

Ramesh Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Aug-27-2013

Judge : Valmiki J. Mehta

Appellant : Ramesh Kumar

Respondent : Union of India and ors.

Advocate for Def. : Mr. B.V. Niren, Mr. S.K. Sharma, Mr. Amit Kumar

Advocate for Pet/Ap. : Mr. Avadh Kaushik

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No. 5865/2012 27th August , 2013 % RAMESH KUMAR Through:Petitioner Mr. Avadh Kaushik, Advocate. VERSUS UNION OF INDIA AND ORS. Through: Respondents Mr. B.V. Niren, Advocate for respondent No.1. Mr. S.K. Sharma, Advocate for respondent No.2. Mr. Amit Kumar, Advocate for respondent No.3. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) 1. The petitioner, Sh. Ramesh Kumar by this writ petition seeks the relief of being appointed as a Peon with the respondent No.2/Veterinary Council of India. Petitioner also hence challenges the appointment given to the respondent No.3 by the respondent No.2 instead of appointing the petitioner.

2. The facts of the case are that an advertisement was issued by the respondent No.2 for appointment to two posts; one of LDC and second of Peon. We are concerned with the post of Peon in the present case. The only requirement as stated in the advertisement for being appointed to the post of Peon was that the candidate must be 10 th class pass from a recognized board. No experience which was required of the candidate has been specified. The relevant portion of advertisement reads as under:Sl No. No. of post 01 Maximum Age Limit 27 yrs. Scale of Pay Qualification & Experience 1. Name of Post LDC Rs.520020200+ G.P. Rs.1900/- Essential: (i) Matriculation of equivalent from recognized University/Board and must have a speed of 40 w.p.m. in typing 2. Peo

27. yrs. Rs.520020200+ G.P. Rs.1800/- Essential: (i) 10th Pass from a recognized Board. The advertisement states that if there are more candidates than required, then test will be conducted. Test was in fact conducted and undisputed position is that petitioner was put at rank No.1 and respondent No.3 was put at rank No.5. No information was uploaded on the website of the respondent No.2 with regard to the result and also petitioner was not informed that he had been put at rank No.1. Instead respondent No.3 was however given the appointment. In response to the RTI queries raised by the petitioner, it transpired that respondent No.3 was given appointment on account of experience. The relevant part of the response of the respondent No.2 dated 24.7.2012 for not appointing the petitioner and appointing the respondent No.3 reads as under:Point 3: In the advertisement experience column has already been provided. Further, as per advertisement, under important Note at No.4, the candidate was also directed to attach attested copies of certificates in support of educational/professional qualification/experience. Hence it itself implies that some weightage shall be given to the experienced candidate. Hence, 5% weightage for experience was given for selection to the Peon.

3. The only aspect urged before me for decision is whether the stand taken by the respondent No.2 in the letter dated 24.7.2012 of giving weightage for experience is a valid basis to deny appointment to the petitioner and give appointment to the respondent No.3.

4. There are some cases which shock the judicial conscience of Courts. I have no hesitation in saying that this is one such case. Illegalities which some authorities resort to and perversion which is caused in the interpretation of the qualifications required for appointment is best understood in the facts of the present case. First of all, it may be noted that in the advertisement which was published for appointment to the post of a Peon it is nowhere specified that the person to be appointed as a Peon must have experience. Of course, I wonder that what is after all experience which a person must have to be appointed as a Peon. Surely, and as the saying goes, the job of a peon is not the job of a rocket scientist, and thus the only requirement therefore which was given in the advertisement was of the candidate to be 10th class pass from a recognized Board, and which qualification indubitably the petitioner has.

5. Let us now see the relevant note point in the advertisement of which shield is taken by the respondent No.2 to appoint the respondent No.3. This point No.4 reads as under:4. Candidate should attach passport size photograph and attested copies of certificates in support of Educational/Professional Qualification/Experience.

