

RITU BHATIA

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v.

MINISTRY OF CIVIL SUPPLIES CONSUMER AFFAIRS &
PUBLIC DISTRIBUTION AND OTHERS

(Civil Appeal No. 1467 of 2019)

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FEBRUARY 05, 2019

[L. NAGESWARA RAO AND M. R. SHAH, JJ.]

Service Law – Termination – Respondent no.2 invited applications for the post of Company Secretary – Advertisement provided for five years post qualification mandatory experience as a Company Secretary as on 30.11.2013 in a PSU/Private Company of repute – Appellant applied for the post of Company Secretary and was appointed to the post of Company Secretary – Appellant's service terminated by respondent no.2 on the ground that she did not have the requisite five years' experience for the post of Company Secretary – Challenge by appellant before the High Court, dismissed – Held: As per appellant she was working as Assistant Company Secretary for the period between June 2008 to May 2010 in Utkal Investments Limited, as Management Trainee in the Delhi Stock Exchange Association Limited for the period between April 2005 to June 2006, and as Management Trainee in ONGC for the period between May 2003 to June 2004 – Her appointment as Management Trainee cannot be equated and/or considered as appointment 'as' a Company Secretary – Word 'as' used in the advertisement should be given a literal meaning – It cannot be said that the appellant had, while working as a 'Management Trainee', functioned 'as' a 'Company Secretary – Word 'as' and the words 'experience as Company Secretary' used in the advertisement are very clear and means that the candidate ought to be appointed and worked 'as' a Company Secretary – Appellant had no experience of five years 'as' Company Secretary and she did not fulfil the eligibility criteria of having five years post qualification experience 'as' Company Secretary as on 30.11.2013 – Services of the appellant rightly terminated.

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A **Dismissing the appeal, the Court**

HELD: 1.1 As per the case of the appellant she was working as Assistant Company Secretary for the period between June 2008 to May 2010 in Utkal Investments Limited and she was working as Management Trainee in the Delhi Stock Exchange Association Limited for the period between April 2005 to June 2006, and as the Management Trainee in ONGC for the period between May 2003 to June 2004. Her appointment as Management Trainee cannot be equated and/or considered as appointment ‘as’ a Company Secretary. [Para 7.2][670-D-E]

1.2 The word ‘as’ used in the advertisement should be given a literal meaning. The respondent is the author of the advertisement and they are the best person to consider what they meant by using the word ‘as’. It is the specific case on behalf of the respondents that the intention behind the advertisement was that the applicant must have been appointed ‘as’ a Company Secretary in PSU/Company of repute and functioned as such for five years to be eligible for appointment. According to the respondent, the purpose was that the person should have held the position of a Company Secretary in a PSU/Company of repute and discharged the statutory functions as such i.e. should have held the position of responsibility. Therefore, when the word ‘as’ is specifically used, the same is to be considered strictly and therefore the experience of the appellant, while working as a ‘Management Trainee’ cannot be considered as an experience of working ‘as’ a Company Secretary and/or it cannot be said that she was appointed ‘as’ a Company Secretary. If the period during which the appellant had worked as a ‘Management Trainee’ is excluded, in that case, admittedly, the appellant would not be fulfilling the requisite eligibility criteria of having been appointed ‘as’ a Company Secretary in a PSU/Company of repute. It cannot be said that the appellant had, while working as a ‘Management Trainee’, functioned ‘as’ a ‘Company Secretary. If submission on behalf of the appellant is accepted that by performing duties as ‘Management Trainee’ she was also performing some duties as ‘Company Secretary’ and therefore she can be said to have fulfilled the eligibility criteria of having been appointed ‘as’ a Company Secretary, in that case, it would be against the intent. If the

