

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL Nos. 1466 and 1500 of 2016

COMMON JUDGMENT: (*Per VRS,J*)

These writ appeals, one filed by the National Institute of Plant Health Management and the Union of India, and the other filed by a candidate selected for appointment to the post of Assistant Director (PHM), arise out of an interim order granted by the learned single Judge, pending disposal of a writ petition.

2. Heard Mr. B. Narayana Reddy, learned Assistant Solicitor General, appearing for the Union of India, which is the appellant in one writ appeal, and Mr. J. Prabhakar, learned counsel, appearing for the selected candidate/appellant in another writ appeal, whose appointment has been stayed by the learned single Judge. We have also heard Dr. Lakshmi Narasimha, learned counsel, appearing for the 1st respondent/writ petitioner.

3. For direct recruitment to the post of Assistant Director PHM, the Institute issued an advertisement notification No.1 of 2016 in January, 2016. The procedure for selection to the post was indicated in the notification as follows:

“Assistant Director (PHM): Selection to the post will be based on written test, Power Point Presentation and Interview.

“Syllabus for written test and interview:

- *Principles and concepts of IPM*
- *Agro-ecosystem analysis*
- *Ecosystem concept*
- *Ecosystem services*
- *Pesticide resistance, pest resurgence, secondary pest outbreak and pest replacement*
- *Biological control for pest management*
- *Ecological engineering for pest management*
- *Companion plants and their role in Push-Pull strategy for pest management*
- *Insect pests and defenders of rice, wheat, red gram, cotton, tomato and chillies.”*

4. But, it appears that the Institute followed a particular procedure evaluating all the aspirants on a hundred marks scale distributed in the manner as follows:

“GUIDELINES ADOPTED BY THE COMMITTEE FOR SELECTION OF CANDIDATES

*M.Sc. I class... 5(>85%=5, 75% to 84%=4, 60% - 74% = 3 marks)
II class... 2 marks
..... 5*

Ph.D.

Recognition for work5 (@2.5 per each recognition)

*Experience-over and above
required specialized experience.....5 (@ 1 mark for 1 year over
above required years)*

*Advanced training in area of
Specialization 10 (@5 for 15 days and above
training)*

*Paper publication in
journals of repute..... 10 (@ 1 mark for each
paper)*

PPT 15 marks

Written Test..... 20 marks

Interview 25 marks”

5. Eventually, by an order, dated 23.06.2016, the appellant in the second writ appeal was selected for appointment. Challenging the said selection, the 1st respondent/writ petitioner filed an application before the Central Administrative Tribunal. But, an objection was taken by the Institute that the jurisdiction of the Tribunal was not extended. Therefore, the 1st respondent moved a writ petition in W.P.No.31494 of 2016. In the said writ petition, the learned single Judge granted an interim suspension of the order of appointment, on 17.10.2016.

6. The selected candidate as well as the Union of India and the Institute moved vacate stay petitions, but the same were rejected by the learned single Judge, forcing the selected candidate and the Union of India and the Institute to come up with the above writ appeals.

7. *Prima facie* it appears that the learned Judge was correct in his approach that the Institute has changed the process of selection, from the way that was indicated in the notification. We do not know whether the rules of the game were changed after the game

commenced, since the writ petitioner claims that even in 2013 the same guidelines were adopted. But, the fact remains that the ultimate selection was not solely based upon the written test, power point presentation and interview, as indicated in the notification itself. On the contrary, the selection is based upon a hundred marks scale that we have indicated earlier, whereby 25 marks were allotted for interview, 20 marks for written test, and 15 marks for power point presentation. Therefore, what was indicated in the notification as the only method of selection has been reduced to a 60 point scale, leaving the remaining 40 points for other things, about which, the notification was conspicuously silent.

8. Another difficulty with the distribution of marks is that while 25 marks have been allotted for interview, only 20 marks have been allotted for written test. The writ petitioner, fortunately for her and unfortunately for the appellants, has secured the highest marks in the written test. The selected candidate secured lesser marks than her in the written test. But, due to the adoption of other parameters not indicated in the notification for selection, the selected candidate has secured a much higher mark. Therefore, the learned Judge was right in thinking that the selection was vitiated.

9. But, one fact, which ought to have been taken note of, is that the order of appointment was admittedly dated 23.06.2016. For reasons which are not attributable to the writ petitioner and for reasons over which she had no control, the earliest order of suspension of the order of appointment was granted only on 17.10.2016. In this interregnum period of three months, the selected candidate has joined duty and also started discharging the functions of the Office. As rightly pointed out by Mr. J. Prabhakar, it was a case of direct recruitment. Therefore, despite our agreement with the learned Judge that the writ petitioner has a good *prima facie* case, the balance of convenience was not in favour of the writ petitioner for the grant of interim suspension of the order of appointment.

10. Therefore, the Writ Appeals are allowed, and the order of the learned single Judge is set aside. However, two things are made clear, namely, (a) that the selected candidate shall not claim any equities, on the basis of her continuance in service, during the pendency of the writ petition, and (b) that similarly, the Department shall not hold anything against the writ petitioner for challenging the selection of the appellant in the second writ appeal. Now that the pleadings are complete, the writ petition itself may be taken up for hearing at an early date, so that the issue of appointment to a higher post reaches finality, within at least a period of four (4) weeks from today.

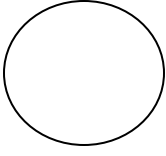
Consequently, miscellaneous petitions if any pending in the writ appeals shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

3rd January, 2017
cbs





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(allowed)

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