



2023:DHC:9242



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Pronounced on: 15th December, 2023**
+ **W.P.(C) 8981/2020 & CM APPL No. 28995/2020**
MANISH KUMAR Petitioner
Through: Mr.Parvinder Chauhan, Advocate
versus
DELHI TRANSCO LIMITED AND ANR Respondents
Through: Ms.Laavanya Kaushik, Advocate
for R-1
Mr.Jayesh UnniKrishnan,
Advocate for R-2 and 3
CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India has been filed by the petitioner being aggrieved by the rejection of his candidature to the post of Assistant Electric Fitter (Post Code 16/12) by the respondents. The petitioner by way of the instant petition is seeking the following reliefs:

“a) Issue a writ, order or direction in the nature of certiorari thereby calling forth to itself the records of the Respondents, especially the Respondent No. 1, in respect of the impugned Rejection Notice dated 25.08.2020 (Annexure - P/1).

b) After perusal of the records so called forth to itself, issue a writ, order or direction in the nature of certiorari thereby setting aside/quashing the impugned Rejection Notice dated 25.08.2020 (Annexure-P/1).



- c) Issue a writ, order or direction in the nature of mandamus thereby directing the Respondents to declare the Petitioner as successful and further direct the Respondent No. 1 to appoint the Petitioner to the post of Asstt. Electric Fitter (Post Code - 16/12) with Respondent No. 1/ Delhi Transco Ltd. against a post reserved for SC Category.*
- d) Issue a writ, order or direction in the nature of mandamus thereby directing the Respondents to treat the Petitioner in service w.e.f. the date on which the other candidates, declared successful for the said post have been allowed to join.*
- e) Issue a writ, order or direction in the nature of mandamus thereby directing the Respondents to give the arrears of salary and allowances to the Petitioner for the period commencing from the date on which the other candidates declared successful in the said Examination have been allowed to join and have started drawing salary and allowances.*
- f) Award the cost of the proceedings in favour of the Petitioner and against the Respondents.*
- g) Grant any other or further relief that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the applicants."*

FACTUAL MATRIX

2. The petitioner in the year 2008 , enrolled himself for a three-year diploma in Electrical Engineering from C.R.R. Institute of Technology. While pursuing his 4th Semester, he did practical/ industrial training with the Delhi Transco Ltd. from the period 15th June, 2010 to 30th July, 2010.
3. The examinations for the sixth semester which is also the final semester of the said diploma were conducted from 4th May, 2011 to 31st May, 2011. During this period, the petitioner got selected as an



Electrical Supervisor by M/s. Dhariwal Enterprises (DE hereinafter) which was associated with BSES Rajdhani Power Limited and accordingly rendered his services during the period of 1st June, 2011 to 9th July, 2011.

4. The respondent no. 2 i.e. Delhi Subordinate Services Selection Board (“DSSSB” hereinafter) issued Advertisement No. 02/12 (“Advertisement” hereinafter), thereby, inviting applications for selection to various posts. The petitioner then applied to the said post in the Scheduled Cast (“SC” hereinafter) category under the notification Post Code No. 16/12, for the post of an ‘Assistant Electric Fitter’ with Delhi Transco Limited (“DTL” hereinafter), i.e., respondent no.1.

5. The petitioner thereafter joined M/s Tata Power DDL (“Tata Power” hereinafter) as an Assistant Officer on 11th July, 2011 and provided his services till 21st October, 2016 as per the experience certificate issued by Tata Power which is placed on record.

6. The DSSSB conducted the written examinations on 29th September, 2019 for the said notification. The results of the same were released on 3rd December, 2019, wherein, the petitioner secured 87 marks against a cut-off of 61.5 marks, as fixed for candidates belonging to the SC category.

7. Thereafter, as per the requirements of the recruitment process, the petitioner uploaded a dossier containing his testimonials as per the prescribed schedule.

8. The respondent no. 2 declared the final result on 25th August, 2020, wherein the selection list did not contain the petitioner’s name despite scoring marks above the released cut off. The selection list filled



6 out of 8 vacancies reserved for the SC candidates.

9. The petitioner was sent a rejection notice No. 1171 ("Rejection Notice" hereinafter) dated 25th August, 2020 stating *inter alia* that the petitioner's candidature had been rejected for the reason that the period mentioned in the experience certificate was overlapping with the last date of the above said examination for his diploma, as mentioned in the uploaded mark sheet of his 6th semester.

