

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2017

Coram

The Hon'ble Mr.Justice Nooty. Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

W.P.No.32275 of 2015
and
M.P.Nos.1 and 2 of 2015

Dr.C.Muniandi

...Petitioner

Vs

- 1 Union of India,
rep. by its Secretary to Government,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi - 110 011.
 2. The Director,
Pasteur Institute of India
Coonoor - 643 103,
Nilgiris District.
 3. Shri B.Sundaran
Assistant Director,
Pasteur Institute of India
Coonoor - 643 103.
 4. Dr.K.N. Venkataramana
Assistant Director,
Pasteur Institute of India.
Coonoor - 643 103.
 5. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai - 600 104.
- ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the connected records, leading to the issue of the impugned order of the fifth respondent, dated 23.06.2015, in O.A.No.722 of 2012, and to quash the same as illegal and void and consequently, to direct the first and second respondents to appoint the petitioner as Assistant Director in Pasteur Institute of India, Coonoor with all attendant and consequential benefits.

For Petitioner :Mr.R.Amardeep for
M/s.Tamizh Law Firm.

For Respondents 1 & 2:Mr.J.Madanagopal Rao
Standing Counsel for Central Govt.

For Respondents 3 & 4:Mr.N.Ramesh

For Respondent-5 :Tribunal

ORDER

(Order of the Court was delivered by Nooty Ramamohana Rao, J.,)

This Writ Petition is instituted, calling in question, the correctness of the order passed by the Central Administrative Tribunal, Madras Bench, (hereinafter, referred to as 'Tribunal') on 23rd June, 2015, in O.A.No.722 of 2012.

2. The facts of the case, while led to the filing of this Writ Petition in gist and kernel are as follows:-

i) The present writ petitioner was the applicant in the said Original Application. Pasteur Institute of India, Coonoor, (for brevity, Institute henceforth) is an autonomous body, controlled and governed by the Ministry of Health and Family Welfare, Government of India. The said Institute is registered under the provisions of the Societies Registration Act, 1860, having its own bye-laws for regulating its day-to-day affairs. It being an autonomous Institute, it keeps adopting with or without suitable modification the rules and orders of the Government of India. The Governing Body of the Institute is headed by the Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi. The other important members of the Governing Body, include i) Director General of Health Services, Government of India, New Delhi, ii) Director General of Indian Council of Medical Research, New Delhi, and iii) Drugs Controller of India, New Delhi. The Central Government and the Government of Tamil Nadu also nominate two eminent Scientists respectively to the Governing Body. The Director of the Institute acts as a Member Secretary of the Governing Body. At the relevant point of time, the writ petitioner was working as Assistant Research Officer, (Group B) in the Institute. He possesses Post Graduate degree in M.Sc. (Microbiology) and Doctoral Degree of Ph.D.

ii) The Institute, by its notification issued on 7th September, 2005, notified that the post of Deputy Director and Assistant Director are to be filled in by the method of direct recruitment, and invited applications from the candidates possessing necessary academic qualifications and experience.

For the post of Assistant Director, in Group A service, upper age limit was prescribed as 45 years. However, the advertisement No.2 of 2005, dated 27th August, 2005 has entered a caveat that the upper age limit is relaxable by the Governing Body under special circumstances. The writ petitioner, respondents 3 and 4 herein and several others have responded to this notification. The Selection Committee under the Chairmanship of the Joint Secretary to the Government of India has been constituted for conducting interviews to the shortlisted candidates on 01st March, 2006. The Deputy Director General of Health Service, Government of India, the Director of Tuberculosis Research Centre, Chennai, a Laboratory of the Indian Council of Medical Research and the Director, in charge of the King Institute of Preventive Medicine, Chennai, and the Director of the Institute comprise the other four members of the Selection Committee. Out of 19 short-listed candidates for the post of Assistant Director, 17 candidates have attended the interview, two candidates, viz., Dr.Sibani Berman and Mr.A.Subramanian did not appear for the interview. The Selection Committee prepared a panel, consisting of five names in the order of merit, wherein, third respondent was kept at Sl.No.1, fourth respondent at Sl.No.2 and the writ petitioner, at Sl.No.3. Dr.N.Sivananda of Erode and Dr.P.Saravanan of Uttaranchal were placed at Sl.Nos.4 and 5 respectively.

