

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

+ W.P (C) No. 8428/2010

% Judgment reserved on: 5th December, 2012
Judgment delivered on: 11th December, 2012

SUDHIR HILSAYAN Petitioner
Through: Mr. Manoj V. George, Mr K.
Gireesh Kumar and Mr. Alex Joseph,
Adv.

Versus

CHAIRMAN, DR. AMBEDKAR FOUNDATION AND
ORS Respondents
Through: Mr. L.K. Garg, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioner is seeking direction to the respondents to complete the selection process for the post of Editor.
2. The case of the petitioner is that he is a Scholar with Masters Degree in Agronomy and Mass Communication with Diploma in Journalism from Indian Institute of Mass Communication (IIMC), New Delhi, Ministry of Information and Broadcasting, Government of India. He is highly qualified with 15 years of editorial experience.
3. It is submitted that initially, petitioner was appointed as Editor on contractual basis in Dr. Ambedkar Foundation i.e. respondent nos. 1

to 3 on a consolidated salary of Rs.10,000/- per month. The Foundation was set up on the recommendation of the Centenary Celebrations Committee of Dr. B.R. Ambedkar as a Society to implement the programmes and activities for furthering the ideology and message of Dr. B.R. Ambedkar among the masses in India, implementing a plan to have various publications by the Foundation and to have a post of Editor in consultation with the Department of Personnel and Training (DOP&T).

4. It is further submitted that in the year 2006, the post of Editor became vacant and the Foundation tried to obtain good talented persons through direct recruitment to fill up the post of Editor. However, it failed in its endeavour twice and could not attract qualified people for the post which had a commitment to the cause. Thus, the Foundation brought out an amendment to the Recruitment Rules whereby maximum age limit was increased from 30 yrs. to 40 yrs. and it was notified. Accordingly, the respondents decided to advertise the post of Editor in Dr. Ambedkar Foundation (DAF). The petitioner being eligible under the amended Recruitment Rules applied for the sanctioned post in Group 'B' along with 73 other candidates. Name of the petitioner was there in the list of shortlisted candidates.

5. Thereafter, a Selection Committee was constituted under the Recruitment Rules which interviewed the candidates and the petitioner topped the merit list prepared by the Selection Committee. The entire selection process was completed way back in June, 2009, however, till date appointment letter has not been issued to the petitioner.

6. Ld. Counsel appearing on behalf of the petitioner has submitted that there are 2 sanctioned posts of Editor in Dr. Ambedkar Foundation i.e. one contractual post of Editor in Project of “Collected Works of Dr. Baba Saheb Ambedkar (CWBA)” and another post of Editor (Regular) in the Foundation for editing monthly Magazine “Samajik Nyay Sandesh Patrika”.

7. It is pertinent to mention here that the petitioner has worked on the contractual post on contract basis as Editor in the Project “Collected Works of Dr. Baba Saheb Ambedkar (CWBA)” from 31.01.2007 to 31.03.2011.

8. It is further submitted that the regular post of Editor has been lying vacant since March, 2006 and the post was advertised couple of times to which there has been a poor response.

9. As per the Recruitment Rules (old) of the Regular Post of Editor, the upper age limit was 30 years. To get a better response and to enable the experienced persons to apply for the post, the upper age limit for the post was increased to 40 years with the approval of the General Body of the Foundation in its meeting held on 12.11.2008.

10. The regular post of Editor falls under the unreserved category. It carries Pay Scale of Rs.6,500-200-10,500 (pre-revised). After taking the approval from the competent authority an advertisement was issued in the Times of India and Hindustan Times both dated 28.02.2009 and in the Employment News dated 14.03.2009 (Hindi and English) for filling up this post. In response to this 74 number of applications were

received within the given time i.e. 31.03.2009 and six applications were received after that. The applications received late were not taken up for scrutiny.

11. After scrutinizing the applications, 4 names including the name of the petitioner met the required qualification and experience. A Committee of Officers interviewed all the four eligible candidates on 08.06.2009. A panel of 3 candidates namely (i) Mr. Sudhir Hilsayan (petitioner), (ii) Ms. Ritu Khatri & (iii) Ms. Arpana Yadav was prepared. Finally, the aforesaid Committee recommended the appointment of petitioner to the post of Editor and the other persons mentioned at serial no. (ii) & (iii) were recommended to be placed in waiting list and file was submitted to the Minister and Chairman of Dr. Ambedkar Found on 09.06.2009 for his decision.