10. The petitioner, being aggrieved by the abovementioned rejection notice, approached his college for the issuance of a certificate to certify that his 6th semester examinations concluded on 31st May, 2011. The college principal vide certificate dated 31st August, 2020 *inter alia* stated that the last date of examination was 31st May, 2011.

11. The petitioner thereafter moved a detailed representation dated 2nd September, 2020, addressed to the Secretary of the respondent no. 2, annexing relevant documents in support. The petitioner on 17th September, 2020 sent a reminder to the respondent no.2 for disposal of his abovementioned representation.

12. The petitioner thereafter registered his grievance with '*Public Grievance Monitoring System*' maintained by the Government of NCT of Delhi and with the 'Listening post of Lieutenant Governor Delhi'.

13. As per the aforesaid online grievance redressal mechanism, the response as stated in the online grievance by the respondent no.2 in both grievances was that experience is computed from the date of the issuance of requisite degree.

14. Aggrieved by the stance taken by the respondents in the Rejection Notice and in reply to the representation before the grievance redressal



authority, the petitioner herein has filed the instant writ petition.

SUBMISSIONS

(On behalf of the petitioner)

15. Learned counsel appearing on behalf of the petitioner submitted that the respondents have infringed upon the petitioner's fundamental and legal right, thereby, violating the principles enshrined under the Constitution.

16. It is submitted that the conduct of the respondents is arbitrary and in violation of the settled legal principles *qua* the service jurisprudence.

17. It is submitted that as per the examination schedule placed on record the petitioner undertook papers of nine different subjects, the first exam being 'EE683 - Industry Practice Based Major Project Wk' which was conducted on 4th May, 2011 and the last exam being EE670 - Computer Programming & Applications, conducted on 31st May, 2011.

18. It is submitted that the petitioner applied under the advertisement notification Post Code No. 16/12 for the post of an 'Assistant Electric Fitter' with DTL. The said notification invited applications for a total of 55 vacancies out of which 8 posts were reserved for candidates belonging to the SC category.

19. It is submitted that as per the above stated advertisement notification, the essential qualification prescribed was of a Diploma in Electrical Engineering with 1 year experience or an ITI in Electrical Trade with 2 years of professional experience in Erection/ Maintenance of transformer HT and LT switchgear, and fitter machines. The petitioner applied against the vacancies reserved for the candidates belonging to the SC category as he possessed all the essential



qualifications as prescribed by the respondent no.2.

20. It is submitted that the petitioner successfully appeared for the written examinations hence, petitioners' application satisfied and fulfilled all essential qualifications as prescribed by the respondent no.2 in the said advertisement.

21. It is submitted that the petitioner having appeared for the examinations dated 29th September, 2019, successfully cleared the said exam as he had scored 87 marks against the cut-off got the SC category, which was fixed at 61.5 marks.

22. It is submitted that the respondent no.2 rejected the petitioner's candidature stating non-eligibility on the ground that the period mentioned in his experience certificate overlaps with the period of exams. Such conclusion drawn by the respondent is based on the premise that the experience gained before the completion of exams shall not be taken into consideration thus, interpreting the petitioner's experience narrowly.

23. It is submitted that *firstly* there exists no overlapping as the last date of examination and the commencement of experience are two different dates. *Secondly*, the advertisement notification does not clearly state or mention that the experience must have been acquired post completion of the exams. Thus, the respondent is bound to stick with the criterion as prescribed initially in the advertisement.

24. It is submitted that the respondents have altered their initial stance as intimated vide the above said impugned Rejection Notice and stated before the '*Public Grievance Monitoring System*' in both grievances that the experience shall be computed after the issuing of requisite degree.



25. It is submitted that the advertisement uses two phrases “Experience” and “Professional Experience” thus, creating a distinction in the notification itself. Therefore, experience without having a professional Diploma/Degree would fall within the ambit of “Experience” whereas experience gained post acquiring Diploma/Degree would fall within the ambit of “Professional Experience”.

26. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

(on behalf of the respondents)

27. *Per Contra*, the learned counsel appearing on behalf of the respondent no.1 vehemently opposed the present petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

28. It is submitted that there is no material ground raised by the petitioner that would warrant the interference of this Court under its extraordinary writ jurisdiction and the petitioner is abusing the process of law by way of the instant writ petition.

29. It is submitted that vide letter dated 27th June, 2011, the respondent no.1 issued a requisition letter to the DSSSB for filling up of 55 posts of Assistant Electric Fitter and in furtherance to the same, the respondent no.2 published a Vacancy Notice under Advertisement No. 02/12 dated 12th September, 2012 under notification Post Code No. 16/12.

30. It is submitted on behalf of the respondent no.1 that the said



recruitment process is the prerogative of the respondent no.2 as it is for the DSSSB to examine the documents submitted by the candidates and forward the final list to the respondent no. 1 to finally process the filling of vacancies.

31. It is submitted that the pre-requisite qualifying criteria for the candidates holding a Diploma and applying for the said post was possession of one year experience as on the date of closing of applications i.e. 15th June, 2012. Therefore, the said experience was to be construed as a 'Post Qualification Experience ("PQE" hereinafter)' and thus, the Rejection Notice issued by the DSSSB to the petitioner for non-possession of the requisite experience is in violation of the eligibility criteria as mentioned in the Advertisement.

32. It is submitted that the petitioner has failed to substantiate any violation on part of the respondent no.1 as the recruitment process has been conducted as per the guidelines stated in the Advertisement by the respondent no.2.

33. Learned counsel appearing on behalf of the respondent no.2 also vehemently opposed the present petition submitting to the effect that the advertisement provided for all the candidates to fulfil the essential qualifications in order to apply for the said posts. The Advertisement contained two segments, the *first* being a 'Diploma in Electrical Engineering or ITI in Electrical Trade' and the *second* being '01 year experience for Diploma Holders or two year professional experience in Erection/Maintenance of Transformer HE & LT switchgears and filter machines for ITI holders'.

34. It is submitted on behalf of respondent no.2 that the written



examination for the above stated post was conducted on 29th September, 2019 after which the marks were uploaded on the website vide public notice dated 3rd December, 2019. The respondent no.2 vide Result Notice No. 1170 and Rejection Notice No. 1171 dated 25th August, 2020 published a list of provisionally selected candidates and issued a rejection notice to the petitioner herein respectively.

35. It is submitted on behalf of respondent no.2 that the petitioner applied for the said post and submitted a Diploma in Electrical Engineering as the essential qualification to be appointed, and the examinations for the same were concluded in May/June, 2011.

36. It is further submitted that having applied under the diploma category, the petitioner uploaded a certificate stating 1 year of essential experience. The experience as stated was (i) 1st June, 2011 to 9th July, 2011 as Electrical Supervisor at DE (total period 01 month 9 days), (ii) 11th July, 2011 to 21st October, 2016, at Tata Power (total period 11 months 5 days as on cut-off date 15th June, 2012 mentioned in the advertisement).

37. It is submitted that as per the Advertisement all candidate must fulfil the essential requirements to be eligible for consideration of their candidature and as per the mark sheet the petitioner concluded his examination on 31st May, 2011 for his final semester i.e. 6th Semester of Diploma in Electrical Engineering.

38. It is submitted to this effect that a person is considered a diploma holder post the declaration of final results and not after merely appearing for the examinations and thus, the experience acquired by the petitioner post receipt of final results shall only be considered valid while



computing the essential experience requirement. Therefore, any experience gained pre declaration of results shall be invalid to such effect.

39. It is submitted that as stated above the experience at DE between the period of 1st June, 2011 to 9th July, 2011 as Electrical Supervisor (total period 01 month 9 days), shall be held invalid as the petitioners' final results were awaited and the same cannot be counted while computing the one year experience criteria. Thus, meaning that the experience mentioned in the certificate overlaps with his date of examinations of the said Diploma.

40. It is further submitted that, with regards to the experience at Tata Power between 11th July, 2011 to 21st October, 2016 (total period 11 months 5 days as on cut-off date 15th June, 2012 mentioned in the advertisement) has been considered against the essential qualifications, despite no material placed on record to prove the employment of the petitioner.

41. It is contended that a petitioner was employed for a total period of 11 months 5 days only thus, failing to meet the one year experience criteria. It is to this effect that the petitioner's candidature was rejected on not having met the minimum eligibility criteria as mentioned in the Advertisement.