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intention was such, in that case, the wording in the advertisement should have been that the candidate should have the experience of the similar nature of work as “Company Secretary”. In the advertisement, it has been specifically and categorically stated that a candidate shall have post qualification experience of five years ‘as’ Company Secretary. The word used “experience as Company Secretary” has to be given meaning that a candidate must have been appointed ‘as’ a Company Secretary and shall have actually worked ‘as’ a Company Secretary for five years. Giving other meaning would be changing the eligibility criteria as mentioned in the advertisement. The appellant has no experience of five years ‘as’ Company Secretary, as she was appointed and/or worked as ‘Management Trainee’ or ‘Assistant Company Secretary’. [Paras 7.3, 7.4][670-F-H; 671-A-E]

1.3 In the present case, the word ‘as’ and the words ‘experience as Company Secretary’ used in the advertisement are very clear and it means the candidate ought to be appointed and worked as such ‘as’ a Company Secretary. As appellant did not fulfil the eligibility criteria of having five years post qualification experience ‘as’ Company Secretary as on 30.11.2013, the services of the appellant have rightly been terminated. [Paras 7.6, 8][672-E-G]

Dr. Asim Kumar Bose v. Union of India and Others
(1983) 1 SCC 345 : [1983] 2 SCR 16 – distinguished.

Case Law Reference

[1983] 2 SCR 16 distinguished Para 5.5

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1467 of 2019.

From the Judgment and Order dated 31.07.2017 of the High Court of Delhi at New Delhi in L.P.A. No. 160 of 2015.

Sunil Kumar, Sr. Adv., Ms. Rohini Prasad, Ashish Kumar, Akshat Chaitanya, Mrs. Sarla Chandra, Advs. for the Appellant.

Gaurab Banerji, Sr. Adv., Ashish Tiwari, Gaurav Agrawal, Ms. Manisha Singh, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

M. R. SHAH, J. 1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Delhi dated 31.07.2017 passed in Letter Patent Appeal (LPA) No.160 of 2015
B by which the Division Bench has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge dated 02.02.2015 passed in Writ Petition (C) No.977 of 2015 dismissing the said writ petition by not interfering with the order terminating the services of the appellant, the original writ petitioner has preferred the
C present appeal.

3. That respondent no.2 herein-Central Railside Warehouse Company Limited invited applications for the post of Company Secretary. That respondent no.2's advertisement, specifically provided for, five years post qualification mandatory experience as a Company Secretary as on
D 30.11.2013 in a PSU/Private Company of repute. The appellant herein applied for the post of Company Secretary. In her application she categorically stated that she had post qualification experience of seven years and three months. That thereafter she appeared in an interview held by respondent no.2 and was offered appointment to the post of Company Secretary vide memorandum dated 13.03.2014. Thereafter,
E she was appointed on regular basis to the post of Company Secretary by Office Order dated 22.04.2014. A show cause notice dated 01.11.2014 was issued by respondent no.2 calling upon the appellant to explain why her services should not be terminated as she did not have the requisite five years' experience for the post of Company Secretary. The appellant
F submitted her reply to the above show cause notice. Respondent no.2 thereafter vide its order dated 02.01.2015 terminated the services of the appellant.

4. The order of termination was challenged by the appellant before the High Court in Writ Petition (C) No.977 of 2015. By order dated
G 02.02.2015, the learned Single Judge dismissed the said petition. The order passed by the learned Single Judge dismissing the writ petition was the subject matter of the appeal before the Division Bench of the High Court by way of LPA No.160 of 2015. By the impugned judgment and order, the Division Bench has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge
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dismissing the writ petition. The order passed by the Division Bench in LPA No.160 of 2015 is the subject matter of the present appeal. A

5. Shri Sunil Kumar, learned Senior Counsel has appeared on behalf of the appellant herein and Shri Gourab Banerji, learned Senior Counsel has appeared on behalf of respondent no.2 herein.

