

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.36975 of 2002

P.O.Balagopalan,  
Technical Supervisor,  
Bureau of Indian Standards,  
Taramani Post,  
Chennai - 600 113. ....Petitioner

..Vs..

1. Director General  
Bureau of Indian Standards,  
and Chairman of the Executive Committee  
Manak Bhavan, No.9, Bahdur Shah Zafar Marg,  
New Delhi - 110 002.
2. Director and Head Human Resources  
Department,  
Manak Bhavan,  
No.9, Bahdur Shah Zafar Marg,  
New Delhi - 110 002.
3. Deputy Director General (South)  
Bureau of Indian Standards,  
Taramani, Chennai - 600 013.
4. S. Nautiyal,  
Executive committee Member (B.I.S)  
Additional Secretary to Government of India  
Department of Consumer Affairs  
Ministry of Consumer Affairs,  
Food and Public Distribution, New Delhi - 110 001.
5. Brig. P. Bhose  
Executive Committee Member (B.I.S)  
Chairman of the National Industrial  
Development corporation Limited,  
Chanakya Bhavan,  
Africa Avenue, New Delhi - 110 021.
6. Ms. Pushpa Girimaji  
Executive Committee Member (B.I.S)  
Consumer Columnist

170, National Modia Centre,  
Nathupur,  
Gurgaon - 122 001.

7.Prof.Manubhai Shah,  
Executive Committee Member (B.I.S)  
Managing Trustee,  
Consumer Education and Research Centre,  
Suraksha Sankool,  
Thaile, Ahamadabad,  
Gandhi Nagar Highway,  
Ahamadabad - 380 054.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate, writ order or direction in the nature of a writ calling for the records of the second respondent in HRD/EC dated 23.10.2001 quash the same and direct the respondents to apply the relaxed qualifying standards for promotion as Assistant Director consider the petitioner's case for promotion as Assistant Director with effect from 14.10.1996 with all attendant and monetary benefits.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.T.S.Raja Mohan  
1 to 3

#### ORDER

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in HRD/EC dated 23.10.2001, quash the same and direct the respondents to apply the relaxed qualifying standards for promotion as Assistant Director with effect from 14.10.1996 to the petitioner with all attendant and monetary benefits.

2. The short facts which are required to be noticed for disposal of this Writ Petition are as follows:-

(i) The Petitioner joined service as Technical Assistant on 10.01.1973 in Indian Standard Institution at Central Laboratory, New Delhi. Thereafter, he was promoted as Senior Technical Assistant. Subsequently, he was promoted in the year 1993 as Technical Supervisor. In the meanwhile, he had passed the Associateship of Institution of Chemist Examination in the year 1977 which is equivalent to M.Sc., Degree. In that examination, he secured only 49.5% marks thereby falling short of 0.5% for 50%.

(ii) For the post of Assistant Director, since the Technical Supervisor is the feeder category from which all eligible candidates would be considered for selection and promotion to the post of Assistant Director, therefore, in the year 1985, the petitioner was called for interview for selection and promotion to the post of Assistant Director. However, even though he attended the interview, he could not clear the same, whereas two other persons, by name one M.Bakshi Gupta and one D.Mukhopadhyaya were selected as Assistant Directors in the years 1980 and 1985 respectively. In this context, it is the case of the petitioner that for selection to the post of Assistant Director, two essential qualifications have been prescribed in the Service Regulations. One is that the candidate must have to obtain 50% of marks in A.I.C. examination and another one is that the candidate should not have crossed the age of 50 years. In the case of the petitioner, he secured only 49.5% marks in the said examination and he had already crossed 50 years, and hence, he sought for relaxation of minimum marks as well as age. In this context, it is the further case of the petitioner that such relaxation can be given to the eligible candidates and in respect of two candidates referred to above, such relaxation for the minimum marks as well the age had been given by the authorities, by which, they became eligible to participate in the selection process and accordingly, they were selected and appointed as Assistant Directors.