42. It is further submitted that the DSSB does not scrutinise the applications of any candidate at the stage of allowing the candidates to appear for the written examinations.

43. It is contended that the advertisement clearly and expressly stipulates that the educational qualifications, age, experience, etc shall



be determined as on closing date of application to determine the eligibility of a candidate. The candidature of an applicant shall be rejected on grounds of not meeting the prescribed criteria.

44. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

ANALYSIS AND FINDINGS

45. Heard the learned counsel for the parties and perused the records.

46. The petitioner has approached this Court seeking issuance of a writ of certiorari for calling forth to itself records of the respondents with respect to the impugned Rejection Notice dated 25th August, 2020 and setting aside the same. Further, the petitioner has also sought a writ of mandamus to direct the respondents to accept the candidature of the petitioner for the post of Assistant Electric Fitter with DTL under the posts reserved for the SC category and to consider the petitioner in service and, give the petitioner arrears of his salary and allowances as have been received by the selected candidates.

47. It is the case of the petitioner that the petitioner successfully completed his Diploma in Electrical Engineering from C.R.R. Institute of Technology situated at Kanjhawla Ghevra, Delhi. As per the date sheet placed on record the last date of his final semester i.e. 6th semester examinations was 31st May, 2011, while he worked with DE between 1st June, 2011 to 9th July, 2011 as an 'Electrical Supervisor'. Further, he switched to working with Tata Power as an 'Assistant Officer' between 11th July, 2011 to 21st October, 2016. Thereafter while working at Tata Power DDL he applied for the post of Assistant Electric Fitter in DTL



against the seats reserved for the SC under the Diploma category. The petitioner to the best of his knowledge fulfilled all essential requirements such as possession of a Diploma in Electrical Engineering and one years of experience until the last date of application. The respondents conducted the written examinations of the said post after seven years, wherein, the petitioner received the admit card and appeared for the written examinations held on 29th September, 2019.

48. The petitioner claims to have successfully cleared the said exam as he had scored 87 marks with respect to the cut off against the SC category being capped at 61.5 marks. He further submitted his diploma certificate and one year experience certificate pursuant to which his candidature was rejected by the respondent no. 2 vide Rejection Notice dated 25th August, 2020 stating that the essential experience overlaps with the date of examination and is falling short of the stipulated one year of experience thus, lacking the essential requirement for the concerned post. Being aggrieved by the same, the petitioner is challenging the reasoning stated by the respondents on the ground that essential experience shall be computed from the last date of examinations as nothing specific has been stated in the Advertisement to this effect and there exists no overlap as the last date of examination and commencement of work experience are two non-overlapping distinct dates.

49. The learned counsel appearing on behalf of the respondents, in rival submissions have contended that the respondent invited applications *inter alia* for the post of Assistant Electric Fitter. The respondents received the present petitioner's application and issued him



an admit card for the written examinations to be held on 29th September, 2019. Thereafter, candidates were required to submit the essential qualification documents, wherein, the respondents after close scrutiny of the said documents rejected the petitioner's candidature stating that he lacked the essential qualification of one year of experience. The reason stated to the petitioner was that there is an overlap of the dates between the final semester examination and the work experience as submitted by the petitioner.

50. The respondents have contended to the effect that the last date of examinations cannot be considered for the calculation of one year of qualifying experience as one cannot be said to have completed a diploma on the last date of examination whereas, the work experience shall be computed from the date of receipt of diploma certificate and hence, the petitioner cannot be granted the relief as prayed hereinabove.

51. Having heard both parties at length, following issues emerge before this Court-

- *Whether this Court can issue writ of certiorari quashing the rejection notice dated 25th August 2020?*
- *Whether a writ in the nature of mandamus can be issued by this Court directing the respondents to declare the petitioner as successful and further direct the respondent no. 1 to appoint the petitioner to the post of Assistant Electric Fitter (Post Code - 16/12) with respondent no. 1 against a post reserved for the SC Category?*



Whether this Court can issue writ of certiorari quashing the rejection notice dated 25th August 2020?

52. Before adjudicating on the merits of the case, this Court will reiterate the scope of issuance of writ of certiorari.

