

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 806 of 2021

Dr. Krishna Shankar Ganguly
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Amales Ray, Adv. Ms. Mousumi Bhowal, Adv. Mr. Samit Rudra, Adv.
For KMC	:-	Mr. Ranajit Chatterjee, Adv. Mr. Swapan Kr. Debnath, Adv.
Hearing concluded on	:-	15.03.2023
Judgment on	:-	10.05.2023

Amrita Sinha, J.:-

The order dated 24th May, 2021 passed by the Chief Manager (Personnel) allegedly in compliance of the direction passed by this court in WPO No. 353 2020 is impugned in the instant writ petition. By the said order the prayer of the petitioner for promotion from an earlier date stood rejected.

According to the petitioner, he is eligible to be promoted to the post of Executive Health Officer.

Circular No. 107 of DMC (HQ) of 1997-98 dated 27th March, 1998 issued by the Deputy Municipal Commissioner (HQ), Personnel Department, Calcutta Municipal Corporation ('KMC' for short) sets out the eligibility criteria for promotion of Medical Officer to the post of Executive Health Officer (General). It mentions that the Medical Officer must possess the essential qualification of MBBS degree from a recognised University/institution and must have a degree in MD (P and SM)/MD (community medicine) or a Diploma in Public Health (DPH) from a recognised University/institution. Apart from the above, a Medical Officer having five years of experience will be eligible on the basis of service

seniority as reflected in the gradation list, subject to reservation as per government policy.

The petitioner possesses the qualification of MBBS and he obtained postgraduate diploma in Health Sciences in Public Health from the Annamalai University in May 2011 through correspondence. He made an application to include his latest educational qualification and update his service book as well as the gradation list.

Medical Officers who were junior to the petitioner in the gradation list were promoted in November 2013. Subsequent promotions were made thereafter, but the case of the petitioner for promotion was not considered by the respondents. The petitioner was given the benefit of promotion on and from 9th March, 2015. Higher qualification of the petitioner was recorded in the service book in September 2016. He prays that he ought to have been given promotion on and from the date of promotion of his juniors i.e, from November 2013.

The prayer of the petitioner for granting promotion from 2013 was considered and rejected by the impugned order. The reason for rejecting the prayer of the petitioner is that he did not satisfy the requisite qualification for promotion. He does not possess the qualification of Diploma in Public Health. The qualification of the petitioner i.e, postgraduate diploma in Health Sciences in Public Health does not appear to be in consonance with the rules of KMC regulating recruitment to the post of Executive Health Officer.

The petitioner admits that he obtained the diploma from the Annamalai University through distance education mode. It has been submitted that if the qualification of the petitioner was not in accordance with the circular regulating promotion, then the authority would not have promoted him in the year 2015. It is only because the qualification of the petitioner was in consonance with the requirement of promotion, that he was promoted. As he obtained the higher

qualification in the year 2011 and applied in the year 2012, accordingly, his candidature ought to have been considered for promotion in the year 2013 along with other Medical Officers.

Non-consideration of the qualification of the petitioner in proper time resulted in delay in his promotion. If the higher qualification of the petitioner would have been recorded in his service book in the right time, the petitioner would not have been deprived of his promotion. Employees who were junior to the petitioner has been promoted, ignoring the claim of the petitioner.

The petitioner has relied upon documents to show that the University from which he obtained his higher qualification is recognised by the University Grants Commission. It has been contended that it cannot be said that the qualification of the petitioner is not equivalent to the qualification as prescribed for promotion. Had there been any issue with regard to the equivalence of the qualification of the petitioner, then promotion ought not to have been given to him. After according promotion relying upon the qualification obtained by the petitioner, KMC cannot, at this stage, question the qualification obtained by him.

Prayer has been made to grant promotion to the petitioner from the date his juniors were promoted by quashing the impugned order passed by the Chief Manager (Personnel).

Learned advocate representing the respondent authorities opposes the prayers of the petitioner. It has been submitted that as the petitioner did not possess the requisite qualification, accordingly, his case was not considered for promotion in the year 2013. For promotion, the petitioner was given the benefit of the circular dated 29th December 2014 which permits promotion of Medical Officers on completion of ten years of service as non-DPH candidate.

The qualification of the petitioner not being equivalent to the qualification as mentioned in the circular relating to promotion, the candidature of the

petitioner could not be taken up for consideration for promotion in the year 2013. The higher qualification of the petitioner was not given credit at all for according promotion to him. The qualification acquired by the petitioner was, however, recorded in his service book but the promotion was given to him prior thereto.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

The first reason for rejecting the prayer of the petitioner for promotion is that his qualification was not in consonance with the Recruitment Regulations of KMC. The required qualification was a 'Diploma in Public Health' (DPH) from a recognised University/institution. The petitioner acquired the qualification 'Postgraduate Diploma in Health Sciences in Public Health' from the Annamalai University through correspondence course.