5.1 Shri Sunil Kumar, learned senior counsel has submitted that in the facts and circumstances of the case, the High court committed a grave error in approving the order of termination on the ground that the appellant was not having the requisite qualification of having experience of five years as a Company Secretary. It is submitted by Shri Sunil Kumar that the High Court has failed to appreciate the fact that though during seven years and three months experience shown in her application, the appellant might have been appointed as Management Trainee and Assistant Company Secretary and consequently might not have been actually appointed as the Company Secretary, however, the appellant was discharging certain or some functions/duties during the period of a Company Secretary. It is submitted that therefore it can be said that the appellant was having requisite experience of five years as a Company Secretary. Therefore, the period during which the appellant was working as a Management Trainee is required to be counted as the requisite experience for the post of Company Secretary. B C D

5.2 It is further submitted by Shri Sunil Kumar, learned senior counsel that the object and purpose behind asking for the experience as a Company Secretary was that the applicant has an experience of working as Company Secretary and not that he/she had actually worked and/or performed the duties as a Company Secretary under the provisions of the Company Secretary Act 1980. It is submitted therefore, the High Court committed an error to hold that the appellant was not having the requisite experience as a Company Secretary. E F

5.3 Relying upon prescribed format of submitting the application attached with the application form, it is submitted that what was required was the qualification/ experience as Company Secretary and not actual working as Company Secretary. G

5.4 It is further submitted by Shri Sunil Kumar, learned senior counsel that as far as the experience gained by the appellant while working with Bharat Bhushan Shares and Commodity Brokers Limited is concerned, the High Court has committed a grave error in considering H

- A the experience only till May, 2007, though the Form-32 shows the date of cessation as 29.06.2007.

5.5 Relying upon the decision of this Court in the case of *Dr. Asim Kumar Bose v. Union of India and Others* (1983) 1 SCC 345, it is submitted by Shri Sunil Kumar that as observed and held by this Court, the word 'as' must be interpreted in its ordinary sense as 'in the capacity of' or be interpreted as the words like, 'similar to', 'of the same kind', 'in the same manner' or 'in the manner in which'. It is submitted, therefore, the word 'as' used in the advertisement should mean that the applicant shall have the experience similar as to or like or of the same kind of Company Secretary. It is submitted, therefore, the experience gained by the appellant while working as Management Trainee and during which the appellant was also performing the similar duties of a Company Secretary, the said experience was required to be counted for the purpose of calculation of experience of five years as Company Secretary.

- D 5.6 Making above submissions it is prayed to allow the present appeal and set aside the order passed by the High Court as well as the order of termination terminating the services of the appellant as a Company Secretary.

6. Present appeal is opposed by Shri Gourab Banerji learned Senior Counsel appearing on behalf of the respondents. It is submitted by Shri Banerji that in the advertisement, inviting the applications for the post of Company Secretary, it was specifically mentioned that the candidate must have an experience of five years **as** a Company Secretary. It is submitted that the obvious intention behind the advertisement was that the applicant must have been appointed '**as**' a Company Secretary in PSU/Company of repute and functioned as such for five years '**as**' a Company Secretary, to be eligible for appointment.

- G 6.1 It is further submitted that the purpose was that the person should have held the position of a Company Secretary in a PSU/Company of repute and discharged the statutory functions as such i.e. should have held the position of responsibility. It is submitted that in the present case and even from the particulars given by the appellant while submitting the application and even from the self-attested documents/experience certificates enclosed with the application, it can be seen that the appellant was not fulfilling the requisite eligibility criteria of having an experience of five years '**as**' a Company Secretary. Shri Banerji further submits that, as it is evident, during the period when the appellant claimed the

experience as required, the appellant worked as ‘Management Trainee’ and even as ‘Assistant Company Secretary’. It is submitted that experience as ‘Management Trainee’ and or ‘Assistant Company Secretary’, cannot be counted for the purpose of considering the eligibility criteria of five years ‘as’ a Company Secretary. A

