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

% Judgment delivered on: 07.10.2022

+ **W.P.(C) 7389/2020 & CM APPL. 24735/2020**

GOVT OF NCT OF DLEHI & ORS. Petitioners

Versus

MRS CHITRA SINGH Respondent

Advocates who appeared in this case:

For the Petitioners: Mrs. Avnish Ahlawat, Standing Counsel with Mr. N.K. Singh, Ms. Laavanya Kaushik, Mr. Siddhant Tyagi and Ms. Aliza Alam, Advocates for GNCTD.

For the Respondent: Mr. Yudhvair Singh Chawhan and Mr. Aditya Sharma, Advocates.

CORAM:-

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 14.10.2019 whereby the Original Application filed by the respondent has been allowed and the Tribunal, by the impugned order, has relaxed the eligibility criteria of two years for the respondent and directed the petitioner to appoint the respondent to the post of Senior Scientific Assistant (Documents).



2. Petitioners had issued an advertisement, inter-alia, for the post of Senior Scientific Assistant (Documents) in Forensic Science Laboratory, Post Code : 044/09.
3. The essential experience prescribed by the advertisement was '*2 years' experience of analytical method/research therein in the relevant field*'.
4. Respondent applied for the said post. The result was declared. The Dossier of the respondent was not sent to the user department by the DSSSB. Respondent thereafter approached the Tribunal by way of an Original Application being OA No. 3212/2010 seeking a prayer for directing DSSSB to send the dossiers of the respondent to the user department.
5. In the counter affidavit filed, the contention of the petitioners was that the respondent had secured marks equal to the persons whose dossiers had been sent. However, since she was younger in age, the person who was senior in age and secured marks equal to the respondent was recommended for appointment to the user department.
6. Subsequently, it was pointed out by the respondent that the person whose dossiers had been sent had not joined and consequently she prayed that her dossiers be sent.
7. In the rejoinder affidavit it was further pointed out by the petitioners that respondent did not satisfy the eligibility criteria and as such could not be appointed.



8. Said petition was disposed of by the Tribunal on 13.03.2012 whereby the user department instead of DSSSB, was directed to take a view on the eligibility of the respondent with regard to the fulfilment of the requisite experience criteria.

9. By order dated 30.11.2012, Govt. of NCT of Delhi i.e. user department has held that the respondent falls short of requisite experience and has inter-alia held as under:-

“19. At this stage, it may be relevant to reproduce extract from the report dated 21.09.2012 of the Committee constituted for the purpose;

“As per Recruitment Rules for the post of SSA (Documents), the committee is of the considered view that:-

1. The candidate possesses the requisite essential educational qualification i.e. M.Sc., Forensic Science with Chemistry at B.Sc. level.

2. Out of two years experience of analytical methods/research therein relevant field, it is to mention that she possesses essential experience of one year 11 months in analytical methods at Chemistry Division, FSL Delhi. Though this experience does not pertain to the relevant field i.e. Document Division even then it may be taken into consideration as nature of duties of this post is to assist the senior officers in the division for their assigned as well as day to day work.

However, it again falls short of one month essential experience. Further to mention that M/s Scope Enterprises confirmed the issuance of certificate and provide appointment letter to corroborate the same. But as per records, it appears that M/s Scope Enterprises deals in:

(i) Mfg. & Dealers in Scientific Controls & Process Equipments



(ii) *Consultants for Equipments import & Technological Collaboration.*

But nowhere it is mentioned that this enterprises is engaged in testing/analytical or research activities. As such the experience certificate issued to the candidate by M/s Scope Enterprises as Trainee Technical Executive w.e.f. 20.12.2006 to 20.03.2007 may not be taken into consideration.”

10. Once again aggrieved by the decision of the petitioners. Respondent filed subject Original Application before the Tribunal being O.A. No. 606/2014.

11. Subject OA has been allowed by the Tribunal by itself relaxing the eligibility condition of the requisite qualification of two years' experience.

12. As noticed herein above, the essential experience prescribed by the advertisement is 2 years' experience of analytical method/research therein in the relevant field.

13. Respondent along with her application had enclosed three certificates for experience of analytical methods. Two certificates issued by the Forensic Science Laboratory, Govt. of NCT of Delhi for the period from 30.03.2007 to 31.07.2008 (16 months) and 04.08.2008 to 25.02.2009 (7 months approx..) and one issued in the name of Ms. Chitra Dadwal D/o Shri Subhash Chand Dadwal by M/s Scope Enterprises, 17/592, Joshi Road, Karol Bagh, New Delhi showing her to have worked with them for 03 months w.e.f. 20.12.2006 to



20.03.2007 with monthly emoluments of Rs. 2500/- on the post of Trainee Technical Executive Analytical Cell.