The petitioner asserts that the qualification postgraduate Diploma in Health Sciences in Public Health is equivalent to the qualification mentioned in the circular for promotion i.e., Diploma in Public Health. According to the employer, the two qualifications are not equivalent to each other.

As the petitioner seeks to claim the benefit by submitting that the two qualifications are equivalent, as such, it was the obligation of the petitioner to obtain an equivalence certificate from the competent authority prior to seeking such benefit. The petitioner ought not to have shifted the burden upon the employer to obtain the equivalence certificate.

He who claims the benefit ought to have produced sufficient documents in his favour so as to refute the allegation of the employer as regards the inequivalence of the two qualifications. There is nothing on

record to suggest that the qualification obtained by the petitioner and the qualification required for promotion are equivalent.

The equivalence of the two qualifications cannot be judged only from their nomenclature. The duration of the course, syllabus, mode of study-whether regular or correspondence, university/institution from where the qualification was obtained etc. are some of the relevant factors which are required to be verified to come to a conclusion whether the two qualifications are equivalent or not. The court is also not the competent forum to decide the equivalence of the qualification obtained by the petitioner.

The second reason for rejection is that the qualification acquired by the petitioner is not recognised by the State of West Bengal. Learned advocate for the petitioner has relied upon the University Grants Commission Act, 1956 and the Annamalai University Act, 1928 in support of the submission that the qualification obtained by him is from a recognised University and accordingly, KMC ought to accept the same and grant benefit of the said qualification.

It has also been submitted that as KMC has its independent Recruitment Regulations as such the regulation meant for the State Government employees will not be applicable in his case.

Even if the court accepts the submission of the petitioner that he would be guided by the Recruitment Regulations of his employer, but in the absence of a proper certificate of equivalence of the two qualifications, the petitioner cannot seek benefit of the qualification acquired by him. Hence, there is no point in going into the issue whether the qualification obtained by the petitioner is recognised or not or whether the qualification has been obtained from a recognised university or not.

The educational qualification of acquiring postgraduate diploma was recorded in his service records as per the order of the Municipal

Commissioner dated 21st April, 2017. The petitioner was promoted as per the modified Recruitment Regulations as a non-DPH candidate having ten years of experience on 9th March, 2015.

According to the circular of KMC, the eligibility and seniority of an employee is counted from the order of the competent authority under which the actual qualification has been recorded in the service book of the employee and his candidature stands after those eligible candidates already existing in the respective gradation list. The petitioner was already granted the benefit of promotion on completion of ten years of service, and accordingly, the date of recording the higher qualification becomes inconsequential.

The next question which arises is whether the petitioner could have been promoted from an earlier date treating him as a non-DPH candidate.

The Recruitment Regulations dated 27th March, 1998 clearly mentions that for promotion to the post of Executive Health Officer the candidate should possess the essential qualification of having MBBS degree from a recognised University/institution and a degree in MD or a Diploma in Public Health from a recognised University/institution and having five years of experience. The petitioner obtained the qualification of postgraduate Diploma in Health Sciences in Public Health in October 2011. The petitioner alleges that the private respondents superseded the petitioner on 4th November, 2013, the date they were promoted to the higher post.

On 29th December, 2014 the modified Recruitment Regulations for the post of Executive Health Officer was published by the employer where there was a scope for promotion of Medical Officers without a diploma in Public Health on completion of ten years of service. Admittedly, the petitioner joined in service as Medical Officer on 25th February, 1989. So, on the date the modified Recruitment Regulations was published i.e, on 29th December,

2014, the petitioner was eligible for promotion to the post of Executive Health Officer. The petitioner was actually promoted vide office order dated 9th March, 2015. The qualification of the petitioner postgraduate Diploma in Health Sciences in Public Health was included in his service records vide office order dated 1st July, 2017.

The petitioner argues that as KMC accepted and recorded his qualification as DPH, accordingly, he ought to be given the benefit of promotion on and from the day promotion was given to his juniors i.e, on and from 4th November, 2013. Plainly said, according to the petitioner his promotion ought to have been given from 4th November, 2013 instead of 9th March, 2015.

As recorded earlier, the qualification of the petitioner not being in accordance with the Recruitment Regulations pursuant to which his juniors were promoted, the petitioner cannot claim promotion relying on his enhanced educational qualification on and from 4th November, 2013. After the modified Recruitment Regulations was published on 29th December, 2014 the promotional avenue of the petitioner on completion of ten years of service opened and the petitioner appears to have been promoted along with similar non-DPH candidates on 9th March, 2015.

It does not appear that there was any error on the part of the employer in not promoting the petitioner on 4th November, 2013. On the contrary, it appears that the petitioner was selected for promotion immediately after the modified Recruitment Regulations was given effect to by the employer. Had there been no modification in the recruitment regulations, the petitioner could not have been selected for promotion as he did not possess the qualification required for promotion.

In view of the above, the court is of the opinion that the order impugned herein does not merit interference. No relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)