

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.07.2012

+ W.P.(C) 2469/2001

DR P.V. LALITHA

... Petitioner

versus

UOI & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Prashant Bhushan with Mr Rohit Kumar Singh, Mr Shashank Singh and Mr Anupam Bharti.

For the Respondent : Mr Amit Yadav for R-1.
Mr Sanjay Ghosh with Ms Tania Sharma and Ms Pooja Chandra for R-2 & R-3.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 07.03.2001 passed by the Central Administrative Tribunal in Transfer Application No.19/2000 whereby the petitioner's said Transfer Application has been rejected by the Tribunal. Initially the petitioner had filed a writ petition on 16.12.1999 being W.P. 7541/1999. That writ petition was transferred to Central

Administrative Tribunal on 06.12.2000 and was numbered as T.A. No.19/2000 which was ultimately dismissed by the said Tribunal by virtue of the impugned order dated 07.03.2001. Being aggrieved thereby, the present writ petition has been filed on 09.04.2001 and after admission, the same is pending adjudication before this Court.

2. The main grievance of the petitioner is that the entire selection process initiated in pursuance of the advertisement No.2/99 for the post of Scientist 'C' (Group IV (2)), is vitiated on account of the fact that the screening process itself as also the selection process was contrary to the advertisement as also to the relevant rules and was also vitiated because of rank arbitrariness being violative of Article 14 of the Constitution.

3. The said advertisement No.2/99 had been taken out by the Centre for Biochemical Technology (C.B.T.) which is now called the Institute of Genomics and Integrative Biology (I.G.I.B.). The advertisement was, *inter alia*, in respect of 3 posts of Scientist 'C' (Group IV (2)). The advertisement, *inter alia*, indicated the essential qualifications and desirable qualifications as under:-

“Scientist C (Group IV (2)) – Three posts, Scale of pay : Rs.10,000-325-15,200 Age : 35 years Essential Qualifications and Experience : Ph.D. with 1 years

experience OR MS/MD with 2 years experience OR First Class M.Sc in Physics/Chemistry/Biochemistry/Microbiology/Biotechnology/Genetics/Life Sciences or Equivalent or First Class MBBS/MVSc., with 4 years experience in the use of techniques in molecular biology/molecular genetics/molecular immunology. **Desirable:** Experience in population genetics and biostatistics, genomics and molecular medicine, novel drug delivery systems, comparative genomics or other frontier area of biotechnology related to healthcare. **Job Description :** The incumbent is expected to actively contribute in the ongoing R&D projects in the areas mentioned above and participate in planning and co-ordinating research activities.”

4. The petitioner was one of the applicants for the above 3 posts. The respondent No.3 did not shortlist the petitioner for the interview. In fact, there were 187 candidates who had applied of which only 16 had been shortlisted by the Screening Committee and out of those 16, 12 candidates were asked to appear in person for interview and 4 were considered in absentia. It is alleged that out of the 12 candidates, 7 candidates were internal candidates i.e., who were already working in I.G.I.B. Finally, out of 7 internal candidates, 3 candidates were selected for the said 3 posts. Those 3 candidates were Dr S. Ramachandran, Dr Chandrika Bhim Rao and Dr Mitali Mukherjee. Insofar as Dr Mitali Mukherjee (respondent No.6) is concerned, there has been no allegation on the part of the petitioner.

However, insofar as Dr S. Ramachandran (respondent No.4 herein) and Dr Chandrika Bhim Rao (respondent No. 5 herein) are concerned there are allegations that they were above the qualifying age and it is also alleged that Dr Chandrika Bhim Rao (respondent No. 5) did not possess the essential qualification in terms of the above mentioned advertisement.