53. Under Article 226 of the Constitution of India, High Courts shall intervene with the order of the statutory authority only in cases where there is a gross violation of the rights of the petitioner. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned authority.

54. Furthermore, two cardinal principles of law that must be observed by the High Court while exercising the issuance of a writ in the form of certiorari is, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or re-weigh the evidence upon which the consideration of the inferior Court purports to have been based. The writ of certiorari can be issued if an error of law is apparent on the face of the record and *secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put, certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not in appeal.

55. It is evident that the Court shall exercise its power under Article 226 for granting a writ of certiorari very cautiously and sparingly under exceptional circumstances, as it is a highly prerogative writ. It should



not be issued on mere asking unless there is something palpably erroneous manifested on the face of the proceedings adjudicated by the authority concerned.

56. Before adjudicating upon the dispute in the instant petition, this Court has referred to the impugned order, relevant portion of which is as follows:

*“1. On scrutiny of marks secured in the written examination and after preliminary scrutiny as per the provision of the statutory Recruitment Rules for the **Post of Assistant Electric Fitter under Post Code-16/12 in Delhi Transco Ltd.** and the terms and conditions of the advertisement, the candidature of the 02 candidates bearing following Roll No. in respect of the said mentioned post code is rejected for the reason/remarks mentioned against each roll number. :-*

SC CATEGORY-01

<i>S.n</i>	<i>Roll_No</i>	<i>Remark</i>
<i>1</i>	<i>3940000077</i>	<i>Done diploma in Electrical Engineering in 2011 date of examination as mentioned is June 2011. Candidate Uploaded experience certificate of working as Electrical Supervisor in Dhariwal Enterprises, Najafgarh Delhi associated with BSES Rajdhani Power Ltd from 01.06.2011 to 09.07.2011 which is not feasible/valid, as the period mentioned in the experience certificate overlaps with his date of exam of diploma as mentioned in the uploaded</i>



		<i>marksheet in 6th semester (having nine papers) and worked as Asst. Officer from 11.07.2011 to 21.10.2016 in TATA Power-DDL. Only period from 11.07.2011 to 15.06.2012 will count i.e. 11 month 05 days. The cut-off date is 15.06.2012).</i>
2	3940000081	<i>Didn't upload e-dossier in stipulated time</i>

2. While every care has been taken in preparing the result, DSSSB reserves the right to rectify errors and omissions, if any, detected at any stage.

This issue with the prior approval of the Competent Authority..."

57. While adjudicating upon the impugned order this Court will deal with issues such as when can a diploma be said to have been completed, whether it is on the date of last examination or on the receipt of diploma certificate and whether the essential experience as provided for in the Advertisement shall be computed from the last date examination or from the date of receipt of the successful completion of the essential qualification Diploma.

58. At this juncture it is imperative for this Court to refer to and highlight the yardstick followed by the Hon'ble Supreme Court and discuss as to when a diploma is deemed to have been completed, whether it is on the date of last examinations or on the receipt of diploma certificate in context to the matter at hand.

59. The Hon'ble Supreme Court in ***Rakesh Kumar Sharma v. State***



(*NCT of Delhi*), 2013 11 SCC 58, deciding a similarly premised matter observed that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. The relevant portion of the judgment is reproduced herein:

“21. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification i.e., eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23-2-2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms, Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.”

60. The Hon’ble Supreme Court in *Indian Airlines LTD vs. Gopalakrishnan*, (2000) 2 SCC 200, while adjudicating a matter similar to the instant petition categorically observed that when in addition to qualification, experience is prescribed, it would only mean acquiring



experience after obtaining the necessary qualification and not before obtaining such qualification. The relevant portion of the same is as follows:

*“4. The respondent has obtained the ITI certificate in June 1994 and he had about five years of experience after obtaining the certificate and diploma in Mechanical Engineering was obtained in April 1996. In any event, it is clear that the experience obtained by him falls short of the requisite qualification. This Court in **N. Suresh Nathan v. Union of India'**: **Gurdial Singh v. State of Punjab and Anil Kumar Gupta v. Municipal Corpn. of Delhi** has explained the necessity to obtain experience after obtaining the requisite qualification.*

5. When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of the respondent, he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma-holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in April 1996 and on the relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at Item 6 that "experience will be computed after the date of acquiring the necessary qualifications. Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification, the view taken by the High Court to the contrary either by the learned Single Judge or the Division Bench does not stand to reason.”

