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

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Date of Decision: 22.05.2017

% **LPA 395/2017**

K ASOKAN

..... Appellant

Through: Mr. Krishna Kumar, Mr. Shekhar
Vyas, Mr. Arun Pathak & Ms. Yukti
Bishnoi, Advocates.

versus

NUCLEAR SCIENCE CENTRE & ORS

..... Respondents

Through: Ms. Mahika Trivedi, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE ANU MALHOTRA

VIPIN SANGHI, J. (ORAL)

Caveat No.507/2017

1. Learned counsel for the caveator has appeared.
2. Accordingly, the caveat stands discharged.

C.M. No. 19402/2017

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

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C.M. No. 19403/2017

5. List of dates is taken on record.
6. The application stands disposed of.

LPA 395/2017 and C.M. No. 19401/2017

7. The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 28.03.2017 passed by the learned Single Judge in W.P. (C) No. 1813/2003, whereby the appellant's aforesaid writ petition has been dismissed with costs of Rs.30,000/-. The appellant had preferred the said writ petition to seek the relief of grant of higher pay grade in the scale of Rs.3000-4500 as payable to a Scientist-'D' instead of Rs.2200-4000, on which the appellant was appointed as Scientist-'C'/ Scientist Coordinator.

8. The respondent Nuclear Science Centre (NSC) issued an advertisement in December 1993 inviting applications to the post of Scientists in the pay scale of Rs.2200-4000. Amongst the Scientists, the applications were invited for Scientist Coordinator. For the said post, the advertisement provided the minimum qualification as M.Sc. in Physics with experience, or Ph.D. (Physics). The advertisement, inter alia, provided that *"higher starting salary/ grade may be admissible to a candidate having suitable experience and qualifications"*. The appellant applied in response to the said advertisement. The Selection Committee – consisting of five Scientists, interviewed the appellant apart from eight other candidates. The Selection Committee made its report dated 24.02.1994, which reads as follows:

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SELECTION COMMITTEE REPORT

The Selection Committee constituted to interview the candidates called for the post of SCIENTISTS (COORDINATOR) in the scale of 2200-4000 met on February 24, 1994. In response to the advertisement 93/12 dated 9.12.93, 48 applications were received. A screening committee constituted by the Director selected 10 candidates to be called for the interview. 9 candidates appeared for the interview. The Selection Committee's recommendations are:

Dr. K. Asokan may be appointed in the scale of Rs.2200-4000 with four increments. It should be specified in the letter of appointment that his job is to assist the Convener AUC in coordinating user activities, workshops/ seminars, publications and liaison work in experiments.

Sd/-

PROF. PRASANTA SEN
S.I.N.P., Calcutta

Sd/-

PROF. S.C. PANCHOLI
Delhi University

Sd/-

Sd/-

Sd/-

DR. R.K. BEOWMIK DR.S.K. Datta PROF. G. K. MEHTA"
(emphasis supplied)

9. On the basis of the said report, an offer was made to the appellant on 07.04.1994. In the offer made to the appellant, the respondent, *inter alia*, clearly stated:

"Dear Dr. Ashokan,

With reference to the interview you attended on February 24, 1994, I wish to inform you that you have been selected for the post of Scientists (Coordinator) in the Nuclear Science

Centre on the basic salary of Rs.2500/- per month in the grade of Rs.2200-75-2800-EB-100-4000. You will be entitled to allowances as admissible in the centre (annexure enclosed).

Your terms of appointment and other service condition will be governed by the bye-laws and the rules of the Centre framed from time to time. Your duties will be to assist the Convenor, AUC in coordinating user activities, workshops/seminars, publications and liaison work in experiments besides work assigned by the Director." (emphasis supplied)

10. The appellant accepted the said offer vide communication dated 18.04.1994. While accepting the offer, he pleaded that he be granted higher grade of Rs.3000-4500. In his aforesaid communication, he, *inter alia*, stated that:

"Dear Sir,

I take this opportunity to thank you for your offer of appointment. While accepting the offer, I submit the following for your kind consideration and perusal.

1. *I intend to complete the medical examination before joining NSC. I will be reaching NSC on 23rd April afternoon. I would like to have medical examination on 25th and 26th April '94 since I have booked by return (train) ticket for 26th April (2115hours). I request to you, kindly to inform the Chief Medical Officer, Ram Manohar Lohia Hospital, regarding this and also make the reference letter ready. Please do the needful at your end in this regard. Please confirm whether the above programme is O.K by fax 08172-67423 or 08712-68650 Attn: Dr. K. Asokan.*

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I may need accommodation during this period (23rd to 26th April)

2. *I hope to be relieved from INSAT – MCF by 11th May. I would be reporting at NSC by 16th May and hence kindly extend my joining time accordingly.*

3. *I am to request you, kindly to place me in higher grade based on the following consideration:*

