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

+ W.P.(C) 15000/2023 & CM APPL. 59922-59923/2023

SHUBHAM CHOPRA

..... Petitioner

Through: Mr. Prashant Vaxish, Ms. Astha Tyagi, Advocates along with petitioner in person

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, GP, Major SA Barreto, Army

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Date of Decision: 28th November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present Public Interest Litigation (“PIL”) has been filed challenging the various provisions of the Notification of “JAG Entry Scheme 33rd Course (October, 2024): Short Service Commission (NT) Course for Law Graduates (Men and Women)”, as issued by the respondent for grant of Short Service Commission in the Indian Army for Judge Advocate General (JAG) Branch.

2. It has been contended on behalf of the petitioner that the respondent has issued Provision 2(c), 9, 10 and 13 along with Note 2 of Provision 2(c) and Note 5 of Provision 15 of the aforesaid Notification, in absolute



infringement of the protection guaranteed to the citizens under Article 14, 16 and 21 of the Constitution of India. CLAT PG 2023 exam was the entry test for the National Law Universities across the nation for LLM course. The impugned Notification has mandated CLAT PG 2023 score as the mandatory eligibility qualification under Provision 2(c) retrospectively. The impugned Notification was published on 30th October, 2023, whereas CLAT PG 2023 applications were closed on 18th November, 2022, around 345 days prior to the impugned Notification published by the respondent. Learned counsel for the petitioner contends that no candidate willing to apply for JAG 33 can go back 345 days in time to fill the application for CLAT PG 2023 to make himself eligible to apply for JAG 33. He submits that mere sitting of a candidate in the CLAT PG 2023 cannot qualify any candidate for JAG 33. Therefore, according to him, the entry exam for LLM by National Law Universities cannot be stipulated as a mandate for any vacancy of the State, especially, when the State is issuing the vacancies after 345 days from the closure of the application of CLAT PG 2023. He further contends that Note 4 of Provision 15 to the extent it stipulates that a candidate should have never been arrested or convicted by a Criminal Court, is arbitrary. He submits that ensuring that there is no prejudice against individuals who have been acquitted after arrest, is crucial for maintaining public trust in the justice system.

3. Having heard learned counsel for the petitioner, this Court notes at the outset that the contention of the petitioner that CLAT PG 2023 score has been stipulated as a mandatory eligibility qualification retrospectively, is totally incorrect. Such mandatory eligibility condition of having CLAT PG score of the preceding year, as laid in the JAG ENTRY SCHEME 33rd



Course, is not a new condition, as similar eligibility conditions have been stipulated in the previous years also. Thus, the mandatory eligibility condition of CLAT PG score of the preceding year has been specified by the respondent previously in its JAG ENTRY SCHEME 30th Course, 31st Course as well as 32nd Course.

4. Provision 2 (c) along with Note 2 of the said Provision of the JAG ENTRY SCHEME 33rd Course, dealing with the educational qualification, reads as under:

“2. Eligibility

... ..

(c) ***“Educational Qualification*** Minimum 55% aggregate marks in their LLB Degree (three years professional after graduation of five years after 10 plus 2) examination. In addition, CLAT PG 2023 Score is mandatory for all candidates (including LLM qualified and LLM appearing candidates) who apply for courses starting in a particular year. The candidates should be eligible for registration as an advocate with Bar Council of India/State. Candidate should be from a College/University recognized by Bar Council of India.

... ..

Note 2: All candidates desirous of applying for JAG Entry are mandatorily required to get their CLAT PG 2023 result verified at the Selection Centre prior to conduct of SSB. If any candidate is unwilling/is unable to get the CLAT PG 2023 result verified, he/she will not be eligible for SSB and their candidature will be cancelled and no representation will be accepted. It is also informed that there is no provision for offline application to be accepted by the Directorate General of Recruiting.”

5. Reading of the aforesaid Provisions makes it evident that all candidates desirous of applying for JAG ENTRY SCHEME 33rd Course are mandatorily required to have CLAT PG 2023 score and the same is required to be verified as an eligibility condition for consideration of their candidature. Nothing has been pointed out by the petitioner as to how the said provision is arbitrary in nature. The respondent as the employing



authority has the prerogative to prescribe the essential requirements of eligibility and educational qualifications for applying to any post. This Court in exercise of its authority of Judicial Review will not interfere with the eligibility or education conditions as laid down by the employing authority, which is in the nature of administrative domain of such employing authority.

6. As noted hereinabove, the said mandatory eligibility condition of CLAT PG 2023 score has been prescribed by the respondent on various occasions previously when similar notifications were issued for grant of Short Service Commission by the respondent for JAG Branch. Therefore, this Court finds no merit in the contention of the petitioner that the aforesaid eligibility condition has been applied retrospectively on the ground that CLAT PG 2023 applications were closed on 18th November, 2022, while the impugned Notification was published on 30th October, 2023. The public at large was aware of the said mandatory eligibility condition, since the said condition had been stipulated by the respondent in the past also for similar appointments.

7. Similarly, this Court finds no merit in the contention of the petitioner challenging the Provision that stipulates that the candidate should have never been arrested or convicted by a Criminal Court. No premium can be attached to a person involved in any criminal proceeding for appointment in the Army, which is directly relatable to the defense of the country.

8. Various provisions of the JAG ENTRY SCHEME have been challenged by way of the present PIL. The petitioner himself has not applied or sought to apply pursuant to the impugned Notification. Therefore, in the absence of any arbitrariness having been pointed by the petitioner, this Court



is not inclined to entertain the present PIL. If any individual is aggrieved by any provision of the said Notification, they can always approach the Court individually for redressal of their grievances.

9. It is relevant to note that stipulation of educational qualifications by a State or its entity, is within the domain of administrative decision making. The prescription of qualifications for a post is a matter of Recruitment Policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. (See: ***Zahoor Ahmad Rather and Others Versus Sheikh Imtiyaz Ahmad and Others, (2019) 2 SCC 404***)

10. Holding that essential qualifications for appointment to a post are for the employer to decide, Supreme Court in the case of ***Maharashtra Public Service Commission versus Sandeep Shriram Warade and Others, (2019) 6 SCC 362*** has held as follows:

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

11. In view of the aforesaid detailed discussion, this Court finds no merit



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in the present writ petition. Accordingly, the same is dismissed along with the pending applications.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 28, 2023/ak