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

% ***Date of decision: 10th September, 2024***

+ **W.P.(C) 12677/2024 and CM APPL. 52824-52826/2024**

MUNICIPAL CORPORATION OF DELHIPetitioner
Through: **Dr. Divya Swamy, Standing Counsel**
for MCD with Mr. Yash Jain,
Advocate.

Versus

SAKSHI SHEDHARespondent
Through: **Mr. M.K. Bhardwaj, Mrs. Priyanka**
M. Bhardwaj, Ms. Akshita Nain,
Mr.Himanshu Bhardwaj and
Mr.Maria Mughesh Kannan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking setting aside of order dated 04.04.2024 passed by the learned Central Administrative Tribunal, New Delhi (the 'Tribunal') in O.A. No. 04/2022.
2. Notice issued.
3. Learned counsel appearing on behalf of the respondent accepts notice.
4. With consent of learned counsel for the parties, the present petition has been taken up for hearing and final disposal.



5. The respondent had preferred OA No.4/2022 before the learned Tribunal in respect of Advertisement No.01/2014 whereby DSSSB had invited applications to fill up the post of Architectural Assistant. The respondent had appeared in the selection process and was offered appointment on 09.03.2021. She had joined the said post on 13.04.2021, however, vide communication dated 23.12.2021 by the petitioners, her appointment was cancelled on the ground of misrepresentation.
6. The communication dated 23.12.2021 issued by the petitioners reads as under:-

“.....The offer of appointment explicitly made it clear that applicant was required to produce the degree in architecture from a recognized university or equivalent. After verification of relevant documents by AO (Engg.), appointment letter was issued in favour of Ms, Sakshi Shedha vide No. AO/Engg.(HQ)/SDMC/ASO-II/2021/D-21 dated 13.04.2021. In pursuant to the offer of appointment Ms. Sakshi Shedha submitted her joining report on 13.04.2021 and later on posted in Town Planning Department on diverted capacity vide No.AC/Engg.(HQ)/SDMC/ASO-11/2021/D-77 dated 04.05.2021. Since then she is working in Town Planning Department as Architecture Assistant.

The case of Ms. Sakshi Shedha has been examined in this department and it is prima-facie established that she did not possess the essential qualification i.e. Degree in Architecture required in case of direct recruitment to the post of Architectural Assistant. While examining her educational qualification it is observed that in her e-dossier verification report the candidate mentioned to have possessed Degree in



Architecture from a recognized university or equivalent but she possessed the Degree in Planning for 4 years which is a misrepresentation of the fact. It is also pertinent to mention that Degree in Architectural is a 5 years course. It will not be out of place to mention here that erstwhile MCD has earlier recruited the candidates for the post of architectural assistant in the year 1999 and 2010 through DSSSB with the qualification in Degree Architecture. Moreover, the latest requisition made by the department vide letter No.HC-I/Engg.(HQ)/SDMC/2018/D-824 dated 31.01.2018 sent to DSSSB regarding filling of two post of architecture assistant, has clearly mentioned that for the post of architectural assistant required qualification is Degree in Architecture from a recognized university or equivalent.”

7. The respondent challenged cancellation of her candidature before the learned Tribunal on the ground that there was no distinction in the Recruitment Rules for the post of Architectural/Planning Assistant with respect to the educational qualification, rather candidates, both Degree Holders in Architecture and Diploma in Planning, could apply for the two posts interchangeably. She pleaded that she did not state that she possesses a degree in Architecture, as has been reflected in the impugned cancellation order. Moreover, before cancellation of her appointment, no show cause notice was issued to her, which is in complete violation of principle of natural justice. She submitted that she was on probation period and the petitioners have illegally and arbitrarily cancelled her appointment. The respondent also averred that before joining the services of MCD, she was working in the institute of Town Planners of India and therefore,



qualification possessed by her was well within the knowledge of appointing authority.

8. The learned Tribunal during pendency of the OA, vide order dated 04.01.2022 granted interim protection to the respondent, which was assailed by the petitioner-MCD before this Court by filing W.P.(C) 14143/2023, wherein vide order dated 31.10.2023 this Court directed the petitioner to decide the OA while observing and directing as under:-

“4. Having heard the learned counsel for the parties, we deem it appropriate to direct the Tribunal to either decide the MA 371/2022 filed by the petitioner Corporation for vacation of stay or if the pleadings in the OA are complete, hear the OA finally and decide the same. Till such time, MA or the OA is decided, the contempt proceedings shall remain stayed. All the pleas of the parties are left open to be canvassed before the Tribunal.”

9. The stand of petitioner before the learned Tribunal was that essential qualifications prescribed for two posts, i.e. Architectural Assistant and Planning Assistant, are distinct, as Diploma in Town/City/Urban Planning was to be made applicable to the post of Planning Assistant and that both the posts are two different specialised fields and one cannot be a substitute of the other.

10. The petitioner also relied upon decision of of Hon’ble Supreme Court dated 17.03.2020, in Civil Appeal No.1819/2020 whereby decision of the Allahabad High Court was set aside holding that Architecture and Planning are two degrees and cannot be a substitute to the other. It was also pleaded that no candidate with the qualification of Degree in Planning has ever been



selected against the post of Architectural Assistant in the Architecture Department, ever since the MCD has been in existence.