(a) *PhD (Physics) completed in 1992.*

(b) *About eight years service in ISRO unit after post graduation in Physics and experience in working in shifts, exposure to computers and also published both technical papers and reports.*

(c) *recently, I have also forwarded applications (through proper channel) for the post of Scientist in the grade of Rs.3000–4500 in Satellite Applications Centre (ISRO), Ahmedabad, DRDO and also CAT, DAE. In fact, when I applied for NSC, I was under the impression that I would be placed in this grade based on my qualification and experience. I understand that there is a provision for this in the Advt. Still I am going ahead with the other formalities.”*
(emphasis supplied)

11. From the aforesaid, it would be seen that while appointing the appellant, he was offered four increments at the initial stage itself in the pay grade of Rs.2200–4000. He even accepted the same. He claimed that he was under the impression that he would get the higher grade of 3000-4500. His communication shows that he pleaded for grant of the higher pay grade—but, without asserting a right to the same on the basis of any rule or regulation.

12. It appears that the appellant kept representing to claim the higher pay grade of Rs.3000–4500. The representation of the appellant was rejected by the Governing Body (GB) of NSC on 21.08.1998. The appellant still continued to represent and the same was again rejected by the GB on 02.12.2002.

13. Thereafter, the appellant preferred the aforesaid writ petition. The appellant sought to place reliance on the words used in the advertisement to contend that since he had obtained Ph.D. degree in Physics, he was entitled to the higher pay grade of Rs.3000–4500. The learned Single Judge rejected the submission by observing that the advertisement had used the word ‘*may*’ and not ‘*shall*’, and thus, there was no representation held out to the appellant that he shall be granted the higher pay grade of Rs.3000–4500. Moreover, the appellant had been granted higher salary by granting 4 increments in terms of the representation held out in the advertisement.

14. The learned Single Judge, while rejecting the appellant’s claim, also took notice of the fact that the appellant had been made an offer by the respondent, as aforesaid, which he accepted with open eyes, and thus, he could not have reneged from his agreement, and after having joined the post, he could not have claimed the higher pay grade. Rejection of his representation for grant of higher pay grade of Rs.3000–4500 did not give him a cause of action since he has no vested right to seek a higher pay grade as claimed by him.

15. The learned Single Judge also took note of the fact that the rejection of the appellant’s claim by the Governing Board, which is the highest body

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of respondent No.1, was communicated to him on 21.08.1998. Yet he did not agitate his grievance, if any, before the Court till 2003. Thus, the writ petition was held to be barred by delay and laches. Mere rejection on second occasion by the Governing Board of the appellant's claim on 02.12.2002 did not furnish a cause of action, since, repeated rejection of subsequent representations would not extend the time period during which the appellant could have preferred the writ petition.

16. The appellant also sought to make out a case of discrimination by pointing out six other cases, where persons with Ph.D. qualification had been placed in the higher pay grade of Rs.3000-4500. The learned Single Judge rejected the said submission in paragraphs 10 & 11 of the impugned judgment, which read as follows:

"10. Counsel for the petitioner argued discrimination against the petitioner and in this regard the relevant averments are made in para 14 of the writ petition, and which para reads as under:-

"14. The petitioner made repeated requests in this regard to the respondents and made a representation even before joining that he should be given a higher grade. The Grievance Committee which consists of Retired Judge of the High Court and two external experts examined the representation of the petitioner and came to the conclusion that the prima facie, the grievance of the petitioner appears to be genuine and the petitioner should be put in the grade at par with other Scientists possessing Ph.D placed in the scale of 3000-4500. The report of the Grievance Committee which was in favour of the petitioner was never provided to the petitioner and the report

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has not been accepted by the Governing Body of the respondents and there have been no reasons assigned for not accepting the recommendations made by the Grievance Committee. It is submitted that this is a clear case of violation of Article 14 of the Constitution of India as the petitioner having Ph.D is offered a lower grade whereas the persons with Ph.D are placed in the scale of Rs.3000-4500 and in fact, the other six Scientists working with the respondents with the Ph.D are being given the higher grade as per the bye laws and it is only in the case of the petitioner alone that the bye laws are not being followed for some ulterior motive of harassing the petitioner. The other six Scientists having the Ph.D who are getting the higher grade are as under:-

1. Dr. A.K.Avasthi
2. Dr. D.Kanjilal
3. Dr. A.Mondal
4. Dr. S.Mookerjee
5. Dr. Ravi Kumar
6. Dr.T.Nandi

It is relevant to note that out of the above scientists joined with the respondents, Dr. A.Mondal was given the grade of Scientist-D while he was doing Ph.D which is given for a candidate having qualification of Ph.D as per the Bye-laws of the Respondents. Incidentally, Dr. S.Mookerjee and the Petitioner obtained their doctoral degree from Department of Physics, University of Rajasthan, Jaipur and joined the Respondent based on Ph.D qualification but placed in different grades, while

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the Petitioner was placed as Scientist-C and Dr. S.Mookerjee in Scientist/Engineer-D."

