

Divya Goyal Vs. State of M.P and Another

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Court : Madhya Pradesh

Decided On : Oct-31-2014

Judge : Sujoy Paul

Appeal No. : Writ Petition No. 4217 of 2013

Appellant : Divya Goyal

Respondent : State of M.P and Another

Judgement :

1. The question to be decided in this matter is whether petitioner can be treated as ineligible for the post of Registration Clerk when she possess the qualification as per the Statutory Recruitment Rules but does not possess the qualification as per the advertisement.

2. The facts necessary for adjudication of this matter are that petitioner is MA in Hindi Literature and PGDCA from Makhanlal Chaturvedi University. The certificates are filed as Annexure P-1. The respondents issued advertisement (Annexure P-2) for the posts of Assistant Grade-III, L.D.C. and Registration Clerk. The petitioner submitted her candidature for the post of Registration Clerk pursuant to said advertisement. She appeared in the written examination. However, by Annexure P-8 dated 10.12.2012, she was informed that petitioner has not produced the typing certificate and, therefore, she could not be treated as eligible. Assailing this order, Shri Pawan Dwivedi submits that the service

conditions of the posts in question is governed by statutory recruitment rules made under proviso to Rule 309 of the Constitution. The rules are called as Madhya Pradesh Registration and Stamp Class-III (Ministerial) Service Recruitment Rules, 2007. By taking this Court to Schedule III, it is submitted that the petitioner do possess the essential qualification as per the rules and, therefore, she cannot be deprived from the fruits of her selection. It is submitted that the advertisement relates to three posts. The respondents should have prescribed the qualification post wise as per the rules separately. They have clumsily mixed all the qualifications and, therefore, this problem has arisen.

3. Per contra, Shri B.Raj Pandey, learned G.A. submits that petitioner is required to possess the qualification as per the advertisement Annexure P-2. In absence of possessing qualification or in absence of challenging the advertisement, petitioner has no case.

4. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

5. At the cost of repetition, the singular question to be decided is whether the petitioner can be treated as ineligible on the basis of advertisement, if she is eligible on the basis of recruitment rules? The educational qualification prescribed in the rules reads as under:-

1. Should have passed the Higher Secondary examination conducted by Board of Secondary Education M.P. or recognized institution or High School Examination under 10+2 education system.

2. Minimum One year's diploma/certificate in computer course from an institute/University recognized by Central Government/State Government or a competent authority constituted by the Central Government/State Government.

6. The petitioner has specifically pleaded in the petition that she possess the qualification as per rules and the same stand is reiterated in the rejoinder. The respondents have not produced any rules to show that the said contention is incorrect or the petitioner do not possess the qualification as per the rules.

7. So far the advertisement is concerned, I find force in the argument of Shri Pawan Dwivedi that respondents have mixed all the posts and then prescribed the qualification in one go. In all fairness, the respondents should have prescribed qualification separately against different posts. As per the qualification shown above, it is clear that petitioner is eligible for the post of Registration Clerk. In the recruitment rules, there is no requirement to pass the typing test. This condition is mentioned in the advertisement. The petitioner cannot be deprived from the right of fair consideration which is a fundamental right flowing from Article 14 and 16 of the Constitution of India.

8. The Supreme Court in (1986) 1 SCC 675 (Union of India and others Vs. Arun Kumar Roy) held that in the event of conflict in the rules and executive instructions/advertisement, it is the rule which will prevail. Once it is held that petitioner is eligible as per rules, she cannot be deprived on the basis of advertisement. Advertisement does not have any statutory force. Whether or not petitioner has challenged the advertisement, her right as per the rules cannot be taken away. Para 16 of said judgment reads as under:-

"16. A notification has no statutory force. It cannot override rules statutorily made governing the conditions of service of the employees. The notification is dated August, 26, 1967. Rule 5(1)(b) was amended in 1971 with retrospective effect from May1, 1965. The rule has necessarily to govern the service conditions and not the notification." (Emphasis supplied)

9. In (2006) 9 SCC 507 (Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and others), the Apex Court opined that the recruitment to the service can only be made in accordance with the rules and the error, if any, in advertisement cannot override the rules and create any right in favour of the candidate, if otherwise not eligible according to the rules. In the said case, the claimant was eligible as per advertisement but was not eligible as per the rules. In the said factual backdrop, it was made clear by the Apex Court that it is the Rule which will decide the eligibility of a candidate.

10. Considering the aforesaid, the rejection order Annexure P-8 is set aside. The petitioner is held to be eligible for the post of Registration Clerk. The respondents

are directed to proceed further by treating the petitioner as eligible as per the rules. The outcome of the selection be informed to the petitioner within 30 days from the date of communication of this order.

11. Petition stands allowed. No costs.

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