

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1597 of 2015

Reserved on: 15.1.2020

Date of order: 27.01.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Aparna Pal,
 Wife of Sankar Pal,
 Aged about 52 years,
 By faith Hindu,
 By Occupation – Service,
 Residing at 1/35/B, Ashoke Nagar,
 Post Office – Regent Park,
 Kolkata – 700 040.

.. Applicant

- V E R S U S -

1. National Institute of Fashion Technology
 (Ministry of Textile),
 Government of India,
 Calcutta Branch,
 H.O. at NIFT Campus,
 Houz Khas near Gulmohar Park,
 New Delhi – 110 016.
2. Union of India,
 Through the Secretary,
 Ministry of Textiles,
 Government of India,
 New Delhi – 110 011.
3. The Director,
 National Institute of Fashion Technology (NIFT),
 L.A. Block,
 Sector – III,
 Near 16 No. Tank,
 Salt Lake City,
 Kolkata – 700 098.
4. Registrar,
 National Institute of Fashion Technology,
 NIFT Head Office,
 Establishment Department,
 New Delhi – 110 016.

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... Respondent

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. B. Chatterjee, Counsel

O R D E R**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) Pass an order directing the respondent authorities to cancel and / or quash and/or rescind the office memorandum dated February 6, 2015 and the order dated June 30, 2015.
- (b) Pass an order directing the respondent authorities to regularize the applicant to a suitable post available in the present recruitment rules.
- (c) Pass an order directing the respondent authorities to consider the applicant for promotional post of Assistant for which she is eligible.
- (d) Pass an order directing the respondent authorities to take appropriate steps to regularize the services of the applicant."

2. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

3. Ld. Counsel for the applicant would submit that the applicant had joined the respondent authorities to the post of Warden for girls hostel on December 1, 1997, and, was, thereafter, appointed to the post of Junior Assistant (Library) w.e.f. September 15, 1999. In the orders of September 15, 1999, however, her designation was incorrectly noted as Hostel Warden which was subsequently corrected by a corrigendum dated September 20, 1999. That, on October 21, 2014, the respondent authorities arbitrarily amended the designation of the applicant from Junior Assistant (Library) to that of the Library Attendant, and, that, the respondent authorities, in response to queries of the applicant, had informed her that there were no recruitment rules for recruitment to the post of Warden or Junior Assistant (Library).

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That, despite her representations against such arbitrary orders, vide an Office Memorandum dated February 6, 2015, the respondents downgraded the applicant retrospectively with effect from the date of her initial appointment. The respondent authorities also issued an order directing all concerned to refer to the applicant as a Library Attendant. Being aggrieved, with the allegedly arbitrary downgrading with retrospective effect, the applicant has approached this Tribunal for relief.

The applicant would advance, inter alia, the following grounds in support of her claim:-

- (i) That, the respondents have admitted that in terms of the instant recruitment rules there was no post of Library Attendant. Therefore, the applicant sought not have been designated to a post which did not exist.
- (ii) That, the respondent authorities not only informed the applicant that the documents relating to the initial appointment of the applicant were not traceable but further informed that at the relevant point of time there were no recruitment rules for the purpose of recruitment to the post of Warden or Junior Assistant (Library).
- (iii) In terms of advertisement of recruitment to the post of Hostel Warden, the applicant being eligible was appointed to the post of Hostel Warden.
- (iv) As the post of Library Attendant ceased to exist from the date on which the present recruitment rules came into force, the respondents could not have retroactively designated the applicant as Library Attendant.
- (v) That, by virtue of her past services, the applicant is entitled to be promoted to the post of Assistant.

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4. Per contra, the respondents would argue as follows:-

- (i) The appointment of the applicant was made in the year 1999 when there were extant recruitment rules for the post of Library Attendant (as per Annexure R-1 to the reply and Annexure A-7 to the O.A.).
- (ii) As per recruitment rules, there were no post of Junior Assistant (Library).
- (iii) That, the applicant was not eligible for the post of Junior Assistant as she did not possess the qualification of 10+2. The applicant also did not meet the criteria of age limit.
- (iv) The administration is entitled to take a corrective action when an error has been detected. Hence, the designation of the applicant has been changed to a post for which she was eligible with reference to her educational qualifications.
- (v) At the material point of time there were no recruitment rules for the post of Assistant Warden. Recruitment rules framed in 2004 required an essential qualification of Graduation which the applicant failed to fulfill.
- (vi) That, while the applicant has furnished a certificate on her Bachelors Preparatory Programme (BPP) from IGNOU, the respondents have ascertained from the prospectus of IGNOU (at Annexure R-3 to the reply) that Bachelor's Preparatory Programme is offered by the University to those students who wish to obtain a Bachelor's Degree from IGNOU but do not have the essential qualification of having passed 10+2. As a result, Bachelor's Preparatory Programme is not equivalent to 10+2 and has no credit weightage.