11. (i) In response to this stand of the petitioner, respondent no.1 as per its counter-affidavit (para 14) has denied the equality of the petitioner with six persons mentioned in para 14 of the writ petition by pleading as under:-

"14. In reply, it is submitted that necessary averments with respect to the report and recommendations of the Grievance Committee has been made in detail in the foregoing paragraphs and need not be reiterated here for the sake of brevity. The petitioner was aware about the report of the Grievance Committee and averments contrary to the same are denied. The reliance on the report of the Grievance Committee is completely misplaced inasmuch as it is the Governing Body, which is the deciding authority, where the report of the Grievance Committee are only recommendatory in nature. It is wrong to suggest that the report of the Grievance Committee was in any manner favourable to the Petitioner. The Petitioner has failed to make out any case of violation of Article 14 of the Constitution inasmuch as the instances of the six Scientists given by the Petitioner, who are getting higher pay scale, had applied against the post advertised in the higher grade. The rest of the contentions made in the paragraph under reply are not true and denied. Out of the list given by the Petitioner, the first three persons were appointed during the initial stage in the development of the Centre, prior to the formulation of the Bye-laws. Their primary responsibility was installation and commissioning of different scientific facilities required by the Centre. Similarly, the remaining three persons mentioned in the list were given responsibilities in the development of various

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research and computational facilities of the Centre. All those six persons had several years of post doctoral/managing experience before joining the Centre. It would be improper to equate their qualification/experience with the petitioner, who did not have any post doctoral/research/teaching/managerial experience at the time of joining the Centre. Also, the job description of the Scientist Coordinator is completely different and does not require any development activity related to the Centre."

(ii) It may be noted that petitioner was admittedly appointed as a Scientist Coordinator i.e Scientist-C. In para 14 of the writ petition when the petitioner compares himself with six other persons alleging discrimination against him, the petitioner has not pleaded that six other persons were appointed as Scientists-C or Scientist Coordinators. Accordingly, petitioner cannot successfully plead a case of discrimination because it is not pleaded or established that six other persons with whom the petitioner claims equality were appointed as Scientist Coordinator/Scientist-C in the respondent no.1 at a higher pay grade of Rs.3000-4500/-. Also, the respondent no.1 in its counter-affidavit in para 14 has stated valid facts as to how petitioner cannot claim equality with such six persons inasmuch as three out of the six persons were appointed before formulation of the bye-laws of the respondent no.1 and the other three persons had much more qualifications than the petitioner including of post doctoral experience before joining the respondent no.1, and petitioner admittedly had no experience post obtaining the Ph.D qualification."

17. Similarly, the appellant sought to place reliance on another instance relating to one Mr. G. Samudra, who was made an offer of appointment on 24.09.1985 as a Scientist in the grade of Rs.700-1300. He was informed that he will be given the grade of Rs.1100-1600 after he secures his Ph.D. degree. The submission of the appellant was that this shows that the higher

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grade was admissible under the bylaws to the Ph.D. holders. This submission has also been rejected by the learned Single Judge in paragraph 12 of the impugned judgment, which reads as follows:

"12. Learned counsel for the petitioner then argued by placing reliance upon a document filed with the rejoinder being the letter dated 24.9.1985 addressed by the Director of the respondent no.1 to one Mr. G. Samudra, however, it is seen that this letter in no way states that Mr. G. Samudra was appointed as a Scientist Coordinator or Scientist- C (letter only says „Scientist“) and since he had a Ph.D qualification he was hence granted the pay grade of Rs.3000-4500/- inspite of being only appointed as a Scientist-Coordinator. Even assuming that Mr. G. Samudra was appointed as Scientist-C at grade pay of Rs.3000-4500/-, even then till it is known as to what personnel position existed in 1985 and whether they were identical in 1993, petitioner cannot claim equality with Mr. G. Samudra. The letter dated 24.9.1985 is therefore reproduced and which will show as baseless the stand of the petitioner that Mr. G.Samudra was a Scientist Coordinator and yet got the higher pay-scale of Rs.3000-4500/- and simply because Mr. G. Samudra had a Ph.D in Physics. This letter reads as under:-

"Prof. A.P.Patro

Director

September 24, 1985.

Mr. G.Samudra

Department of Physics

Purdue University

WEST LAFAYETTE In.47906

U.S.A

Dear Mr. Samudra,

You have been in touch with Prof. Mehta. We recently had a selection committee meeting and considered your bio-data. We are pleased to offer you the position of a "Scientist" in our Centre in the grade Rs.700-1300 W.P.(C) No.1813/2003 Page 15 of 18 which will be Rs.1100-1600 After you get your Ph.D degree. In addition to the basic pay you will be entitled to the allowance as permissible to Central Govt. employees in Delhi. The total emoluments, at the minimum basic salary of Rs.1100, will come to Rs.2715. We will provide accommodation to come to Rs. 2715. We will provides accommodation to our scientists as per Govt. rules. If you are interested in our offer please let us know the date by which you can join. We are looking forward to hearing from you.

