
(2010) 09 DEL CK 0235

Delhi High Court

Case No: Writ Petition (C) 2734 of 2010

Union Public Service
Commission

APPELLANT

Vs

Dheerender Singh
Paliwal

RESPONDENT

Date of Decision: Sept. 30, 2010

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Naresh Kaushik, Aditi Gupta and Amita K. Chaudhary, for the Appellant; O.P. Khadaria and Phool Singh, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

In the Employment News 28th Feb - 6th March 2009 Advertisement No. 4 was published on behalf of the Union Public Service Commission inviting applications for 37 categories of Posts. Vide Serial No. 29 of the advertisement applications were invited from eligible candidates to fill up 9 posts of Senior Scientific Officers (Biology) in Forensic Science Laboratory, Home Department, Govt. of Delhi. The qualifications essential were specified. Information at Serial No. 29 of the advertisement reads as under:

29. (REF. No. F.1/9/2009-R-II) NINE SENIOR SCIENTIFIC OFFICERS (BIOLOGY) IN FORENSIC SCIENCE LABORATORY, HOME DEPARTMENT, GOVT. OF NCT OF DELHI. Out of nine posts, two posts are permanent and seven posts are temporary. Of them, one post (temporary) is reserved for Scheduled Castes candidates, two posts (temporary) are reserved for OBC candidates and remaining six posts (2 permanent and 04 temporary) are unreserved. QUALIFICATIONS: ESSENTIAL: A. EDUCATIONAL: Master's Degree in Zoology or Botany or Anthropology or Human Biology or Bio-chemistry or Micro-Biology or Genetics or Biotechnology or Molecular Biology or Forensic Science with Zoology or Botany or Forensic Science as one of the subjects at B. Sc. level from a recognized University. B. EXPERIENCE: 3 years experience in analytical

methods/research therein in the relevant field. DESIRABLE: QUALIFICATIONS, DUTIES & HQ: Same as in Item No. 27 above.

2. Relevant would it be to state that pertaining to the essential educational qualifications there was a twin requirement, firstly of the candidate possessing a Master's Degree in the 10 disciplines listed and secondly of having Zoology, Botany or Forensic Science as one of the subjects at B. Sc. level.

3. After setting out the requirements of the 37 category of posts in respect whereof applications were invited, information was published pertaining to whether the posts were permanent or temporary as also the pay-scale applicable to the posts with further information of other emoluments which would be paid. Thereafter, age limit norms were disclosed followed by Instructions to the candidates. Under the caption "INSTRUCTIONS AND ADDITIONAL INFORMATION TO CANDIDATES FOR RECRUITMENT BY SELECTION", instructions were set out followed by 3 Notes as under:

NOTE-I: The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview.

NOTE-II: Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to Interview all the Candidates, the Commission at their discretion may restrict the number of candidates, to a reasonable limit by any or more of the following methods:

(a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement; or

(b) On the basis of experience in the relevant field; or

(c) By counting experience before or after the acquisition of essential qualifications; or

(d) By holding a screening test.

The candidate should, therefore, mention all the qualifications and experience in the relevant field over and above the minimum qualifications and should attach attested certified copies of the certificate in support thereof.

NOTE-III: In regard to Educational Qualifications the mark-sheet in lieu of educational certificate will not be accepted by the Commission.

4. Relevant would it be to note that after Clause (d) to Note II, a clear instruction has been given to the candidates that attested/self-certified copies of the certificates qua minimum qualifications should be attached. Thus, it is apparent that pertaining to the post of Senior Scientific Officers (Biology) the candidates were required to submit attested/self-certified copies of their Master's Degree in the relevant discipline as also the B. Sc. degree

pertaining to the discipline of Zoology or Botany or Forensic Science, for these two were the prescribed minimum educational qualifications.

5. Not only that. By way of further caution to the applicants, vide Instruction No. 7, under the caption "CERTIFICATE TO BE ATTACHED", following was instructed:

CERTIFICATE TO BE ATTACHED:

Candidates should note that they should attach with their applications attested/self certified copies of the following documents:

(i) Matriculation or equivalent certificate in support of their declaration of age.

(ii) Degree or Diploma Certificate or other certificates in support of their education qualifications.

(iii) If the qualification possessed by the candidate is equivalent, then the authority (with number and date) under which it has been so treated must be indicated;

6. Thereafter, the candidates were cautioned vide four Notes, Note-III whereof is relevant and may be noted. It reads as under:

NOTE: III: If no copies of the above certificates are sent with the application, it is liable to be rejected and no appeal against its rejection will be entertained.

7. It is apparent that it was made known to the candidates that if certificates as required are not sent with the application, the same would be liable to be rejected.