6. Surely, once the expression educational/professional qualification/experience is as used in this note point No.4, then, the same is used in the alternative because wherever qualification was required, there only qualification would be sufficient and wherever qualification with experience was required, then, both qualification and experience were necessary. There cannot be interpretation of this note point of requiring experience when in the main portion of the advertisement no experience is required and the only qualification required is that the candidate must have passed 10th class board exam.

7. In the present case, since in the advertisement with respect to appointment of a Peon, no experience has been specified, and the only qualification which was required as being essential for appointment was that the candidate must be 10th class pass from a recognized Board (in fact, the petitioner had cleared not only the 10th class Board but did 12th class also). Thus petitioner was bound to be appointed in preference to respondent No.3 who secured only 5th rank as

compared to 1st rank of the petitioner.

8. It is quite clear that the defence taken by the respondent No.2 is a sham and for some reason only taken to favour and appoint respondent No.3. The action of not appointing the petitioner is a fraud not only upon the petitioner but also by the appointing authority and the selecting authority upon the respondent No.2 itself. By this malafide, unfortunate and illegal act damage has been caused both to the petitioner on account of his nonappointment and to the respondent No.3 whose appointment will have to be struck down because writ petition has to be allowed.

9. In view of the undisputed position which has emerged that the petitioner had rank No.1 after completion of the selection process, the only requirement/qualification for being appointed to the post of a peon was that the candidate must be 10th class pass from a recognized Board and which qualification if petitioner satisfied, there was no requirement of any experience in spite of what is urged by the respondent No.2 on the basis of note point No.4, writ petition is thus allowed and the petitioner is directed to be appointed by the respondent No.2 to the post in question. Petitioner will be entitled to the service benefits from the date from which he would have join duties on being appointed. Appointment letter be issued to the petitioner within a period of three weeks from today.

10. That leaves us with the issue as to what should happen so far as respondent No.3 is concerned. Though I am surprised at the appointment of the respondent No.3 over the petitioner, and which is quite clearly peculiar, however in the facts and circumstances of this case, it would be enough while cancelling the appointment of respondent No.3 and appointing the petitioner to the post in question, it is directed that the respondent No.3 will be paid a sum of `50,000/- as compensation by respondent No.2 on account of respondent No.3 losing his services. It is also directed that whenever the respondent No.2 now advertises afresh for the post of Peon or any other post to which the respondent No.3 is qualified and suitable, then, on all things being equal in the selection list for the new post for which appointment has to be made, respondent No.3 will be given preference and issue of age bar will not be raised against the respondent No.3.

The respondent No.3 for the period he has served with the respondent No.2 will get all service benefits as applicable under the Rules and policies of the respondent No.2.

11. I have already stated that there are some cases which cause great consternation in the mind of the Court and present is one such case. Therefore, in the facts of the present case besides giving relief to the petitioner, and also some relief to the respondent No.3, it is appropriate that this judgment be placed before the governing body of the respondent No.2 and the governing body in view of the gross abuse of the appointment process by the selection committee or person whoever is responsible for effectuating at the first step the appointment of the respondent No.3 instead of the petitioner to the post of Peon with the respondent No.2, the said persons be proceeded against departmentally by the respondent No.2 in accordance with the rules for causing illegal appointment of respondent No.3. Strict action in accordance with the rules be taken against the persons who are found responsible and accountable for committing the gross illegality which has been found in appointing the respondent No.3 by the respondent No.2. If the governing body of the respondent No.2 finds that possible certain offences are also committed, then, the governing body of the respondent No.2 is also directed to take appropriate action in accordance with law against all the persons who are found responsible for bringing about the first step selection and recommendation of illegal appointment of the respondent No.3 and denying the appointment to the petitioner to the post in question. Let an authorized officer of the governing body of the respondent No.2 file an affidavit in this Court within six weeks that necessary steps have been initiated as directed in terms of the present judgment.

12. While disposing of the writ petition and allowing the same, list this matter for compliance of directions which have been passed in the present case on 21st October, 2013. AUGUST 27 2013 Ne W.P.(C) No.5865/2012

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