61. The Hon'ble Supreme Court in **Anil Kumar Gupta v. Municipal Corpn. of Delhi**, (2000) 1 SCC 128, adjudicating upon the issue as to whether the experience gained after the examination and before the publication of results, can be taken into account made the following



observations:

“30. Coming to Shri R.K. Allawadi, justice Jain held that he got his degree on 29-7-1987, the marks sheet is dated 24-7-1987. Justice Jain considered his experience in Bhasin Construction Co. for the period 2-7-1987 to 22-8-1988 as 1 year, 1 month, 22 days and as JE in MCD from 23-8-1988 to 31-7-1989 as 11 months, 9 days, in all 2 years, 1 month, 1 day, justice Jain excluded the experience prior to 24-7-1987. Similarly, in the case of Naresh Gupta, the marks certificate is dated 24-7-1987 and the service in Aggarwal & Co. is from 15-6-1987 to 30-11-1988 (1 year, 5 months, 16 days) and as JE in MCD is from 1-12-1988 to 31-7-1989 (8 months) if the service from 15-6-1987 to 23-7-1987 is not to be considered, the candidate will be ineligible.

31. The issue relating to Mr. Ailawadi and Mr. Naresh Gupta is a common issue. In the case before us, the words used in the rules and notification are "professional experience of two years. The narrow question is whether the experience gained after the examination and before the publication of results, can be taken into account. We may point out that this issue does not concern itself with a question sometimes raised in relation to cases where the result of the examination is not declared before the date of advertisement or the last date of receipt of application and is announced after such date. Such cases may stand on a different footing. We are aware that, in regard to those cases, there are various rulings of this Court as to which is the crucial date. Here we are not concerned with such an issue because the advertisement is of 1989 and long before that in all the cases, the degree results were announced and degree certificates/marks-sheets were also obtained. We are here concerned with a limited question as to whether the experience gained after campus selection, ie, after final examination in BE was over and before publication of result of BE Examination/or marks certificate, could be treated as "professional experience".

32. In the context of the advertisement in this case and the facts--including the rival pleas as to "consent in the High Court, we are disinclined to hold that the experience rendered before actual announcement of results is to be excluded. We are dealing with a



case in which no argument as the one raised before us was advanced in the High Court on this issue. Added to this, the rival claims as to "consent of parties in the High Court remain. We are, therefore, not inclined to disturb the conclusion of the High Court so far as these two officers are concerned."

62. The Hon'ble Supreme Court in ***K.K. Dixit v. Rajasthan Housing Board, (2015) 1 SCC 474***, while adjudicating a promotion matter observed that experience of service must be acquired after obtaining the qualification or degree and the candidates are not entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility. The relevant portion is as follows:

*"33. As held in para 36 of **Shailendra Dania case** we are required to decide the matter on the basis of the entire scheme of the rules, the facts and circumstances at the relevant time and the rules called in question, for independently giving meaning to the words, the principle involved and the past practice, if any. In that view of the matter, the word "with" occurring before the words, "three years' service" or "seven years service" has to be given a natural meaning as understood in the common parlance and in the light of two watertight compartments created for the two classes for promotion with respective quotas of 20% and 30%. It must be held that three years' total experience of service must be service as a degree-holder. This view is fortified by the provision in the Regulations that for similar promotion a diploma-holder has to have seven years' total experience of service. The relevant regulation does not contemplate any reduced total experience for promotion for a diploma-holder who may acquire degree or AMIE qualification while in service. Even on acquiring such higher qualification the diploma-holder concerned is neither given any advantage vis-à-vis other diploma-holders nor is he ousted from the right of consideration against 30% quota provided for diploma-holders. In such a situation in order to enter into the watertight compartment of 20% quota for the degree-holders with three years' experience of service, a diploma-holder with AMIE qualification*



must show that he fulfils the entire eligibility criterion i.e. he is a degree holder with three years' experience of service as a degree-holder. Such watertight compartment and separate quotas cannot be rendered meaningless so as to affect the prospect of promotion of the degree-holders by inducting into that category a diploma-holder who does not have three years experience of service as a degree-holder. In the absence of any such provision in the Regulations, no equivalence can be permitted in such a situation because even a diploma-holder with seven years' experience of service is confined to a prospect or chance of promotion only against 30% quota for the diploma-holders.