(iii) Subsequently, in the year 1995, when similar promotional avenue came up for consideration to the post of Assistant Director, this time also, the petitioner sought for relaxation of age as well as minimum marks making him eligible to participate in the selection process to the post of Assistant Director. Since such relaxation had not been given to the petitioner, he already approached this Court by filing a Writ Petition in W.P.No.2099 of 1996.

(iv) During the hearing of the said Writ Petition some time in August 2000, it was pleaded on behalf of the petitioner before this Court that if the case of the petitioner is considered by the competent authority, namely, the Executive Committee of the respondents, namely, Bureau of Indian Standards (BIS), and such relaxation is granted by considering his case sympathetically, the petitioner would withdraw the said Writ Petition.

(v) It is the further case of the petitioner that, on the assurance given by the learned counsel appearing for BIS that the case of the petitioner would be considered sympathetically, the said Writ Petition was withdrawn.

(vi) It is also the case of the petitioner that,

thereafter, it seems that the case of the petitioner has been placed before the Executive Committee of BIS and pursuant to the decisions said to have been taken by the Executive Committee, the request of the petitioner for relaxation of minimum marks and age had been rejected and the same had been communicated by the respondents, by order dated 23.10.2001. Challenging the said order dated 23.10.2001 rejecting the plea of the petitioner for relaxation of minimum marks as well as age, the petitioner has filed this Writ Petition with the aforesaid prayer.

3. I have heard Mr.V.Ravikumar, the learned counsel appearing for the petitioner who would submit that the petitioner was short of only 0.5 marks for eligibility marks of 50% in A.I.C examination. Since the promotional avenue for the post of Assistant Director had come belatedly, in the meanwhile, the petitioner has reached the age of 50 already. In order to get relaxation of 0.5 marks with the short of 50% marks and also the relaxation of upper age limit of 50 fixed in this regard for the purpose of participating in the selection process to the post of Assistant Director, representations had been made by the petitioner time and again. When similar pleas were raised by other candidates at least in respect of two candidates as referred to above, such relaxation had been given by the respondents by using their discretion and accordingly, they were brought under the zone of consideration for selection to the post of Assistant Director and in fact, in the year 1980, the first person, namely, M.Bakshi Gupta got selected and in the year 1985, the second person, namely, D.Mukhopadhyaya, got selected to the post of Assistant Director and they had been working. When gesture had been shown to other two persons, who are similarly placed like the petitioner, the very same benefit can be extended to the petitioner also, which was in fact, assured on behalf of the respondents before this Court also in the earlier round of litigation.

4. The learned counsel for the petitioner would further submit that, the impugned order merely states that, the Executive Committee of BIS has rejected the plea of the petitioner and it has not been stated as to for what reason such a decision for rejecting the plea of the petitioner had been taken by BIS. Even though the power of relaxation in the minimum marks and the age, is the absolute discretion of the competent authority concerned under the Statute, the same cannot be exercised in a cavalier manner and if at all, any rejection is made in this regard, the actual deliberations and discussions taken place and the reason for such decision should be communicated to the petitioner.

5. Herein, in the case in hand, since no such reasoning had been given in the impugned order, as nothing is reflected

therein, the impugned order cannot stand in the legal scrutiny and therefore, it is liable to be interfered with.

6. Per contra, the learned Standing Counsel appearing for the respondents, after getting necessary instructions from the respondents and by relying upon the counter affidavit filed by the respondents, would submit that, it is an admitted case on the side of the petitioner that he did not have minimum marks which was a qualification to be considered for promotion to the post of Assistant Director. Like that, it is also an admitted case that the petitioner has already reached the maximum age prescribed. No doubt, the minimum marks as well as maximum age can be relaxed in deserving cases by the competent authority of the respondents. In this regard, the learned counsel for the respondents would submit that such relaxation had already been given to the petitioner at least in two occasions by exercising the powers vested with the Director General under the erstwhile Regulations, namely, ISI Service Cadre Rules, 1972. In the first occasion, where such relaxation was given to the petitioner, though he attended the interview based on his performance, the Interview Board have not selected him. When such relaxation was given for the second time in the year 1987, the selection itself was cancelled due to some administrative reasons. Therefore, the learned Standing Counsel would submit that the Department does not have any animosity against the petitioner and by using the discretionary power, the competent authority has given such relaxation to the petitioner at least twice.