iii) The Selection Committee has finalised the merit order of the candidates, and prepared a panel accordingly, subject to i) Relaxation of age and ii) Approval of the Governing Body. It appears that the Secretary to the Government of India (Health and Family Welfare) in his capacity as Chairperson of the Governing Body of the Institute, conveyed an approval to the recommendations of the Selection Committee, by letter, dated 14th March, 2006. Hence, the Ministry of Health and Family Welfare conveyed the approval for the age relaxation, in favour of the respondents 3 and 4, who are beyond the age of 45 years, and also the approval of the Governing Body Institute for their appointment has been conveyed. Accordingly, on 16th March, 2006, the respondents 3 and 4 came to be appointed as Assistant Directors of the Institute.

iv) Petitioner, on coming to know that one more post of Assistant Director was sanctioned to the Institute on 11th May, 2007, sought for appointment in the newly sanctioned post, based upon inclusion of his name in the panel drawn by the Selection Committee on 01st March, 2006 at Sl.No.3, as by 11th May, 2007, two candidates, placed above him at Sl.Nos.1 and 2 in the panel have already been appointed as Assistant Directors on 16th March, 2006 itself. To secure consideration of his case for appointment as Assistant Director, the petitioner approached the Tribunal, by instituting O.S.No.532 of 2008. Tribunal gave certain directions to the respondents therein to consider his

case, and pass appropriate orders. On 15th February 2009, an order was passed, declining to consider the case of the writ petitioner for appointment as Assistant Director against the newly sanctioned post on 11th May, 2007, on the ground that, life span of the panel prepared on 01st March, 2006, is only of six month and the six months period has expired by 31st August, 2006, and nearly one year, thereafter, the post of Assistant Director was newly sanctioned to the Institute, and hence, the case of the writ petitioner cannot be considered based upon his ranking in the expired panel.

v) The rejection of the claim of the petitioner for appointment as Assistant Director on 15th February 2009, resulted in instituting O.A.No.1224 of 2009, by the petitioner, and by an order, dated 28.02.2011, the Tribunal has quashed the order, dated 15.02.2009, and issued consequential direction to the respondents therein to appoint the applicant therein, (the present petitioner) as Assistant Director with effect from 11th May, 2007, when the post was so created. The Director of the Institute and Union of India challenged the correctness of the order passed by the Tribunal, in O.A.No.1224 of 2009, by instituting a Writ Petition, in W.P.No.11923 of 2011. The petitioner has also instituted W.P.No.20760 of 2011, when the Tribunal declined to modify its earlier order suitably. Both the Writ Petitions were heard together by the Division Bench, and they were disposed of by a common order, dated 18.11.2011. The Division Bench has held that the reasons weighed with Tribunal, in allowing O.A.No.1224 of 2009 is not acceptable, and hence, the order, dated 28.02.2011, passed by the Tribunal in O.A.No.1224 of 2009, was set aside and the W.P.No.11923 of 2011 was allowed and W.P.No.20760 of 2011, instituted by the petitioner was dismissed.

vi) Not content and happy with this result, dated 18.11.2011 handed down by the Division Bench of this Court, the present petitioner ventured to file another Original Application, being O.A.No.722 of 2012, challenging the selection and appointment of the respondents 3 and 4 as Assistant Directors on 16.03.2006. That O.A.No.722 of 2012 is now dismissed by the Tribunal, on 23.06.2015, essentially, for two fold reasons. Firstly that, the said Original Application is barred by delay and laches, and secondly, that the principle of res judicata would apply. It is against this judgment, the present Writ Petition is instituted.

