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

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Date of Decision: 04.10.2023

+ **LPA 368/2014**

SURJIT RAI @ SURJIT GAUR Appellant
Through: Mr V.S.R. Krishna and Mr V.
Shashank Kumar, Advocates.

versus

NATIONAL BAL BHAWAN & ORS. Respondents
Through: Mr S. Rajappa, Advocate for
Respondent No. 1 to
Respondent No. 3.
Mr R. Gowrishankar, Advocate
for Respondent No. 4.
Ms Pratima N. Lakra, CGSC
with Ms Vanya Bajaj and Mr
Kashish G. Baweja, Advocates
for Respondent no.5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present intra court appeal impugning the judgement dated 22.05.2013 (hereafter '**the impugned judgment**') passed by the learned Single Judge of this Court in W.P.(C) No. 2828/1998 captioned *Surjit Rai @ Surjit Gaur v. National Bal Bhawan & Others*. The appellant had filed the aforesaid Writ Petition challenging the appointment of respondent no. 4 as a



Supervisor Bal Bhawan Kendra (BBK) under respondent no. 1 (National Bal Bhawan).

2. The learned Single Judge found that the appellant's challenge to the appointment of respondent no. 4 as a Supervisor, BBK was founded on his claim that he was entitled to be selected for the said post. The Court noted that the appellant was not found suitable and therefore, was not selected. Further, no waiting list was prepared but another candidate, Ms. Yogendra Budhiraja, was placed in the waiting list. Thus, even if the appellant's challenge was accepted and the appointment of respondent no. 4 was quashed, the appellant would not be entitled to any benefit. The Court also felt that there was a minor discrepancy in the qualification of respondent no. 4, but considering that she had discharged her duties on the said post since the year 1996-97, it was not a fit case to exercise its discretion under Article 226 of the Constitution of India.

3. The controversy in the present context relates to qualification of respondent no.4 to be appointed as a Supervisor, BBK.

4. On 24.06.1996, respondent no.1 issued an advertisement for filling up two posts (one in General Category and one in ST Category) of Supervisor, BBK. The essential qualifications of candidates were prescribed as senior secondary or any equivalent qualification from a recognized board and a degree or diploma in Fine Arts with the minimum of three years' experience of working with children. The candidates were also required to have managerial qualities. In



addition, it was desirable that the candidates have interest in one or more Arts, Crafts, Music, Dance, Drama, Literature etc.

5. A total number of 135 candidates applied for the said posts. After sifting the applications, 14 candidates belonging to the General Category and 3 candidates belonging to ST Category were called for interview. The candidates were interviewed by the Selection Committee. The appellant was also one of the candidates called for interview however, he was not found suitable for the post.

6. On 18.03.1997, the Selection Committee recommended respondent no. 4 for the appointment to the post of Supervisor, BBK. Respondent no.4 was, thereafter, appointed to the post of Supervisor, BBK (General Category) and joined her duties with effect from 26.04.1997. She has been employed with respondent no.1 since the said date.

7. There were complaints regarding appointment of respondent no. 4, which were considered by various authorities. It is stated by respondent no.1 that none of the concerned authorities found any merit in the complaints.

8. The appellant as well as Employees Association had complained that respondent no. 4 did not possess the requisite qualifications and did not satisfy the eligibility criteria as set out in the advertisement for inviting applications for the said post.



9. An Inquiry Committee comprising of Assistant Director, Science and Assistant Director, Administration was set up by respondent no. 2. The said Committee submitted a report in November, 1997. The Inquiry Committee found that at no stage of scrutinising the application or conducting the interviews, any of the officials had pointed out any inadequacy in the qualifications possessed by respondent no. 4. The Inquiry Committee found that respondent no.4 had done a matriculation and had cleared a pre-university exam, which was equivalent to senior secondary school qualification. She had a degree of Bachelor of Arts from Delhi University. In addition, she had completed Part-I of Senior Diploma in Sangeet Bhushan, however, that was not equivalent to the diploma in Fine Arts. Respondent no.4 had music as a subject at pre-university in BA-I Level and therefore, satisfied the desirable condition of having interest in one of the Arts.

10. According to respondent no.1, respondent no. 4 had satisfied the essential qualifications as she had a degree in Bachelor of Arts from Delhi University. The essential qualification of “*Degree or Diploma in Fine Arts*” was interpreted to mean any degree, or a diploma in Fine Arts. Since respondent no. 4 had a degree of Bachelor of Arts, there was no requirement for her to hold a diploma in Fine Arts. According to respondent no.1, the qualification of holding a degree was not further qualified to mean only a degree in Fine Arts. However, the Inquiry Committee found that the said interpretation did not seem to be correct.



11. The relevant extract of the said report, which is relied upon by the appellant, is set out below:

“1.8 Interpretation of eligibility clause:

The National Bal Bhavan Society has interpreted the eligibility clause to mean

(i) Senior Secondary or equivalent

with

(any) degree

or

Diploma in Fine Arts

If this interpretation is assumed to be correct than Smt. Sharma who possesses a degree from Delhi university fulfils the eligibility condition and Diploma in Fine Arts’ is only an alternative for Degree (Degree not necessarily in Fine Arts).