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(vii) Vide Office Memorandum dated 21.10.2014 and 6.2.2015, it was clarified that the applicant would continue to hold a Group "C" post and would draw the same pay as that of the Junior Assistant as the pay scale of Junior Assistant, Library Assistant and Library Attendant are similar. It was clarified by the respondents that the change in her designation would neither affect her pay or career and she would not suffer any financial loss on account of her redesignation.

5. The moot issues which require to be resolved in the instant Original Application are:

- (i) whether the applicant has been posted according to her eligibility and entitlement, and,
- (ii) whether the applicant was prejudiced in terms of orders dated February 6, 2015 and June 30, 2015 respectively.

6.1. We find from the documents annexed to the pleadings that the applicant was initially appointed on 24.11.1997 on contract basis as Warden for Girls hostel of NIFT, Kolkata (Annexure A-1 to the O.A.). Thereafter, on 15.9.1999, (Annexure A-2 to the O.A.), the applicant was offered appointment to the post of Hostel Warden. Such notification advertising the post of Hostel Warden was not furnished by either of the parties, and, hence, the applicant's averments in Para 5(V) to the O.A. that she was eligible for the said post of Hostel Warden in terms of advertisement to the said post, could not be verified.

On 20.9.1999 (Annexure A-2 to the O.A.), the respondent authorities arbitrarily amended the applicant's designation from Hostel Warden to Junior Assistant (Library). No rules or appropriate authorization is on record to establish that such redesignation as Junior Assistant (Library) was a correct order. It is clear from the recruitment rules annexed both by the applicant and the respondents that, although

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there was a post of Junior Assistant, there was no post of Junior Assistant (Library) as specified in the order dated 20.9.1999.

It is also seen, upon a perusal of the recruitment rules that the essential qualification for the post of Junior Assistant was as follows:-

1	2	3	4	5
	Name of the post	Scale of pay	Age limit for direct recruitment	Educational and other qualifications required for direct recruitment
4.	Junior Assistant	Rs. 950-1500	18-25 years	<ul style="list-style-type: none"> (i) Must have passed 10 + 2 Examination or its equivalent recognized by Government Having a speed of 30 w.p.m. in English typing (ii) DESIRABLE <ul style="list-style-type: none"> (i) Knowledge of Hindi typing with speed of 25 w.p.m. (ii) Knowledge of operation of PABX/PBX system

The applicant would assert that she did have the educational qualification of 10+2 at the material point of time by annexing a certificate dated 31.5.2001 (Annexure A-4 to the O.A.) that refers to her successful completion of BPP Programme with IGNOU. The respondents, however, have clarified vide Annexure R-3 to the O.A. that such BPP Programme is offered by the University to those who do not have essential qualifications of having passed 10+2. Accordingly, the certificate that she had successfully completed the BPP Programme of IGNOU issued in 2001 does not come to the aid of the applicant in certifying or establishing that she possessed the essential qualifications as required under the recruitment rules of Junior Assistant.

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6.2. The respondents, thereafter, issued a memorandum on 21.10.2014 clearly explaining that she did not have the requisite qualifications for the post of Junior Assistant, but met the eligibility criteria for Library Attendant as per recruitment rules annexed at Annexure A-7 to the O.A. as well as R-11 to the reply. The requisite recruitment rules of Library Attendant (Annexure A7 to the O.A) states as follows:-

1	2	3	4
Name of the Post	Scale of Pay	Age limit for direct recruitment	Educational and other qualifications required for direct recruits
Library Attendant	Rs. 950-1400	18-25 yrs	10 th class from Board or its equivalent recognized by Govt. Ability to read Hindi & English. Desirable: 10+2 with typing and some knowledge of documentation.

which admittedly were the qualifications that the applicant had obtained at the material point of time.