3. Heard Mr.R.Amardeep, learned counsel for the petitioner elaborately. He would submit that the view expressed by the Tribunal on this occasion is clearly wrong, for, the petitioner, after relentless pursuit, has secured necessary information under the Right to Information Act, and hence, based upon the information so obtained, he has instituted the present Original

Application (i.e. O.S.No.722 of 2012). Though the petitioner has been asking for information to be made available, the Information Officer, attached to the Institute, was not willing to part with the information, and only when the petitioner went in Appeal, and secured direction in his favour for making available the necessary information, the information was grudgingly furnished to him in October, 2011 and immediately thereafter, the present O.A.No.722 of 2012 was filed, and hence, the view of the Tribunal that there was delay and laches on the part of the petitioner is not sustainable.

4. The learned counsel for the petitioner would submit that, earlier Original Applications instituted by the petitioner, viz., O.A.No.532 of 2008 and O.A.1224 of 2009 were entirely for different purpose, whereas, the present O.A.722 of 2012 squarely challenges the selection and appointment of respondents 3 and 4 as Assistant Directors. When a qualified and otherwise suitable candidate, like the petitioner is available, the question of relaxing the upper age limit in favour of respondents 3 and 4 should not have been contemplated by the respondents at the first instance, and therefore, they have grossly erred in relaxing the upper age limit in favour of the respondents 3 and 4. Instead the petitioner ought to have been chosen for appointment as Assistant Director, as his name is included at Sl.No.3 in the merit order.

5. It is contended that the relaxation of upper age limit is allowable only under special circumstances. When an otherwise suitable candidate, who is less than 45 years of age is available, the question of relaxing the upper age limit in favour of any other candidates, who is above 45 years does not arise.

6. The petitioner was working as Assistant Research Officer in the same Institute, and he is aware of the appointments made in favour of respondents 3 and 4 as Assistant Directors on 16.03.2006. Instead of squarely challenging their selection and appointment made in favour of respondents 3 and 4, what the writ petitioner has done is that he accepted their selection and appointment and waited for sanction of one more post of Assistant Director on 11th May, 2007, and it is, at this stage, he sought for appointment as Assistant Director against the newly sanctioned post on 11th May.2007, that too, based upon inclusion of his name in the selection panel drawn on 1st March, 2006 immediately down below the respondents 3 and 4. In other words, the petitioner has accepted the selection made on 1st March, 2006, pursuant to which, respondents 3 and 4, came to be appointed as Assistant Directors on 16.03.2006. Sanction of new post of Assistant Director 11.05.2007, gave him, an all together, a new cause of action. It is for that reason, he instituted O.A.No.532 of 2008, before the Tribunal, wherein, a

direction was issued to consider his case for appointment to the post of Assistant Director against the newly sanctioned post on 11th May.2007. Therefore, the petitioner had an occasion and opportunity to challenge the selection and appointment of respondents 3 and 4 as Assistant Directors not only after 16.03.2006, but even at the time, when he instituted O.A.No.532 of 2008, but, he has not chosen to challenge the correctness of the inclusion of the names of respondents 3 and 4 in the selection panel drawn on 1st March, 2006, which panel was drawn, resulting in the appointment of respondents 3 and 4 as Assistant Director on 16th March, 2006. He is virtually acquiesced in the selections that were carried on 1st March, 2006. Only when the Official respondents have challenged the correctness of the order passed by CAT in O.A.No.1224 of 2009 on 15.02.2009, quashing the order of rejection of the petitioner's candidature, and issued declaration that the writ petitioner shall be deemed to have been appointed as Assistant Director, w.e.f. 11th May, 2007 onwards, the writ petitioner turned around and started challenging the selection and appointment of respondents 3 and 4.

7. Virtually, the order of appointment of respondents 3 and 4, dated 16th March,2006, remained unchallenged till the date the present O.A.No.722 of 2012 is instituted nearly six years thereafter. It is a settled legal principle that the delay and laches would defeat the rights of a party. It is rested upon a public policy. The rationale behind it was that, the opposite parties may have changed their position thinking that the order of appointment, dated 16.03.2006, is accepted, when it is not challenged. Thus, certain valuable rights have accrued to the respondents 3 and 4, in the interregnum period, and such rights cannot be upset or over turned, without their being a compelling factor to do so.

