

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WA.NO. 1593 OF 2015 () IN WP(C).5298/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 5298/2014

APPELLANT(S)/RESPONDENTS:

1. THE CHAIRMAN, COIR BOARD
COIR HOUSE, MAHATMA GANDHI ROAD, COCHIN - 682 016.

2. THE COIR BOARD
REPRESENTED BY ITS SECRETARY, MAHATMA GANDHI ROAD
COCHIN - 682 016.

3. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES
NEW DELHI - 110 001.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SMT. O.M. SHALINA, CENTRAL GOVERNMENT STANDING COUNSEL

RESPONDENT(S)/PETITIONER:

DR.DAS ANITHA RAVINDRANATH
SENIOR SCIENTIFIC OFFICER
CENTRAL COIR RESEARCH INSTITUTE, KALAVOOR
ALAPPUZHA - 688 522, RESIDING AT TAPOVAN
NO.88/GIRINAGAR NORTH EXTENSION, KOCHI - 682 020.

R. BY ADV. SRI.T.C.GOVINDA SWAMY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15.10.2015,
THE COURT ON 29.10.2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.1593 of 2015

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Dated this the 29th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed by the respondents to Writ Petition No.5298 of 2014 against the judgment dated 02.02.2015 by which judgment the learned Single Judge directed the appellants to consider appointment of the Writ Petitioner in accordance with law. Parties shall be referred to as described in the Writ Petition.

2. Brief facts giving rise to the Writ Petition as emerged from the pleadings of the parties are: Writ Petitioner was appointed as Scientific Assistant on 12.12.1982 in the Coir Board. She was initially promoted on adhoc basis as Scientific Officer in the year 1994. Subsequently, petitioner was selected for the post of Senior Scientific Officer under direct recruitment with effect from 06.12.2007. Secretary of

the Coir Board issued a Notification inviting application for appointment on the post of Director (RD&TE). Petitioner who fulfilled the qualification for the post submitted application. The Coir Board published a rank list in which petitioner's name was included at serial No.2. The Coir Board with the approval of the Government of India offered appointment to the candidate who was placed at serial No.1. However, the candidate at serial No.1 expressed her inability to assume duties of the Director. The Coir Board vide its letter dated 17.01.2014 recommended the Government to approve the appointment of the petitioner on the post of Director since the candidate who was placed at serial No.1 has refused to assume duties. Petitioner also filed a representation before the Coir Board on 11.02.2014 requesting for being appointed on the post of Director since the candidate at serial No.1 has declined the offer of appointment. Government of India vide letter dated 19.02.2014 communicated to the Coir Board that the recommendation dated 17.01.2014 of the Coir Board has been examined in the Ministry and it has been decided that

Coir Board may go for fresh advertisement for filling up the post of Director (RD&TE). Writ Petition was filed by the petitioner challenging the said communication, Ext.P7.

3. Following are the prayers which were made by the petitioner in the Writ Petition:

“(a) declare that the non-feasance on the part of the respondents 1 and 2 to consider and appoint the petitioner as Director (RDT&E) against the vacancy notified by Exhibit P2 is arbitrary, discriminatory and unconstitutional.

(b) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to consider and appoint the petitioner as Director (RDT&E) forthwith, with all consequential benefits with effect from the date of offer of appointment issued to the 1st rank holder Dr.Haseena A.P.

(c) issue a writ of certiorari or other appropriate writ order or direction calling for the records leading to the issue of Exhibit P7 and quash the same.

(d) award costs of and incidental to this Writ Petition (Civil).

(e) pass such other orders or directions as deemed fit and necessary in the facts and circumstances of the case.”

4. Counter affidavit has been filed by the Union of India in the Writ Petition. In the counter affidavit it was stated that the proposal was sent by the Coir Board to the Ministry seeking approval for appointing the 2nd rank holder,

the petitioner as Director (RDT&E). In the counter affidavit it was stated that the matter was examined keeping in view of the merits of the matter and interest of the Coir Board and the Ministry directed the Board to go for fresh advertisement for filling up of the post.

5. Petitioner has filed a reply affidavit. In the Writ Appeal counter affidavit has been filed by the petitioner wherein petitioner has annexed letter dated 31.10.2014 of the Government of India by which reply was given to the information sought by the petitioner under the Right to Information Act. Petitioner was communicated the note dated 31.01.2014 of the Ministry giving reasons for non-approval of petitioner's appointment.

6. Learned Single Judge vide his judgment and order dated 02.02.2015 allowed the Writ Petition and issued the following directions:

“Accordingly this writ petition is allowed. There shall be a direction to the respondents to consider the appointment of the petitioner in accordance with law. Needful shall be done within a period of two months from the date of receipt of a copy of this judgment.”

