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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 01.02.2024***

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W.P.(C) 332/2024 & CM APPL. 1506/2024 (stay)**DSSSB AND ORS****..... Petitioners****Through: Ms.Avnish Ahlawat, SC, GNCTD
with Ms.Tania Ahlawat, Mr.Nitesh Kumar Singh
& Ms.Laavanya Kaushik, Advs.****versus****PRAVEEN KUMAR****..... Respondents****Through:****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 27.04.2023 passed by the learned Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in O.A. No.1471/2021. Vide the impugned order, the learned Tribunal has allowed the OA preferred by the respondent by directing the petitioner to process his candidature for the post of Physical Education Teacher notified vide advertisement bearing no. 04/2020.
2. Learned counsel for the petitioner submits that the impugned order is liable to be set aside as the learned Tribunal has failed to appreciate that once it was made mandatory for all candidates to upload their latest postcard size photograph (5 inches x 7 inches), the candidature of the respondent, who had uploaded only a passport size photograph, was rightly rejected. He



submits that the directions to candidates to upload their postcard size photograph as against passport size photograph was issued pursuant to the directions issued by the Apex Court in **W.P.(C) 234/2018** titled ***Shantanu Kumar & Ors. vs. UOI & Ors.*** Merely because the respondent was, pursuant to the interim orders passed by the learned Tribunal, permitted to submit his postcard size photograph in the offline mode before the examination and was consequently issued the necessary admit card, would not imply that this vital lapse on his part could be condoned. He, therefore, prays that the impugned order be set aside.

3. Having heard the submissions of the learned counsel for the petitioner, we may begin by noting the relevant extracts of the impugned order which read as under:

*“10. Prima facie, it appears that the said uploading of the photograph is not a major discrepancy which can curtail the right of the applicant qua participating in examination. Moreso in the light of the fact that the applicant has been declared to be successful, the respondents can always compare the photograph initially uploaded and subsequently uploaded as to find out the genuineness of the candidate who participated. The error on the part of the applicant is restricted to not uploading the photograph in the proper format and size and no malafide has been held against the applicant. The decision in so far as the contention of the learned counsel for the respondents in the judgment of Hon'ble High Court in **Jyoti's** case(supra) cannot be applied in the facts and circumstances of the present case.*

*11. In the case of **Avtar Singh Vs. Union of India** [(2016) 8 SCC 471], the Supreme Court in paragraphs 35 and 36 held as under: -*

35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration



of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of the cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects”

*12. Following the aforesaid decision, Hon’ble High Court of Delhi in Ajay **Kumar Mishra vs Union of India & Ors.**[WP (C) No.11642/2016 decided on 23.12.2016] held that there is a difference between a mere inadvertent error and misrepresentation or suppression, and there could be no intentional misrepresentation if such error is rectified by submission of documentary proof. Relevant portion of the said decision reads as under:-*

“5. As observed above, it is not the case of the respondents that the petitioner derived any advantage by entering the wrong date of birth in his online and application. There is a difference between a mere inadvertent error and misrepresentation or suppression. There could be no_ intentional misrepresentation as the school certificate was submitted. The penalisation of cancellation of the candidature on the ground of a



typographical error is arbitrary, unreasonable harsh and disproportionate to its gravity of the lapse. The writ petition is, therefore, allowed and the pending application also stands disposed of. The impugned order is set aside”

13. Admittedly, when the applicant has already uploaded the photograph of correct size as prescribed in the advertisement and provided his ID Proof details and postcard size photograph for the post in question, his candidature cannot be rejected due to minor inadvertent error and hence deserves consideration.”

4. From the aforesaid findings of the learned Tribunal, it emerges that as per the advertisement though every candidate was required to upload his/her postcard size photograph along with the application form, the respondent had inadvertently uploaded only a passport size photograph. It is the respondent's case that as soon as he realised his mistake, he approached the petitioner with his postcard size photograph, which was not accepted, compelling him to approach the Tribunal. Vide its interim order, the learned Tribunal not only directed the petitioner to accept the postcard size photograph of the respondent but also permitted him to appear in the exam in which he emerged successful. Consequently, when the respondent appeared in the examination his postcard size photograph was already available with the petitioner. The question, however, would be whether this mistake was of such a nature that his candidature should be rejected. The learned Tribunal was of the view that this lapse on the part of the respondent was a minor inadvertent mistake.

5. In the light of the facts noted hereinabove, we see no reason to take a different view as we are also of the view that this mistake was not of such a



grave nature that the respondent should be told that despite his having emerged successful in the examination, his candidature will be rejected. It also needs to be noted that even this mistake, though minor in nature, stood rectified before the examination itself.

6. Further, we cannot lose sight of the fact that generally, as a matter of practice, in most public examination, candidates are required to affix/upload only their passport size photograph. The requirement to upload postcard size photographs was introduced by the petitioner only pursuant to directions issued in ***Shantanu Kumar (supra)***. No doubt the postcard size photograph is much bigger than a passport size photograph and will go a long way in avoiding cases of impersonation in the public examinations. This, however, would not imply that the mistake on the part of the respondent, which as hereinabove noted stood rectified before the examination itself, should be a ground to cancel his candidature. In this regard, we may refer to a recent decision in ***Vashist Narayan Kumar vs. The State of Bihar & Ors. 2024 SCC OnLine SC 2***, wherein the Apex Court, while dealing with a case of a candidate who had made an inadvertent mistake by entering his date of birth as 08.12.1997 instead of 18.12.1997, his actual date of birth, held as under:-

*“19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a **mountain out of this molehill (emphasis supplied)**. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson’s eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 **[Prince***



Jaibir Singh vs. **Union of India & Ors.**, this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.

20. In one of the cases cited as a precedent in the counter affidavit, before the High Court, **Pankaj Paswan** vs. **State of Bihar Anr.**, 2015 SCC On Line Patna 8739, the State had taken a defence that many candidates applied in more than one place and hence there could be deliberate tweaking in the date of birth to take advantage of the selection process in more than one district or region. It is very important to notice that there is no such plea taken in the present case. If any such device or trick had been adopted, the State would have easily detected the same and placed the same before the Court. The fact that the same has not been done shows that there was no trick or device resorted to by the appellant. It is a trivial error which appears to be a genuine and bona fide mistake. It will be unjust to penalise the appellant for the same.”

7. In the light of the aforesaid, we are of the considered opinion that the learned Tribunal was justified in holding that the respondent should not be made to suffer on account of this trivial lapse on his part which was *bonafide* and stood rectified well before the examination. We, therefore, find no reason to interfere with the impugned order.

8. The writ petition along with pending application is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 1, 2024/kk