

WasimuddIn Vs. Uoi and ors

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Court : Delhi

Decided On : May-19-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 13816/2009

Appellant : Wasimuddin

Respondent : Uoi and ors

Advocate for Def. : Mr. B.V. Niren; Mr. Abhishek Goyal; Mr. Sanjay Bhatt; Mr. Abhishek Anand, Advs.

Advocate for Pet/Ap. : Mr. Haneef Mohd, Adv.

Judgement :

1. The petitioner seeks a direction to the respondent no.2 IDBI Bank Ltd. (IDBI) to appoint the petitioner to the post for which he had been selected i.e. of Assistant Manager Grade-A.
2. Notice of the petition was issued. Counter affidavit has been filed. The petitioner on 11th January, 2011 stated that he did not wish to file any rejoinder thereto.
3. The case of the petitioner is that in pursuance to the advertisement issued by the respondent no.2 IDBI inviting applications for various posts, he had applied for the post of Assistant Manager Grade-A and had appeared in the written test held

for the said purpose and was vide e-mail dated 27th April, 2009 of respondent no.2 IDBI directed to appear for Personal Interview. It is further the case of the petitioner that post interview, he was vide e-mail dated 21st July, 2009 of the respondent no.2 IDBI "advised" that he had been found "prima facie eligible" for the said post based on his performance in the Written Test and Interview and that it had been observed that he had not undergone the pre-recruitment medical test; the petitioner was therefore advised to report to the designated offices of the respondent No.2 IDBI for pre-recruitment medical test. Vide another e-mail dated 22nd July, 2009 the place where the petitioner was to report for pre-recruitment medical test was changed. It is further the case of the petitioner that upon so approaching, he was issued a letter dated 23rd July, 2009 authorizing pre-recruitment medical test.

4. This petition was filed because the petitioner was vide another e- mail also of 23rd July, 2009 informed to ignore the earlier e-mail regarding medical examination and further informed not to undergo the medical test and to return the authorization for pre-recruitment medical test to the respondent no.2 IDBI. It was stated in the said letter that the e-mail asking the petitioner to undergo medical test had been sent "due to some server problem".

5. The petitioner in the petition has further pleaded that he had on 23 rd July, 2009 itself also received call from the Yes Bank for interview on 23rd/24th July, 2009 and which interview he did not take for the reason of having been selected in the respondent no.2 IDBI.

6. The respondent no.2 IDBI in its counter affidavit has inter alia pleaded that the petitioner in the Written Test scored only 54/200 marks; however, being eligible for Interview, was called for Interview; however, in the Interview the petitioner scored 39/100 marks while the minimum qualifying marks for interview were 45 and hence the petitioner was not selected. It is further pleaded that those who had cleared the Interview were furnished the letters for medical examination on the date of Interview itself but the petitioner having not cleared the Interview, no such letter was issued to him; however subsequently, on review of the short listed candidates in the Interview it was observed that the medical reports of some of them had not

been received and hence reminder e-mail was sent on 21st July, 2009 and which mistakenly, owing to error in data entry was sent to the petitioner also. It is thus the case of the respondents that the petitioner having not qualified for selection, cannot take advantage of the e-mail mistakenly sent to him.

7. The counsel for the petitioner has argued that the respondent no.2 IDBI has not filed any documents whatsoever along with its counter affidavit. It is contended that there is nothing to show that the qualifying marks for the interview were 45/100. It is further contended that there can be no qualifying marks for Interview but the counsel is unable to immediately cite the judgment to the said effect. It is yet further contended that the discrepancy in the e-mail sent on 23rd July, 2009 and in the counter affidavit as to the reason for the alleged mistake in sending the e-mail dated 21st July, 2009 itself shows that the reasons given are false. It is yet further contended that no particulars of persons to whom the said e-mail(s) was / were mistakenly sent have been given. It is yet further contended that the e-mail could not be mistakenly sent owing to defect if any in the server. The petitioner thus claims that he is entitled to undergo the medical test and if clears the same, is entitled to the direction for appointment in the respondent no.2 IDBI.

8. Per contra, the counsel for the respondent no.2 IDBI has urged that the petitioner has not imputed any mala fides to the respondent no.2 IDBI or to any of the officials of the respondent no.2 IDBI and in the absence thereof cannot seek appointment without qualifying therefor.

9. The settled position in law is that even a selected candidate has no right to insist upon appointment. The applicants in pursuance to such advertisements inviting applications only have a right of consideration and do not have any right of appointment. Reference in this regard can be made to the Constitution Bench judgment of the Apex Court in *Shankarsan Dash v. UOI* (1991) 3 SCC 47.

10. The writ petition was premised only on the e-mail which the respondent no.2 IDBI even today has claimed to have been erroneously sent to the petitioner. Else, the selection process of the respondent no.2 IDBI has not been challenged. Though arguments have been raised as to the respondent no.2 IDBI having not supported its pleas in the counter affidavit with any documents but the petitioner

chose not to even rejoin to the said counter affidavit. Without the same, the petitioner, especially in the absence of any plea alleging mala fides and particulars thereof cannot controvert the averments in the counter affidavit. There is no reason placed before this Court for not to believe the said averments. It is not the case of the petitioner that anyone with marks lower than scored by him or having less than 45/100 marks in Interview has been selected. It may be noted that even then, the petitioner would not have secured any right to appointment as reiterated by the Apex Court in *State of UP v. Rajkumar Sharma* (2006) 3 SCC 330 holding that even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person.

11. The petitioner cannot claim any right from the mistake of the respondent in asking him to undergo the medical test. The petitioner as per the selection criteria was / is not eligible for appointment. The Supreme Court in *Ashok Kumar Sonkar v. UOI* (2007) 4 SCC 54 held that where the selection is illegal for the reason of being ineligible to be considered for appointment, the cancellation of appointment even without affording any opportunity of hearing is proper inasmuch as in such cases the hearing would be a futile exercise and a Court of law does not insist on compliance with useless formalities. Reference may also be made to *Central Airmen Selection Board v. Surender Kumar Das* (2003) 1 SCC 152 where the question of whether the principle of promissory estoppel can be invoked or not in the case of a candidate not eligible for appointment being selected by mistake contrary to the terms of the advertisement and the rules was left open, the finding having been returned of selection being illegal owing to being attributable to the misrepresentation by the candidate.

12. As far as the contention of the counsel for the petitioner that there can be no minimum eligibility marks for an interview is concerned, the Supreme Court in *Lila Dhar v. State of Rajasthan* (1981) 4 SCC 159 has held that the observations made in certain judgments relating to admissions in educational institutions as to the requirement of certain minimum marks in interview cannot be said to apply to recruitments in which the suitability of the person for the post and which can be judged in interview only, is of vital significance. Thus no purpose would be served in granting time also to the counsel for the petitioner, at this stage sought, for

producing the judgment.

13. There is no merit in the petition; the same is dismissed. No order as to costs.

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