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Government of NCT of Delhi Vs Hira Singh Rawat

Writ Petition (C.) No. 1842 of 2010

Court: Delhi High Court

Date of Decision: April 22, 2010

Acts Referred:

Administrative Tribunals Act, 1985 â€" Section 19#Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Mool Chand Garg, J; Anil Kumar, J

Bench: Division Bench

Advocate: Rakesh Tiku and Aruna Tiku, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

Mool Chand Garg, J.

C.M. 3661/2010

Exemptions allowed subject to all just exceptions.

W.P. (C.) No. 1842/2010

1. This writ petition has been filed to assail the orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter

referred to as "the Tribunal") dated 17.10.2008 in O.A. No. 531/2008 and order dated 22.09.2009 in R.A. No. 82/2009. The Tribunal vide

order dated 17.10.2008 gave the following directions:

The prayer made in this Original Application filed u/s 19 of the Administrative Tribunals Act, 1985 is for declaration to the effect that the action of

the respondents in not allowing the applicant to join his duties to the post of Lab Assistant is illegal. There is no dispute on facts that the applicant

was promoted as Lab Assistant but was not allowed to join his duties only for the reason that he was not matriculate. It has been the case of the

applicant that he had done matriculation and the stand taken by the respondents that the certificates produced by him would not meet the

requirement of passing matriculation examination is incorrect. There would, however, be no need to go into the issue whether the applicant had

done matriculation or not, as he has now indeed passed matriculation examination on 05.09.2008.Inthe circumstances, the promotion of the

applicant would not be disputed. The only discordant view taken by the counsel for the respondents is that the applicant cannot seek promotion

from the date the same was made as at that time he was not matriculate. Mr. Yogesh Sharma, counsel for the applicant, in all fairness accepts this

position and states that let the applicant be promoted from the date he passed the matriculation examination i.e. 05.09.2008.

- 2. In view of discussion made above, we partly allow this application and direct the respondents to promote the applicant as Lab Assistant w.e.f.
- 5.9.2008 on which date he has passed matriculation examination. No costs.
- 2. Against the aforesaid order the petitioner approached this Court by filing a Writ Petition bearing No. 8446/2009 which was disposed of vide

order dated 23.04.2009. As per the said order following directions were given:

Nobody appears on behalf of the petitioner even on second call. We find from the judgment that the respondent herein had filed OA claiming

promotion to the post of Lab Assistant, which was denied to the respondent on the ground that he was a non-matriculate. The Tribunal noted that

since the respondent had subsequently passed Matriculation Examination, i.e. on 05.09.2008. He had become entitled to be considered for the

promotion to the post of Lab Assistant, at least from 05.09.2008 if not from an earlier date.

In this petition, it is pointed out that the necessary eligibility condition for promotion to the aforesaid post is Matriculation with Science subject and

therefore, he is still not eligible. However, we find from the impugned judgment that this aspect was not specifically brought to the

Tribunal. It would, therefore, be appropriate to the petitioner to file a review application before the Tribunal raising the aforesaid issue. We are

confident that the Tribunal shall consider these aspects on its own merits and would not dismiss the review application as time barred in case the

same is filed within one month. With the aforesaid observations, this writ is disposed of

3. The petitioner, thereafter, filed a Review Application registered as R.A. No. 82/2009. The said review application has been decided by the

Tribunal vide impugned order dated 22.09.2009.

- 4. The Tribunal as per the order passed in the review application made the following observations:
- 3. In this review application, like in the counter reply in the OA, there is a mention of the applicant having passed his matriculation examination from

UP Board in 1983 with Hindi, English, Gen. Maths, Civics and Economics (non-science subjects), and his having appeared in secondary school

examination of National Open School in May, 1992 with subjects including science. It is once again mentioned that the applicant failed in maths

and he reappeared in the said subject in November, 1992 but once again failed, and could not be awarded secondary school certificate by the

National Open School. Mention is then of his appearing in the senior secondary school examination from National Open School in 1993 with

