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

+ **LPA 327/2014**

% Date of decision : 23rd September, 2014

GOVT. OF NCT OF DELHI & ANR. APPELLANTS
Through : Ms. Zubeda Begum,
standing counsel (GNCTD)

versus

ATUL BHARDWAJ RESPONDENT
Through : Mr. Rajpal Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J. (Oral)

1. The instant appeal relates to appointment of the respondent Dr. Atul Bhardwaj to the post of Lecturer in Shalakyta Tantra in the Chaudhary Brahm Prakash Ayurvedic Charak Sansthan (hereinafter referred to as 'the Sansthan'), appellant no.2 herein. The brief facts giving rise to the instant appeal to the extent necessary are set down hereafter:
2. We are informed by Ms. Zubeda Begum, learned standing counsel for Govt. of NCT of Delhi that the Ch. Brahm Prakash Ayurvedic Charak Sansthan is an autonomous institute registered

under the Societies Registration Act, 1860 which is fully financed and controlled by the Govt. of NCT of Delhi. The Sansthan was commissioned w.e.f. 30th December, 2009 in a phase wise manner. The courses being conducted by the appellant no.2 stand affiliated to the Guru Gobind Singh Indraprastha University. The Sansthan started admitting students from November 2010 for the academic session 2010-2011. Recruitment to the various posts to the various faculty positions in the Sansthan was effected by the governing council of the appellant no.2.

3. So far as the concerned post of Lecturer of Shalakyia Tantra is concerned, it is an admitted position that the respondent had applied for appointment pursuant to an advertisement dated 9th September, 2009 issued by the appellants. The respondent participated successfully in the screening test conducted by the appellant on 16th April, 2010. For the post in question, 26 candidates (including the respondent) who were successful in the test, were interviewed on 11th April, 2011. The appellants admit that the respondent was thereafter placed in the final merit list for the post of Lecturer of Shalakyia Tantra.

4. Inasmuch as no appointment letter was issued to the respondent, he submitted an application dated 18th July, 2011 under the Right to Information Act seeking certain information from the respondents on relevant aspects. The response of appellant no.2 on 30th March, 2012 to the queries at Serial No.3, 4 and 6 deserves to be considered in extenso and reads as follows:

“Ch. Brahm Prakash Ayurved Charak Sansthan

No.3, Warden Flat, Maulana Azad Medical College
Delhi Gate, New Delhi-110002

Tel/Fax: (011)/09/PD/CBPACS/Adm/RTI/1958-59

Dated 30th March, 2012

To,
Sh. Rakesh Sharma, S/o Sh. Jagbeer Singh Sharma,
H.No.580, VPO Ghevra,
Delhi-110081

Sub: - Regarding your RTI application

The Sanstahn has received your RTI application (along with IPO of Rs.10/- bearing number 92E 441122) seeking information in respect of Sansthan. The required information is as under:

<i>3. Does the recruitment procedure was duly followed for the selection of candidates in April 2011 for the final prof. interviews?</i>	<i>3. Yes (As per the knowledge of the undersigned)</i>
<i>4. When will the result of upstated interviews for the final prof. faculty will be disclosed?</i>	<i>4. As per the requirement of Sansthan and after the prior approval of the competent authority, the “Offer of appointment”of concerned subject will be given to the selected candidates, if any.</i>
<i>6.What were the <u>criteria</u> for the selection of final prof. faculty in April 2011?</i>	<i>6. <u>As per the eligibility conditions for the concerned posts published in the leading newspapers, the candidates appeared in the screening test (if conducted for any post) then the interview was conducted.”</u></i>

5. The above response manifests that the respondent was found meritorious for a post which was duly sanctioned by the appellants; the appointment/selection process was conducted after approval having been taken from all concerned authorities; the selection process was duly followed. This selection thus stood completed as the respondent was in the list of candidates who were found meritorious. Only the issuance of the appointment letter for the post in question remained.

