

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

Judgment reserved on January 06, 2016
Judgment delivered on February 11, 2016

+ W.P.(C) 8201/2015, CM No.17192/2015
UTKARSH

..... Petitioner

Through: Mr. Rajiv Manglik, Adv.

versus

AIR INDIA LTD. & ANR

..... Respondent

Through: Ms. Gunjan Sinha Jain, Adv.
with Mr. Mukesh Verma,
Adv. for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

For orders see, W.P.(C) 8041/2015.

U. Rao.
(V.KAMESWAR RAO)
JUDGE

FEBRUARY 11, 2016/ak

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 UTKARSH

..... Petitioner

Through: Mr. Rajiv Manglik, Adv.

versus

CHAIRMAN AND MD, AIR INDIA LTD.

..... Respondent

Through: Mr.Lalit Bhasin, Adv. with
 Ms.Ratna D. Dhingra &
 Ms.Bhavna Dhami, Adv. for
 Air India Ltd.

+ W.P.(C) 8201/2015, CM No.17192/2015
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V.KAMESWAR RAO, J.

1. As these two writ petitions involve identical issues with somewhat similar facts and having been filed by the same petitioner, are being disposed of by this common order.

Writ Petition No.8041/2015

2. It is the case of the petitioner that petitioner after completing 10+2, did the flying course from Eagle Flight Training Pvt. Ltd, New Zealand in the year 2010. He did his recedency course from Haryana Institute of Civil Aviation, Karnal, a Govt. of Haryana undertaking and obtained Commercial Pilot Licence ('CPL' for short) issued by the Director General, Civil Aviation, DGCA in 2012 after doing 30-35 hours of flying. It is the case of the petitioner that he did a Multiengine instrument rating from Academy of Carver Aviation, Pune in December, 2013. It is his case that another institute namely Indira Gandhi Rashtriya Uran Academy ('IGRUA' for short) an autonomous body under the aegis of the Ministry of Civil Aviation, also gives training for obtaining CPL and charges a fee of Rs.32,50,000/- for the said course.

3. On August 7, 2015, an advertisement was issued by the respondent for making selection to the post of Pilot from open market, which was to be made through the process of written test, psychometric test and personal interview. It is his case that out of 180 vacancies advertised, 90 vacancies have been reserved for candidates who obtained the CPL from IGRUA. The reliefs he has sought in this petition, are as under:-

"(i) To quash and set aside the reservation of vacancies earmarked for CPL Holders from IGRUA in view of the advertisement dated 07 Aug 2015 (Annexure P-2) and direct the same to be filled from open market strictly as per merit; and

(ii) To direct the respondent to fill up vacancies reserved for OBC strictly from the candidates not belonging to creamy layer and the other unfilled vacancies are required to be de-reserved; and

Alternatively;

(iii) To direct the respondent to earmark fixed quota of vacancies for Haryana Institute of Civil Aviation, a state owned Institute; and

(iv) To award exemplary costs in favour of the Petitioner.

(v) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case."

4. The respondent has filed its counter-affidavit, wherein it has been averred that the IGRUA is a premier institute for high quality of training of Pilots. Between the year 1986 to 2008, the erstwhile Indian Airlines and erstwhile Air India continuously supported IGRUA financially and provided financial support to the said institute. It was initially funded with grants in aid from the Central Government and financial support from National carriers. The sole purpose for setting up the institute, was to provide quality training to Pilots. It is an autonomous body under the

