



2024:DHC:550



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

% Judgment delivered on: 23.01.2024

+ W.P.(C) 677/2024

ANKITA MEENA

..... Petitioner

versus

AIRPORT AUTHORITY OF INDIA AND ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Pooja Dhar, Advocate

For the Respondent : Mr. Digvijay Rai and Mr. Archit Mishra, Advocates for R-1/AAI with Mr. Deepak Tomar, AGM (Law) AAI and Mr. Yatinder Choudhary, Manager (Law) AAI.

Mr. Jitender Kumar Tripathi, SPC, Mr. Mimansak Bhardwaj, GP, Mr. Sunny Chhonkar and Mr. Vipin Kumar Jayant, Advocates for R-2/UOI.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 3024/2024**

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.



W.P.(C) 677/2024 & CM APPL. 3023/2024 (Interim Relief)

3. This is a writ petition under Articles 226 and 227 of the Constitution of India *inter alia* seeking following reliefs:

“(a) Declare that the action of Respondent No.1 in reserving only 1 out of 32 posts for ST candidates for recruitment for the post of Senior Assistant (Electronics) against advertisement dated 14.12.2022 is unlawful;

(b) Declare that the refusal of the Respondents to consider Petitioner’s candidature for the post of Senior Assistant (Electronics) is arbitrary and violates the fundamental rights of the Petitioner as guaranteed under Articles 14, 19 and 21 of the Constitution of India;

(c) Issue a writ of mandamus or any other appropriate writ order or direction commanding the Respondents to appoint the Petitioner at the post of Senior Assistant (Electronics) in Respondent No.1 Airports Authority of India against Advertisement dated 14.12.2022; ...”

4. Ms. Pooja Dhar, learned counsel appearing for the petitioner challenges the impugned action and submits that insofar as the vacancies to the post of Senior Assistant (Electronics) of the respondent is concerned, the posts reserved for the ST category is indicated as ‘01’, whereas according to the Constitutional Mandate, ought to have been ‘02’ in accordance with the Rules and Regulations of the DoPT.

5. She submits that according to the circular dated 17.06.2021 as against the Senior Assistant (Electronics), 32 vacant posts were assessed, out of which the breakup was UR-26, SC-4 and ST-2. She submits that contrary to their own circular dated 17.06.2021, the advertisement bearing ADVT. No 01/2022/NR dated 14.12.2022 at page 87 of the present petition, though shows the total vacancies of Senior



Assistant (Electronics) as 32, however, the seats reserved for the ST category is indicated as '01'.

6. Learned counsel submits that unilaterally, the Airport Authority of India, i.e, the respondent does not have any right, authority or jurisdiction to decrease the constitutional mandate of reservation to the ST category, particularly when in the previous circular assessing the vacancies showed as '02' reserved posts for the ST category. She submits that this is the seminal cause on which the present petition is based.

7. Subsequently, learned counsel also submits that the petitioner, who is a B. Tech degree holder having two years' experience in the relevant course, was refused consideration of her candidature. This was revealed only after a number of representations were made and finally after a response from the respondents was elicited by a query raised under the Right to Information Act, 2005, vide the reply dated 20.09.2023 which disclosed that the petitioner did not possess the required qualification/experience does not relate to the job requirement.

8. She submits that the petitioner had the requisite two years' experience as per the advertisement as also she is a B. Tech degree holder which is a higher qualification than the Diploma in Electronics. She submits that it is trite that a higher degree qualification would be sufficient for a post requiring a lower qualification and not *vice versa*.

9. She submits that having regard to both the above issues (i) that the reservation to the extent of one more post to the ST category, if given, coupled with the experience of two years and (ii) the B. Tech degree being the higher qualification, the petitioner would be well



within the consideration zone and ought to be selected for the said post. She also submits that her name was in the provisional list, having cleared the written examination too. As such, she submits that there was no reason as to why the petitioner was not entitled to be considered for the post of Senior Assistant (Electronics).

10. Insofar as the issue of experience is concerned, she relies upon the judgment of the Supreme Court in *Anil Kumar Gupta and Others vs. Municipal Corporation of Delhi and Others* reported in (2000) 1 SCC 128, particularly paras 12, 19, 20 and 25.

11. *Per Contra*, Mr. Digvijay Rai, learned counsel appearing for the respondent, at the outset, submits that the petitioner had not challenged the advertisement itself bearing No. 1/2022/NR where the reservation for the vacancies in respect of the ST candidates was indicated only as '01'.

12. He submits that it is too late in the day to come after the selection process is over, not being selected and then raising a grievance on all the aforesaid issues.

13. That apart, Mr. Rai brings attention of this Court to page no.90 of the present petition which indicates that so far as the essential qualifications are concerned, the educational qualification ought to be 'Diploma in Electronics/Telecommunication/Radio Engineering' and so far as the essential qualification in respect of the experience is concerned, it was indicated as 'Two years (2) relevant experience in the concerned discipline'.

14. Mr. Rai, learned counsel submits that the petitioner lacks in the experience of two years in the concerned discipline as also that she was



over qualified. According to Mr. Rai, both the issues were primordial in rejecting the candidature of the petitioner.

15. Learned counsel also refers to the online application form submitted by the petitioner, which is at page 96 and the relevant portion being at page 99 wherein in the column indicating the degree, the petitioner has filled in 'Diploma in Electronics' rather than her original degree which is 'B. Tech in Electronics'. According to learned counsel, the same amounts to misrepresentation. In fact, he submits that had she filled in the correct detail about her qualification, i.e. B. Tech in Electronics, the online form would have not been uploaded at all, since the option was only in respect of the said exact educational qualification that was sought for this post.

