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

Date of decision: 28.02.2024

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

+ LPA 175/2024 AND CM APPL. 12142/2024 (Int. Dir)
ANKITA MEENA Appellant

Through: Ms. Pooja Dhar and Mr. Pratul Pratap
Singh, Advocates.

versus

AIRPORT AUTHORITY OF INDIA AND ANR Respondents

Through: Mr. Digvijay Rai & Mr. Archit
Mishra, Advocates and Ms. Sonali
Singh, AM (law) for R-1.
Mr. Jitender K. Tripathi, SPC with
Mr. Mimansak Bhardwaj, Advocate
for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

CM APPL. 12144/2024 (Ex.)

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

CM APPL. 12143/2024 (Delay 1 day)

3. This is an application filed by the appellant seeking condonation of one day's delay in filing the appeal.
4. The application is, for the reasons stated therein, allowed and



consequently, the delay of one day in filing the appeal stands condoned.

5. The application stands disposed of.

LPA 175/2024 AND CM APPL. 12142/2024 (Int. Dir)

6. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 23.01.2024 passed by the learned Single Judge in W.P.(C) 677/2024. Vide the impugned order, the learned Single Judge has dismissed the writ petition preferred by the appellant wherein the appellant had sought the 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;...”.*

7. In order to appreciate the rival submissions of the learned counsel for the parties, we may first note the factual matrix of the present case.

8. Upon an advertisement being issued on 14.12.2022 inviting applications for recruitment against the non-executive cadres in the Northern Region including 32 vacancies of Senior Assistant (Electronics) by the respondent no. 1, the appellant applied for the said post as a Scheduled Tribe (ST) candidate. As per the aforesaid



advertisement, out of the 32 vacancies, one post was reserved for a ST candidate. The appellant, who holds a B.Tech degree in Electronics and Communications as against the qualification of diploma in Mechanical/Automobile/Fire prescribed under the advertisement, applied for the said post by way of an online application wherein it appeared that her qualification was shown as diploma as against the degree held by her. When the final result of the selection process was declared on 06.07.2023, the appellant realized that she was unsuccessful and, therefore, raised certain queries with the respondent no. 1; first by writing letters to the Chairman of the respondent no. 1 and thereafter by filing applications under the Right to Information Act (RTI Act). Upon receiving information under the RTI Act, the appellant on 11.01.2024 approached this Court by way of W.P. (C) 677/2024, which has been dismissed vide the impugned order.

9. Being aggrieved, the present appeal has been preferred.

10. In support of the appeal, learned counsel for the appellant begins by urging that the impugned order is liable to be set aside as the learned Single Judge has proceeded on an erroneous presumption that the appellant had made a misrepresentation regarding her qualification in the online application submitted by her. The learned Single Judge has without any basis presumed that despite holding a degree in Electronics, the appellant had projected that she was a diploma holder. The learned Single Judge, she contends, has failed to appreciate that the qualification of diploma was filled in the online application form only on account of the default dropdown menu.

11. Ms. Dhar next submits that the learned Single Judge has come



to a wholly perverse conclusion by holding that the appellant's experience in the relevant field acquired before she obtained the degree in Electronics could not be included towards the requisite two years' experience as prescribed in the advertisement. She contends that the learned Single Judge has failed to appreciate that once the advertisement did not specifically provide that only the experience earned after acquiring qualifying degree was to be counted, the appellant's experience in the field prior to obtaining the degree or while undergoing the degree course ought to have also been taken into consideration. In support of her plea, she seeks to place reliance on decision of the Apex Court in **Anil Kumar Gupta & Ors. vs. MCD & Ors. (2000) 1 SCC 128**.

12. She next contends that the learned Single Judge has also failed to appreciate that degree in Electronics held by the appellant was higher qualification than the prescribed qualification of diploma in Electronics and, therefore, it could not be said that she was not holding the requisite qualification for appointment as Senior Assistant (Electronics). She submits that this presumption drawn by the learned Single Judge that despite appellant holding a degree in Electronics, she was not eligible for the post of Senior Assistant which required only a diploma is wholly perverse.