control of the Ministry of Civil Aviation. It is because of the continuous financial support of the Air India, IGRUA has made available trained Pilots from whom the respondent could recruit Pilots for its requirement, subject to them meeting the eligibility/qualifying criteria. The aim behind setting up IGRUA was to have a Government control flying school for imparting training to Pilots. The Pilots were to be absorbed by the National carriers. The respondent would state that, it is in need of qualified Pilots due to induction of new fleet, upgradation of Pilots, conversion training from A320 family aircraft to B-787, retirements and heavy attrition rate and accordingly it was decided by the respondent to recruit Pilots from various sources. The respondent has taken a stand that as IGRUA provides trained qualified Pilots, it was decided that, as in the past, certain percentage of the vacancies would be notified to be filled from candidates from IGRUA and accordingly the advertisement dated August 7, 2015 was published for filling up 180 vacancies, out of which 50% are from IGRUA candidates and 50% from open market. Further a Staff Employment Notice was also issued for filling up of 32 vacancies of Pilots from amongst CRJ Pilots of Alliance Air/permanent serving employee of the respondent organization. The respondent's stand is also that the selection process as advertised, required all eligible

candidates to appear for a common written test. The candidates, who qualify in the written test were required to appear for psychometric test and it is those candidates, who qualify/found fit in the psychometric test and falling in the applicable zone of consideration, will be required to appear for personal interview. It may be noted here that the petitioner had applied against 50 vacancies meant for open market.

Writ Petition No. 8201/2015

5. The factual aspects with regard to the petitioner having been narrated above, the same are not repeated for the sake of brevity except the fact that the challenge in this writ petition is primarily to the notification issued by the respondent No.2 for campus placement at IGRUA to be conducted from August 31, 2015 to September 04, 2015. IGRUA has invited applications upto August 2015 for campus placement from candidates who have graduated post last campus selection (held in September 2010) and holders of the Commercial Pilot Licence. The reliefs, prayed for in this petition, are as under:-

“(i) To hold that the campus recruitment to the public post, pilots for Air India Express, as per notification issued by IGRUA (Annexure P-2), is illegal and unconstitutional; and

(ii) To direct the respondents to fill the vacancies/posts as required by the respondent No.2 by issuing advertisement from the open market strictly as per

merit; and

Alternatively;

(iii) To direct the respondent to earmark fixed quota of vacancies for Haryana Institute of Civil Aviation, a state owned Institute; and

(iv) To award exemplary costs in favour of the Petitioner.

(v) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case."

6. The respondent No.2 who had filed its counter-affidavit, would justify its action and had stated that the petition is bad for non-joinder of necessary parties as the respondent No.2 had already made offer to 40 candidates, who have been given time to join till January 20, 2016. It is also pleaded that the IGRUA is a necessary party as the advertisement for calling for campus selection has been advertised by the said organization. That apart, it is also stated that the appointment in question is clearly on contractual basis, wherein fixed term contract is entered into between the answering respondent and the selected candidates. In other words, it is their case that it is not a regular selection. On merit, the respondent would submit, that it had sought to recruit 40 trainee co-pilots on contractual basis from IGRUA, which runs under the aegis of Ministry of Civil Aviation. The candidates were

required to be holders of Commercial Pilot Licence from 2010 onwards with age limit of 35 years, 38 years and 40 years for General, OBC and SC/ST candidates. The selection procedure employed by the answering respondent was completely reasonable, rational and transparent. The respondent has also stated that it also recruits candidates from open market. It has relied upon an advertisement dated July 29, 2015 inviting applications from the open market.

7. Mr. Rajiv Manglik, learned counsel for the petitioner would make two fold submissions, the candidates who are required to be appointed under the reservation category i.e for SC, ST and Other Backward Classes, were forming part of creamy layer, as. each candidate has to spend an amount of Rs.32,50,000/- in a span of few months cannot be appointed as such. In other words, it is his submission, a candidate belonging to the reserved category, who could able to spend an amount of Rs.32,50,000/- cannot belong to a non creamy layer. That apart, it is his submission that 50% of the vacancies confining to IGRUA is bad, illegal and violative of Article 14 and 16 of the Constitution of India. He also states, that even confining the selection to IGRUA through a process of campus interview is also bad. He would rely upon the judgment of the Bombay High Court in *Writ Petition No. 2825/2012 Sonali Pramod*

Dhawde vs. Central Bank of India and another in support of his contention. He also relied upon the judgment of the Supreme Court in the case reported as (2009) 5 SCC 65 *State of Bihar vs. Upendra Narayan Singh*.

