

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

Date of decision: 16th FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 241/2021**

RAJESH KUMAR

..... Appellant

Through: Mr. R.K. Saini, Advocate

versus

SINDHI ACADEMY & ANR.

..... Respondents

Through: Mr. Naman Jain, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. By way of the instant LPA, the Appellant seeks to challenge the Order dated 30.07.2021, passed by the learned Single Judge in W.P.(C) 277/2021, dismissing the Writ Petition which was filed by the Appellant herein seeking the following reliefs:

“a) A Writ of Certiorari calling for the records of the case and peruse the same.

b) A writ of certiorari or any other writ, order or direction, quashing the order dated 29.04.2020 (Annexure P-17) dismissing the appeal of the petitioner and order dated 19.06.2019 (Annexure P-16) whereby the petitioner (working as Assistant for 13½ years) was downgraded/reverted to the post of LDC, being illegal, arbitrary, malafide, unjust and violative of Articles 14, 16 and 21 of the Constitution of India.

c) A Writ of Mandamus directing Respondent No. 1 to forthwith reinstate the Petitioner to the post of 'Assistant' and give him all consequential benefits

including salary and allowances, seniority etc. as if, he was never downgraded/ reverted to the post of LDC.

d) A Writ of mandamus commanding the Respondent to pay the costs of this petition to the Petitioner. e) Any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Shorn of details, the facts, in brief, leading to the instant appeal are as under:

- a) It is stated that the Appellant herein joined the services of the Respondent No.1 herein as a Lower Divisional Clerk (LDC). It is stated that a requisition for recruitment to the post of Assistant was sent by the Respondent No.1 herein in October, 1994 to the Employment Exchange. It is stated that the Appellant herein, who was working with the Respondent No.1 herein as an LDC, filed his application for the post of Assistant. It is stated that the Employment Exchange sponsored 10 candidates for the post of Assistant and out of those 10 candidates, two were called for the interview. The Appellant herein was also called for the interview and was found suitable for the job and was accordingly offered the post of Assistant. It is stated that while working on the post of Assistant, four memos were served on the Appellant by the Respondent No.1/Academy enquiring about the subjects passed by him at the Graduation level.
- b) It is pertinent to mention here that as per the Recruitment Rules, the qualifications required for the post of Assistant in the

Respondent No.1 is that the candidate must be a Graduate with Sindhi Language as elective subject at Secondary level from a recognized University or its equivalent; the candidate must have proficiency in English and Hindi; and the candidate should also have three years' experience of working in Government/Semi Government organization or NGOs. The Appellant herein holds a B.Com degree from Delhi University with two years' experience of working in the Respondent No.1/Academy.

- c) It is stated that a show case notice was issued to the Appellant herein to show cause as to why his appointment on the post of Assistant be not annulled for not possessing the requisite qualifications as prescribed by the Recruitment Rules. It is stated that the Appellant herein submitted his reply to the show-cause notice stating that he possessed all the essential qualifications that are required for the post of Assistant. It is stated that *vide* order dated 19.06.2019, the Appellant herein was reverted back to the post of LDC.
- d) Being aggrieved by the said decision, the Appellant herein preferred an appeal before the Executive Committee of the Respondent No.1 which was rejected by the Executive Committee *vide* order dated 29.04.2020 by holding that the Appellant herein does not possess the knowledge of Sindhi language which was a requisite qualification for the post of Assistant.
- e) Aggrieved by the said order, the Appellant herein approached this Court by filing a Writ Petition, being W.P.(C) 277/2021.

Learned Single Judge, after going through the material on record and the relevant Recruitment Rules, came to the conclusion that the Appellant herein did not have Sindhi as an elective subject at the Secondary level and that he also did not have three years of work experience in a Government/Semi-Government/NGO and, therefore, he did not possess the requisite educational qualifications which were required for being appointed to the post of Assistant. The learned Single Judge also held that it is not clear as to how the application of the Appellant herein was accepted by the Secretary of the Respondent No.1 for consideration for the post of Assistant when his name was not sponsored by the Employment Exchange.

f) Aggrieved by the said judgment, the Appellant has filed the instant Appeal.