XXXXXX

37. In the light of aforesaid discussions, we find merit in these appeals and they are accordingly allowed to the extent of reversing the views of the High Court in respect of Question 2 as noted by the Division Bench in the common judgment under appeal. We hold that the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of "AMIE", are not entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility for promotion to the post of Project Engineer (Senior) against the 20% quota fixed for promotion of degree-holder Project Engineers, (Junior). In order to claim promotion against such 20% quota the three years' experience of service must be acquired after obtaining the qualification or degree of AMIE."

63. The Hon'ble Supreme Court in ***Sheshrao Jangluji Bagde v. Bhaiyya***, 1991 Supp (1) SCC 367, made the following observation:

"3.....Normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification....."

64. In reference to the cases discussed above it can be concluded that,



firstly, when in applying to a particular post the essential requirements stipulate educational qualification and a minimum experience attained, and unless expressly stated, such experience shall mean to have been acquired after the requisite qualification. *Secondly*, a diploma/ degree is said to have been completed on the date of declaration of results and shall not relate back to the concluding date of examinations.

65. In the instant petition the petitioner bases his arguments on the ground that his experience shall be computed from 1st June, 2011 as he was through with his final semester examinations on 31st May, 2011, thus, having concluded his part of the said diploma. It is settled law as per the plethora of Supreme Court cases cited hereinabove that the completion of a diploma does not relate back to the date of examinations and is said to have been acquired on the date of declaration of final results.

66. This Court is of the considered view that, a diploma is said to have been successfully completed when the candidates result is declared as 'passed' and not just after doing his part of the process by appearing in the final examinations. It must be noted that mere appearance in the examinations does not guarantee the candidate that he will pass, there exists uncertainty as the result may or may not be in favor of the candidate. He/she may pass or fail the examinations and hence, a candidate acquires a diploma after the declaration of a pass result. Thus, with regard to issue no. 1, this Court is of the considered view that a diploma is said to be completed on the date of declaration of a pass result.

67. Further, when experience is provided in addition to an essential



qualification it must be construed to have been acquired post possessing the required diploma, especially when the applications are invited to fill vacancies in relation to the essential educational qualification. Thus, the its is held that experience shall be computed from the date of declaration of diploma results.

68. Now this Court will adjudicate on the fact whether this Court can pass any directions to the respondents to set aside the impugned rejection notice while exercising its writ jurisdiction.

69. The Hon'ble Supreme Court in ***Union of India v. Uzair Imran***, **2023 SCC OnLine SC 1308**, observed as to what extent can a Court adjudicate upon and interfere with the findings of the employer. The relevant portion is as follows:

“14. Normally, it is not the function of the court to determine equivalence of two qualifications and/or to scrutinise a particular certificate and say, on the basis of its appreciation thereof, that the holder thereof satisfies the eligibility criteria and, thus, is qualified for appointment. It is entirely the prerogative of the employer, after applications are received from interested candidates or names of registered candidates are sponsored by the Employment Exchanges for public employment, to decide whether any such candidate intending to participate in the selection process is eligible in terms of the statutorily prescribed rules for appointment and also as to whether he ought to be allowed to enter the zone of consideration, i.e., to participate in the selection process. It is only when evidence of a sterling quality is produced before the court which, without much argument or deep scrutiny, tilts the balance in favour of one party that the court could decide either way based on acceptance of such evidence.”

70. This Court finds substance in the contentions raised by the



respondents and is of the view that the grounds raised by the petitioner for setting aside the Rejection Notice, do not require intervention of this Court since, there is no error apparent on the face of the said order. The respondents have considered the plea of the petitioner along with the evidence placed before it and accordingly, it adjudicated upon it. There is no illegality on the part of the respondents in passing the said notice.

71. The writ of certiorari cannot be issued in the present matter since there is nothing palpably erroneous manifested on the face of the proceedings thus, no such circumstances are present in the instant petition. The writ jurisdiction is supervisory in nature and the Court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the material evidence adduced before the Court, or the tribunal was insufficient or inadequate to sustain the impugned finding.