16. He submits that not only is the petitioner "*lacking in requisite experience*", but also has committed the error of misrepresenting her educational qualification.

17. He also draws attention of this Court to the column in the online application form regarding previous work experience details, which shows that she claimed to have been working as a Technical Assistant at Kiran Enterprises Sanganer, Jaipur from 07.09.2020 through till 30.11.2022. According to Mr. Rai, the experience which she indicates, apparently a part of that experience falls within the period when the petitioner was obtaining her B. Tech Degree and as such, even the work experience is short by atleast one year.

18. Mr. Rai also relies upon the judgment of Supreme Court in ***Chief Manager, Punjab National Bank and Another vs. Ankit Kumar Das*** reported in (2021) 12 SCC 18 to submit that in that case, the Supreme



Court was considering the case for the post of Peon for which the essential educational qualification required therein was 12th Class and the respondent / candidate therein was a graduate. The Supreme Court in para 19 rejected the same and allowed the appeal of the Punjab National Bank.

19. In fact, according to Mr. Rai, the respondent therein had suppressed the material information in the application form, which was taken note of specifically by the Supreme Court.

20. Mr. Rai submits that looking at it, in any which way, the petitioner is not qualified and that the present writ petition deserves to be dismissed in *limine*.

21. On rebuttal, Ms. Dhar submits that so far as allegation of misrepresentation is concerned, the same is without any basis. She submits that the online application form did not contain any option other than to fill in the 'Diploma in Electronics' and as such, the petitioner cannot be alleged to have committed any misrepresentation. Additionally, she submits that the degree and other educational qualification/testimonials were also uploaded at the same time alongwith the online application form and as such, the issue was of consideration of higher qualification and not misrepresentation.

22. This Court has heard the arguments of learned counsel for the parties and considered the judgments relied upon by them.

23. At the outset, this Court has observed that the online application form which has been filled by the petitioner appears to be an apparent misrepresentation inasmuch as the essential qualification sought as per the advertisement was 'Diploma in Electronics' which undisputedly the



petitioner filled, whereas the petitioner was actually holding a degree in B.Tech.

24. Moreover, this Court is also unable to agree with the petitioner in respect of the work experience details which were filled in by the petitioner, whereby it is very clear that the petitioner is stated to have work experience from 07.09.2020 through till 30.11.2022. Whereas in the same online application form, the year of passing of B. Tech Degree has been shown as 2021. Apparently, the post degree experience is roughly about one year and clearly she would fall short of one year for the purposes of two years' work experience that was required by the respondent/Airport Authority of India.

25. The submission regarding the petitioner having a higher qualification and as such being entitled to be considered for the said post is concerned, the Supreme Court in the aforesaid judgment of **Punjab National Bank** (Supra) by a learned three judges' bench decision has noted in para 19 as under:-

"19. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact overqualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent-original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in Ram Ratan Yadav [Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, (2003) 3 SCC 437 : 2003 SCC (Cri) 306 : 2003 SCC (L&S) 306] , suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of



suppression of material information and the facts and as the respondent-original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular Letter No. 25 of 2008 dated 6-11-2008, the Bank rightly cancelled his candidature and rightly did not permit him to resume his duty."

26. It is clear from the aforesaid judgment that the wrong filling of the educational qualification has been taken to be a material suppression and in fact, in that case, the continuance of the employee in employment itself was cancelled.

27. In the present case too, there does not seem to be any much of a variation between the facts which arose in the ***Punjab National Bank's*** (supra) case and the present one. On that count, the contention of Ms. Dhar that there was no other option but to fill in 'Diploma in Electronics' does not appeal to this Court without her having challenged the original notification itself.

28. So far as the advertisement is concerned, it has been clearly brought out that the post reserved for the ST candidate is only '01' and as such, was an issue which the petitioner could and ought to have challenged at the relevant point in time. Having gone through the process, qualified provisionally and then failed to be selected since apparently some other candidate, who may be better qualified, has been selected to the sole post, the petitioner has subsequently challenged the advertisement on the basis that the same is contrary to the constitutional mandate, is impermissible.

29. This Court is of the considered opinion that in case there is any



such infraction by the Airport Authority of India, the petitioner ought to have challenged it at the initial stage itself, rather than first participate, take a chance and subsequently after being unable to get through, challenge the advertisement, which itself smacks of *malafide*.

30. The petitioner having participated in the selection process cannot challenge the same after she has been declared unsuccessful. This ratio has been affirmed by various judgments of Supreme Court in ***Ramesh Chandra Shah vs. Anil Joshi*** reported in (2013) 11 SCC 309, ***Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand & Ors.*** reported in (2011) 1 SCC 150, ***Madras Institute of Development Studies & Anr. vs. K. Sivasubramaniyan & Ors.*** reported in (2016) 1 SCC 454 and recently reiterated by learned Division Bench of this Court in ***Karan Singh Meena vs. Registrar General, Delhi High Court & Anr.*** reported in 2022 SCC OnLine Del 3098.

31. So far as the judgement of the Supreme Court in ***Anil Kumar Gupta (Supra)*** is concerned, there is no quarrel with the ratio laid down therein since in that particular case, the UPSC had clarified by a notification dated 13.09.1985, addressed to the Municipal Corporation of Delhi, that the entire service, including the service rendered before obtaining the degree was to be taken into consideration.

32. In the present case, there is no such clarification or any circular issued by the Airport Authority of India nor did Ms. Dhar urge any such argument. The fact that in that particular case, there was a clarification by the UPSC itself, the ratio therein would not be applicable to the facts of the present case.



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33. The Court, as such, does not find any merits in the present petition and the same is dismissed without any order as to costs.

TUSHAR RAO GEDELA, J.

JANUARY 23, 2024

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