13. Finally, she submits that the learned Single Judge has also erred in holding that the appellant having participated in the selection process, she was precluded from challenging the advertisement by urging that two vacancies ought to have been reserved for ST candidates. By placing reliance on a decision of the Apex Court in **Dr.**



(Major) Meeta Sahai v. State of Bihar & Ors., (2019) 20 SCC 17, she contends that the learned Single Judge has failed to appreciate that despite the appellant having participated in the selection process, she could not be precluded from raising a question regarding her constitutional right which mandates that out of the total posts, 7.5% posts must be reserved for ST candidates. She, therefore, prays that the impugned order be set aside and the appeal be allowed.

14. On the other hand, Mr. Digvijay Rai, learned counsel for the respondent no. 1, who appears on advance notice, supports the impugned order and submits that even if this Court were to accept the appellant's plea that there was no misrepresentation on her part, the fact remains that the appellant had participated in the selection process without any demur and was, therefore, estopped from subsequently raising a grievance that two posts ought to have been reserved for ST candidates. He further submits that when the advertisement was silent regarding the nature of experience, it had to be presumed that only the experience obtained after acquiring qualifying degree would be taken into consideration. He, therefore, prays that the appeal be dismissed.

15. Having considered the rival submissions of the parties, we may begin by noting the relevant extract of the impugned order. It would, therefore, apposite to refer to para nos. 23 to 32 thereof which read as under:

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 (Crl) 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.”

16. In the light of the aforesaid findings of the learned Single Judge, we may now proceed to deal with the submissions of the appellant. As noted hereinabove, the first and foremost submission of Ms. Dhar is that the learned Single Judge has erred in holding that there was misrepresentation on the part of appellant in filling the application form. In the light of the explanation given by the learned counsel for the appellant that there was default dropdown menu in the application form, we are inclined to agree with the appellant that there was no willful misrepresentation by her. The finding of the learned Single Judge in this regard is, accordingly, set aside.

17. Now coming to the appellant's plea that unlike other advertisements issued by the respondent, it was not specified in the advertisement inviting applications for the post of Senior Assistant that only the experience earned after acquiring the qualifying degree would be taken into account. Having perused the advertisement, even though we are inclined to agree with the appellant that the advertisement in question was silent as to whether only the experience earned after acquiring the degree would be counted, we are of the considered view that just because the advertisement was silent in this regard, it would not imply that the experience earned by a candidate even before acquiring a qualifying degree ought to have also been taken into consideration. In our view, when the advertisement is silent, there is a presumption that only the experience earned after



acquiring the degree would be counted.

18. We have also considered the decision in *Anil Kumar Gupta (supra)* relied upon by the appellant but find that as held by the learned Single Judge, the same is not applicable to the facts of the present case. In the said decision, the Apex Court was dealing with a situation where a clarification has been sought by the UPSC making it clear that the entire service of the candidate including the service rendered before obtaining the degree was to be taken into consideration. In the instant case, no such clarification was ever issued by the respondent that the experience earned before obtaining the degree would be counted. We, therefore, have no hesitation in concurring with the learned Single Judge that the appellant did not have the requisite experience of two years.

19. In the light of our aforesaid conclusion that the appellant was not holding the requisite experience of two years in the field of Electronics after having obtained the said degree, we do not deem it necessary to delve into other two grounds urged by the appellant. We are, therefore, refraining from examining as to whether the appellant who holds a degree in Electronics could, in the facts of the present case, be holding the requisite qualification of diploma in Electronics as prescribed under the advertisement. For the same reasons, we are also not examining the issue as to whether the appellant was entitled to challenge the advertisement and the reservation of one post provided for ST candidates after she had, without raising any objection, participated in the same.



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20. For the aforesaid reasons, we find no infirmity in the impugned order. The appeal being meritless is dismissed along with the accompanying application.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 28, 2024

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