6. Inasmuch as no appointment letter was received by the appellant, he once again addressed a query under the Right to Information Act to the appellants. By a response dated 12th June, 2012, the appellants responded to his queries at Serial no.1 and 5 in the following terms:

"S.	<i>Information Sought About</i>	<i>Reply</i>
1.	<i>Does Ch. Brahm Prakash Ayurved Charak Sansthan has seek (sic) permission of cancellation of the whole prepared result from state govt. Health & Family Deptt. Or any other competent authority.</i>	<i>1. <u>No permission of cancellation was sought.</u></i>
5.	<i>Does the teaching faculty appointed as on temporary basis in different prof. are recruited against the sanctioned post available to Ch. Brahm Prakash</i>	<i>5. Some faculty members are appointed on the sanctioned posts available with Ch. Brahm Prakash Ayurved Charak Sansthan and <u>few others are appointed against the posts</u></i>

	<i>Ayurved Sansthan?</i>	<i>Charak</i>	<u><i>no yet sanctioned.</i></u>
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7. We find substance in the submissions of the learned counsel for the respondent, which have also been sustained by the learned Single Judge, that even as on 12th June, 2012 there was no cancellation of the select panel.

8. The respondent was compelled to initiate the writ proceedings when the appellant no.2 issued an advertisement dated 14th December, 2012 inviting applications for the same post for which advertisement dated 9th September, 2009 had been issued for which the selection process stood completed. In the writ petition being W.P(C) 33/2013, the respondent inter alia complained that there was no cancellation of the select panel and by the advertisement dated 14th December, 2012, the appellants also called bio-datas of the willing candidates in the prescribed proforma shockingly the selection process notified in this advertisement for appointment to faculty positions was only ‘*a walk-in interview*’ be held on 10th January, 2013.

9. The writ petition came to be filed on 2nd January, 2013. This resulted in the issuance of third advertisement which came to be issued on 2nd February, 2013. The appellants filed a counter affidavit to the writ petition contending that they were justified in not issuing the letter of appointment inasmuch as the course of Shalakyta Tantra was proposed to be conducted only in the third professional of the curriculum. Despite the respondent having

successfully participated in the selection process, appointments were not effected so as to save the finances of the institution. It was further submitted that there were no recruitment rules issued for the selection process and that the Governing Council finalized the rules only on 12th February, 2013. Reservation policy was considered by the Governing Council on 21st February, 2013 and the post in question fell in the reserved category. Ms. Zubeda Begum, learned standing counsel for the appellant submits that consequently a Corrigendum dated 21st February, 2013 was issued with regard to the post in question.

10. No document in support of the submissions was placed before the learned Single Judge or is forthcoming on the record. However, given the findings in the impugned judgment dated 12th December, 2013 by the learned Single Judge which we propose to discuss hereafter, it is completely unnecessary to examine these aspects of the matter. The submission in the counter affidavit to the effect that there were no recruitment rules at the time of issuance of the advertisement dated 9th September, 2009 is incorrect and rightly stands rejected by the impugned order. The learned Single Judge has taken a note of the response dated 30th March, 2012 of the appellant no.2 to the queries under the RTI Act which we have extracted above.

11. Learned counsel for the respondent has also drawn our attention to the undisputed mandate of appellant no.1 while setting up the appellant no.2 Sansthan which was to the following effect:

“5. 407 posts have been sanctioned for the project with the stipulation that appointment to teaching posts shall not be made till a decision is taken by the Government regarding commencement of academic activities. (Annexure – VI) Recruitment will be as per the recruitment Rules for similar posts in the Government of NCT of Delhi. All Group ‘A’ appointments shall be made by the Sansthan directly (without reference to UPSC), being an autonomous body. Recruitment to Group ‘B’ and ‘C’ posts shall be made through DSSSB as per standing instructions of Government of NCT of Delhi. Group ‘D’ posts will be ‘Out-sourced’ to the extent possible.”

12. The position that the recruitment to the posts in the Sansthan in terms of advertisement dated 9th September, 2009 was to abide by the recruitment rules for similar post in the Govt. of NCT of Delhi was not disputed before the learned Single Judge. This position is not disputed before us as well. Therefore, the submission of the appellant that the selection process pursuant to the advertisement dated 9th September, 2009 being liable to be set aside for want of recruitment rules has to be rejected.

13. We agree with the learned Single Judge that the selection process stood validly completed as per the applicable recruitment rules and the select panel list was so prepared. It is also not disputed that there was vacancy on the date of finalization of the select panel. [After issuance of the letter of appointment].

