

Before Surya Kant & P.B. Bajanthri, JJ.

SANGEETA SUPEHIA—Petitioner

versus

UNION OF INDIA & OTHERS—Respondents

CWP No. 9136 of 2014

August 26, 2015

Constitution of India, 1950—Arts.226 and 227—PGIMER Chandigarh advertised one post of Tutor (Bio-Informatics)—Essential qualification prescribed for one post M.Sc. (Bio-Technology, Molecular Biology, Human Genomics/Bio Chemistry/Bio Physics)—Petitioner selected and she joined on 03.09.2012 — Respondent No.5 challenged selection before the Central Administrative Tribunal, Chandigarh Bench—CAT allowed the Application of 5th Respondent setting aside the selection for want of one of the advertised qualifications—Petitioner challenged the order of Tribunal in Writ Petition—Petitioner contended since Respondent No.5 had appeared for interview and participated in the process of selection, she could not be permitted to question the selection of the petitioner—Petitioner fulfills the qualification—Since Selection Committee of PGIMER Chandigarh consisting of internal experts to determine the merit and suitability of the candidates recommended the Petitioner for the post, there is no infirmity in her selection and appointment — Respondent No.5 submitted that the Petitioner does not fulfill the essential qualification prescribed for the post of Tutor (Bio Informatics) — M.Sc. in Bio Informatics is not prescribed in the Recruitment Rules or in the advertisement — Selection authority should have rejected the application of the Petitioner for want of essential qualification — There is no error in the order of Tribunal — Writ Petition disposed of holding that there is no reason to interfere with the order of the Tribunal.

Held that PGIMER without resorting to amendment of Recruitment Rules have considered the petitioner's qualification namely M.Sc. in Bio Informatics for the purpose of selection and appointment while ignoring the prescribed essential qualification. Firstly, the petitioner could not submit application for the post for the reasons that she does not fulfil the essential qualification. Assuming that the petitioner had applied for the post on the score that M.Sc. in Bio Informatics is one of the internal subject of M.Sc. Bio Technology.

Still the selecting authority while scrutinizing the applications should have rejected her candidature for want of essential qualification. However, even at the time of interview and selection or appointment, PGIMER have totally by passed essential qualification prescribed in the rules of recruitment read with advertisement. Consequently, the selection committee even though they are experts in the subject, erred in over looking the fundamental issue of eligibility. The experts could have at best suggested to amend the rules of recruitment before initiating the selection process which is like a game and in the middle of the game the selection Committee or selecting authority cannot insert or substitute qualification not prescribed in the rules of recruitment and advertisement. In other words, selecting authority have tinkered the process of selection therefore there is not infirmity in the order of the Tribunal. One of the preliminary contention urged by the petitioner is that an unsuccessful candidate cannot challenge the selection. The said principle is not applicable to the case in hand for the reasons that there is a patent illegality committed in the selection process i.e. ignoring the essential qualification. The 5th respondent could not have pre-supposed that the candidates lacking essential qualifications would also be considered on merits. It is permissible for an unsuccessful candidate to challenge the selection in such a situation as there is no place for arbitrariness in selecting/appointing authorities action. Judicial review of administrative action will be justified in the case of patent irregularities like the present one. Recruitment rules cannot be avoided and the executive or selecting authority have no option but to act only in terms of the rules of recruitment governing the post. Provisions of Recruitment Rules must be strictly adhered while making selection and appointment.

(Para 12)

Further held that in the case of *Public Service Commissioner, Uttranchal versus Jagdish Chandra Singh Bora and another*, reported in 2014(8) SCC 644, the Supreme Court has held that executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution. In the present case not even executive order has been passed on their own, the selection committee took a decision to consider candidature of the petitioner ignoring that she do not have the essential qualification.

(Para 19)

Further held that petitioner's counsel contended that by virtue of her appointment she is working for about 3 years and it being a case

of hardship, she is continued in service. Therefore her selection be upheld. The Supreme Court in the case of *D.M. Prem Kumari versus The Divisional Commissioner, Mysore Division and others*, reported in 2009(12) SCC 267 held as follows:-

“15) "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a mis- understanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.”

