

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

107

**CWP-10483-2017 (O&M)
Date of decision:14.12.2017**

Dr. Mithilesh Kumar Jha

....Petitioner

Versus

Dr. B.R. Ambedkar, National Institute of Technology and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for respondents No. 1 to 3.

Mr. J.S. Lalli, Advocate for respondent No.4.

P.B. BAJANTHRI, J. (ORAL)

With the consent of the parties, main matter is taken up on board today itself.

2. In the instant writ petition, petitioner has prayed for the following relief:-

“ Issue a writ in the nature of Mandamus directing the respondents to issue Vigilance Clearance Certificate without any rider to the petitioner so as to enable him to join as Director at Central Institute of Technology,

Kokrajhar, Assam in view of the recommendation dated 16.09.2016 made by respondent No.2 (P-6) and Legal Opinion dated 20.10.2016 of Ld. Assistant Solicitor General of India (P-8).”

3. Petitioner was a candidate for recruitment to the post of Director at Central Institute of Technology, Kokrajhar, Assam. For want of Vigilance Clearance Certificate from respondents No.1 and 2 petitioner could not join the post of Director. During pendency of this petition following order was passed on 10.10.2017:-

“Petitioner is a candidate for the post of Director, Central Institute of Technology, Kokrajhar, Assam. For want of vigilance clearance certificate petitioner is not in a position to join the post at Assam. Therefore, respondent No.1 is hereby directed to consider petitioner's grievance relating to issuance of vigilance clearance certificate for the purpose of reporting as a Director at Central Institute of Technology, Kokrajhar, Assam. Such decision shall be taken within a period of one month from today and communicate the same to the petitioner, failing which personal appearance of respondent No.1 would be ordered for appraisal of the matter.

List this matter on 05.12.2017.”

4. Thereafter there was no response from the concerned respondent. Consequently, on 04.12.2017, following order was passed:-

“Order dated 10.10.2017 passed by this court has not been complied by the Ist respondent. Therefore, issue bailable warrants to the Ist respondent for 18.12.2017.”

5. When the matter is pending Director who is Officiating Chairman of the Board of Governor (for short 'BOG') in the absence of regular Chairman

of the BOG and Registrar has taken a decision for issuance of Vigilance Clearance Certificate with a rider that no case of any vigilance/criminal/prosecution is contemplated against petitioner. At later stage vigilance clearance certificate issued to the petitioner will stand withdrawn. Such Vigilance Clearance Certificate has been issued on 07.12.2017. Subject to aforesaid rider-condition petitioner is entitled to report as Director at Central Institute of Technology Kokrajhar, Assam if he is otherwise eligible or not. The rider imposed in the Vigilance Clearance Certificate may not be a hurdle for reporting to the post of Director. Learned counsel for respondent No.4 submitted that selection process to the post of Director at Central Institute of Technology, Kokrajhar, Assam would be in vogue only for a period of one year and it is elapsed during pendency of this petition. Further fresh advertisement is stated to have been issued. Therefore, petition do not survive for consideration and petitioner has not challenged the fresh advertisement.

6. Learned counsel for respondents No.1 to 3 submitted that delay in issuance of vigilance clearance certificate is due to non-constituting committee. For the purpose of constituting committee file is being moved from 07.12.2016 to 23.12.2016. Committee has not met on various dates for want of non-appearance of the members who were appointed in the year 2016. The constitution of appointing committee was modified on 3 occasions. Thereby there delay in issuance of vigilance clearance certificate.

7. Heard learned counsel for the parties.

8. Perusal of the records, it is evident that for the purpose of issuance of vigilance clearance certificate to the petitioner matter is under active consideration from 11.11.2016 (Annexure P9) due to administrative

lapses on the part of respondents No.1 to 3. Even after completion of 1 year committee could not meet date fixed for the meeting of the Board of Governor is 23.12.2017 only to the extent whether petitioner is to be prosecuted or not. In the meanwhile, on 07.12.2017 Registrar has issued Vigilance Clearance Certificate with the Rider. The rider imposing the Vigilance Clearance Certificate would not be a hurdle for reporting as a Director at Central Institute of Technology, Kokrajhar, Assam. Even reporting of the petitioner as Director would be subject to removal of the rider. 4th respondent's contention that the selection process of Director, Central Institute of Technology, Kokrajhar, Assam has lapsed and post has been re-advertised and the petitioner has not questioned would be beyond the control of the petitioner for the reasons that vigilance clearance certificate is required to be issued by respondents No.1 to 3 and they were aware that the post of Director at Central Institute of Technology, Kokrajhar, Assam selection process is required to be completed within a year. Thus there is no lapses on the petitioner's part. On the other hand there is serious lapse on the part of the respondents No.1 to 3. Therefore, 4th respondent's contention that selection procedure to the Director post has lapsed during pendency of this petition, cannot be accepted. Consequently, petitioner in not questioning the re-advertising the post do not hold good.

9. In view of the issuance of vigilance clearance certificate petitioner may approach appropriate authority seeking his reporting as a Director at Central Institute of Technology, Kokrajhar, Assam. Learned counsel for respondent No.4 has submitted that he has filed his statement of objection in the Registry today. In the reply statement, 4th respondent has taken the contention that the process of selection has elapsed. Petitioner has

not challenged the advertisement. Aforesaid issues have already discussed (supra) that apart petitioner's grievance is only for a writ of mandamus. Therefore, contentions of 4th respondent may not hold good.

10. At this stage, learned counsel for respondents No.1 and 2 submits that bailable warrant issued to respondent No.1 be recalled. Questing of recalling that order do not arise in view of the disposal of the main matter itself.

14.12.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No