12. On the recommendations as mentioned above, the then PS to Minister-cum-Chairman vide note dated 25.11.2009 conveyed the directions of the Minister as follows:-

“The Hon’ble Minister (SJ&E) desires that a Committee (hereinafter Committee-II) to be headed by Shri Nilambuj Sharan, Director, and consisting of not less than 3 officers may be constituted to scrutinize the applications received and shortlist the eligible candidates. The selection of a suitable candidate from the shortlisted candidates as mentioned in above para may be done by adopting the prescribed procedures in this regard.”

13. In compliance with the above directions, Committee-II consisting of Shri Nilambuj Sharan, Director, M/O SJ&E (Chairman),

Shri K. Vivekanand, Deputy Secretary, M/O SJ&E (Member), Shri N. Barik, Deputy Secretary, M/O SJ&E (Member) & Smt. Harinder Kaur, Deputy Secretary, M/O SJ&E (Member) had a meeting on 15.01.2010 and on the basis of scrutiny of applications following two separate lists of shortlisted candidates were prepared:

List I: Candidates fulfilling the age (date of birth), educational qualifications and experience requirement exactly as per the advertisement, with the following 4 names:

- i. Mr. Awinash Chandra Sinha
- ii. Ms. Arpana Yadav
- iii. Shri Sudhir Hilsayan (Petitioner)
- iv. Ms. Ritu Khatri.

14. Second list was prepared, but the candidates therein were not fulfilling the criteria as per the recruitment rules.

15. On 21.04.2010, file was submitted to the Member Secretary (DAF) for orders as to which of the above lists to be considered for taking further action in the matter. In response to the same, the Member Secretary (DAF) observed on 24.04.2010 that *“We will have to adhere to the conditions as given in Recruitment Rules and notified in the advertisement. Any deviation, at this stage, is not desirable”*.

16. Counsel for the petitioner submits that petitioner has been duly selected by the proper process as required under the Recruitment Rules. Therefore, any deviation thereafter is against the Recruitment

Rules and that prejudice the legitimate right of the petitioner.

17. The petitioner is fully qualified and gone through the double-checked methods and both the times, he was found fit for the post. This post is lying vacant since 28.02.2006 on the resignation of one Ms. Sanghamitra and the important work of Dr. Ambedkar Foundation is suffering.

18. To support his case, learned counsel for the petitioner has relied upon a case of ***R.S. Mittal Vs. Union of India, 1995 Supp (2) SCC 230***, wherein the Supreme Court has held as under:-

“Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate, the Central Government’s approach in this case was wholly unjustified.”

19. He has also relied upon a case of ***Union of India etc.***

Vs.N.P.Dhamania etc., AIR 1995 SC 568, wherein the Supreme Court has held as under:-

“The recommendations of the DPC are advisory in nature. Such recommendations are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest. Notwithstanding the fact that it is open to Appointments Committee of Cabinet which alone is the appointing authority and not the Minister concerned to differ from the recommendations of the DPC, it must give reasons for so differing to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. Said reasons need not be communicated to the officer concerned.”

20. Ld. Counsel further submitted that on 02.05.2010, Member Secretary (DAF) submitted the file to the Minister-cum-Chairman to consider the following:

“(i) Since the same candidates have been earlier shortlisted, interviewed and ranked; the proposal of Director (DAF) for the appointment of Shri Sudhir Hilsayan for the post of Editor in DAF, may be accepted out of the list no. 1 as per the recommendation of the First Committee,

OR

(ii) The candidates may be interviewed again, and fresh recommendation be submitted for consideration of Chairman (DAF). In case, this option is preferred, the composition of the interview committee may be decided by Chairman (DAF).”

21. He further submitted that on 01.06.2010, the then PS to Minister (SJ&E) & Chairman (DAF) conveyed the directions of the Minister (SJ&E) & Chairman (DAF) as follows:

“Hon’ble Minister (SJ&E) and Chairman, DAF has observed that the response to the advertisement is very poor which may be due to the low emoluments for this post and other reasons.

