placed in the select list on the basis of their performance in the subjective (written) test, wherein the petitioner obtained 42 marks while the respondent no. 2 obtained 43 marks. Since there was only one vacancy and the respondent no.2 had been placed at serial no.1 in the merit list as against the petitioner who was at serial no.2, the respondent no.2 was selected for appointment as a UDC.
4. Being aggrieved, the petitioner made a representation to the respondent no.1 contending therein that since he was already a regular employee of respondent no.1 having the requisite experience of more than 5 years' of regular service in government organisation, he ought to have been given preference, vis-a-vis the respondent no. 2, who was only a contractual employee. It was urged by the petitioner that not only was the respondent no.2 a contractual employee, but even otherwise she did not have continuous five year service in any government organization or educational institute of repute.
5. Upon the said representation being rejected, the petitioner has approached this Court by way of the present petition.
6. Learned counsel for the petitioner, while reiterating the same pleas as raised by the petitioner in his representation made before the respondent no. 1, submits that as per the conditions laid down by the respondent no.1 in it's advertisement issued in July, 2017, a candidate

was required to have 5 years experience of work in a Government financed autonomous body or a Government organisation or an educational institute of repute. He submits that the respondent no.2, though working as a contractual employee with respondent no.1 since 17.09.2008, did not have continuous service of 5 years in any organization as her experience certificate in itself shows that there were intermittent breaks in her service. He, therefore, contends that the petitioner being a regular employee of the respondent no. 1, a government organisation and having the requisite experience of 5 years required for selection to the post of UDC, it is he who ought to have been given preference over respondent no.2, a contractual employee.

7. On the other hand, Ms. Tamali Wad, learned counsel for respondent no. 1 and Mr. Abhay Mani Tripathi, learned counsel for respondent no. 2 while defending the appointment of respondent no. 2, submit that the experience of almost 9 years which the said respondent possessed at the time of submitting her application for selection to the aforesaid post was commensurate with the requisite experience as required under the advertisement. They submit that the advertisement only prescribed that the candidates, desirous of being selected to the post of UDC must possess five years' experience of working in a government financed autonomous body or a government organisation or an educational institute of repute. The eligibility experience as set out in the advertisement, they contend, does not, in any manner, prescribe that the experience of five years must be by way of 5 years continuous service or that the same must be acquired on a post held

on regular basis. They submit that the respondent no.2, having been found to be more meritorious, was rightly selected to the post of UDC in preference to the petitioner. Furthermore, the petitioner now stands promoted as UDC w.e.f 15.06.2022 and therefore, prays that writ petition be dismissed.

8. Having considered the submissions of the learned counsel for the parties, I find that in the light of the admitted position that respondent no.2 was found to be more meritorious vis-à-vis the petitioner, the only question which arises for consideration of this Court is as to whether the respondent no.2 possessed the necessary five years experience as envisaged under the advertisement.
9. In order to determine this short question, it would be necessary to refer to the relevant qualification and experience criteria as mentioned in the advertisement issued by the respondent no.1. The same reads as under:

*“Qualification & Experience
Essential*

1. Graduate of an Indian University or possessing equivalent qualification.
2. 5 years experience of work in a Government financed autonomous body or a Government organization or an educational institute of repute.”

10. The aforesaid clause which prescribes five years experience of work in a Government financed autonomous body or a Government organization or an educational institute of repute, does not anywhere specify that the experience is to be by way of uninterrupted and continuous service. It also does not state that experience acquired on

an appointment which is contractual in nature will not be taken into account. The respondent no.2, admittedly had been working as a typist in respondent no.1 on contractual basis w.e.f 17.09.2008 with artificial breaks of mostly one day except in March 2008, when she was given a break of one month. She, therefore, had almost 9 years of work experience in a government organization/respondent no.1. Moreover, the respondent no.1, who is the author of the conditions prescribed in the advertisement has taken a categorical stand before this Court that the experience as prescribed under the advertisement did not imply that a candidate must have uninterrupted service of five years or that the said experience should be acquired only while working on a regular post. It has been contended by respondent no.1 that the experience as envisaged under the advertisement included experience acquired by a candidate on a contractual post as also experience which may not have been continuous but with short breaks provided the same totalled to more than 5 years. Having perused the aforesaid clause laying down the eligibility experience, I do not find this interpretation given by the respondent no.1 to be arbitrary or unreasonable in any manner and therefore, see no reason to disregard this interpretation given by respondent no.1

11. In this regard, reference may be made to the decision of Apex Court in *Agmatel India (P) Ltd. Vs. ResourSYS Telcom, (2022) SCC OnLine SC 113* wherein the Court, while dealing with a clause in a tender document, emphasised that author of a document is taken to be the best person to understand and appreciate its requirement and the Court must exercise restraint while interfering with the interpretation

given by the author of the tender document. The said principles in my view, would be equally applicable while dealing with an eligibility clause like the one in the present case. The relevant extracts of the said decision read as under-

24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the three-Judge Bench decision of this Court in Galaxy Transport Agencies wherein, among others, the said decision in Afcons Infrastructure has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible: and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.

12.. I, therefore, do not see any reason to interfere with the impugned

order. The writ petition being meritless is, accordingly, dismissed with no orders as to costs.

(REKHA PALLI)
JUDGE

NOVEMBER 15, 2022/acm