8. On the other hand, Mr. Lalit Bhasin, learned counsel appearing for the respondent in W.P.(C) No.8041/2015, would submit that the challenge to the advertisement reserving 50% vacancies to be filled from the candidates from IGRUA is totally without any merit. He states, that given the background of the IGRUA, the financial support given by the respondent organization and the fact that the 50% vacancies being reserved for the candidates obtaining CPL from IGRUA, cannot be said to be discriminatory. He has drawn my attention to the copy of the memorandum dated April 7, 1986, under which the IGRUA came into existence, to highlight that a need was felt for establishing a central flying school for training commercial Pilots. This was primarily for the reason, there was no centralized training infrastructure of appropriate standards for the training of Pilots. According to him, the training of students aspiring for a carrier in aviation and the dependency on the flying clubs all over the country at that time, which had limited fleet of trainer aircrafts and half of those were serviceable and the training

facilities in the flying club had lot of deficiencies and for bringing about standardisation in training of commercial Pilots and improving substantially the quality training was considered as urgent necessity. He would state, that the training imparted at IGRUA, which is a qualitative training institute, a need was felt for recruiting candidates having CPL from IGRUA. He also states, that even though the Air India being in losses, grant in aid is not being provided by the Air India, but still the Ministry of Civil Aviation is supporting the existence of the Air India, they are within their rights to fill certain vacancies from the candidates having acquired CPL from IGRUA. He would rely upon the judgment of the Madras High Court in *Writ Petition No.29832/2011 M. Palanimuttu vs. Secretary, Ministry of Defence and others decided on September 7, 2015* in support of his contention. He also states, that today the challenge in the petition is only academic, inasmuch as the petitioner has not secured the qualifying marks in the written test, which comprised of Aptitude Test, Technical Knowledge Test and General Knowledge, wherein the petitioner was required to obtain 60% in each. He would state, that the petition must be dismissed on this very ground only.

9. Ms. Gunjan Sinha Jain, learned counsel appearing for the

respondents in the Writ Petition No.8201/2015, would submit that the writ petition is not maintainable in view of the fact that the 40 vacancies against which, appointments were made, the recruitees have not been made parties. That apart, she would state that IGRUA is also a necessary party, which had put up the impugned notification for making campus placements. That apart, she would also state, that the appointment of Pilots in the respondent No.2 was a temporary appointment for a period of five years and not being an appointment on regular basis till attaining the age of superannuation, the respondent were within their right to confine the appointment through campus placement from IGRUA. She also states, before the selection through the impugned notification, the selection was being made through open market. She also states, that on July 29, 2015, an advertisement was issued for making appointments through open market. She has also placed before me, a decision of the Board of the respondent No.2 organization to highlight that because of the administrative exigencies, due to shortage of the Pilots, the campus placement was resorted to. Even on that ground, this Court would not like to interfere with the impugned notification and dismiss the petition. She would rely upon the judgments in the case of *Federation of Central Government SC/ST Employees vs. Cochin Refineries Ltd. ILR 2006 (2)*

Kerala 699 (Writ Petition (Civil) No. 17789/2004) decided on July 20, 2005. She would also rely upon the judgment of the High Court at Patna in *Civil Writ No.7616/2011 decided on August 24, 2011 Rajesh Roushan and others vs. State of Bihar and others* in support of her contention.

10. Having heard the learned counsel for the parties, insofar as the first submission of Mr. Rajiv Manglik, that the respondents are required to scrupulously follow the reservation by appointing reserved candidates belonging to the non creamy layer is concerned, the petitioner, being a General Candidate, has no locus to challenge the process of selection on that ground. That apart, he has not given any instances where such appointments have been made, which suggest that the same has been urged on a mere apprehension. Hence, this submission of Mr. Manglik needs to be rejected.

