

Court No. - 33

Case :- WRIT - A No. - 959 of 2022

Petitioner :- Smt. Kavita Sonkar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Babu Lal Ram, Ankit Sonker

Counsel for Respondent :- C.S.C., M.N. Singh

Hon'ble Mrs. Manju Rani Chauhan, J.

Instructions passed on to the Court today, is kept on record.

Heard Mr. Babu Lal Ram, learned counsel for the petitioner and learned Standing Counsel for the State-respondent no.1 and Mr. V.K.S. Raghuvanshi, learned counsel for the respondents-Commission.

This writ petition has been filed by the petitioner with the following prayer:-

"(a) Issue a writ, order or direction in the nature of certiorari quashing thereby call upon the respondents to produce order of cancellation of candidature of the petitioner passed by the respondents and this Hon'ble Court also be pleased to quash the aforesaid order regarding cancellation of candidature of the petitioner.

(b) issue a writ, order or direction in the nature of Mandamus directing the respondents to permit the petitioner to join her duty on the post of A.R.O. in pursuance of the advertisement No.A-6/E-1/2014 R.O./A.R.O. (direct/special recruitment examination 2014) and this Hon'ble Court also be pleased to direct the respondents to recommended selection of the petitioner on the post of R.O./A.R.O."

Learned counsel for the petitioner submits that the petitioner applied for the post of A.R.O. in pursuance of Advertisement No. A-6/E-1/2014 and was declared successful in the pre and main examination, but the appointment has not been given to the petitioner for the reasons best known respondents-Commission.

Learned counsel for the respondents-Commission, on the basis of instructions received, submits that one of the requirements

for the post of Assistant Review Officer is that candidate, should possess 'O' Level Certificate in computer Application from an Institute recognized by the Government. He further submits that the petitioner, who applied for the post of A.R.O., did not possess "O" Level certificate awarded by the DOEACC society or a qualification equivalent thereto, therefore, his candidature has been rejected when the document were being verified. Thus, the relief as prayed can not be granted.

From perusal of impugned advertisement as well as the document as annexed at page 23&24 to the petition, it is clear that the petitioner possesses the DCA Certificate, which is not equivalent "O" Level certificate awarded by the DOEACC society or a qualification equivalent thereto, therefore, he is not eligible or qualified for the post of Assistant Review Officer as per the prescribed qualification mentioned in the advertisement. It is the Commission/competent authority, who has right to consider the case of the petitioner and it is not the function of the Court to adjudge or evaluate the suitability or desirability of a particular qualification that may be prescribed. Here too the Courts must exercise due restraint and desist from treading down this path since these issues must be left to the fair judgment and assessment of the employer and the experts in the field.

The Apex Court in the case of **Zahoor Ahmad Rather Vs. Imtiyaz Ahmad**, reported in (2019) 2 SCC 404 has held as under: -

"26. 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. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of

the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench."

The Apex Court in the case of **Maharashtra Public Service Commission Vs. Sandeep Shriram Warade**, reported in (2019) 6 SCC 362 has also held as under:-

"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."

The Full Bench of the Apex Court in the case of **Punjab National Bank Vs. Anit Kumar Das**, 2020 SCC Online SC 897 has observed as under:-

"21. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications....."

The recruitment/selection process should be made strictly in accordance with terms of the advertisement and the recruitment rules as has been held by the Apex Court in the case of **Yogesh**

Kumar And Others vs Government Of NTC Delhi reported in ***(2003) 3 SCC 548.***

In view of the aforesaid discussion, the Court is of the considered view that the petitioner possess the DCA Certificate, which is not equivalent "O" Level certificate awarded by the DOEACC society or a qualification equivalent thereto, therefore, he is not eligible or qualified for the post of Assistant Review Officer as per the prescribed qualification mentioned in the advertisement, hence it would be impermissible to consider the petitioner as being eligible for the said post and relief as prayed has also not been granted.

Accordingly, this writ petition lacks merits and is dismissed.

Order Date :- 21.3.2022

Jitendra/-