72. Accordingly, issue no. i is decided.

Whether a writ in the nature of mandamus can be issued by this Court directing the respondents to declare the petitioner as successful and further direct the respondent no. 1 to appoint the petitioner to the post of Assistant Electric Fitter (Post Code - 16/12) with respondent no. 1 against a post reserved for the SC Category?

73. Now this Court will discuss the issue no. ii which is whether a



writ in the nature of mandamus can be issued by this Court directing the respondents to declare the petitioner as successful and further direct the respondent no. 1 to appoint the petitioner to the post of Assistant Electric Fitter (Post Code - 16/12) with respondent no. 1 against a post reserved for SC Category.

74. It is now imperative for this Court to briefly revisit the settled law regarding the issuance of the writ of mandamus for the reasons as prayed by the petitioner.

75. Mandamus literally means 'a command'. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law.

76. Upon deliberation of the observations made by the Hon'ble Supreme Court in catena of cases, the law on issuance of a writ of mandamus is settled which states there must exist a legal right in the person seeking such issuance and the said right must be infringed.

77. It is a settled legal principle that appointment to a particular post cannot be claimed as a matter of right. The recruiting authority must ensure equality of opportunity subject to following the recruitment rules and ensure the selection process is carried in a transparent and fair manner.

78. In the instant petition, the petitioner does not have any vested right merely because he was issued an admit card and scored more



marks than the cut-off as prescribed for the candidates belonging to the SC category. The ground taken by the petitioner that his candidature was rejected at a subsequent stage holds no merit as instructions stipulated in the Advertisement at point 10 which deals with cancellation of candidature states that candidature can be rejected at any stage of the process if the eligibility conditions are not fulfilled and point 11 which contains general instructions for candidates states that DSSSB is not verifying/scrutinizing the application form initially, but at a final stage of selection.

79. Therefore, mere appearance at the examination does not entitle any candidate to any claim for the post. Similar guidelines can be observed in other provisions of the said Advertisement as well which have not been reproduced for brevity.

80. This Court is of the view that an advertisement inviting applications for appointment to a particular post does not create any legal or fundamental right in favor of an applicant which can be enforced by way of a writ jurisdiction. It is prudent to note to this effect that unless *malafide* on part of the recruiting authority can be established an applicant cannot assert any violation of a legal or fundamental right.

81. Pursuant to the above and the factual matrix of the instant petition this Court is of the considered view that the petitioner's legal right has not been infringed by the respondents with respect to rejection of his candidature *vide* Rejection Notice dated 25th August, 2020. The respondents, whereas, have complied with the instructions stipulated in the Advertisement. A legal right cannot be sought by way of a writ of mandamus merely on rejection by a concerned authority, the petitioner



must have a legal right and the same must be infringed by the respondent by not acting in accordance with his legal duty.

82. Further, a key inference that needs to be drawn is that this Court has noted above that the respondents have not acted erroneously and have only performed their duty by not computing the requisite experience from the last date of final semester examinations.

83. Thus, in the entirety of the factual matrix and legal position this Court is not inclined to grant a writ of mandamus for the purpose of directing the respondent no. 2 to consider his candidature and pay him salary and allowances as received by selected candidates in favour of the petitioner.

84. Accordingly, issue no. ii is decided.

CONCLUSION

85. In view of the above discussions of facts and legal principles, this Court is not inclined to pass any directions in favour of the present petitioner and against the respondents.

86. This Court is of the view that, as per the material placed on record and contentions raised, the petitioner did not possess the diploma certificate as on 1st June, 2011, the reason being his result was still pending. Therefore, in light of the above stated principle the experience shall be computed post the declaration of results and not post completion of examinations.

87. Hence, the petitioner was found illegible for the position he applied for since, he did not possess the requisite experience on the date for the advertisement of the job post. Therefore, this Court is of the view that the impugned Rejection Notice issued by the respondent no.2



2023:DHC:9242



rejecting the petitioner's candidature does not suffer from any defects and is not arbitrary and illegal.

88. For all the aforesaid reasons, no merit is found in the instant petition and the same is, hereby, held to be misconceived and unnecessary. The petitioner has not been able to make out a case which warrants the interference of this Court.

89. Accordingly, the instant petition stands dismissed.

90. Pending applications, if any, also stand dismissed.

91. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
Sv/db/ryp