5. The first writ petition (i.e., W.P. 7541/1999) had been filed by the petitioner at a stage when only the candidates have been shortlisted by the Screening Committee. The selection process of selecting persons for the said 3 posts had not been completed. Therefore, these 3 persons (respondent Nos. 4, 5 & 6) had not been made parties to the original writ petition. It is that writ petition which was transferred to the Tribunal and was numbered as T.A. No.19/2000. Consequently, that T.A. was heard by the Tribunal without the respondent Nos. 4, 5 and 6 being impleaded in the proceeding. However, when the present writ petition was filed, as objection had been taken with regard to non-impleadment of respondent Nos. 4, 5 and 6, who were subsequently impleaded by virtue of orders dated 30.04.2002 and 24.03.2003.

6. Although Mr Prashant Bhushan, learned counsel appearing on behalf of the petitioner raised several grounds seeking quashing of the entire

selection process itself, we feel that we cannot go into the allegations of *mala fides* inasmuch as the persons against whom the allegations have been made, namely, Dr Assis Datta and Dr S.K. Brahmachari, have not been made parties to the present proceedings. Therefore, there could be no answer in respect of the allegations of *mala fides*. We may also point out that, initially, in the earlier writ petition as also in the present writ petition, there were no allegations of *mala fides* and that such allegations have come up only in the rejoinder/sur-rejoinder and written submissions. There is only a suggestion of *mala fides* in Ground No. 'O' of the writ petition but such a general allegation of *mala fides* cannot be looked into because the position is well settled that when *mala fides* are alleged, particulars of the same have to be given so that the person against whom it is alleged is in a position to answer the allegations. It is for this reason that we are not going into the issue of *mala fides*.

7. It has been made clear by the learned counsel appearing on behalf of the petitioner that although they have challenged the entire selection process, they are not seriously contesting the factum of appointment, insofar as respondent Nos. 4, 5 and 6 are concerned. The petitioner is more concerned

about the fact that she was left out of the selection process and that she was not included in the shortlist prepared by the Screening Committee.

8. The learned counsel for the petitioner pointed out that the Screening Committee itself was not properly constituted and was in violation of the CSIR Recruitment Rule No. 9.2.2 which provided that the Screening Committee Members were to be selected from amongst the members of the Selection Committee. It was contended that the Screening Committee consisted of not only persons who were members of the Selection Committee but also of persons who were not part of the Selection Committee and, therefore, this rule has been violated. It was also pointed out that the Selection Committee itself was not properly constituted inasmuch as according to the CSIR Recruitment Rule No. 9.2.1 the Selection Committee should have a maximum of 5 Members and the Chairman of the Committee but, the Selection Committee consisted of 7 Members and the Chairman of the Committee.

9. It was also submitted by the learned counsel for the petitioner that there was no clear cut criterion on the basis of which the Screening Committee was to shortlist candidates. One criteria, perhaps, was the “impact factor”. However, it is not at all clear whether even this ‘impact

factor' was taken into account while preparing the shortlist of candidates. We had asked the learned counsel appearing on behalf of I.G.I.B. and C.S.I.R. to inform us as to what was the tangible objective criterion which was applied by the Screening Committee for shortlisting of candidates. He was unable to come out with a clear cut answer. The only answer that was forthcoming was that the Screening Committee comprises of experts who could very well assess the comparative merits of the candidates and thereby select the top 16 candidates for further processing of selection by the Selection Committee. But, this, in our view, is not a satisfactory answer. The very object of a Screening Committee is to cut down the number of candidates on the basis of some tangible objective criterion and that the criterion must have a nexus with the object at hand namely selection for the 3 posts of Scientist 'C'. The learned counsel for the respondents C.S.I.R. and I.G.I.B. then drew our attention to paragraph 2 of the counter affidavit filed on their behalf in T.A. No.19/2000. In the said paragraph it has been stated that the Centre for Biochemical Technology which was the previous name of I.G.I.B., received 187 applications for the post of Scientist 'C'. All the applications were screened on the basis of 'well-defined' criteria particularly in the context of four super specialisation areas specified in the

advertisement, such as the number of publications of a candidate, the journals in which the said publications were published and the ranking of such journals as per grading given by international agencies, experience in the field of specialisation etc. It was further stated that after screening the applications, 16 candidates were shortlisted and recommended for consideration and were to be invited for an interview by the Selection Committee.