7. Appellants filed a Review Petition before the learned Single Judge praying for review of the judgment which review application was rejected on 11.06.2015. This Writ Appeal has been filed by the appellants against the judgment of the learned Single Judge as well as the order passed on the review petition.

8. We have heard learned counsel for the appellants as well as learned counsel for the respondent-Writ Petitioner.

9. Learned counsel for the appellants in support of the Writ Appeal contended that the appointment on the post of Director in the Coir Board cannot be made without obtaining approval of the Government of India which is a statutory requirement as per the Coir Industry Act, 1953. It is submitted that the Government had considered the proposal of the Coir Board seeking approval for appointment of the petitioner which proposal was considered and on valid reasons Government of India refused to approve the appointment of petitioner, hence learned Single Judge ought not have issued direction for appointment of petitioner. It is submitted that merely by inclusion in the rank list a

candidate does not get any indefeasible right for appointment on the post. Further, on refusal to accept the offer for appointment by the candidate at serial No.1, petitioner does not become automatically entitled for appointment on the ground that she was placed at serial No.2 in the rank list. No error was committed by Government of India in refusing to approve the proposal for appointment of petitioner.

10. Learned counsel for the petitioner refuting the submissions of the learned counsel for the appellants contended that there was no valid reason in disapproving the proposal for appointment of petitioner. In the counter affidavit filed by Government of India no reasons were given for disapproving the proposal. It is true that a candidate by mere inclusion in the rank list does not acquire an indefeasible right but the right of appointment cannot be denied arbitrarily or without any valid reason. It is submitted that the petitioner fulfilled all the qualifications and necessary experiences as mentioned in the advertisement and the reasons which are now being given under the Right

to Information Act also indicate that there was no valid reason for refusing the approval. Reasons given in the note are all irrelevant and indicate non-application of mind to the vital facts while examining the proposal for appointment.

11. We have heard counsel for the parties and perused the records.

12. The Coir Industry Act, 1953 has been enacted for the establishment of a Board for the development of the Coir Industry and matters connected therewith. Section 26 of the Act enumerates power of the Central Government to make Rules. In exercise of the power under Section 26, Coir Industry Rules, 1954 has been framed. Rule 23 provides for appointments. Rule 23 has been amended by Notification dated 28.05.1998. Rule 23 as amended provides as follows:

“23. **Appointments.**- (1) Save as provided for in sub section (1) of section 9 of the Act and subject to such delegation as may be provided in the Bye-laws, all appointments to post of officers and employees under the Board shall be made by the Board.

(2) The Board shall from time to time fix the scale of establishment:

(a) Provided that no such post of officers or employees shall be created by the Board without the previous sanction of the Central Government.

(b) Provided further that no such post the maximum scale of pay of which exceeds Rs.15200/- per month shall be filled without the prior approval of the Central Government.”

As per the 2nd proviso to Rule 23 the post of Director is a post which is required to be filled with the prior approval of the Central Government.

13. Section 27 of the Act empowers the Coir Board to make bye-laws. As per Section 27(1) the Coir Board may make bye-laws consistent with the Act and Rules, which provides that “the appointment, promotion and dismissal of its officers and other employees other than the Secretary and the creation and abolition of their posts.”

14. Copy of the advertisement inviting application for the post of Director has been brought on record as Ext.P2. Qualifications mentioned in Ext.P2 are as follows:

“Educational qualifications:

Doctorate in any branch of Textile Technology or Textile Chemistry or Mechanical Engineering or Applied Chemistry with at least 10 years experience in research, development, programming, training and extension work in the field of coir or any other natural fibre. Preference will be given to persons who have published papers in any of the fields.”

15. Petitioner in response to the advertisement submitted her application. Petitioner along with her application dated 08.02.2013 annexed 25 enclosures containing all relevant details including experience, papers published, etc. Copy of the application has been brought on record as per Ext.P3. Petitioner's name was included in the rank list at serial No.2. Copy of the rank list published by the Coir Board has been brought on record as Ext.P5. Appointment offered to candidate at serial No.1 was not accepted by the said candidate hence the Coir Board vide its letter dated 17.01.2014 forwarded the name of petitioner for approval on the post of Director. On the said recommendation, letter dated 19.02.2014 was communicated by the Government of India which communication is to the following effect:

BY FAX/SPEED POST

F.No.2(5)/2013-Coir

Government of India

Ministry of Micro, small and Medium Enterprises

Udyog Bhavan, New Delhi - 100 011.

Dated 19th February, 2014.

To

Shri M.MKumararaja,
Secretary,
Coir Board,
Coir House, M.G.Road,
Ernakulam (S)
Kochi - 682 016.