11. The main issue, raised by the petitioner in this petition, that the respondents could not have made appointments by reserving 50% of vacancies (in W.P.(C) No. 8041/2015) and filling all the vacancies (in W.P.(C) No. 8201/2015) from one source i.e IGRUA is concerned, even though such submission has now become academic, inasmuch as the petitioner having not qualified in the selection process, in W.P.(C)

8041/2015, he cannot lay a claim to those 50% reserved vacancies, but the petition having been filed much before the process of selection was undertaken and the fact, in W.P(C) 8201/2015, the challenge is to the filing up all the vacancies from IGRUA, through campus selection, I intend to decide the issue raised by the petitioner in these petitions.

12. The justification of the respondents, primarily has been that the IGRUA has been established to train candidates for Pilot training by the Govt. of India and since the funding is being made by the Govt. of India in running the institution and the training being specialized one, it is but natural that the Air India and the Air India Express reserve/make recruitment from IGRUA. In other words, the primary justification for reserving seats for candidates from IGRUA is that the institution is funded by the Ministry of Civil Aviation. Whether such a stand would have a protection of the Constitutional provisions, the answer must necessarily be "No", more particularly, in the present scenario. No doubt, when the institution was established in the year 1986, a need was felt because of the limited number of flying clubs existing at that time with a limited facilities of aircrafts, which are required to train persons/pilots and also the deficiencies found in such flying clubs. The situation has changed over a period of time. Many training institutes

have come about, which are also imparting training in flying, pursuant thereto, CPL licences are being issued by the Directorate General of Civil Aviation. Thus, candidates having CPL are also available from the training institutes other than IGRUA. This development is significant, concerning the right of the appointment of candidates having passed out from institute other than IGRUA. The conclusion, necessarily must be that the respondents could not limit the choice, insofar as 50% of the vacancies from IGRUA, as that would be contrary to Article 14 and 16 of the Constitution of India. Otherwise, with regard to those 50% vacancies, reserved for candidates from IGRUA, would not be available for candidates undergone training from the other institutes. There is no doubt that given the nature of constitution of IGRUA, as admitted by the respondents in their pleadings, the IGRUA would be a 'State' for the purpose of Article 12 of the Constitution of India. In the case reported as *(1974) 4 SCC 3 E.P. Royappa vs. State of Tamilnadu and others*, Justice P.N. Bhagwati (as His Lordship then was) speaking for himself, Justice Y.V. Chandrachud and Justice V.R. Krishna Iyer considered the ambit of Article 14 and 16 and observed as under:-

"Article 14 is the genus while Article 16 is one of its species. Article 14 declares that the State shall not deny any person equality before the law or equal protection of the laws within the territory of India. Article 16 gives

effect to the doctrine or equality in all matters relating to public employment. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen shall be ineligible for or discriminated against irrespective of any employment or office under the State on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Though, enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution.

The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

13. Similarly, in *Union Public Service Commission vs. Girish*

Jayanti Lal Vaghela and ors (2006) 2 SCC 482, the Supreme Court has elucidated the meaning of expression "equality of opportunity for all citizen in matters relating to public employment" as under:-

"Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

14. The Supreme Court in *Union of India vs. N. Hargopal and ors (1987) 3 SCC 308*, considered a question whether persons not sponsored by the employment exchange could be appointed to the existing

vacancies. The Andhra Pradesh High Court had ruled that the provisions of 1959 Act are not applicable to Government establishment; that the Act does not cast duty either on the public sector establishment or on the private sector establishment to make the appointments from among candidates sponsored by the employment exchanges only and that instructions issued by the Government of India that candidates sponsored by the employment exchanges alone should be appointed are contrary to Articles 14 and 16. The Supreme Court referred to Sections 3 and 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and held as under:-

".....The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Arts. 14 and 16 have to be given any meaning. We, therefore, consider that insistence of recruitment through employment exchanges advances rather than restricts the rights guaranteed by Arts. 14 and 16 of the Constitution. The submission that employment exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily Press, for example, is also equally ineffective as it does not reach everyone desiring

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employment. In the absence of a better method of recruitment, we think that any restriction that employment in Government Departments should be through the medium of employment exchanges does not offend Arts. 14 and 16 of the Constitution."