10. Although this is what is stated in the counter affidavit, the record with regard to the screening process has not been produced before us so that we have nothing before us to verify as to whether this process had indeed been followed. It would be pertinent to mention that this Court by an order dated 16.10.2003 had directed the respondent to produce the original record containing the criteria adopted by the Screening Committee for shortlisting the candidates for the said purpose. Unfortunately, that record has not been produced till date. The only conclusion that we can arrive at from this circumstance is that what has been stated in the affidavit has not in fact happened. There is no evidence before us which would enable us to conclude that the criteria stated to have been followed by the Screening Committee had in fact been adopted.

11. We also find that there might be some merit in what the learned counsel for the petitioner stated that the criteria stated to have been followed by the Screening Committee had in fact not been followed because if that were to be so then respondent No.5 could not have come through the screening process inasmuch as her Ph.D. was in the field of Mathematics with the sub-category of Bio-statistics. Although Bio-statistics was a desirable qualification, it was not an essential qualification as indicated in the said advertisement above. Therefore, there may be some merit in the submission made by the learned counsel for the petitioner that the respondent No.5 did not possess the essential qualifications. However, we are not going into that aspect of the matter now as the learned counsel for the petitioner does not press for any relief insofar as the respondent No. 4, 5 and 6 are concerned.

12. After considering the totality of circumstances, we are of the opinion that the screening process was itself unclear and, therefore, it was not fair to leave out the petitioner from the further process of selection. Therefore, insofar as the petitioner is concerned, some relief has to be given to her. We are informed by the learned counsel appearing for respondent Nos. 2 and 3 that now there are several vacancies for the post of Scientist 'C' with

I.G.I.B.. This has been stated on instructions from Mr Manish Pathak, Assistant, I.G.I.B. He states, once again on instructions, that these vacancies are in the process of being advertised. Therefore, we feel that the petitioner ought to be considered if she makes an application against the vacancies which are to be advertised for the post of Scientist 'C' (Group IV (2)). There is one problem, however, and that is with regard to the age bar. We are informed that the age limit for the post of Scientist 'C' is 35 years.

13. The petitioner, we are told, is above the said age limit of 35 years. However, the Court can, in appropriate cases, relax the upper age limit, to give relief to the parties. The Supreme Court in Anup Singh v. Haryana State Agricultural Marketing Board : 1999 SCC (1&s) 723 while directing that the appellant be considered against the vacancies which had occurred also directed that their claim for being appointed to the post in question shall not be rejected on the ground of age bar because they have been pursuing the remedy before the court of law. Again in Dilip Kumar Tripathy And Others v. State of Orissa And Others: (1996) 10 SCC 373 the Supreme Court while directing the respondent to issue an advertisement indicating the number of vacancies available and to adjudge the suitability of the applicants in accordance with the prescribed procedure etc., also directed that if, by the

passage of time, any of the persons who were included in the second list have been age-barred in the meantime and if they make an application for the post in question pursuant to the fresh advertisement then the competent authority may relax the age bar and consider their cases in accordance with law. This Court has also applied the same methodology in the case of Dr **Virender Singh Lather v. The Secretary, Agriculture Scientists Recruitment Board, New Delhi & Anr.** : in **W.P.(C) 10916/2005** decided on 27.01.2012 where, after noticing the above two decisions of the Supreme Court, this Court had observed that it found no difficulty in directing the respondents not to consider the petitioner therein to be “over-aged”.

14. Consequently, the writ petition is disposed of with the direction that the petitioner may apply in response to the advertisement inviting applications for the posts of Scientist ‘C’, which advertisement is likely to be published in the near future. If the petitioner makes such an application the Competent Authority will not reject the application on the ground of “age bar”. Of course, the petitioner would have to meet all the other eligibility criteria and would also have to be found suitable for the said post, after following the due procedure, as prescribed in law. We also make it clear that the fact that the petitioner has been agitating this matter before this Court as

also before the Central Administrative Tribunal, shall not go against her when her application is considered.

15. The writ petition is disposed of accordingly. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 19, 2012
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