(Para 20)

Further held that in view of the above facts and circumstances, we do not find any reason to interfere with the order of the Tribunal. We direct the PGIMER, Chandigarh to re-do the selection to the post of Tutor (Bio-Informatics) with reference to essential qualification prescribed for the post and so also interview marks awarded on 09.07.2012. In other words, the candidates who fulfil the essential qualifications their names be reconsidered and to select and appoint merited candidate within a period of 2 months from the date of receipt of the copy of the order.

(Para 21)

Sandeep Moudgil, Advocate *for the petitioner*

Amit Jhamji, Advocate for PGI

G.S. Bal, Senior Advocate with

Sewa Singh, Advocate for respondent No.5.

P.B. BAJANTHRI, J

(1) The petitioner has questioned the order dated 11.04.2014 passed in O.A. No. 1350/CH/2012 by the Central Administrative Tribunal (for short 'Tribunal'), Chandigarh Bench, by which 5th respondent's Application was allowed.

(2) Post Graduate Institute of Medical Education and Research, Chandigarh (for short 'PGIMER') issued an advertisement to fill up one post of Tutor (Bio-Informatics) in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-. The essential qualification prescribed for

the post is M.Sc. (Bio Technology, Molecular Biology, Human Genomics/Bio Chemistry/BioPhysics) vide advertisement No.F-04/2010-Estt.I(2) for which last date for receipt of application was 20.10.2010.

(3) The petitioner and 5th respondent were candidates for recruitment to the post of Tutor (Bio Informatics) among others. 22 candidates were called for interview including the petitioner and 5th respondent on 09.07.2012 vide Annexure A1. 14 candidates appeared before the Selection Committee for interview. Petitioner's name was recommended for selection and appointment so also one Sh. Vikas Sharma's name was kept as the wait list candidate. According to the petitioner 18 candidates applied with the qualification of M.Sc. in Bio-Informatics including her. The petitioner was declared successful and selected for the post of Tutor in Bio Informatics w.e.f. 28.08.2012. In pursuance of the same she joined service on 03.09.2012.

(4) 5th respondent challenged the selection of the petitioner before the Tribunal in the month of October 2012. On 11.04.2014, Tribunal was pleased to allow the Application of 5th respondent setting aside the selection of the petitioner for want of one of the advertised qualification. Hence this writ petition.

(5) Learned counsel for the petitioner vehemently contended that Tribunal erred in not considering the principle of promissory estoppel since respondent No.5 had appeared for interview and participated in the process of selection, she could not be permitted to question the selection of petitioner. The selection committee considered the qualification of the petitioner namely M.Sc. in Bio Informatics equivalent to those notified in the advertisement. Therefore, contention of the 5th respondent that the petitioner does not fulfil the qualification for the post as per the advertisement is not tenable. The petitioner's counsel submitted that the post of Tutor (Bio Informatics) is to be held by a qualified person like the petitioner since she is qualified in M.Sc. Bio informatics. The M.Sc. Bio Technology course curriculum includes Bio-Informatics subject. Whereas 5th respondent is qualified with the M.Sc. Bio Chemistry which is an inferior qualification than the M.Sc., Bio-Informatics. Since the Selection Committee of PGIMER, Chandigarh consisting of internal experts to determine the merit and suitability of the candidates recommended the petitioner for the post, there is not infirmity in her selection and appointment. Consequently, Tribunal failed to appreciate the recommendation of the Selection Committee of PGIMER.

