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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 23.03.2022**

\+ **W.P.(C) 4721/2022**

RAJEEV ..... Petitioner

Through: Mr Anuj Aggarwal and Mr Shubham Pundhir, Advocates

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD & ANR. ..... Respondents

Through: Mrs Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mrs Tania Ahlawat, Mr Neeraj Pal and Mr Siddhant Tyagi, Advocates.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE JASMEET SINGH

[Physical Hearing/ Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.(ORAL):-

CM APPL. 14119/2022

1. Allowed, subject to just exceptions.

W.P.(C) 4721/2022 & CM APPL. 14118/2022*[Application filed on behalf of the petitioner seeking interim relief]*

2. This writ petition assails the order dated 15.02.2022, passed by the Central Administrative Tribunal [in short 'Tribunal'] in O.A. No. 357/2022. The Tribunal, *via* the impugned order dated 15.02.2022, has dismissed the petitioner's O.A.

3. The petitioner had approached the Tribunal with the grievance that even though he had qualified the written examination, he was not considered for selection by the Delhi Subordinate Services Selection Board [in short

'DSSSB'] against Advertisement No. 04/20, dated 04.01.2020, only for the reason that the e-dossier which had to be uploaded before the stipulated cut-off date, had not been uploaded by that date by the petitioner.

3.1. To be noted, the petitioner had applied for the post of PGT (Fine Arts) (Male) (Post Code 83/20) against the aforementioned advertisement. It is not disputed that the e-dossier had to be uploaded by the shortlisted candidates, within a span period ranging between 07.10.2021 and 21.10.2021.

3.2. It is not disputed that the petitioner, although registered with DSSSB, did not open the assigned portal, and, therefore, in a sense, was responsible for his lack of awareness that he had to upload the e-dossier within the time span set out above. The case set up by the petitioner is that he was ailing during that period, and, therefore, did not take the necessary steps i.e., of opening the web portal.

3.4. It is also accepted by the petitioner that since he had changed his mobile phone number, he was unable to access the text message, that may have been sent by the DSSSB in the ordinary course, concerning the marks obtained by him in the written examination conducted for the aforementioned post. The petitioner, however, claims that although he had attempted to upload the information with regard to his changed mobile number on DSSSB's website, he did not succeed.

4. Mr Aggarwal contends, in support of the petitioner's case, that representations were made, with regard to the petitioner's inability to upload the e-dossier in time, on 12.11.2021, 15.11.2021 and 24.11.2021. To be noted though, that the record bears testimony to only representations dated 15.11.2021 and 24.11.2021.

4.1. Mr Aggarwal goes on to state that since at least two chances were

given to other candidates, the petitioner ought to have been given at least one chance to upload his e-dossier, as he had otherwise passed the written examination and in his category [i.e., the Other Backward Classes (OBC) category], he, admittedly, has secured more marks than the last candidate who has been selected for the subject post.

4.2. In support of his plea, our attention has been drawn by Mr Aggarwal to the first recall notice dated 11.11.2021 and the second recall notice dated 29.11.2021. These recall notices, broadly, gave opportunity to those candidates to correct deficiencies *qua* documents that had already been uploaded by them. Based on this, Mr Aggarwal contends that the exclusion of the petitioner was unfair.

4.3. Furthermore, Mr Aggarwal has also relied upon the judgment of the Supreme Court rendered in ***Food Corporation of India v. Rimjhim*** 2019 **(**5) SCC 793.

4.4. Based on the observations made in the aforesaid judgment, Mr Aggarwal says that since the petitioner possess the essential qualifications, he should not have been excluded from consideration for appointment to the subject post only because he did not upload the e-dossier before the cut-off date.

5. We have heard Mr Aggarwal at some length and given due consideration to the submissions made by him.

6. Although Mr Aggarwal is right that the petitioner did qualify the written examination and has secured marks which are higher than those secured by the last candidate, provisionally, selected by the DSSSB in his category, he appears to have missed the boat due to his own lethargy and slothfulness.