Subject:- Filling up of the post of Director (RDT&E) in the pay
band of Rs.15,600-39,100 + 7,600 (GP) under Coir Board -
regarding.

Sir,

I am directed to refer to the correspondence resting with Coir Board's letter No.CB/Adm/2013/4/1 dated 17.01.2014 on the above subject and to say that the matter has been examined in the Ministry and it has been decided that Coir Board may go for fresh advertisement for filling up the post of Director (rd&te).

2. This has the approval of Hon'ble Minister of State (Independent Charge), Micro, Small and Medium Enterprises.

Yours faithfully,

Sd/-

(Anil Kumar)

Under Secretary to the Govt. of India,
Telefax: 01123063641"

16. A Constitution Bench of the Apex Court in **Shankarsan Dash v. Union of India** ([1991] 3 SCC 47) has held that candidate included in the select list has no indefeasible right for appointment even if any vacancy exists. The following was laid down in paragraph 7:

"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) 1 SCR 165: (AIR 1973 SC 2216), *Miss Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268: (AIR 1987 SC 169), or *Jitendra Kumar v. State of Punjab*, (1985) 1SCR 899 : (AIR 1984 SC 1850)."

It was laid down that the State is under no obligation to fill up all or any of the vacancies. It was however, observed in the said judgment that it does not mean that the State has the licence to act in an arbitrary manner.

17. The Apex Court in **Asha Kaul v. State of Jammu and Kashmir** ([1993] 2 SCC 573) has reiterated that the decision not to appoint a candidate selected has to be on valid reasons and grounds. The State cannot arbitrarily refuse the appointment. The following was laid down in

paragraph 8:

“8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha (AIR 1973 SC 6); IMS. Jain v. State of Haryana (1977 (1) SCC 486 State of Kerala v. A Lakshmikutty (1986 (1) ATC 735) but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, -in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government - the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India (1991 (3) SCC 47) when the earlier decisions of this Court are also noted. The following observations of the court are apposite:

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

Petitioner placed reliance on the judgment of the Apex Court in Civil Appeal No.4964 of 2010 decided on 07.07.2010 (***East Coast Railway and Another v. Mahadev Appa Rao and Others***). Referring to the Constitution Bench judgment in ***Shankarsan Dash v. Union of India*** (supra) the following was laid down by the Apex Court in paragraphs 12, 13, 14 and 20:

“12. A Constitution Bench of this Court in *Shankarsan Dash v. Union of India* (1991) 3 SCC 47 : (AIR 1991 SC 1612 : 1991 AIR SCW 1583) had an occasion to examine whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment against such post merely because his name appeared in the merit list of candidates for such post. Answering the question in the negative this Court observed:

"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 the State of Haryana v. Subhash Chander Marwaha, 1974 (3) SCC 220 : (AIR 1973 SC 2216); Neelima Shangla (Miss) v. State of Haryana, 1986 (4) SCC 268 : (AIR 1987 SC 169) or Jitender Kumar v. State of Punjab, 1985 (1) SCC 122 : (AIR 1984 SC 1850)."

13. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

14. To the same effect is the decision of this Court in Union Territory of Chandigarh v. Dilbagh Singh and Ors. (1993) 1 SCC 154 : (AIR 1993 SC 796 : 1992 AIR SCW 3263), where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a mala fide manner. That was also a case where selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the

allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".

20. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

It is relevant to note that in the present case there is no decision of the Government of India not to fill up the post of Director rather by the same Notification the Government of India has communicated the Coir Board to issue advertisement for inviting application for selection on the post of Director.

18. The only question to be considered in the Writ Appeal is as to whether the decision of the Government of

India refusing to approve the appointment of petitioner for the post of Director suffers from any such error which warranted interference by this Court in exercise of judicial review.

19. As noted above, mere inclusion of name in the rank list does not give any indefeasible right to seek appointment. Government is free to take a decision not to appoint all or any one of the candidates from the rank list. However, there has to be valid reasons for refusing appointment and the Government without valid reasons cannot refuse appointment.

20. Although in the Writ Petition a counter affidavit was filed by the Government of India, no reasons were given as to why the proposal for appointment of petitioner has been refused. In the counter affidavit, the following has been stated by the Government of India in paragraph 6:

“The averments in para 10 are denied. In response to the proposal of the Board, seeking approval to appoint the 2nd rank holder, i.e., petitioner, the Ministry after examining the same and after due application of mind has directed the Board to go for fresh advertisement for filling up the post of Director (Research, Development, Training &* Extension) taking into account the

requirements of the post. The contention of the petitioner that she is automatically entitled to the post as the 1st ranked person declined the offer of appointment and therefore the decision by the Ministry is without application of mind and not bona fide exercise of power and hence unsustainable, cannot be accepted, as the decision has been taken after due application of mind keeping in mind the requirements of the post and the expanded role envisaged for this post.”