Hon’ble MSJ&E) desires that a review may please be taken in this regard and a suitable proposal may please be put up at the earliest possible so as to ensure that candidates with outstanding qualifications will apply for the post.”

22. Ld. Counsel for the respondents further submits that thereafter note was put up before the Minister-cum-Chairman who observed that the response to the advertisement is very poor, which may be due to the low emoluments for this post and other reasons. Therefore, he desired that review may please be taken in this regard and a suitable proposal be put up at the earliest possible so as to ensure that candidates with outstanding qualification can apply for the post.

23. Thereafter, the governing body meeting was held on 15.03.2011 in which it approved the proposal to upgrade the post of Editor in the pay scale of Rs.15,600-34,000/- with grade pay of Rs.5,400/- and directed that a case be prepared for creation of new post of Editor in the said scale to be forwarded through IFD, Department of Expenditure.

24. Accordingly, the case for upgradation of the post of Editor was sent to the Department of Expenditure, Ministry of Finance for

clearance. On being considered, the same was not found feasible to agree with it. Thereafter, the respondents again decided to send the proposal to the Department of Expenditure, Ministry of Finance. Since the second time proposal has not been approved by the IFD of the respondents, therefore, till date status of the upgradation has no way of.

25. Learned counsel for the respondents has vehemently argued that Dr. Ambedkar Foundation was set up in 1992 for furthering of Dr. Ambedkar's ideology and spreading his message of Social Justice for which the aforesaid monthly magazine is the most important vehicle. In view of the important nature of this work, the need for services of a competent and qualified person is felt, who can discharge the responsibility in a professional and effective manner. The Editor, in addition to collection and editing of material for the magazine would also be doing the following work:-

- *Material for the monthly magazine in Hindi i.e. "Samajik Nyay Sandes".*
- *To look after sale and promotion of monthly magazine.*
- *Preparation of publicity material including brochures on various Schemes and programmes of the Foundation.*
- *Preparation of speeches of Hon'ble Minister (SJ&E) & Secretary (SJ&E) for various occasions.*
- *To prepare Press Note/Press release for various programmes of the Foundation.*
- *To coordinate with the Media, Doordarshan & AIR for various programmes of the Foundation.*

- *To organize and carry out awareness campaigns as envisages in the Memorandum of Association of the Foundation.”*

26. He further submitted that though the post in question is vacant from February, 2006, however, the respondents are trying their level best to get the post upgraded in a pay scale of Rs.15600-34000/- with grade pay of Rs.5400/-.

27. In support of his submissions, learned counsel for the respondent has relied upon a case of ***Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47***, wherein the Supreme Court has observed as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Miss Neelima

Shangla v. State of Haryana, or Jatendra Kumar. v. State of Punjab.”

28. He has also relied upon a case of ***All India SC & ST Employees' Association & Anr. Vs. A. Arthur Jeen & Ors., (2001) 6 SCC 380***, wherein the Supreme Court has observed as under:-

“10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash Vs. Union of India (1991) 3 SCC 47: 1991 SCC (L&S) 800: (1991) 17 ATC 95. Para 7 of the said judgment reads thus (SCC pp.50-51):-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this

Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha ,(1974) 3 SCC 220: 1973 SCC (L&S) 488, Neelima Shangla v. State of Haryana, (1986) 4 SCC 268: 1986 SCC (L&S) 759 or Jatinder Kumar v. State of Punjab,(1985) 1 SCC 122 : 1985 SCC (L&S) 174."

29. On hearing Id. Counsel for the parties, it is emerged that the post in question is lying vacant since March, 2006. The respondents tried their level best to fill up the said post, however, could not succeed. Finally, they amended the Recruitment Rules, thereby the maximum age limit was increased from 30 to 40 years. Under the amended Recruitment Rules, the petitioner applied. He was found suitable for the post on the basis of his qualifications and experience as required under Recruitment Rules.

30. Moreover, the petitioner has worked with the respondent on another post of Editor on contract basis from 2007 to 2011. The Selection Committee found him suitable and selected him finally.

31. Here, I have no hesitation to say that the Selection Committee of the respondent might have assessed the earlier work done by the petitioner on contract basis and thereafter his selection was made.