6.2 Further Shri Banerji submitted that, therefore, when it was found that the total post qualification experience of the appellant ‘as’ Company Secretary was less than five years against the requirement of minimum five years’ experience and thereafter when the services of the appellant were terminated on the ground that at the time when the application was invited, she was not fulfilling the eligibility criteria, her services have been rightly terminated. It is submitted that the High Court in the impugned judgment and order has considered in detail the experience of the appellant while working in Delhi Stock Exchange Association Limited; Bharat Bhushan Shares and Commodity Brokers Limited; Utkal Investment Limited and thereafter considering the material on record, has rightly refused to interfere with the order of termination and has rightly rejected the petition. B C D

6.3 Shri Banerji. Learned counsel for the respondent has further submitted that so far as the reliance placed upon the decision of this Court in the case of *Dr. Asim Kumar Bose* (supra) relied upon by the learned Senior Counsel appearing on behalf of the appellant is concerned, it is submitted by Shri Banerji that on facts, the said decision shall not be applicable to the facts of the case on hand. It is submitted that the said decision is distinguishable on facts. It is submitted that, on interpretation of the relevant rules, this Court held that the word ‘as’ in the collocation of the words used “at least six years’ experience as Associate Professor/ Assistant Professor/reader” and the words “at least five years’ experience as Reader/Assistant Professor” must be interpreted in its ordinary sense as meaning teaching experience gained “in the capacity of”. It is submitted that before this Court the question was whether a Specialists’ Grade II in a teaching hospital belonging to the Central Health Service was eligible for appointment or promotion as a Professor or Associate Professor of the concerned speciality? It is submitted therefore, the said decision shall not be applicable to the facts of the case on hand. Making above submissions, it is prayed to dismiss the present appeal. E F G

7. Heard the learned Senior Counsel appearing on behalf of the respective parties at length. The question which is posed for consideration H

- A before this Court is, whether in the facts and circumstances of the case can it be said that the appellant fulfilled the eligibility criteria mentioned in the advertisement of having experience of five years ‘as’ a Company Secretary and/or, can it be said that the period during which the appellant worked as ‘Management Trainee’ and/or ‘Assistant Company Secretary’ be considered for treating the appellant having been appointed ‘as’ a Company Secretary so as to become eligible for the post of Company Secretary which was advertised?

7.1 From the material on record, more particularly the application submitted by the appellant and the supporting self-attested documents and the certificates, it appears that according to the appellant she was having seven years and three months post qualification experience. The same is reproduced and considered by the High Court in para 3 of the impugned judgment and order.

7.2 Considering the above, it appears and even it can be seen from the relevant appointment orders, and even as per the case of the appellant that she was working as Assistant Company Secretary for the period between June 2008 to May 2010 in Utkal Investments Limited and that she was working as Management Trainee in the Delhi Stock Exchange Association Limited for the period between April 2005 to June 2006, and as the Management Trainee in ONGC for the period between May 2003 to June 2004. Her appointment as Management Trainee cannot be equated and/or considered as appointment ‘as’ a Company Secretary.

7.3 The word ‘as’ used in the advertisement should be given a literal meaning. The respondent is the author of the advertisement and they are the best person to consider what they meant by using the word ‘as’. It is the specific case on behalf of the respondents that the intention behind the advertisement was that the applicant must have been appointed ‘as’ a Company Secretary in PSU/Company of repute and functioned as such for five years to be eligible for appointment. According to the respondent, the purpose was that the person should have held the position of a Company Secretary in a PSU/Company of repute and discharged the statutory functions as such i.e. should have held the position of responsibility. Therefore, when the word ‘as’ is specifically used, the same is to be considered strictly and therefore the experience of the appellant, while working as a ‘Management Trainee’ cannot be considered as an experience of working ‘as’ a Company Secretary and/or it cannot be said that she was appointed ‘as’ a Company Secretary.