7. However, after Bureau of Indian Standard (BIS) came into being replaced by the erstwhile Indian Standard Institution (ISI), the Rule position had got changed. According to the present Rule, the power to regularise/relax the age and education qualification is only with the Executive Committee i.e. E.C. Therefore, when the case of the petitioner was placed before the Director General of BIS, on his instructions, it has been referred and placed before the EC, which conducted the meeting already on 28.08.2001, and after discussion and deliberations, it has decided to reject the claim of the petitioner for relaxation of age and marks. When such decision has been taken by the competent authority, the petitioner cannot make any aspersions on the respondents to state that the discretion of the respondents has already been exercised in respect of the other two persons, whereas the same benefit has not been extended to the petitioner. These allegations made by the petitioner are totally unfounded, because, admittedly, the petitioner got the benefit of such relaxation from the respondents at least two times. Therefore, the learned Standing Counsel appearing for the respondents would submit that the decision taken by the Executive Committee of the respondents, had been communicated through the impugned order. Therefore,

the said order does not require any interference from this Court.

8. I have considered the said submissions made by the learned counsel appearing for both sides and have also perused the materials placed before this Court.

9. The only issue raised in this writ petition is that whether the respondents, while exercising their discretion to reject the claim of the petitioner for giving relaxation of minimum educational qualification and maximum age, had acted upon without any discrimination and ill-will.

10. In this context, the learned Standing Counsel appearing for the respondents has produced before this Court a copy of the agenda placed before the Executive Committee, which had a meeting on 28.08.2001. As per the agenda, the entire issue has been given in detail. I have perused the entire agenda, out of which, certain portions can be culled out and be extracted hereunder for better understanding:

"4. The request made by Shri Balagopalan dated 27 December 1995 was duly considered by the Competent Authority for giving any relaxation (copy enclosed) within the existing provisions of the regulations and Shri Balagopalan was informed accordingly vide our Memo No.PM/21 (69) dated 2 February 1996. It may further be mentioned that in that representation also Shri Balagopalan had cited the names of S/Shri.M.Bakshi Gupta and D.K.Mukhopadhyay, who had joined BIS as AD in Scientific Cadre in spite of their having less than 50 percent marks. While putting up the case to the Competent Authority, it was informed that prior to establishment of BIS, DG of the then Indian Standards Institution (ISI) was empowered to grant relaxation in age and qualifying marks as per the provisions of the rule for the ISI Service Cadre, 1972. Further, the advertisement released by the ISI prior to 1987 for recruitment to the post of AD also specified that for specially experienced candidates, age and division may be relaxed.

5. It may however, be stated that Shri Balagopalan was also given an opportunity in 1985 by relaxing the percentage of qualifying marks as provided in the erstwhile ISI Service Cadre Rules, 1972 for recruitment to the post of AD but was not selected by the Interview Board. In 1987 also, he was given another opportunity and was again called for interview, which was later on cancelled due to certain directions from the

Central Government.

6. Further, no such relaxation in qualifying marks and prescribed age limit has been granted after establishment of the BIS. Accordingly, a few requests received from Group 'B' Lab/Drawing personnel seeking relaxation in different requirement were duly put up to the Competent Authority (DG) who after due consideration did not accede to the requests. A few such examples are S/Shri.S.C.Jana, TS (ERO, Lab) and D.K.Sarkar, STA (ERO, Lab) seeking relaxation of marks from 50% to 46.5% and 49% respectively (which they had secured); S/Shri S.Ganapathi Subramanyan, STA (SRO Lab); Bimal Kumar Das, STA (ERO Lab); D.K.Sarkar, STA (ERO, Lab) and K.S.Shah, STA (ERO Lab) in the number of years of working experience as STA; Shri Ram Prakash, TS (CL) seeking relaxation in the age limit as he had crossed 50 years of age.