15. Similarly, in *Excise Superintendent, Malkapatnam, Krishna District, A.P vs. K.B.N. Visweshwara Rao and others* (1996) 6 SCC 216, the Supreme Court held as under:-

"It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

16. The aforesaid view was reiterated in *State of Bihar vs. Upendra Narayan Singh (supra)*. Because of the stipulation in the advertisement

to restrict 50% of the vacancies to IGRUA has an effect of limiting the choice of candidates. Field of choice would become broader by considering all those candidates, who apply for the post whether they had undergone training from IGRUA or other training institutions, which are also similarly recognized as IGRUA. Finally, the CPL has to be granted by DGCA. It cannot be the case of the respondent that the other training institutions are not similarly placed like the IGRUA in the matter of recognition. In other words, they are similarly placed. Even though, against the impugned advertisement in W.P.(C) NO. 8041/2015, the petitioner had applied against the 50 vacancies meant for open selection, insofar as the notification for making campus recruitment was concerned, the petitioner could not apply as he was not a trainee from IGRUA and the said notification was limited to the candidates from IGRUA. This Court had an occasion to deal with a similar issue in the case of *Ashik Abbas and ors vs. Govt. Of National Capital Territory of Delhi and ors 80 (1999) DLT 810*, wherein this Court was concerned with policy of the MCD to consider students who passed a particular course from DIET for appointment as Primary Teachers to the exclusion of the students, passed from other institutes. This Court in paras 10 to 14 has held as under:-

"10. There appears to be no reasonable classification based on any rationale or intelligible differentia, whereby students who passed a particular course from DIET are to be considered for appointment to the post of Primary Teacher of MCD and other students who passed from other institutes, although duly recognised, are to be excluded. The appointment with MCD is appointment to a Public Office and MCD has to treat equally in the matter of public appointment of all such persons. Whether a candidate passes a particular course from the institute or the other institute, when both the recognised is on equal footing and pertains to same class. Article 14 of the Constitution forbids class legislation. The categorisation of the candidates in two classes, one who are passing the course from DIET and other passing the course from other institutes is clearly arbitrary and discriminatory and does not pass the test of permissible classification. It is now well settled that to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the Group and (ii), that the classification must have a rational relation to the object sought to be achieved by the statute in question. Candidates of both the categories form one class for the purpose of seeking appointment and they have right to be considered for the same. In fact, considering the candidates who passed a particular course from DIET and excluding those who passed from other recognised institutions amounts to irrational classification and also amounts to depriving such candidates, who passed their course from institutes other than DIET, right to be considered for public appointment and is, therefore, violative of Article 16 of the Constitution as well.

11. In fact, creating two categories (i) who passed ETE course from DIET and others who passed similar course from other institution amounts to creating artificial categories and it over emphasis the Doctrine of

Classification. In Mrs. Maneka Gandhi Vs. Union of India and another Hon'ble the Supreme Court held that the Doctrine of Classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of quality and the Preamble of the Constitution which is an integral part and scheme of the Constitution.

12. Relying upon the aforesaid judgment, Hon'ble Supreme Court in LIC of India and another Vs. Consumer Education and Research Centre and others held that the term policy by the Life Insurance Corporation confining to only salaried class from Govt., Semi Govt. or reputed commercial firms is discriminatory offending Article 14 and denial thereof to larger segments violates their constitutional rights. It would be apt to quote the following passage from this judgment which equally applies in the present case:

"The over-emphasis on classification would inevitably would result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Menaka Gandhi ratio extricated it from this moribund and put its elasticity for egalitarian path finder. Lest, the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have Life Insurance offending Article 14 of the Constitution and socio-economic justice."