21. It is the petitioner who obtained information under the Right to Information Act and has brought it on record by means of counter affidavit in the Writ Appeal the information supplied by the Government of India by letter dated 31.10.2014. The said information has been brought on record as Annexure R(c). Government of India has supplied the note put up by the Ministry on the proposal received for according grant of sanction for appointment of second rank holder in the select list, i.e., petitioner. Notes of Secretary dated 30.01.2014 has been put up on the proposal. It is useful to look into the said note. The note stated:

“The post of Director (RDT&E), Coir Board, necessarily warrants a person with more of experience in Training and Extension rather than hardcore Research and Development. The person who is at Sl.No.2 in the select list, viz., Dr. Das Anita Ravindranath is already working as Senior Scientific Officer (Micro)

in Coir Board and therefore her services and expertise are already available with Coir Board.

2. In view of the above, it would be in the interest of Coir Board to go for fresh advertisement for filling up the post of Director (RDT&E) as this will infuse new blood and new thinking in the functioning of the Coir Board.

3. Therefore, if approved, Coir Board may be asked to go for fresh advertisement for filling up the post of Director (RDT&E)."

A perusal of the materials on record indicate that the reasons for not approving the proposal which is apparent from the note are: (a) The post of Director (RDT&E), Coir Board, necessarily warrants a person with more of experience in Training and Extension rather than hardcore Research and Development. (b) The person who is at serial No.2 in the select list, i.e., the petitioner is working as Senior Scientific Officer (Micro) in Coir Board and therefore her services and expertise are already available with Coir Board. (c) It would be in the interest of Coir Board to go for fresh advertisement for filling up the post of Director (RDT&E) as this will infuse new blood and new thinking in the functioning of the Coir Board.

22. Now coming to the reasons noted therein with

regard to reason (a) it is stated that the post of Director (RDT&E), require more experience and training and extension rather than hardcore Research and Development. Qualification for the post of Director as noted above, indicate that persons should have experience in research, development, programming training and extension. Petitioner's details filed as Ext.P3 indicate that she has annexed the relevant details with regard to her working not only in the field of research and development rather experiences regarding training and extension has also been mentioned. The reason given in the notes that experience in Training and Extension is required rather than hardcore Research and Development. On what basis it is noted that a person having experience in Training and Extension rather than hardcore Research and Development is not to be preferred is not clear and more so, when experience regarding training and extension being already there in the details submitted by the petitioner, coming on to the conclusion that petitioner has no experience in training and extension is nothing but not looking into the relevant

materials on record submitted along with the proposal. Second reason given in the notes that petitioner is already working as Senior Scientific Officer, Micro, Coir Board hence her service and expertise are already with the Coir Board cannot be said to be a ground for refusing the approval of appointment. Petitioner who was selected and included in the rank list at serial No.2 was found eligible and the fact that she was working in the same institute on the post of Scientific Officer cannot be a disqualification for considering her on the post of Director. The third reason that fresh advertisement for filling up the post of Director (RDT&E) will infuse new blood and new thinking in the functioning of the Coir Board, that reason is not relevant for refusing the approval of appointment of the petitioner since advertisement itself permit a person up to 50 years of age to apply. Fresh appointment may be a consequence after its disapproval but the refusal to approve has to be on valid reasons.

23. As noted above, the Government of India has not come up in the counter affidavit with any reason as to why

the appointment was not approved. When the Writ Petition was filed challenging the action in disapproving the appointment of petitioner who was at serial No.2 in the rank list, it was incumbent on the Government of India to give reasons and support its decision on valid reasons. It is well settled that there has to be reasons for a decision for disapproval of the appointment of a person who is in the select list more so when there is no decision not to fill up the post. Reasons which is brought on record by the petitioner herself after obtaining information under the Right to Information Act also does not indicate that there was any such reason on the basis of which it can be said that the Government of India has considered all relevant materials available on record and the reasons indicated in the notes cannot be said to be valid reasons for disapproving the proposal. We having satisfied that no valid reasons have been given by Government of India in its counter affidavit in support of its decision of not approving the proposal for appointment of petitioner who was at serial No.2 in the rank list, we are of the view that ends of justice will be served

by directing the Union of India, 3rd respondent in the Writ Petition to reconsider the proposal dated 27.01.2014 submitted by the Coir Board.

In the result, judgment of the learned Single Judge dated 02.02.2015 is modified directing the 3rd respondent in the Writ Petition to consider the proposal dated 27.01.2014 of the Coir Board afresh and take appropriate reasoned decision within a period of two months from the date a copy of judgment is produced before the 3rd respondent.

Writ Appeal is partly allowed.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**