Hindi, Economics, Pol. Science and English (nonscience subjects), which the applicant cleared. There is not a word mentioned with regard to the

applicant having passed matriculation with science on 5.9.2008. We do find from the relevant clauses of the order dated 24.5.2007 that

matriculation or higher secondary has to be with science (physics and chemistry) and the candidates who are without science, too would be eligible

provided they have successfully undergone a three months orientation course in science conducted by the Directorate of Education. There is no

averment in the review application that the subject science cleared by the applicant in matriculation in 2008 in science was only of physics or

chemistry and not both. No arguments had been raised on that count. It is only while preparing the judgment that we have found out from the order

dated 24.5.2007 that science has to be with physics and chemistry. Once, it is not even now the case of the respondents that the subject science

cleared by the applicant did not have any questions on physics or chemistry, there would be no need for us to go into the same. We only hasten to

mention that when a person clears matriculation examination with science, the paper of science would include combined questions of physics and

chemistry. It is not the case of the respondents either that all subjects cleared by a candidate in matriculation must be related to science, and that if

only one of the subjects is science, the candidate would not be eligible. These aspects have not been highlighted during the course of arguments,

but we are making mention of every possible aspect of the case. As mentioned above, even though the controversy to be decided was limited and

there was no dispute after the applicant had passed yet another examination of matriculation with science and proved it by bringing on record his

matriculation certificate, yet the respondents pleaded before the High Court that the applicant may be matriculate but he had not passed it with

science. This resulted into giving permission to the respondents to file a review application, which would be only at the cost of delaying the relief

granted to the applicant and also burdening him with unnecessary finances.

5. Thus, from the observations made by the Tribunal vide order dated 22.09.2009, it is apparent that the basic dispute between the parties was

with regard to the eligibility criteria for the promotion of the petitioner to the post of Lab Assistant which required Matriculation certificate with

Science. It was the contention of the respondent that after having passed High School examination from U.P. Board in 1983 with Hindi, English,

General Maths, Economics and Civics, he was eligible for promotion whereas it was the case of the petitioner that this was not so. According to

the petitioner, the matriculation was required with Science which was not so in the case of the respondent. The respondent later on appeared for

Matriculation examination through National Open School with Science and was able to pass the same on 05.09.2008.

6. It was, in these circumstances, the petitioner was directed to consider the respondent for promotion vide orders dated 22.09.2009 as referred

above.

7. It seems that the petitioner was not happy with the said direction and kept on raising the issue of qualification of the respondent. It was, in this

context that they filed the Writ Petition which, as stated above, was disposed of by permitting them to file a Review Application.

8. However, in the review application as well as the submission made before the Tribunal, it was not the case of the petitioners that merely because

the respondent had qualified by passing a second examination of matriculation with Science, he was eligible for promotion from 05.09.2008 and

that for that purpose he was required to be considered by the Departmental Promotion Committee which is the sole argument addressed before us

by the learned Counsel for the petitioner.

9. Even though the petitioner has taken us through the writ petition filed by them before this Court and the Review Application filed before the

Tribunal subject matter of order dated 22.09.2009 but nowhere it is stated that the respondent could not have been promoted with effect from

05.09.2008 as no DPC was to be held on that date or that he was to be promoted only after DPC is held for the purpose of his consideration

which recommended his promotion with effect from 05.09.2009. In this regard it may also be observed that as per earlier order passed by

Tribunal in OA No. 531/2008, it has been observed that the respondent was eligible for promotion to the post of Lab Assistant of which he was

performing the duties formally but not promoted because he was not having requisite educational qualification at that time.

10. It is surprising that if the petitioners were so conscious of the fact that the directions given by the Tribunal as per the order dated 7.10.2008

considering the respondent for promotion w.e.f. 05.09.2008 should have been subject to Departmental Promotion Committee, why have not they

taken this ground as ground of review and before that took this ground as part of the writ petition.

11. Having gone through the contents of the writ petition as well as the review application we do not find that any such ground has been even

pressed by the petitioner. The petitioner is, therefore, debarred from raising such an issue now once they failed to take up this issue either before

the Tribunal while passing an order in the Original Application or before this Court and thereafter in the review application filed by them, therefore

now they are not entitled to raise this issue. The plea taken by them that there were other persons who also qualified in similar examinations though

taken would not permit the petitioners to postpone the date of promotion of the respondent.

12. For the foregoing reasons, we do not find any illegality or irregularity in the order of the Tribunal which would necessitate any interference by

this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. The writ petition is without any merit and it is, therefore, dismissed with no order as to costs.

All the pending appli	cations are also dispose	ed of.		