National Law Schools/Universities on the approved panel and in the standby category. Since NLU, Delhi was evidently empanelled, applications were invited from the students. It is noted that the petitioner, who had joined the law course in an institute in Chandigarh, had approached the respondent No.1 to know the procedure for making an application for being considered for appointment as LCRA in the Supreme Court. It appears, the petitioner was told that the students of only those National Law Schools could apply, which were placed on the approved panel of the Supreme Court. This Court on a consideration of the facts and the law, was of the view that the petitioner in effect was asking for a consideration as LCRA. The denial of such an opportunity of consideration of taking recourse to the dispensation is manifestly unjust. The scheme, policy, eligibility criteria are both discriminatory and arbitrary and thus violative of Article 14 of the Constitution of India, inasmuch as the policy should be fair and equitable, which enables every aspirant to be considered for engagement as LCRA. The policy, to the extent of confining the source of candidates for engagement as LCRA to the empanelled law colleges and Universities is illegal. I note, in the case reported as *124(2005) DLT 223 Mohd. Mahtab Alam and ors vs. The Commissioner of MCD and Anr.*, wherein challenge was made to a

13. It is a matter of common knowledge that JMI University is created by the Act of Parliament. It is also noticed that is DBT/ETE course is recognised by NCTE. NCTE is a statutory body created under NCTE Act for the purpose of granting such recognition. Once a course is recognised by NCTE under Section 14(3)(a) of the NCTE Act, the students who passed the said course cannot be deprived of appointments to public post.

14. Therefore, I hold that action of the respondents 1 and 2 in considering the applications of only those candidates who passed ETE course from DIETs run by SCERT and excluding candidates who passed similar course from other recognised institutions is discriminatory and, therefore, bad in law."

17. Recently, this Court in the case reported as **206 (2014) DLT 674 Phaguni Nilesh Lal vs. The Registrar General, Supreme Court of India & Anr.**, while considering a case wherein, petitioner, who was topper of her batch and pursuant to her studies in law at the Army Institute of Law, Mohali, had approached this Court against the Registrar General, Supreme Court of India for redressal of her grievance for not considering her application as a Law Clerk-cum-Research Assistant on the ground that the said institute was not empanelled with the Registrar General and her application has not been forwarded by her institute.

18. The case set up by the respondents was that the application for consideration for short term assignment as Law-cum-Research Assistant ('LCRA' for short), as in the previous years were being called from

condition contained to the extent that the selection will be done out of trained candidates from recognized institutes from Delhi and other States on interview and performance in academic and professional qualification basis provided they have passed their 10th & 12th examinations from Delhi. It was contended that Note 8, as amounting to an unreasonable classification as it ignores, and completely excludes candidates who possess the prescribed qualifications and are registered with the Employment Exchange at Delhi, but have completed their schooling from outside Delhi. The respondent sought to justify the classification on the basis of a policy decision to give preference to those who have completed 10th and 12th standard from Delhi in a larger public interest. This Court in para 21 has held that 'institutional preference' cannot be used in public employment. According to the Court, if the MCD were of the view that all schools and institutions in Delhi offering 10th and 12th standard are a separate and distinct class, and therefore, constitute a separate category, it should have supported that conclusion on the basis of objective material. It is not as if all such institutions are homogenous, all kinds of schools, affiliated to different Boards exist in Delhi. There are private schools, both aided and unaided; schools managed by autonomous bodies, the MCD, the Government of NCT etc. Hence, the

mere description of schools on the basis of their location does not set them apart from schools in the rest of the country. The plea of institutional preference here, therefore, cannot stand scrutiny as a distinct class or category, justifying a valid classification. Translating the aforesaid conclusion in the facts of this case, merely because an institution is funded by the Government, does not set such an institution apart from the other institutes in the rest of the country. The IGRUA cannot stand a scrutiny as a distinct class or category, justifying a valid classification. That apart, even if, it were to be assumed that the selection from IGRUA is based on an intelligible differentia, there is no attempt to show how that has a rational nexus with the object sought to be achieved, viz appointment of most suitable candidates to the post. The non-consideration of candidates from the other institutes, rather would be against public interest as the candidates from such institutes might be better qualified with better experience.