8. Normally, when more valuable and assured fundamental rights of a citizen are grossly violated or abused, the constitutional court will be very slow to defeat any such claim only on the ground of delay or laches. There the Court would bestow certain consideration to the nature of violation alleged, and seeks to redress the situation properly, for, the fundamental rights guaranteed to the citizens of this Country are treated and considered as sacrosanct, and they must be upheld, and any breach thereof, must be dealt with a firm fist, lest, the fundamental rights guaranteed under Part III of our constitution will loose not only the glow and glory, but also in substance. Hence, no effort would be speared by the Court for remedying the breach of constitutional right, much more so, if it is a fundamental right.

9. In the instant case, the fundamental rights guaranteed under Articles 14 and 16 have been faithfully complied with by

the Institute, when the case of the writ petitioner has received appropriate consideration at the hands of Selection Committee, which included him at Sl.No.3 in the panel of five candidates. Unfortunately, for him, the life span of the panel was only six months, and during the currency of such life span, the new post of Assistant Director has not been sanctioned by the Government to the Institute, and it came to be sanctioned only on 11th May, 2007, long after the expiry of panel on 31.08.2006. In that view of the matter, no fundamental right of the petitioner is violated, and hence, there was no occasion for one to ignore the principles underlying the concept of delay and laches being treated as fatal for maintaining certain claims. We are, therefore, of the opinion that the view expressed by the the Tribunal this time is not erroneous at all.

10. Next comes the contention relating to the principles behind the concept of res judicata. The concept of res judicata is again rested upon a public policy. It is not a technical doctrine of law, for every litigation, there should be a foreseeable end and no person shall ever be made to face litigation after litigation after litigation. His productive time and energy cannot be put to an eternal demand by making him to go around from one Court to another and toss him around in rounds. When the petitioner had instituted O.A.No.532 of 2008 before the Tribunal, he ought to have squarely called in question, the selection and appointment of respondents 3 and 4 as Assistant Directors on 16th March, 2006 itself. Having remained a mute spectator, he cannot turn around six years later, and call in question, the selection and appointment made in favour of respondents 3 and 4, all because, his endeavour to get appointed against the newly sanctioned post on 11.05.2007, have been completely neutralized. The fact that, he was able to secure information only during October, 2011, under RTI Act is no good reason at all for him to wait for six years, to mount a challenge to the appointment of respondents 3 and 4 as Assistant Directors.

11. We are therefore, not all impressed by the contention canvassed by the petitioner herein.

12. We sincerely hope and trust that the writ petitioner will not get unduly disappointed that the efforts made by him to secure some relief or the other from the Courts have not fructified. He, being a Research Scholar, we only hope that he will look at the events far more objectively, and in a proper spirit. We hope that he would concentrate all his energies and time in carrying on good quality research in the Institute, named after an imminent Scientist, and earn good reputation for himself and to the Institute as well. The persons, endowed with a sense of objectivity and spirit of research can easily muster this conviction and courage to overcome individual

disappointments, after all, temporary hurdles in one's own progress are easily surmounted with little more effort and industry. We hope that petitioner would carry on with his research activities, and publish great quality work, which would fetch him appropriate recognition. We also hope that the Institute would view the entire litigation instituted by the petitioner as a genuine attempt of a person, seeking to get recognition of his rights only. With this, the writ petition stands dismissed, but, however, without costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To Union of India,
rep. by its Secretary to Government,
Ministry of Health and Family Welfare,
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+1 CC to Mr. N. Ramesh, sr 13449(06/04/2017)
+1 CC to Mr. Tamizh Law Firm, sr 14062(06/04/2017)

NR(CO)
RS(22/03/2017)

W.P.No.32275 of 2015