If the period during which the appellant had worked as a ‘Management Trainee’ is excluded, in that case, admittedly, the appellant would not be fulfilling the requisite eligibility criteria of having been appointed ‘as’ a Company Secretary in a PSU/Company of repute. It cannot be said that the appellant had, while working as a ‘Management Trainee’, functioned ‘as’ a ‘Company Secretary.’

7.4 If submission on behalf of the appellant is accepted that by performing duties as ‘Management Trainee’ she was also performing some duties as ‘Company Secretary’ and therefore she can be said to have fulfilled the eligibility criteria of having been appointed ‘as’ a Company Secretary, in that case, it would be against the intent. If the intention was such, in that case, the wording in the advertisement should have been that the candidate should have the experience of the similar nature of work as “Company Secretary”. In the advertisement, it has been specifically and categorically stated that a candidate shall have post qualification experience of five years ‘as’ Company Secretary. The word used “experience as Company Secretary” has to be given meaning that a candidate must have been appointed ‘as’ a Company Secretary and shall have actually worked ‘as’ a Company Secretary for five years. Giving other meaning would be changing the eligibility criteria as mentioned in the advertisement. As observed hereinabove, the appellant has no experience of five years ‘as’ Company Secretary, as she was appointed and/or worked as ‘Management Trainee’ or ‘Assistant Company Secretary’.

7.5 Now, so far as the reliance placed upon the decision of this Court in *Dr. Asim Kumar Bose* (supra) by learned Senior Counsel appearing on behalf of the appellant is concerned, on considering the facts of the case before this Court, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand. The facts before this Court in the aforesaid decision are distinguishable. In the aforesaid decision, the appellant was appointed to the Specialists’ Grade in substantive capacity as Radiologist in Irwin Hospital, Delhi which was a teaching hospital. He was considered as an Associate Professor of Radiology (ex officio) both by the Delhi University as well as by the Maulana Azad Medical College, Delhi to which Irwin Hospital was affiliated. He was not considered for the regular appointment to the post of Associate Professor of Radiotherapy in that college on the ground that his teaching experience as ex officio Associate Professor was not to be counted. Rule 8(2-A) of the Central Health Service Rules was

- A under consideration by this Court which provided that a candidate shall have the teaching experience as an Associate Professor. The appellant was having the experience as an Associate Professor of Radiology (Ex-officio) and therefore it was the case on behalf of the Union of India that he was not having the teaching experience as Associate Professor as he worked as an Associate Professor of Radiology (ex-officio). To
- B that, this Court observed and held that the provisions contained in Rule 8(2-A) and paragraph 3 of Annexure I to the Second Schedule of the Central Health Service Rules must be interpreted in a broad and liberal sense so as to avoid any injustice to person in specialists' Grade like the appellant. This Court observed that the Rules nowhere provide that the
- C teaching experience gained by a Specialist in a teaching hospital as an Associate Professor (ex officio) shall not be counted towards the requisite teaching experience. This Court further observed that there is hardly any difference so far as the teaching experience is concerned whether it is acquired on regular appointment or as specialist in a teaching hospital with the ex officio designation. It was thereafter further observed that
- D the word 'as' in the collocation of the words used "at least six years' experience as Associate Professor/Assistant Professor/Reader" and of the words "at least five years' experience as Reader/Assistant Professor" in the relevant Rules must be interpreted in its ordinary sense as meaning teaching experience gained "in the capacity of".
- E 7.6 In the present case, the word '**as**' and the words 'experience as Company Secretary' used in the advertisement are very clear and as observed hereinabove it means the candidate ought to be appointed and worked as such '**as**' a Company Secretary. Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand.
- F 8. In view of the above and for the reasons stated above, as appellant did not fulfil the eligibility criteria of having five years post qualification experience '**as**' Company Secretary as on 30.11.2013, the services of the appellant have rightly been terminated. We are in complete agreement with the view taken by the High Court.
- G 9. In view of the reasons stated above, the present appeal fails and is accordingly dismissed. No costs.