14. As informed to the appellant by RTI responses, there was no cancellation of the select panel by any authority in accordance with law. The issuance of the appointment letter was also not withheld

on account of any illegality in the selection process or otherwise. The process was admittedly as per the rules.

15. Failure to issue an appointment letter cannot to be justified on the specious ground that the course was offered only in the third year. We may note that the course in question is not just any academic course. The respondents were recruiting faculty for a professional course. It cannot be disputed that such teaching requires tremendous preparation. The faculty must be in a position just not immediately before commencing of an academic session but the faculty has to be given an opportunity to prepare itself; examine the available facilities, point out the deficiencies, if any, arrange the course material and preparation of course material; devise their teaching methods; tools and syllabi distribution amongst other imperative action. Teaching by itself is not the only requirement of such professional course academic sessions.

16. We are informed that ‘Shalakya Tantra’ for which the respondent was selected) is a science of Indian medicine dealing with the ear, nose and throat. The teaching involves several practical aspects as well. The teachers also run OPDs and there is practical aspect of the teaching as well.

17. It is also necessary to note that in order to make an effective selection, recruitment has to commence well before the commencement of academic sessions. It is for this reason that the selection process for appointments was commenced by the advertisement dated 9th September, 2009.

18. It is also an admitted position that there has been no cancellation of the selection process by any competent authority which has been admitted in the response dated 12th June, 2012 by the appellants. No decision of the competent authority to re-advertise the post is also available. The action of the appellants therefore in re-advertising the post is clearly without authority cannot be sustained on any legally tenable ground.

19. We also find substance in the submission of the learned counsel for the respondent that the proposal to conduct the selection process by the advertisement dated 14th December, 2012 by only 'walk-in interviews' shows the arbitrariness on the part of the appellants. This is astonishing to say the least. We find substance in this submission. Certainly appointments to the post of lecturers in technical professional courses cannot be effected by merely walk-in interview. On the contrary, the respondent had been subjected to an extensive screening test and thereafter selected after being scrutinized in serious interviews.

20. Ms. Zubeda Begum, learned standing counsel for the appellants is aggrieved by the finding of the learned Single Judge to the effect that the re-advertisement process was malafide. It is submitted that the respondent did not challenge the action on any ground of malafides. This position is correct. However even though, the action of the appellants may not be malafide, however, the fact that it was contrary to law as well as arbitrary cannot be disputed.

21. Learned counsel for the appellants has also vehemently urged that the re-advertisement was necessary in view of the fact that the Governing Council of the appellant no.2 had put in place reservation roster on 21st February, 2013 and that the post in question fell to the reserved candidate. Inasmuch as the selection process pursuant to the advertisement dated 9th September, 2009 was validly conducted pursuant to the then applicable recruitment rules, any reservation policy framed subsequent thereto shall only apply to selection processes conducted in the future and cannot be applied retrospectively.

22. A submission is made that the writ petition was barred by delay and laches. Given the facts, we do not find any delay and laches on the part of the respondent who was waiting for his appointment pursuant to a validly completed selection process. In fact by their responses the respondent clearly told the appellant that the select panel had not been cancelled. The corollary was that his appointment was to follow. We may note that the appeal filed by the appellants is delayed by 68 days.

23. For all these reasons, we find no merit in this appeal which is hereby dismissed.

24. Learned counsel for the appellant submits that a certified copy of this order is necessary to proceed in the matter. It is submitted by learned counsel for the appellant that the certified copy shall be applied today itself. The Registry shall furnish certified copy to the appellants within three days of submission of the application for the certified copy.

25. The appellants shall consider the case of the respondent for appointment to the post of Lecturer in Shalaky Tantra and issue the appointment letter within three weeks from the date of receipt of the copy of this order.

26. In case the appellants fail to comply with this direction, the appellants shall be liable to pay costs of Rs.25,000/- to the respondent.

27. The Registry is directed to release to the respondent forthwith the costs of Rs.20,000/- which was deposited by the appellant pursuant to the order dated 25th April, 2014.

CM No.7169/2014

In view of the dismissal of the appeal, no further orders are required to be passed in the application. The application stands disposed of.

GITA MITTAL, J.

J.R. MIDHA, J.

SEPTEMBER 23, 2014

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