11. Based upon the pleading of the parties, the learned Tribunal vide impugned order dated 04.04.2024, held as under:-

“14. The advertisement notification placed at page 52 clearly stipulates that the post was advertised for Architectural Assistant and Assistant Architect in the Municipal Corporation of Delhi. The essential qualification, as prescribed in the advertisement is Degree in Architecture or Diploma in Town/City/Urban Planning or equivalent from a recognized University or equivalent. While the respondents had advertised for the posts of Architectural Assistant, no distinction was made with respect to candidates with Degree in Architecture or Diploma in Town/City/Urban Planning, rather both sets of candidates were equally eligible to apply for the said post, in terms of the essential qualification. Simple reading of the Recruitment Rules makes it clear that there is no distinction between the qualification prescribed for Architectural Assistant and Assistant Architect. The advertisement has not distinguished between the two, thereby implying that candidates possessing Diploma in Planning were eligible to apply for the said post.

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17. We have gone through the Attestation Form, wherein, the applicant in her own handwriting, under the head qualification has clearly mentioned Degree in Planning from the School of Planning and Architecture. More so, before issuing the offer of the appointment, the document



verification exercise was done by the respondents and the applicant was obliged to place her original documents at the relevant point in time, which according to the respondents, was done by the applicant. Only upon such verification exercise, the applicant was extended offer of appointment. The argument of the learned counsel for the respondents where he clearly submits that the appointment letter was issued in favour of the applicant on 13.04.2021, which was the mid of peak of second wave of Covid-19 Pandemic and there might be a situation where the respondents could not have done the exercise with due diligence, runs contrary to the impugned order. As explained by the learned counsel for the respondents, an explanation has been sought from the erring officers and they have been proceeded against departmentally.

18. The contention of the learned counsel for the applicant is that for the post of Architectural Assistant, Degree in Architecture is mandatory and this issue was settled by the Hon'ble Apex Court. We have no reason to dispute the said contention. However, the judgment relied upon by the respondents may not come to the rescue of the respondents. We reiterate that the issue before us is whether the candidature of the applicant has been rightly cancelled and whether for the post of Architectural Assistant, the essential qualification was Degree in Architecture.

19. We reiterate that : (a) The respondents advertised posts of Architectural Assistant; (b) The educational qualification prescribed was Degree in Architecture or Diploma in Town/City/Urban Planning or equivalent from a recognized University or equivalent; (c) The applicant applied for the same and in terms of her merits, she was selected; (d) In the attestation



form, she clearly mentioned that she is possessing a Degree in Planning; (e) Upon document verification, the respondents extended the offer of appointment; (f) The applicant's services have been terminated without issuing her any show cause notice."

12. In the present petition, the challenge to the impugned order dated 04.04.2024 passed by the learned Tribunal is though on 16 grounds, however, the learned Tribunal has confined the grounds to II, III, IV and V.

13. The challenge to the impugned order dated 04.04.2024 passed by the learned Tribunal is on the ground that the award passed by the learned Tribunal suffers from legal infirmities directing the petitioners to reinstate the respondent within eight weeks, thereby ignoring the entitlement of the role to the suitable candidates.

14. The petitioner has placed reliance upon decision in ***Pramod Kumar Vs U.P. Secondary Education Services Commission & Ors.*** 2008 SCC OnLine 465, to submit that a person lacking the eligibility to a post cannot approach the Court for enforcement of the right of reinstatement. To submit above, reliance was also placed upon decision of ***State of Gujarat & Ors. Vs. Arvind kumar T. Tiwari & Anr.*** 2012 SCC OnLine SC 736, to submit that a candidate, who does not possess the requisite qualification what is required for the post, has no vested right to challenge his candidature if not qualified.

15. Further reliance is placed upon decision of ***State of M.P. & Anr. Vs. Dharam Bir***, (1998) 6 SCC 165, wherein it was observed that the courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention.



16. The afore-noted ground in the present petition show that the primary challenge to the impugned judgment dated 04.04.2024 is on the ground that the direction to appoint any person who is not eligible for a post, is bad in law.

17. Upon hearing and on perusal of record of this case, we find that respondent had participated in the selection process for the post of Architectural Assistant under Post Code 86/14 in pursuance to an advertisement issued by the DSSSB in the year, 2014.

18. As per advertisement notification, the essential qualification for the post of Architectural Assistant is degree in Architecture or Diploma in Town/City/Urban Planning or equivalent from a recognized University or equivalent. The learned Tribunal has also taken note of the fact that in the advertisement, no distinction was made with respect to candidates with Degree in Architecture or Diploma in Town/City/Urban Planning. The respondent in her application form had mentioned her qualification as degree in Planning from the School of Planning and Architecture. Thereby, the respondent had declared her qualification while applying for the post and she was offered appointment only after due completion of document verification process. Also, the learned Tribunal has also taken note of the fact that at the relevant point of time there was no Degree in Town/City/Urban Planning, while when the selection process, which is subject matter of the instant Original Application was initiated, Degree in Planning was being issued by the Universities

19. Hence, though the ratio of law laid down in ***Pramod Kumar (Supra)***, ***State of Gujarat (Supra)*** and ***State of M.P. (Supra)*** is not disputed but is not applicable to the facts of the present case.



20. Having being declared successful, respondent was offered appointment to the post of Architectural Assistant on 09.03.2021. Accordingly, she joined the post on 13.04.2021. In terms of the offer of appointment, the applicant's services were liable to be terminated only if her services were not found to be satisfactory, as she was on probation, which is not the case here. The impugned order mentions that there is misrepresentation by the applicant, which is not established.

21. In our opinion, after having worked for almost eight months, respondent has been arbitrarily served with the impugned order dated 23.12.2021, cancelling her candidature which is illegal, perverse and cannot be accepted.

22. In view of the aforesaid, this Court finds no error or perversity in the order dated 23.12.2021 passed by the learned Tribunal.

23. We hereby direct the petitioner to comply with the directions mentioned in Para-4 of the order dated 04.04.2024 within four weeks.

24. With directions, as aforesaid, the present petition and pending application are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 10, 2024

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