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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8850/2015

SANDEEP KUMAR

..... Petitioner

Through: Dr. S.N. Singh and Mr. Atul Singh,
Advs.

versus

DELHI TECHNOLOGICAL UNIVERSITY

..... Respondent

Through: Mrs. Avnish Ahlawat, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.05.2017

1. The present petition has been filed with the following prayers:-

“That this Hon’ble Court may be pleased to:

- i. *issue writ of certiorari and/or any other writ or writs or any appropriate orders or directions to the respondent calling them to produce the entire records of the case and quash the decision contained in the minutes of the 16th meeting of the Board of Management of the respondent taken on 27.05.2015 scrapping the selection process undertaken pursuant to Advt. No. DTU/Rectt./Faculty/02/2013 dt. 01.05.2013;*
- ii. *writ of mandamus and/or any other writ or writs or any appropriate orders or directions to the respondent to declare the final result of the interview held pursuant to Advt. No. DTU/Rectt./Faculty/02/2013 dt. 01.05.2013 and issue*

appointment letter to the petitioner for the post of Assistant Professor in the Department of Electronics and Communication in case he has been recommended for appointment by the selection committee;

iii. allow this petition with costs; and

iv. pass any other appropriate order and/or direction which this Hon'ble court deems fit and proper in the interest of justice."

2. It is the submission of Dr. S.N. Singh, learned counsel for the petitioner, that the respondent had issued an advertisement dated May 1, 2013 for making certain appointments in the University. The petitioner having necessary qualifications, applied for the post of Assistant Professor in the Department of Electronics & Communication. On January 19, 2014, he appeared in a written test. On January 15, 2015, the petitioner gave his presentation as required. He was also interviewed on January 16, 2015 by duly constituted Selection Committee. He states that the result of the selection process has not been declared. According to him, the stand of the respondent that the selection process has been scrapped is untenable in the facts of this case, inasmuch as the Committee constituted by the Lt. Governor was with regard to the appointments/selection made in the year 2012 pursuant to an advertisement in the year 2011. He has drawn my

attention to various documents in support of the contention including pages 117, 119 of the paper book. He states that when there is no issue with regard to the advertisement issued in the year 2013, the subject-matter of an Enquiry with regard to earlier appointment/selection cannot be a ground for respondents not to declare the result of the selection process, in which the petitioner had appeared. He would rely upon the judgment of the Supreme Court in the case reported as *(2010) 7 SCC 678 East Coast Railway and Another v. Mahadev Appa Rao and others* to contend once selection process has been completed finally by holding interviews, the respondent has no power to scrap the same in an arbitrary manner.

3. On the other hand, Ms. Avnish Ahlawat, learned counsel for the respondent would draw my attention to page 181 of the paper book, which is a communication dated march 4, 2015 from the Department of Training & Technical Education, Govt. of NCT of Delhi to the Vice Chancellor of the respondent University whereby the decision of the Lt. Governor to stop all process initiated by Shri Sharma (Former Vice-Chancellor) was conveyed. She also draws my attention to page 185 wherein the following has been stated:-

*“It was informed that in pursuance of **Direction No.1** “All processes initiated by Shri Sharma, former V.C be stopped- as*

had been informed; in the emergent meeting also that selection process was in progress for the post of Assistant Professor and Non Teaching Ministerial Staff. It was also informed that in pursuance of the direction of the Chancellor, DTU, as also, the fact that the desirable age as 35 years in both these cases had been changed to 40 years during the process and the same had not been informed to the public in general, both these processes need to be stopped.

In light of this, both these advertisement No. DTU/Rect./Faculty/02/2013 dated 01.05.2013 and advertisement No. DTU/Rect./Admn./03/2012 dated 04.04.2013 are being scrapped. And since recruitment of Associate Professor and Professor was also part of this advertisement that will be also automatically scrapped.”

4. According to Ms. Ahlawat, the plea of Dr. Singh that the subject-matter of the Enquiry by the Committee was confined to the appointments/selection of the year 2012 and the results of the selection held pursuant to the advertisement dated May 1, 2013 need to be declared is unsustainable, as according to her it was concluded by the Committee that in the appointments/selection process of the year 2012, it was noted the desirable age of 35 years for the post of Assistant Professor was changed to 40 years during the process and the same had not been informed to the public in general and the said infirmity also existed in the selection process

initiated pursuant to the advertisement dated May 1, 2013. In this regard, she has drawn my attention to page 17 of the writ petition, wherein the petitioner himself has inter-alia stated that with regard to contract faculty working in the University with many of them in the age group of 35-40, a decision was taken to give them a chance to appear in the written test, as was to be taken by outside candidates also. In other words, in the selection process, in which the petitioner appeared, candidates between the age group of 35-40 were also considered, which aspect was found to be unjustified by the Committee. She also states as the advertisement was issued during the time Shri Sharma was the Vice-Chancellor, the impugned decision dated May 27, 2015 was justified.

5. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether the respondent was justified in not declaring the result of the selection process initiated pursuant to the advertisement dated May 1, 2013 in terms of the decision taken by the Board of Management on May 27, 2015. The impugned decision of May 27, 2015 reads as under:-

“XXXXX	XXXXX	XXXXX
1. Recruitment	advertisement	No.
<i>DTU/Rectt./Faculty/02/2013 dated 01.05.2013 for the post of</i>		

Professor, Associate Professor and Assistant Professor and Advertisement No. DTU/Rectt./Admn./03/2012 dated 04.04.2013 for the post of non-teaching and Ministerial Staff are being scrapped.”

6. The aforesaid decision is because of findings of a Committee constituted by the Lt. Governor. The Committee has in its report did comment when the selection process was in progress for the post of Assistant Professor the desirable age as 35 has been changed to 40 years and the same had not been informed to the public in general. The said infirmity also existed in the selection process initiated pursuant to the advertisement dated May 1, 2013. This aspect has been conceded by the petitioner at page 17 of the writ petition. I agree with the submission made by Mrs. Ahlawat that the infirmity was similar to the one found in the appointments/selection process of 2012, that too carried under the directions of the Former Vice-Chancellor. Suffice to state, the criteria to change the age to 40 years during the selection process without informing the public at large is not justified. There is no infirmity in the impugned decision.

7. Insofar as the judgment of the Supreme Court in ***East Coast Railway and Another (supra)*** as relied upon by Dr. Singh is concerned, the facts in the said case are that the Senior Divisional Personnel Officer, East Coast

Railway, Visakhapatnam, issued a notification proposing to conduct a written/practical typewriting test for filling up the posts of Chief Typists. In response as many as 12 candidates appeared in the test. The result were declared on November 22, 2006. Some of the candidates, who failed to qualify made a representation complaining about the manner in which the test was conducted alleging that defective typewriting machines provided to them placed them at a disadvantage vis-a-vis candidates declared successful. The successful candidates also appeared to have made a representation impressing upon the authorities to go ahead with the interviews and to complete the selection process. One of the successful candidates filed a petition before CAT. On December 14, 2006, the Divisional Manager of the Railways issued an order cancelling the typewriting test conducted on October 30, 2006. By another notification of even date a fresh typewriting test was notified to be held on December 16, 2006 for all the 12 in-service candidates who appeared in the earlier test. The Tribunal has also dismissed the OA holding that the test earlier conducted was rightly cancelled, inasmuch as the candidates were made to take the test in batches and no option was given to them to bring their own typewriters. The Tribunal further held that although some of the candidates had made representation as

early as October 23, 2006 seeking permission to use computers, their request was not considered. In appeal before the High Court, the writ petition filed by a successful candidate in the first test allowed the appeal and set aside the order passed by the Tribunal. The High Court further directed respondent to proceed with the selection process in terms of practical test conducted on October 30, 2006. The Supreme Court in paras 30 and 31 held as under:-

30. We may hasten to add that while application of mind to the material available to the competent authority is an essential pre-requisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed importance only if the competent authority was shown to have applied its mind to whatever material was available to it before cancelling the examination. Since application of mind as a thresh-hold requirement for a valid order is conspicuous by its absence the question whether the decision was reasonable having regard to the material before the authority is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard and fast rule can be

formulated in that regard nor do we propose to do so in this case.

31. So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind. Any other view would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law.”

8. In view of the aforesaid conclusion of the Supreme Court, it has to be seen whether there was an application of mind to the material available by the Competent Authority to justify the decision. In the facts of this case, there is no dispute that there was material in the nature of a report available

with the Authority concerned to scrap the selection process including the one in terms of advertisement dated May 1, 2013 as the infirmities found in the report also existed in the selection, in terms of advertisement dated May 1, 2013. That apart, the decision was also to scrap the selection process initiated by Shri Sharma (Former Vice-Chancellor). There was sufficient material available with the Competent Authority to take the impugned action. The judgment has no applicability. Further, I note the respondent in reply to grounds, has stated as under:-

“(A-N) Ground (A-H) is wrong and is denied. It is submitted that petitioner has no legal right to challenge the action of the respondent of scraping of the selection procedure conducted vide advertisement no. DTU/Rectt./Faculty/02/2013 dated 01.05.2013 as no appointment letter to the post of assistant professor has been issued to him and thus no legal right to the post has been created in his favour. In any case, there is serious allegation against the Vice Chancellor of the University who actively participated in the recruitment and short listing of candidates, therefore, the competent authority decided to scrapped the recruitment process which were initiated through 2012 and 2013 advertisements.”

9. That apart, I may state here, as the result has not been declared nor any appointment letter issued, mere participation in the selection process

would not confer any right in favour of the petitioner. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

MAY 12, 2017*/ak*