(6) Per contra, 5th respondent submitted that the petitioner does not fulfil the essential qualification prescribed for the post of Tutor (Bio Informatics). The essential qualification prescribed is M.Sc. (Bio Technology, Molecular Biology, Human Genomics/Bio-Chemistry/Bio Physics). She further contended that she is M.Sc. in Bio-Chemistry. She has specifically pointed out that the petitioner is not qualified with any one of the essential qualification prescribed for the post in question. On the other hand, M.Sc. in Bio Informatics is not prescribed in the Recruitment Rules or in the advertisement. The petitioner is not eligible for the post with reference to the prescribed essential qualification consequently, she should not have applied for the post. Further the selecting authority should have rejected application of the petitioner for want of essential qualification at threshold. Even the appointing authority should have rejected the petitioners application for the post in question for want of essential qualification. It was further contended by 5th respondent that the Tribunal has considered each of the contention of the petitioner while allowing the O.A. Consequently, there is no error in the order of the Tribunal and it has been decided on merit, hence this writ petition is to be dismissed.

(7) Learned counsel for respondent No. 2 and 3 fairly submitted that even though the essential qualification for the post of Tutor (Bio Informatics) is M.Sc. (Bio Technology, Molecular Biology, Human Genomics/Bio Chemistry/Bio Physics). However, the selection Committee considered the qualification of the petitioner and selected her though she did not fulfil one of the essential qualification, for the petitioner's qualification has some relevance to the post. The Selection Committee being an expert body have rightly selected petitioner. Therefore, there is no infirmity in the selection or her appointment. The Tribunal failed to appreciate the decision of the Selection Committee consisting of Dean, PGIMER and other experts and Tribunal and courts cannot sit over the decisions of the experts.

(8) We have heard the parties and gone through the record.

(9) The PGIMER issued advertisement on 20.09.2010 inviting applications for the post of Tutor (Bio- Informatics) along with other various posts. An extract of the Advertisement is reproduced herein:-

“POSTGRADUATE INSTITUTE OF MEDICAL
EDUCATION AND RESEARCH CHANDIGARH

ESTABLISHMENT BRANCH-I
PHONE 0172-2755504, 2755510

DETAIL INFORMATION SHEET CONTAINING QUALIFICATIONS EXPERIENCE, AGE LIMIT, SCALE OF PAY ETC. IN RESPECT OF POST ADVERTISED VIDE ADVERTISEMENT NO.04/2010/Estt.I(2) FOR WHICH LAST DATE FOR RECEIPT OF APPLICATION IS 20.10.2010.

TUTOR (BIO-INFORMATICS)
PAY SCALE

Rs.9300-34800 with grade Pay of Rs.4200/-

Age Limit

Upto 50 years

ESSENTIAL

M.Sc. (Bio-technology, Molecular Biology, Human Genomics/ Biochemistry/Biophysics.”

(10) The core question is whether petitioner who was selected and appointed to the post of Tutor (Bio-Informatics) have the essential qualifications prescribed for the posts namely M.Sc. (Bio Technology, Molecular Biology, Human Genomics/Bio Chemistry/Bio Physics)? The essential qualification is in terms of Recruitment Rules which has been produced as Annexure R/2-1

Recruitment Rules

- | | |
|--|---|
| 1. Name of the post | Tutor (Bio-Informatics) |
| 2. No of posts | One(1) |
| 3. No of the Department: | Experimental Medicine and Biotechnology |
| 4. Classification | Group “B” |
| 5. Scale of Pay | Rs.9300-34800 with common Grade of Rs.4200/- |
| 6. Method of recruitment | 100% by direct recruitment |
| 7. Age limit for direct recruit : | 50 years |
| 8. Educational and other M.Sc qualification for direct recruits: | (Biotechnology, Molecular Biology Human, Genomics/ Biochemistry/Biophysics” |

(11) The recruitment rules has been extracted for the purpose of examining the prescribed essential education qualification for the post of Tutor (Bio-Informatics).