Yours faithfully,

Sd/-

(Prof. A.Patro)

Director""

18. The submission of Mr. Krishna Kumar, learned counsel for the appellant is that the advertisement itself provided that higher starting salary/ grade pay may be admissible to the persons having suitable experience and qualification. He points out that the minimum qualification prescribed for the said post was M.Sc. in Physics with experience, or Ph.D. in Physics. This itself shows that candidates who have Ph.D. in Physics would get the higher pay grade. He submits that the four increments granted to the appellant at the initial stage were granted in routine to all candidates who came with experience. He submits that the appellant came to the respondent

organisation with eight years of experience. Therefore, grant of four increments at the initial stage to the appellant was not on account of his possessing the higher qualification of Ph.D. in Physics, but on account of his earlier experience.

19. Mr. Krishna Kumar has also sought to place reliance on Annexure-I to the bylaws which prescribes the pay scales for Scientists and Technical Staff. He submits that in respect of the designation Tech.-J/ JE-E/ E-C/ SC, the pay scale was Rs.2200-4000 and the minimum qualification was M.Sc. or B.E. with one year experience. However, in respect of Tech.J/ JE-F E-D/SD, the pay scale was Rs.3000-4500 and the minimum qualification is Ph.D. or B.E. with five years experience, or M.Tech. with two years experience. The submission of Mr. Krishna Kumar, therefore, is that the higher pay grade is determined by the higher qualification, and not by the designation in respect whereof the appointment is made.

20. On the other hand, learned counsel for the respondent/ caveator submits that the appellant having accepted the offer made to him with open eyes, cannot renege from the same. She has placed reliance on the report of the Selection Committee which assessed the capability and functionality of the appellant at the time of his appointment, and on that basis, recommended his appointment to the pay scale of Rs.2200-4000 with four increments.

21. She also submits that the representation of the appellant having been rejected at the highest level in the year 1998, the filing of the writ petition was highly belated and barred by delay and laches in the year 2003.

22. Having heard learned counsels and perused the impugned order as

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well as the record, we are of the view that there is no merit in the appeal and the impugned judgment does not call for interference.

23. We have extracted hereinabove the report of the Selection Committee. The Selection Committee made the assessment in relation to the "*suitable experience and qualifications*" of the appellant. The Selection Committee consisted of experts and if, in their assessment, the appellant deserved the pay scale of Rs.2200-4000 with four increments, the said opinion of experts, in any event, is not open to judicial review. The appellant was made an offer of appointment on 07.04.1994 clearly stating that he would be entitled to basic salary of Rs.2,500/- per month in the pay scale of Rs.2200-4000. Thus, there was no scope of any doubt in the mind of the appellant that he had been appointed and offered the position of Scientist-'C' in the pay scale of Rs.2200-4000. The letter of acceptance issued by the appellant also clearly shows that he was very much conscious of the fact that the offer made to him was in respect of the pay scale of Rs.2200-4000 with four increments. He consciously accepted the same, as would be seen from the extract of his communication dated 18.04.1994. Having so accepted the grade offered to him with 4 increments, he could not have turned around and challenged the pay grade with increments offered to him and accepted by him, particularly when, the claim is not premised on any statutory basis.

24. The submission of Mr. Kumar that the pay scale of Rs.3000-4500 is attached to the qualification of Ph.D. with Physics, has no merit. The pay scales are prescribed in respect of different posts/ designations to which appointments are made. If the appellant was so minded, he could have applied in respect of a vacancy, if any, for appointment of Scientist-'D'. If

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he chose to apply in respect of a vacancy for Scientist-'C' - for which the minimum qualification was M.Sc., despite his holding a Ph.D. degree in Physics, he cannot turn around and say that on account of his higher qualification, he should be paid the pay scale which is admissible to Scientist-'D', for which one of the minimum qualifications is Ph.D. in Physics.

25. We also find merit in the submission of learned counsel for the respondent that the writ petition itself was barred by delay and laches when he approached the Court after five years of being communicated the rejection of the representation by the Governing Board.

26. The case of discrimination alleged by the appellant has been appropriately dealt with by the learned Single Judge in the extract quoted hereinabove, and we need say any further.

27. For all the aforesaid reasons, the appeal is dismissed. However, keeping in view the circumstances of the case, the costs imposed upon the appellant by the impugned judgment are waived.



VIPIN SANGHI, J



ANU MALHOTRA, J

MAY 22, 2017

B.S. Rohella