14. The Committee appointed by the petitioners noticed that as per the two certificates issued by the FSL, the respondent had an experience of one year and 11 months. The third certificate of M/s Scope Enterprises was recommended by the Committee to be rejected on the ground that they had verified the authenticity of the certificate issued by the M/s Scope Enterprises and when the Committee members visited the address given on the certificate they found that there was neither any office nor any Analytical Cell available at the said address and the premises was a residential one.

15. It is, in these circumstances, that the third certificate was rejected.

16. We notice that the Tribunal has also not taken into account this third certificate of M/s Scope Enterprises, however, has decided to relax the eligibility condition.

17. Learned counsel for the respondent submits that if the certificate issued by M/s Scope Enterprises is taken into account, respondent would satisfy the requisite experience required by the subject advertisement.

18. Learned counsel for the respondent further submits that material was placed on record before the petitioner to show that even the FSL as well as World Health Organization was dealing with M/s Scope Enterprises and the said entity does exist.



19. Without going into the finding returned by the Committee of the petitioner that the said enterprises does not exist, we have examined the certificates issued by M/s Scope Enterprises.

20. It is noticed that the letterhead on which the certificate is issued shows that M/s Scope Enterprises is an organization dealing in manufacturing and supply of equipment. The letterhead does not indicate that the said enterprises deals in any research or testing of any sample by use of the said equipment.

21. Furthermore, the letters placed on record by the respondent of FSL dealing with the said enterprise shows that they are supply/purchase orders for equipment. None of the correspondence placed on record by the respondent shows that the said organization is involved in any analytical or research of any sample, rather the organization seems to be an entity dealing in sale and purchase of equipment which is used by the laboratories.

22. By no stretch of imagination can involvement in sale and purchase of equipment be equated with gaining experience in analytical methods/research as was prescribed by the subject advertisement.

23. Accordingly, even if the contention of the respondent was to be accepted that said enterprises does exist, the document provided by the respondent do not still satisfy the eligibility criteria as required by the advertisement.

24. Perusal of the impugned order shows that the Tribunal also seems to have formed a similar view and that is the reason that the



Tribunal has not taken into consideration the three months' experience of the respondent in M/s Scope Enterprises as satisfying the eligibility condition. On the other hand, the Tribunal has exercised the powers of relaxation.

25. The Tribunal in the impugned order has referred to Note-1 of the Recruitment Rules which prescribed that the qualifications are relaxable at the discretion of DSSSB for the reasons to be recorded in writing in case of a candidate, otherwise well qualified.

26. We observe that there is no such relaxation power in the advertisement which was published by the petitioners for the purposes of inviting applications to the said posts. Even if the Recruitment Rules provide a power to relax, however, as the subject advertisement does not stipulate any power of relaxation, no relaxation can be granted contrary to the advertisement.

27. It is open to an appointing authority to prescribe conditions more stringent than the Recruitment Rules. The conditions prescribed by the Recruitment Rules would be the minimum conditions. If the appointing authority is of the opinion that a stricter selection process is to be prescribed to select the best candidate, it would be open to the authority to do so.

28. As noticed above, though the Recruitment Rules provide for a power to relax but the subject advertisement does not contemplate any relaxation. Consequently, there will be no power of relaxation with any authority conducting an exercise of appointment pursuant to the



subject advertisement. Even otherwise in the instant case the Competent Authority has declined to grant any relaxation.

29. We may further note that it is open to an appointing authority to prescribe the eligibility conditions and it is not open to Courts or the Tribunal to substitute their view for the eligibility condition or relax any eligibility condition as prescribed by the authority seeking to appoint to a particular post.

30. Reference may be had to the judgment of the Supreme Court in *Maharashtra Public Service Commission Through Its Secretary Vs. Sandeep Shriram Warade and Others*, (2019) 6 Supreme Court Cases 362, wherein the Supreme Court has held as under:-

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement.”

31. The Supreme Court further in *State of Uttar Pradesh and Others Vs. Vikash Kumar Singh and Others*, (2022) 1 Supreme Court Cases 347 has held that grant of relaxation is at the discretion of the Competent Authority and Mandamus cannot be issued by Court directing the Competent Authority to grant relaxation in qualifying service.



32. In view of the above and particularly in view of the law laid-down by the Supreme Court, we are of the view that the impugned order of the Tribunal dated 14.10.2019 relaxing the eligibility condition cannot be sustained. Accordingly, the same is set aside.

33. The petition is allowed in the above terms.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

OCTOBER 7, 2022/‘rs’