8. At the tail end of the advertisement is a re-caution printed under the caption "IMPORTANT" where under 7 cautions have been printed in detail, Caution No. 3 being as under:

3. Copies of certificates should be attached in support of information given in the form where necessary. Any information contained in the attached certificates shall not be considered unless it is claimed in the application form.

9. It is crystal clear and needs no reasoning that the importance of attested/self-certified certificates to be furnished as proof of having the minimum essential education qualifications was repeatedly highlighted to the candidates as a requirement of a valid application, requiring the same to be submitted along with the application form. Pertaining to the post of Senior Scientific Officer (Biology) it is apparent that two degree certificates, one at the Master's level and the other at the Bachelor's level had to be furnished.

10. Admittedly, the respondent did not submit the B. Sc. degree certificate obtained by him when he submitted the application form. Respondent was not called for an interview and upon inquiry made was informed that his application was rejected since he furnished

no proof that when he obtained a graduation degree he had studied the discipline of Zoology or Botany or Forensic Science. The respondent made enquiries and learnt that two persons who had not furnished their graduation degrees had been called for interview. The respondent approached the Central Administrative Tribunal and questioned the action taken by UPSC and succeeded vide impugned order dated 9.12.2009.

11. The reasoning of the Tribunal is that the respondent had a Master's degree in Zoology, photocopy whereof was submitted by him after attesting the same and since the prerequisite to undertake the Master's course was a graduation degree, it could safely be inferred that the petitioner had Zoology as a subject at the graduation level.

12. UPSC has questioned the logic and the reasoning of the Tribunal by urging that today it is possible to switch disciplines at the graduation level and due to inter-disciplinary relationship it is possible to obtain a Master's degree in a discipline having no direct relationship with the same discipline at the graduation level. In any case, urges UPSC, it conducts thousands of entrance tests in which lakhs of candidates apply and that UPSC is not to conduct inquisitorial or deductive exercises; the candidates have to strictly comply with the letter of the advertisement. With reference to the advertisement in question, UPSC highlights that what more could it do other than to repeatedly highlight to the candidates the requirement of submitting the necessary attested copies of the certificates establishing the eligibility of the candidate. If the candidate chose to remain negligent, he had to suffer.

13. A similar issue had arisen before the Tribunal when various Original Applications filed by Lawyers were allowed. Pertaining to the post of Assistant Public Prosecutor the advertisement concerned clearly stipulated that minimum educational qualification was a Degree in Law from a recognized University. Three years experience at the Bar was also stipulated as an eligibility condition. The applicants before the Tribunal had furnished self-attested photocopies of enrolment certificates issued by the State Bar Council. They did not submit self-attested photocopies of L.L.B degree which they claimed to possess and urged before the Tribunal that it was known to one and all that the prerequisite of enrolment with the State Bar Council was a Degree in Law. The Tribunal held in their favour. By and under judgment and order dated 25.1.2010 WP(C) No. 10058/2009 and connected writ petitions were allowed by a Division Bench of this Court holding that the letter of the advertisement had to be complied with and since UPSC conducts a large number of exams, it is impracticable to expect UPSC to give a go by the instructions that have been categorically and specifically mentioned in the advertisement. The plea that procedure is the hand made of justice was repelled by holding that in practical life, to give procedure a complete go by would mean that nobody would be obliged to follow the procedure resulting in unmanageable situations. It was observed that if UPSC was compelled to accept procedurally incomplete applications there would be serious practical difficulties that it would have to encounter and this may well lead to a break down in the system.

14. We respectfully concur.

15. We have highlighted herein above the repeated emphasis at different places in the advertisement repeatedly cautioning the candidates to strictly comply with each and every requirement of the advertisement. The respondent must suffer for being negligent.

16. As regards the plea of discrimination, Shri Naresh Kaushik learned Counsel for UPSC informs us that applications were invited for 37 disciplines, as detailed in the advertisement, and the same were processed discipline-wise by different Under Secretaries at UPSC and that one Under Secretary wrongly accepted applications of two persons, but not in the discipline in which the respondent had applied, but this would not entitle the respondent to any relief.

17. We concur. Equality in the negative is not recognized by law. There cannot be equality in a wrong.

18. We would be unfair if we do not note the decision dated 13.3.2002 in CA No. 2199-2200/2002 Jyothi KK and Ors. v. Kerala PSC and Ors. cited by learned Counsel for the respondent, who urges that the said decision holds that if a person has acquired higher qualification in the same faculty (discipline) such qualification can certainly be stated to presuppose the acquisition of the lower qualification prescribed. Suffice would it be to state that the said decision was in the context of Rule 10 (a)(ii) of the applicable rules which stipulated:

Notwithstanding anything contained in these rules or in the special Rules, the qualifications, recognized by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.

19. Accordingly, we allow the writ petition and set aside the impugned order dated 9.12.2009 passed by the Tribunal and as a consequence we dismiss OA No. 2492/2009 filed by the respondent.

20. No costs.