7. One cannot quibble with the proposition, which has been eloquently articulated in the judgment of the Supreme Court rendered in ***Food Corporation of India***, which, if paraphrased broadly, enunciates the principle that if one has the necessary essential qualifications, the fact that the proof *qua* the same had not been submitted in time, should not be the reason to exclude the candidate from consideration. In other words, the Courts have been urged by the Supreme Court to make a distinction between the factum of possession of essential qualifications by a candidate and the mode of its proof.

7.1. Every judgment has a factual context; at times even a small variation in facts can impact the ratio of the decision. [See ***Haryana Financial Corpn. v. Jagdamba Oil Mills***, (2002) 3 SCC 496[1].] A close scrutiny of the facts, to the extent set forth in the aforementioned judgment of the Supreme Court, would show that the petitioner had approached the Court with due alacrity.

7.2. The written test, in that case, was held on 04.10.2015. The respondent in that case i.e., Rimjhim, who ranked 6th in the merit list, was issued a call

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[1] **19.** Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (at p. 761) Lord MacDermot observed : (All ER p. 14C-D)

> "The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

letter on 31.12.2015. The respondent/ Rimjhim, soon after, was asked to report at the Zonal Office of the appellant/FCI, *inter alia,* for production/verification of original documents; which had been retained by the appellant/FCI in the first instance and were returned to the respondent/Rimjhim, after verification. It is when the respondent/Rimjhim did not receive the final letter of appointment, and her name did not find mention in the list of selected candidates published on the appellant/FCI's website on 02.05.2016, that she made a representation to the appellant/ FCI on 06.05.2016.

7.3. Since the respondent/Rimjhim had not been considered for appointment by the appellant/FCI, she approached the High Court by way of writ petition in and about 27.05.2016. Although the learned Single Judge did not grant her relief, the Division Bench set aside the judgment of the learned Single Judge and granted her relief. It is in these circumstances, that the Supreme Court dismissed the appeal preferred by the appellant/FCI.

7.4. In that case, what was missing, insofar as the respondent/Rimjhim was concerned, was an experience certificate. The respondent/Rimjhim was required to have experience in translation from English to Hindi and *vice versa*; the requirement was to have one year experience in translation. It appears that the respondent/Rimjhim had produced this certificate only before the learned Single Judge.

7.5. There is nothing indicated in the aforementioned judgment of the Supreme Court as to whether there were other candidates in the fray. There is also nothing stated in the said judgment, which would suggest that if the respondent/Rimjhim was considered for appointment to the post of Assistant Grade-II (Hindi), another candidate would end up losing his or her job.

8. In the instant case, the factual matrix is slightly different. As indicated above, the petitioner did not take recourse to any legal remedy up-until he approached the Tribunal.

8.1. The O.A. was filed in the Tribunal in and about 07.02.2022. The delay between the date when the first representation was made, which, as indicated above, was made on 12/15.11.2021, and 07.02.2022, when the petitioner lodged an action before the Tribunal, in our view, is fatal.

8.2. The reason why we say so is that, on 18.01.2022, DSSSB, even according to Mr Aggarwal, has published a list of candidates who are provisionally nominated, albeit as per merit, for the subject post. Therefore, as against the advertised vacancies i.e., which are thirteen [13] in number, the DSSSB has taken out a public notice which sets out the details of those who are in the main list as well as those who are in the waiting panel list.

9. Therefore, in the given facts and circumstances, if we were to entertain the petitioner's writ petition, at this juncture, it will not only be unfair to those who have already been shortlisted, even though provisionally, but to all those who may possibly have secured marks higher than the petitioner in his category i.e., the OBC category.

9.1. It is because of this reason that we are of the view that the fact situation does not permit us to entertain the present writ petition.

9.2. Insofar as the respondents are concerned, they need a closure date, as, otherwise, those who are waiting to secure an employment are left in the realm of uncertainty.

9.3. As observed right at the beginning, no one else but the petitioner is responsible for what has transpired in the instant case. His lack of alacrity and sloppiness has resulted in him not securing the job.

10. Therefore, we find no reason to disturb the impugned order passed by the Tribunal.

11. The writ petition is, accordingly, dismissed.

12. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 23, 2022/sr

Click here to check corrigendum, if any