

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: July 9th, 2010

+ W.P.(C) 10535/2009

Deepak Kumar Petitioner
Through: Mr. Apurb Lal with Ms. Alka & Mr. Daleep
Singh, Advocates

-versus-

Delhi Transco Ltd & anr Respondents
Through: Mr. Aman Sinha, Adv. for R-1
Ms. Ruchi Sindhvani, Adv. for R-2.

**CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J.

1. By way of present petition under Article 226 of the Constitution of India, petitioner has prayed for the following directions:-

“(1) direct the respondents to remove the name of the petitioner from overage category;
(2) declare the result of part-II papers of the petitioner for ends of justice and
(3) pass such other or further order as this Hon’ble Court may deem fit and proper.”

2. The facts leading to the filing of present petition are as under:-

The petitioner had passed matriculation examination in the year 1997. In May, 2002, he had passed senior secondary examination from National Open School. In 2005, petitioner did Diploma in Electric Engineering from Chhotu Ram Rural Institute of Technology, affiliated to Board of Technical Education, Delhi. Respondent no.1 i.e Delhi Transco

Ltd requested respondent no.2 i.e Delhi Subordinate Services Selection Board (in short referred to as `DSSSB`) for selection of candidates for various posts including the post of Assistant Electric Fitter to which the petitioner had applied. Respondent no.2 i.e DSSSB advertised various posts for appointment in respondent no.1 in Employment News dated 7/13th June, 2008 (Annexure P-3 Rozgar Samachar Page 16 of paper book). Petitioner applied for the post of "Assistant Electric Fitter" wherein age prescribed was 35 years as per advertisement. Petitioner submitted his application on 7th July, 2008 along with all necessary documents and was issued `Admit card`. On 8th March, 2009, petitioner appeared in the examination conducted by respondent no.2 i.e DSSSB. In July, 2009, complete merit of short listed candidates was displayed wherein the name of the petitioner was at sr.no.60. It was shown as `overage`.

3. The contention of the petitioner is that petitioner has been wrongly declared as `over age` and his result has been wrongly withheld by respondent no.2. It is contended that as per advertisement, petitioner was not overage. It is, therefore, prayed that petitioner's name may be removed from `overage` category and result of Part II examination be declared.

4. The respondent no.2 i.e DSSSB has filed counter affidavit opposing the present petition. The stand of respondent no.2 is that two requisitions for filling up 69 vacancies of Assistant Electric Fitter were sent by respondent no.1 to respondent no.2 along with recruitment rules. The same were advertised by respondent no.2 in leading newspapers of English, Hindi, Punjabi and Urdu as well as Employment News. The age limit for the post of `Assistant Electric Fitter` was published as "Not exceeding 25 years" which was as per requisitions send by the user department i.e respondent no.1. However, there was relaxation in upper

age limit for SC, ST as well as OBC category which is not relevant for disposal of the present writ petition as the petitioner has not applied in that category. The stand of respondent no.2 is that inadvertently the maximum age for recruitment has been published in some Hindi newspaper as "not exceeding 35 years" instead of 25 years. The stand of respondent no.2 is that in English newspaper, the age given for the post of 'Assistant Electric Fitter' was "not exceeding 25 years". Further, as per recruitment rules of respondent no.1, the age given is 'not exceeding 25 years' for general category. It is contended that as the petitioner was not fulfilling the eligibility criteria as regards age is concerned, he has rightly been not considered for the said post being ineligible. It is contended that misprint of advertisement in the 'Hindi Newspaper' does not entitle the petitioner to take advantage of the same when there was clear mention in advertisements in English and Hindi Newspapers that in case of any discrepancy among the English, Hindi, Urdu and Punjabi versions of the advertisement/information, the "English version" will be treated as final.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for petitioner is relying upon the advertisement given in the Hindi newspaper i.e Rozgar Samachar dated 7-13 June, 2008 wherein the age limit for the post of 'Assistant Electric Fitter' Post Code-006/08 is mentioned as 'not exceeding 35 years'. Relaxation is there for SC/ST/OBC category but same is not necessary as the petitioner had not applied in that category.

The respondent no.2 is relying upon requisitions along with Recruitment Rules sent by respondent no.1 to respondent no.2 as well as copies of advertisements annexed with counter affidavit. The relevant requisition of respondent no.1 in this regard is placed on record (page 29

of the paper book)which is reproduced as under:-

- “5. Age limits:
- | | | |
|--------|--|------------------------|
| (a) | As per Recruitment Rules | Not exceeding 25 years |
| (b) | Relaxation in upper age limit available to: | |
| (i) | SC | by <u>5</u> years |
| (ii) | ST | by <u>5</u> years |
| (iii) | OBC | by <u>3</u> years |
| (iv) | PH | N.A |
| (v) | PH & SC/ST | N.A |
| (vi) | PH & OBC | N.A |
| (vii) | Government servant & Departmental candidates | N.A |
| (viii) | Are the age limits Relaxable for Women/ Widows | N.A |

The advertisement appearing in English Newspaper “The Hindu” dated 13th May, 2008 clearly mentions the age limit for the aforesaid post as “not exceeding 25 years”. Further clause (8) of NOTE appearing in the aforesaid advertisement clearly mentions as under:-

“In case of any discrepancy among the English, Hindi, Urdu and Punjabi versions of the advertisement/information, the English version will be treated as final.”

Even the Hindi Newspaper “Amar Ujala” dated 13th May, 2008 also gives the similar note as is mentioned above.

Clause 10 of the advertisement (page 47 of the paper book) is also relevant which is as under:-

“(10) CANCELLATION OF CANDIDATURE

- (i) The candidates applying for the posts should ensure that they fulfil all the eligibility conditions. Merely because a candidate has been allowed to appear at the examination it will not be considered as a valid ground for his/her being eligible for the selection. If on verification at any time or after the written examination or at any stage of recruitment process, if it found that they do not fulfil any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled by the Board/Appointing Authority.”

7. In view of above discussion, it may be seen that as per Recruitment Rules of respondent no.1, the age limit for the post of 'Assistant Electric Fitter' is "not exceeding 25 years". In the advertisement for filling up the vacancies for the aforesaid post, in Hindi Newspaper, maximum age limit has been published as 'not exceeding 35 years' whereas in English Newspaper as noted above, it has been published as per recruitment rules of respondent no.1 i.e "not exceeding 25 years". There was a discrepancy of age in Hindi Newspaper as the same was published contrary to Recruitment Rules of respondent no.1. The "Note-clause 8 appearing in the advertisement to the effect that "In case of any discrepancy among the English, Hindi, Urdu and Punjabi versions of the advertisement/information, the English version will be treated as final" clarifies the position i.e maximum age of recruitment for the aforesaid post is 25 years. The above note is there in both the newspapers i.e Hindi as well as English (page 49 & 51 of the paper book). The petitioner did not deliberately annexe the complete advertisement with the petition so as to hide the true facts. The same amounts to concealment of material facts. The petitioner is admittedly of 28 years of age when he applied for the said post i.e he was not fulfilling the eligibility criteria. There is also a clear mention in the advertisement that if a candidate does not fulfil any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled by the respondent. The petitioner has been rightly declared overage. No illegality is done by the respondent no.2 in declaring him 'overage' as he does not fulfil the eligibility criteria. In any event grant of relief under Article 226 of the Constitution of India is a discretionary relief. Considering the facts and circumstances of the case, present is not a fit case for exercise of such a discretion in favour of petitioner.

I find no merit in the petition and dismiss the same. There shall be no order as to costs.

VEENA BIRBAL, J.

July 9th, 2010
ssb