6.3. The applicant had approached the Hon'ble High Court, Calcutta vide a Writ Petition No. 5263 (W) of 2015 (Annexure R-2 to the reply) which was disposed of on 7.4.2015 stating as follows:-

“ Since the relevant order protects the pay of the petitioner and the future prospects of the petitioner in her service and the petitioner cannot demonstrate to the contrary, WP. 5263 (W) of 2015 is disposed of by directing the respondent institute to ensure that the pay protection that would have been due to the petitioner had her designation not been changed is accorded to the petitioner despite the change in her designation.”

Subsequently, the Hon'ble High Court Calcutta upon deciding on a recalling application of the petitioner in CAN 4971 of 2015 in W.P. 5263 (W) of 2015 disposed of the CAN and the Writ Petition with liberty to the petitioner to approach the appropriate forum in accordance with law. Even if such orders were recalled, the fact remains that the Hon'ble High Court Calcutta while deciding on merits the matter, disposed the same on the grounds that the relevant order of the respondents had protected the pay of the petitioner as well as the future prospects of the petitioner in her service. By virtue of such order, the respondent authority was only

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to ensure that the applicant's pay to be protected on account of the change in designation.

6.4 Office Memorandum dated 21.10.2014 states as follows:-

"5. It has therefore been decided to designate Ms. Aparna Pal as Library Attendant retrospectively w.e.f. 1.12.1999 in the pay scale of Rs. 3050-4590/- and PB-1 of Rs. 5200-20200/- with GP 1900/- replaced 01/01/2006 which are equivalent to the pay scale of Junior Assistant and Library Assistant. As the pay scales of Junior Assistant and Library Attendant are similar she will continue to draw the pay being drawn by her."

which establishes that despite the change in designation there would be no prejudicial effects upon the applicant as far as the pay scale is concerned.

6.5 We further find that, at all stages the applicant has been given a chance to represent against the proposed re-designation of the applicant and vide a detailed order dated 11.11.2014 (Annexure A-7 to the O.A.), the respondents have also replied to the applicant's letter dated 3.11.2014 in which they had taken steps to enclose the relevant recruitment rules in force during 1999 for the post of Junior Assistant as well as that for Library Attendant.

The applicant in her rejoinder has argued as follows:-

That, she did meet the requirements for the post of Junior Assistant (Library) which she has joined on 1.12.1999. That, it is immaterial whether the post of Library Attendant was existing in 1999 and also that the qualification of 10+2 examination was not at all required for the post of Junior Assistant (Library). Each of these averments, as above, are denied by records, namely in that;

(a) There were no recruitment rules for the post of Junior Assistant (Library).

(b) The post of Junior Assistant called for academic qualification of 10+2, which the applicant did not possess.

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(c) The post of Library Attendant was notified in the recruitment rules at the material point of time calling for such eligibility conditions that the applicant fulfilled.

6.6 We would refer to the ruling of the Hon'ble Apex Court that it is the prerogative of the employer to prescribe recruitment qualifications. In ***Banarasidas v. State of UP, AIR 1956 SC 520*** the Hon'ble Court held that it is open to the appointing authority to lay down requisite qualifications for recruitment to Government Service. In ***Commissioner, Corpn. of Madras v. Madras Corpn. Teachers' Mandram, 1997 (2) SLR 468*** the Court ruled that recruitment qualification pertains to the domain of policy. Reiterating the said ratio in ***Basic Education Board UP v. Upendra Rai, (2008) 3 SCC 432***, it has been held that change in eligibility conditions/educational qualification for the purpose of recruitment has been held to be a policy decision which cannot be interfered with by the courts. This was upheld in ***V.K. Sood v. Secretary, Civil Aviation, AIR 1993 SC 2285 at 2288*** that it is for the authorities to prescribe the qualifications and it is not the province of the court to prescribe qualifications or entrench into such matters. In ***Mangej Singh v. Union of India, (1998) 9 SCC 471*** it was held that normally it is for the State to decide the qualifications required and the courts cannot substitute the requirements on their assessment of what the requirements should be.

The above ratio conclusively lays down that prescription of qualifications is the prerogative of the employer. The respondent authorities in the instant matter have notified such qualifications in their recruitment rules extant at the material point of time. The applicant could not establish that she possessed the requisite qualifications, namely 10+2 pass, a mandatory requirement for the post of Junior

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Assistant. Hence, we find the respondent authorities not only had acted as per the Rules, but also took a sympathetic view in ensuring that the applicant's pay is protected upon redesignation to the post to which she was entitled.

Accordingly, we are of the considered view that the actions of the respondent authorities were not prejudicial to the applicant and refrain from intervening in the orders so impugned.

7. The O.A. is dismissed on merit.

Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member



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