19. The Supreme Court in *Pradeep Jain vs. Union of India (1984) II*

LLJ 481 has held as under:-

“What is fundamental, as an enduring value of our polity is guarantee to each of equal opportunity to unfold the full potential of his personality. Any one anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular

educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the resident of any particular State; it is more or less evenly distributed and given proper opportunity and environment, every one has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious."

20. The reliance placed by the learned counsel for the respondents in the case of *Federation of Central Government SC/ST Employees (supra)* is concerned, the challenge was to the government policy, which was contained in an office memorandum dated May 29, 2000 was raised by the Union. There was no challenge by a prospective candidate with regard to the policy of direct recruitment from certain specific institutions.

21. The Division Bench of the Kerala High Court came to the

conclusion that when State involve itself in Business or in Commercial venture where the competition is keen, novel method could be adopted to keep ahead in the race bearing in mind national interest. The Court did not find any fault on such a policy of recruitment being made by campus interview. I further note, the policy under challenge before the High Court was making campus interviews not specific to one institution but reputed institutions more than one, unlike the recruitment here confining 50% of vacancies to one institution (Writ Petition No.8041/2015) and filling all vacancies in a year from the said institution (Writ Petition No.8201/2015). Hence, the judgment would have no applicability in the facts of this case. Even the reliance placed by the learned counsel for the respondents on the judgment of the Madras High Court in the case of *M. Palanimuttu (supra)*, similar is the challenge by way of public interest litigation for banning campus interview and to forbear the Central Govt. and State Government, Public Sector Undertakings in participating in campus selection for recruitment of candidates. The said judgment can also be distinguished as the campus interview is not confined to one particular institution but from several institutions through the process of campus interview, which is not the case here, as the respondents had reserved/made recruitment from the candidates obtaining CPL from

IGRUA, which would mean that they had confined themselves to a particular institution to the exclusion of the candidates from the other institutes/other institutions. The plea of administrative exigencies cannot be an excuse for violating Article 14 and 16 of the Constitution of India.

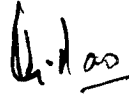
22. The submission made by the learned counsel for the respondents justifying the appointments on the ground of being tenural, by relying upon the judgment of the Supreme Court reported as *2006(4) SCC 1 State of Karnataka vs. Uma Devi (supra)*, is concerned, the same was in the context whether the appointment was for a limited tenure/on contract basis. The judgment of the Supreme Court was not in the context of the facts, which fall for consideration in the case in hand that while making appointments, even on contract basis/tenure basis, the department can reserve certain vacancies from a particular institution/confine campus interviews to one institution i.e IGRUA. The said judgment has no applicability in the facts of this case.

23. Noting two aspects that the petitioner had not got the qualifying marks of 60% in each of the examination of the written test and the fact that he has not made the recruitees, who have been given the offer of appointment in terms of the notification for campus interviews, I am afraid that no relief can be granted to the petitioner.

24. The writ petitions are dismissed by holding that the petitioner is not entitled to the relief(s), as prayed for in the petitions.

CM No.16492/2015 (for directions) in W.P.(C) 8041/2015
CM No.17192/2015 (for directions) in W.P.(C) 8201/2015

In view of the order passed in the writ petitions, the present applications are dismissed as infructuous.


(V.KAMESWAR RAO)
JUDGE

FEBRUARY 11, 2016
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