

UpSC Vs. Sushil Kumar

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Court : Delhi

Decided On : Oct-29-2013

Judge : V. K. Jain

Appellant : UpSC

Respondent : Sushil Kumar

Advocate for Pet/Ap. : Mr. Naresh Kaushik

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

29. 10.2013 + WP(C) No.1673 of 2011 UPSC Through: Petitioner Mr. Naresh Kaushik, Adv. versus SUSHIL KUMAR Respondent Through: CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

(ORAL) The respondent before this court sought the following information from the petitioner:

1. What were the minimum criteria defined for the short listing of the candidates for calling them for interview in case of the candidate is having B. Tech (Computer Science)/MCA degree?.

2. What were the various norms followed for differentiating among the candidates while short listing them, which are having different qualification as per Educational Qualification prescribed in Point A, B, C and D?. These qualifications were advertised in as the different educational qualification and were required with different number of years of experience.

3. What were the minimum criteria for short-listing the candidates for interview in case of educational qualification A?.

4. What were the minimum criteria for shot listing the candidates for interview in case of educational qualification B?.

5. What were the minimum criteria for shot listing the candidates for interview in case of educational qualification C?.

6. What were the minimum criteria for shot listing the candidates for interview in case of educational qualification B?.

7. Application of Mr. Sushil Kumar S/o Mr. Jairam DOB2012.1980 was rejected on what basis?. Applicant was having around 3 years of experience as desired by the commission in actual coding, testing and maintenance with B.Tech (Computer Science) degree and CCNA certification while the requirement was of only 2 years of experience with B.Tech (Computer Science) degree as per point A of educational qualification of advt.

8. Place provide me the list of finally shortlisted candidates for interview with criteria on the basis of which they were shortlisted for interview including their qualification and work experience or any other criteria.

2. The information at serial Nos.1 to 7 stand supplied but the information sought for at serial No.8 was declined to the extent it related to the name of the shortlisted candidates, their qualification and work experience, on the ground that the same was exempt under Section 8 (1) (j) of the Right to Information Act, 2005 (for short RTI Act). The selection criteria, however, was supplied to the respondent.

3. Being aggrieved from the non-supply of information, the respondent preferred a first appeal before the first appellate authority which vide order dated 11.1.2010 directed supply of the list of final shortlisted candidates to the respondents. He, however, declined to direct disclosure of the information relating to educational qualification and experience of the shortlisted candidates. Being still aggrieved, the respondent preferred a second appeal before the Central Information Commission which vide order dated 13.1.2011 directed as under:

4. We find the plea taken by the CPIO not tenable. If the authorities chose to invite some candidates for interview on the basis of meeting certain benchmarks in terms of their qualification and work experience, the information regarding that cannot be any longer classified as personal information. For the sake of transparency, it is essential that the bench mark fixed by the authorities for inviting candidates for the interview should be disclosed other such details as their educational qualification and work experience, etc should also be disclosed if these are part of the required bench mark. Therefore, we direct the CPIO to provide the Appellant within 10 working days from the receipt of this order the list of the candidates invited for the above interview along with the educational qualification and work experience of each of those candidates, provided these form part of the bench mark fixed for inviting candidates for interview.

Being aggrieved from the order passed by the Commission, the petitioner is before this Court by way of this writ petition.

4. A similar issue came up for consideration before the Honble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE656 In the aforesaid case, the respondent before the Apex Court had sought inter alia the following information:

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?.

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court inter alia held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC483 One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.

The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court had recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest

and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent.

7. For the reasons stated hereinabove, the impugned order passed by the Central Information Commission is set aside. The writ petition stands disposed of. No orders as to costs. OCTOBER29 2013 bmesh W.P.(C) No1673 of 2011

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