32. The respondents after completion of almost all the formalities prepared an appointment letter and only the name of the petitioner had to be filled in it. Why I am recording so, because as admitted by the respondent that the present Director of the respondent Foundation is posted since 2008 and the appointment process for this post is also

started during his tenure as Director and his name is also printed in the said appointment letter which is annexed as Annexure P-7 at Page 81 of the paper book.

33. It is also admitted that the respondents prepared 2 lists one exactly as per the Advertisement and Recruitment Rules; and the other list was of those candidates who were not eligible.

34. On 21.04.2010, file was submitted to Member Secretary for orders as to which of the above lists to be considered for taking further action in the matter.

35. In response to the same, Member Secretary (DAF) observed on 24.04.2010, that they will have to adhere to the conditions as given in the Recruitment Rules and notified in the advertisement. Any deviation at this stage would not be proper and desirable.

36. After completion of the process, the respondents have taken the view that the Editor in addition to the collection and editing of material for the Magazine is required to collect the material for monthly Magazine in Hindi i.e. "Samajik Nyay Sandesh" and to look after the sale and promotion of monthly Magazine. Moreover, the Editor has to prepare the publicity material including the Brochure on various schemes and programmes of the Foundation. He has to prepare the speech of Minister and Secretary for various occasions. Also to coordinate with Media, Doordarshan and All India Radio for various programmes of the Foundation and to organise and carry out awareness

campaign as envisaged in the Memorandum of Association of the Foundation.

37. Therefore, the respondents have taken the decision to select the best candidate for the post. The said post has to be upgraded in the pay scale of Rs. 15,600-34,800. Admittedly, the respondents sent proposal in view of the reasons mentioned above to the Department of Expenditure, Ministry of Finance. However, on consideration, the same has been rejected.

38. The Minister-cum-Chairman has again directed to send the proposal, however, the same has not been cleared even by the IFD of the respondent. Thus, the status of upgradation is nowhere.

39. Undisputedly, for the post of Editor, the respondents had given wide publicity in the popular Newspaper i.e. Hindustan Times, Times of India and in the Employment News both in Hindi and English. Despite that the response was very poor for the reasons that to carry out the work of Dr. B.R. Ambedkar and for the cause of the downtrodden, the passion is required in the candidate.

40. The work of the respondent has been suffering since 2006. Neither they are able to upgrade the post, nor prepared to give the appointment to the petitioner.

41. The settled law is that merely because the name of the candidate included in the panel, it does not give any indefeasible right for appointment and the State is under no legal duty to fill up the vacancy. However, the appointing authority cannot ignore the select panel; or on

its whims and fancies decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline appointment to a person who is on the select panel.

42. In the present case, there is nothing against the petitioner that either he does not fulfil the educational qualification or experience. The only reason is that respondents want better person to be selected. If they would have succeeded then there was no occasion to interfere by the Court.

43. In the present case, respondents tried their level best to get the upgradation of the post of editor, however, they failed at the door of Department of Expenditure, Ministry of Finance and their own door.

44. Therefore, I find no justification in keeping the post vacant, which is lying vacant since 2006, which is neither in public interest nor in the interest of the respondents.

45. The petitioner is B.Sc. (Ag.) Hons., M.Sc. (Ag.), Master of Mass Communication (MMC), PG Diploma in Journalism, Pursuing M.A. (Hindi) and Elective Course in 4th year Mass Media. Apart from that he worked as editor for the collected work of Baba Saheb Dr. B.R. Ambedkar (CWBA) with the respondent. Also doing translation from English to Hindi and vice-versa. He edited two issues, February to March and April, 2007 of “Samajik Nyay Sandesh” monthly Magazine

of Dr. Ambedkar Foundation. In addition to that he has been the editor of “SAMATAVADI BHARAT”, LOK SAROKAR, MASS HERO and honorary Editor of “Voice of Buddha” Magazine and so on. The complete details of his experience is at Page 74 & 75 of the paper book.

46. In view of the above, I am of the considered view that the petitioner is entitled to get the appointment letter from the respondents. Accordingly, I direct the respondents to issue him appointment letter within four weeks from the receipt of this order.

47. Instant petition is disposed of on the above terms with no order as to costs.

SURESH KAIT, J.

DECEMBER 11, 2012

Jg