

\$~9

\*

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

%

Judgment delivered on : 27.05.2014

+

**W.P.(C) 3414/2011**

NOORUL HAQUE SIDDIQUI

..... Petitioner

versus

JAMIA HAMDARD UNIVERSITY THROUGH  
ITS REGISTRAR

..... Respondent

**Advocates who appeared in the matter:**

For the petitioner: Mr. Azhar Alam.

For the respondent: Mr. Pranoy Dey and Mr. Ajay Pal Singh.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J**

**CM No.16828/2013 (u/S. 151 CPC for early hearing)**

1. According to the learned counsel for the petitioner, the matter in issue is covered by a judgment of Single Judge of this Court dated 19.11.2013 passed in *W.P. (C) No.2235/1912* titled *Danesh Khan v. Jamia Hamdard University*.
2. I had kept the application back in order to enable the respondent to obtain instructions in the matter. For this purpose, the matter was adjourned on two occasions, i.e. 23.4.2014 and 21.5.2014.
3. Counsel for the respondent says that he cannot but contend that the

matter in issue in the instant writ petition also arose for consideration in *Danesh Khan's* case.

4. Accordingly, the early hearing application is allowed and the writ petition is taken up for hearing.

**W.P.(C) 3414/2011**

5. The writ petition seeks a direction from this Court for issuance of a letter of appointment to the post of Laboratory Technician (Senior Scale) in the pay scale of Rs.9,300-34,800/- plus Grade Pay along with allowances.

6. Ordinarily such a prayer would not have been granted. At best, the respondent would have been directed to consider the petitioner for appointment. However, the facts in this case are rather peculiar.

7. These facts briefly are as follows:-

7.1. Against an advertisement issued by the respondent, the petitioner, on 29.7.2010, applied for the post of Laboratory Technician (Senior Scale). The petitioner, as required, appeared in a written screening test. The petitioner qualified in the said test and was, therefore, shortlisted for an interview. The petitioner qualified in the interview as well and was, accordingly, placed at serial No.6 in a notice dated 25.2.2011, issued by the respondent.

7.2. The said notice contained the names of those incumbents as well, who had been recommended for appointment as Laboratory Technicians (Junior Scale). As indicated above, the petitioner had applied for the post of Laboratory Technician (Senior Scale).

7.3. As per the said notice, the petitioner was required to report to the Medical Superintendent/Director Hkm Abdul Hameed Centenary Hospital for medical examination and to the Dean/Principal of the respondent for

joining formalities, within a week from the date of issuance of the notice.

7.4. It was made clear that formal appointment letters to the incumbents, whose names were mentioned in the said notice, i.e. notice dated 25.2.2011, would be issued separately, subject to their fitness after medical examination and upon receipt of feedback from their respective referees.

7.5. It was further indicated that the place of posting of the selected incumbents was to be finalised by the Dean/Principal of the respondent as per the Medical Council of India (MCI) requirements in consultation with the Heads of Departments.

7.6. It appears that during the medical examination of the petitioner, it got revealed that he was suffering from rheumatic heart disease. A medical board constituted for the said purpose, opined that the petitioner was medically fit, to undertake the job of a Laboratory Technician. The medical board's opinion that the petitioner was 'fit' was rendered based on the opinion of the Cardiologist of GB Pant Hospital, dated 11.3.2011. I may only add that as regards the fitness of the petitioner to undertake the responsibility of a Laboratory Technician, the opinion of one Dr. Amit Banerjee of Lok Nayak Hospital, was also taken. The said opinion also vouched for petitioner's fitness to take up employment.

7.7 In this regard, I find on record that there is yet another opinion of one Dr. A.K. Bisoi of AIIMS. He has opined likewise.

7.8 Despite, the aforementioned state obtaining, the petitioner was not issued a letter of appointment and, consequently, not allowed to join duty. The petitioner made a representation in this behalf to the Dean, on 14.3.2011. This was followed by a communication dated 13.4.2011 addressed to the Registrar of the respondent. Since, the petitioner got no

response in respect of the same, he was compelled to serve a legal notice dated 28.4.2011, on the respondent. It is then that the impugned order dated 30.4.2011 was passed. In the impugned order, it was indicated to the petitioner that his request was placed before the competent authority which had not acceded to the same.

7.9. The petitioner, being aggrieved, instituted the captioned petition.

8. Notice in the captioned petition was issued on 20.5.2011. Since then, pleadings in the matter stand completed.

9. The respondents in the counter affidavit have taken the position that since the petitioner was suffering from a rheumatic heart disease, it was entitled to decline appointment to the petitioner. It is averred that appointment is not a matter of right and, therefore, despite a recommendation, respondent could decline appointment to the petitioner.

10. The other objection taken by the respondent is that an LOI had not been issued by MCI to the respondent for the academic session 2011-2012.

11. Insofar as the second objection is concerned, I am informed by the counsel for the respondent that LOI has since then has been issued.

12. I must also note at this juncture, as indicated above, that apart from the petitioner, one Mr.Danesh Khan who was also recommended for appointment as Laboratory Technician (Senior Scale) and shortlisted at serial No.2, was denied appointment on a similar ground, which was, that he was medically unfit. In his case as well, the doctors had opined that he was fit to carry on his normal duties.

13. This Court by a judgment dated 19.11.2013, passed in *W.P.(C) No.2235/2012*, titled *Danesh Khan v. Jamia Hamdard University*, allowed the writ petition and directed the respondent to issue a letter of appointment

to the petitioner in that case, i.e. Mr. Danesh Khan.

14. As a matter of fact, since a stand was taken that de hors the recommendation for appointment, no appointment could take place as no post was available, the court, directed that, if it is necessary, a supernumerary post be created for the petitioner.

15. In the present case, the second objection does not survive as, I am informed by the counsel for the respondent that an LOI has been received from the MCI.

16. This brings me to the first objection raised by the respondent. In support of the first objection, that is, appointment cannot be claimed as right despite a recommendation; it was argued that the number of vacancies for the post, in issue, had been reduced on account of financial difficulties faced by the respondent. On, the counsel, being asked as to how many vacancies were available, as this information was not given in the counter affidavit, he was not able to supply the said information to me. The assertion, therefore, in my view, is vague and, hence, cannot be countenanced by this Court.

17. Coming back to first objection, I must note that while the submission of the learned counsel for the respondent that appointment is not a matter of right, in its broad framework, is right; though denial of a right upon due consideration as to suitability of a candidate, has to be backed by valid reasons, which do not violate the mandate of Article 14 of the Constitution of India. An arbitrary decision of any kind is an antithesis to the rule of law.

18. In this case, once the experts have found that, notwithstanding the medical condition of the petitioner, he would be fit to discharge his duties, denial of employment by the respondent on whim, without cogent reasons, is a decision, which is, both unreasonable and arbitrary.

19. In these circumstances, I am inclined to allow the writ petition. It is ordered accordingly.

20. The respondent will issue a letter of appointment to the petitioner, with expedition, though not later than four weeks from today. As indicated in the case of ***Danesh Khan***, if no vacancy is available, a supernumerary post would be created as delay, clearly, occurred on account of unreasonable and obdurate stand of the respondent.

21. The petitioner, will join duty on the date indicated by the respondent, in the letter of appointment. The petitioner will be paid the salary and allowances which are applicable to the post of Laboratory Technician (Senior Scale); albeit from the date of his appointment.

22. The writ petition is disposed of in the aforesaid terms.

**RAJIV SHAKDHER, J**

**MAY 27, 2014**

s.pal