However this interpretation does not seem to be correct. For reaching a correct interpretation the qualification clause could be split into following two parts:

(i) one relating to general academic qualification and

(ii) the other relating to professional qualification.

The term senior secondary or equivalent covers the former and the ‘Diploma in Fine Arts’ cover the latter.

The term “Degree” used in the clause could be read in the context of professional qualification and could mean only “Degree in Fine Arts”.

This interpretation is supported by the provision of Final Recruitment Rules also which were then in the process of being framed and now stand promulgated. The new rule provides Senior



Secondary as academic qualifications with degree in fine arts as professional qualification or degree as academic qualification and diploma in fine arts as professional qualification.”

12. There was also a controversy whether respondent no. 4 had the requisite experience of working with children. Respondent no. 4 was employed with the Exploitation Removal Board (Shoshan Unmoolan Parishad) – an organization, which was aided by the Government of India. The said organisation was engaged in setting up centers for welfare of Scheduled Castes/Scheduled Tribes students and imparting training in the areas of tailoring, cutting, stenography etc. During her tenure with Exploitation Removal Board, respondent no.4 had experience of teaching (cutting and tailoring) to children of above the age of thirteen years. In addition, she had also arranged special classes while working as an Assistant Director. She had also examined monthly and other tests, which were conducted by Exploitation Removal Board.

13. The Inquiry Committee found that respondent no.4 was employed with the Exploitation Removal Board from 01.04.1990 to 24.04.1996 and that the Exploitation Removal Board was engaged in imparting training in cutting and training amongst other courses. The Inquiry Committee found that Selection Committee’s assessment to accept respondent no. 4’s experience with trainees in Exploitation Removal Board as the requisite experience, could not be faulted.

14. The learned counsel appearing for the appellant earnestly contended that respondent no. 4 did not meet the eligibility criteria as



she did not have a degree or diploma in Fine Arts. He also contended that respondent no. 4's qualification of completing Part-I of senior diploma in Sangeet Bhushan could not be considered as a qualification in Fine Arts because music is not a Fine Art. According to him, the fact that respondent no. 4 had music as a subject at pre-university and BA-I Level was also of no consequence for the same reason.

15. The Nex Lexicon Webster's Dictionary¹ defines the expression 'Fine Arts' as under:

"Those arts concerned with beauty rather than utility, i.e., usually including poetry and music but sometimes limited to painting, sculpture and architecture".

16. In *O'Sullivan v. English Folk Dance and Song Society*², Per Jenkins L.J. had observed as under:

"I am prepared to accept the wider meaning assigned to the 'fine arts' in the definitions and to treat them as including, for example, poetry, eloquence, and music as well as such 'arts of design' as painting, sculpture, and architecture. We are indeed bound for the present purpose to include music amongst them. It is possible that dramatic art should also be included".

17. We are unable to accept that music is not fine art and any qualification in Music could not be a qualification in fine arts.

18. The question whether the degree in Bachelor of Arts from Delhi University was sufficient to meet the criteria of "*Degree or Diploma*

¹ *The New Lexicon Webster's Dictionary of the English Language* (1988th ed.). (n.d.). (Vol. 1). Lexicon Publications, Inc.

² [1955] 1 W.L.R. 907



in Fine Arts” is a contentious issue. As noted by the Inquiry Committee, respondent no. 1 has interpreted the said qualification to mean either a degree in any subject or a diploma in Fine Arts. According to respondent no. 1, a person who had successfully completed a degree course would satisfy the eligibility criteria. However, if the candidate had not done so, it was essential that the candidate held a diploma in Fine Arts. According to appellant, the said interpretation is incorrect and it was necessary for a candidate to either have a degree in Fine Arts or a diploma in Fine Arts.

19. Undisputedly, the Selection Committee had proceeded on the basis that respondent no. 4 had satisfied the eligibility criteria by virtue of holding a degree in Bachelor of Arts from Delhi University. Neither the Selection Committee nor any of the officials of respondent no.1 had raised any issue regarding respondent no.4’s not meeting the eligibility criteria during the selection process.

20. Respondent no.1 is the employer and had issued the advertisements. It had prescribed the eligibility criteria for the post in question. Therefore, its interpretation of the eligibility criteria must be accepted in the event of any ambiguity.

21. It is also well settled that a remedy under Article 226 of the Constitution of India is a discretionary remedy.



22. In *Thansingh Nathmal v. Superintendent. of Taxes*³, the Supreme Court held as under:

“7.The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so.

23. In *Century Spinning and Manufacturing Company Ltd. & Another v. Ulhasnagar Municipal Council & Another*⁴, the Supreme Court held as under:

“8. The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition.”

24. We find no infirmity with the decision of the learned Single Judge in refraining from entertaining the petition in the given facts and circumstances of the case.

25. It is also pointed out by Mr Rajpappa, learned counsel appearing for respondent no. 1, that respondent no. 4 will retire from services in February, 2024 after a satisfactory continuous service spanning about 27 years.

³ 1964 SCC OnLine SC 13

⁴ (1970) 1 SCC 582



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26. In view of the above, we are not persuaded to accept that any interference with the impugned order is warranted.

27. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 04, 2023
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