(12) The M.Sc. in Bio-Informatics possessed by petitioner is not one of the essential qualification prescribed for the post of Tutor (Bio-Informatics). On the other hand 5th respondent fulfils the essential qualification namely M.Sc. (Bio Chemistry). In this background whether consideration of the petitioner's candidature is in accordance with the rules of recruitment read with advertisement or not. The PGIMER without resorting to amendment of Recruitment Rules have considered the petitioner's qualification namely M.Sc. in Bio Informatics for the purpose of selection and appointment while ignoring the prescribed essential qualification. Firstly, the petitioner could not submit application for the post for the reasons that she does not fulfil the essential qualification. Assuming that the petitioner had applied for the post on the score that M.Sc. in Bio Informatics is one of the internal subject of M.Sc. Bio Technology. Still the selecting authority while scrutinizing the applications should have rejected her candidature for want of essential qualification. However, even at the time of interview and selection or appointment, PGIMER have totally by passed essential qualification prescribed in the rules of recruitment read with advertisement. Consequently, the selection committee even though they are experts in the subject, erred in over looking the fundamental issue of eligibility. The experts could have at best suggested to amend the rules of recruitment before initiating the selection process which is like a game and in the middle of the game the selection Committee or selecting authority cannot insert or substitute qualification not prescribed in the rules of recruitment and advertisement. In other words, selecting authority have tinkered the process of selection therefore there is not infirmity in the order of the Tribunal. One of the preliminary contention urged by the petitioner is that an unsuccessful candidate cannot challenge the selection. The said principle is not applicable to the case in hand for the reasons that there is a patent illegality committed in the selection process i.e. ignoring the essential qualification. The 5th respondent could not have pre supposed that the candidates lacking essential qualifications, would also be considered on merits. It is permissible for an unsuccessful candidate to challenge the selection in such a situation as there is no place for arbitrariness in selecting/appointing authorities action. Judicial review of administrative action will be justified in the case of patent irregularities like the present one. Recruitment rules cannot be avoided,

and the executive or selecting authority have no option but to act only in terms of the rules of recruitment governing the post. Provisions of Recruitment Rules must be strictly adhered while making selection and appointment.

(13) The Supreme Court held that selection Committee/appointing authority has no power to relax the qualification. An extract of the judgment reported in *Shainda Hasan versus State of Uttar Pradesh and others*¹ is as under:-

“5. The High Court has rightly held the relaxation granted by the Selection Committee to be arbitrary. In the absence of statutory rules providing power of relaxation, the advertisement must indicate that the Selection Committee/Appointing Authority has the power to relax the qualifications. Regarding "Working knowledge of Urdu" we do not agree with the High Court that the said qualification is unjust. The college being a Muslim minority institution prescribing the said qualification for the post of Principal, is in conformity with the object of establishing the institution.”

(14) Similarly in case titled as *Dr. Prit Singh versus Mr. S.K. Mangal and others*² Supreme Court held as follows:-

“13. We fail to understand as to how the Vice-Chancellor who himself was of the opinion that the appellant did not possess the requisite qualifications for the post of Principal and who had refused to approve the said appointment, later approved the same appointment on 13th November, 1987 with effect from 16th October, 1987. It has rightly been submitted on behalf of the respondents that the Vice-Chancellor approved the appointment after 15th October, 1987 when the amendment was made in the prescribed qualifications for the post of Principal of a recognised College of Education. If he was not eligible for appointment in terms of the prescribed qualifications on the date he was appointed by the Managing Committee subject to the approval of the Vice-Chancellor, then later he cannot become eligible after the qualifications for the post were amended. As such we are in agreement with the

¹ (1990)3 SCC 48

² 1992(5) SLR 79

view expressed by the High Court, that on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed.”

(15) The Apex Court in the case of *Ravinder Sharma (Smt.) and another versus State of Punjab and others*³ held that as on the last date of submission of the application candidate must possess the required qualification for the post. An extract of the judgment is reproduced herein:-

“12. The appellant was directly appointed. In such a case, the qualification must be either:

- i) a Graduate/Intermediate Second Class or
- ii) Matric first class.

Admittedly, the appellant did not possess this qualification. That being so, the appointment is bad. The Commission recommended to the Government for relaxation of the qualification under Regulation 7 of the Regulations. The Government rejected that recommendation. Where, therefore, the appointment was clearly against Regulation 7, it was liable to be set-aside. That being so, no question of estoppel would ever arise. We respectfully agree with the view taken by the High Court.”