3. Heard the Counsel for the Parties and perused the material on record.
4. Learned Counsel for the Appellant submits that the requisition sent to the Employment Exchange for the post of Assistant clearly states that the essential qualification for the post of Assistant is that the candidate should be a Graduate from a recognized University whereas the desirable condition of appointment were that the candidate should know Sindhi, should have two years' office experience and should possess typing speed in English @ 45 words per minute. He, therefore, states that the Appellant herein possessed all the essential qualifications that were required to be fulfilled for the post of Assistant.

5. Material on record reveals that a letter was sent to the Sub-Regional Employment Officer, Sub-Regional Employment Exchange for sponsoring Sindhi (Arabic/Devnagri script) knowing candidates for the post of Assistant. The said letter was accompanied by a requisition form. The Appellant herein, who was working as an LDC in the Respondent No.1/Academy, after knowing the fact that names have been called for from the employment exchange for the post of Assistant, submitted his application for the said post.

6. Respondent No.1/Academy is governed within the definition of employer under the Employment Exchanges (Compulsory Notification Of Vacancies) Act, 1959 (*hereinafter referred to as 'the Employment Exchange Act'*). The post of Assistant is not excluded from the ambit of the Employment Exchange Act. The Respondent No.1 herein/Academy wrote a letter to the Employment Exchange for sponsoring candidates and out of 10 candidates sponsored by the Employment Exchange only two appeared for the interview. The Appellant herein was not sponsored by the Employment Exchange. There is nothing on record to show that the Respondent No.1 herein had issued any advertisement for filling up the post of Assistant in addition to writing a letter to the Employment Exchange for sponsoring candidates for the said post. For filling up the vacancy of Assistant, the only permissible modes of recruitment would be either through Direct Recruitment or by calling in sponsored candidates through Employment Exchange. In the present case, no advertisement for Direct Recruitment was issued by the Respondent No.1 herein and only candidates sponsored by the Employment Exchange were allowed to apply for the post of Assistant. Therefore, the application of the Appellant herein, who was not sponsored

by the Employment Exchange, could not have been considered at all by the Respondent No.1 herein. The application of the Appellant herein could not be accepted as it is contrary to the recruitment rules. As per the Recruitment Rules, the qualifications required for the post of Assistant is that the candidate must be a Graduate with Sindhi Language as elective subject at Secondary level from the recognized University or its equivalent; the candidate must have proficiency in English and Hindi and the candidate should also have three years' experience of working in Government/Semi Government organization or NGOs whereas the Appellant herein held a B.Com degree from Delhi University with two years' experience of working in the Respondent No.1/Academy and, therefore, he did not possess the requisite qualification.

7. The Order reverting the Appellant herein to the post of LDC has been affirmed by the Appellate authority and also by the learned Single Judge.

8. It is well settled that it is the employer who knows as to what qualifications are required to be fulfilled by a candidate to be appointed on a particular post. The Apex Court in Maharashtra Public Service Commission v. Sandeep Shriram Warade, (2019) 6 SCC 362, has held that the essential qualifications for appointment to a post is for an employer to decide, according to the needs and nature of work. Relevant portion of the said judgment reads 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 on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. **In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.***" (emphasis supplied)

9. The reliance placed by the learned Counsel for the Appellant on the requisition form issued by the Respondent No.1/Academy is immaterial. As rightly pointed out by the authorities, the Appellant herein, being an insider, knew fully well the desirable qualification for the post of Assistant and, therefore, he cannot take advantage of the requisition form which was attached to the notification which was sent by the Respondent No.1 to the Employment Exchange.

10. As stated earlier, appointment to the post of Assistant can either be made through Employment Exchange or by issuing an appropriate advertisement. In the present case, neither the Respondent No.1 had issued any advertisement for the post of Assistant nor was the name of the Appellant herein sponsored by the Employment Exchange. Meaning thereby that the appointment of the Appellant herein to the post of Assistant is contrary to the recruitment rules. In addition to this, the Appellant herein does not also possess the requisite essential qualification.

11. In view of the above, this Court does not find any infirmity with the order passed by the learned Single Judge.

12. Accordingly, the instant LPA is dismissed, along with pending application(s), if any, with the above observations.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2023

Rahul