(16) The Supreme Court in case of *Chairman, Public Service Commissioner, J. and K. versus Sudarshan Singh Jamwal*⁴ it is held that regulation to issue notification of orders or rules would be in terms of statutory powers. An extract of the decision is reproduced herein:-

“3. The decision in the case of Sampat Prakash, speaks of the application of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act says that where by any Central Act or Regulation a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications,

³ (1995)1 SCC 138

⁴ 1998(9) SCC 327

orders, rules or bye-laws so issued. The order, upon which the first respondent relied, was, according to the High Court itself, issued in the exercise of the State Government's inherent power, meaning, apparently, the power derived from Section 21 of the General Clauses Act. The order was not issued in exercise of the power to make the said Rules and power was not exercised in the like manner and subject to the like sanction and conditions which operated for the making of the said Rules. Reliance upon the judgment in the case of Sampat Prakash, (AIR 1970 SC1118) was, therefore, misplaced as also reliance upon Section 21 of the General Clauses Act. The exemption order did not, therefore, entitle the first respondent to appear at the recruitment examination.”

(17) The Supreme Court in the case of *Orissa Public Service Commission and another versus Rupashree Chowdhary and another*⁵ held that selection authority should not debate from the statute. An extract of the judgment is reads as follows:-

“13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.”

(18) In the case of *State of Gujarat and others versus Arvindkumar T.Tiwari and another*⁶ Supreme Court has held as follows:-

“11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.

⁵ 2011(8) SCC 108

⁶ (2013)1 SCT117

Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1992(3) S.C.T. 738 : 1993(1) SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., 2008(2) S.C.T. 699 : AIR 2008 SC 1817).”

(19) In the case of *Public Service Commissioner, Uttranchal versus Jagdish Chandra Singh Bora and another*⁷ the Supreme Court has held that executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution. In the present case not even executive order has been passed on their own, the selection committee took a decision to consider candidature of the petitioner ignoring that she do not have the essential qualification. An extract of the judgment is reproduced herein:-

“28. However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification would not have the effect of amending 2003 Rules. Undoubtedly, 2004 clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to Article 309 of the Constitution of India. In spite of accepting the submission of Mr. C.U. Singh that clarification dated 29th April, 2004 would not have the effect of superseding, amending or altering the 2003 Rules; it would not be possible to give any relief to the respondents. The criteria under the 2003 Rules governs all future recruitments. We have earlier already concluded that no vested right had accrued to the respondents, the trained apprentices, under the 2001 Rules. We do not accept the submission of Mr. C.U. Singh that the claim of the respondents (trained apprentices) would be covered under the 2001 Rules by virtue of the so called amendment made by 2003 Rules. We

⁷ 2014(8) SCC 644

are of the opinion that the High Court committed an error, firstly, in holding that the 2003 rules are applicable, and secondly, not taking into consideration that all the posts had been filled up by the time the decision had been rendered.”

(20) The petitioner's counsel contended that by virtue of her appointment she is working for about 3 years and it being a case of hardship, she be continued in service. Therefore her selection be upheld. The Supreme Court in the case of *D.M. PremKumari versus The Divisional Commissioner, Mysore Division and others*⁸ held as follows:-

“15) "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a misunderstanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.”

(21) In view of the above facts and circumstances, we do not find any reason to interfere with the order of the Tribunal. We direct the PGIMER, Chandigarh to re-do the selection to the post of Tutor (Bio-Informatics) with reference to essential qualification prescribed for the post and so also interview marks awarded on 09.07.2012. In other words, the candidates who fulfil the essential qualifications their names be reconsidered and to select and appoint merited candidate within a period of 2 months from the date of receipt of the copy of the order.

(22) Accordingly, the writ petition is disposed of.

Arihant Jain

⁸ 2009(12) SCC 267