..

8. Shri Balagopalan filed a Writ Petition in the High Court of Madras on the grounds that two of the colleagues namely, Shri.M.Bakshi Gupta, Director SPD and Shri D.K.Mukhopadhyay, JD, MDD, were selected as Assistant Director in the year 1980 and 1985 though they did not have the necessary qualifying marks i.e.50% in AIC examination. During the course of arguments in the Hon'ble High Court on 4 August 2000 and 11 August 2000 Shri Balagopalan counsel requested that if his client's case is considered sympathetically by BIS, he will withdraw the case. Accordingly, BIS advocate said to the Court that BIS has no malafide intentions against Shri Balagopalan and because of his securing 49.5% of marks, he could not be selected and BIS would consider the application of Shri Balagopalan again sympathetically within the frame work of regulations. The Hon'ble High Court allowed Shri Balagopalan to withdraw the case.

8.1 Accordingly, the case was put up to DG who desired that this case may be placed before EC for its consideration giving the factual position as EC is the only Competent Authority to relax any of the provisions of the regulations.

9. EC may please consider."

11. Based on such detailed agenda, the issue was considered and decided by the E.C of the respondent on

28.08.2001, where the petitioner's case was considered as item 2.8 where the E.C has taken the following decision:

"2.8. Representation of Shri P.O.Balagopalan, Technical Supervisor, SRO, Chennai for relaxation in qualifying marks for appointment to the post of Assistant Director - Having considered item 2.8 of the addenda to the agenda. EC deliberated on the same and REJECTED his request for relaxation in the qualifying marks."

12. On a perusal of the agenda as well as decision taken by the E.C., it is clear that the request of the petitioner with all background history, has been placed before the Executive Committee for its deliberations and decisions. The Executive Committee is fully empowered to give such relaxation, and after having considered the request of the petitioner, it had decided to reject the same. When the Statute fixes certain responsibility and vesting certain powers on the authority, such authority, in exercising such power, has acted upon, unless such decision or the decision making process is either discriminatory or violative of any statutory provision or shocking to the conscience of the Courts, genuinely, such decisions taken by such authorities exercising their powers vested in them cannot be questioned.

13. Here, in the case in hand, on a perusal of the agenda placed before the Executive Committee, the decision taken therein discloses that no such violation had been made by the Executive Committee. In this context, it is to be noted that similar request made by several persons had already been rejected by the Executive Committee at various points of time, which has been specifically mentioned at paragraph 6 of the agenda placed before the Executive Committee, which is already extracted herein above.

14. Moreover, it is further to be noted that in the case of the petitioner as has been discussed above, such relaxation of minimum educational qualification as well as maximum age, had already been made by the respondents at least on two occasions (i.e) in the years 1985 and 1987. Moreover, merely because a relaxation is given, that would not absolutely pave the way for the candidates to be promoted to the post of Assistant Director in the respondent-Organisation.

15. The relaxation once makes a candidate to become eligible to participate in the selection process. When such relaxation has already been given and the benefit came to be extended making him eligible, the petitioner could not achieve by not performing well before the Interview Board. Accordingly, he failed to succeed. Therefore, the petitioner cannot put the

blame on the respondent-Department, as absolutely, there is no animosity or ill-will against the petitioner from any one of the Departments of the respondent-Organisation. When that being so, the decision taken by the Executive Committee based on the present Rule under BIS, cannot be found fault with.

16. Therefore, this Court is of the considered view that the decision taken by the respondents through the Executive Committee in rejecting the plea of the petitioner for giving relaxation of educational qualification as well as maximum age, is perfectly in order and therefore, the said decision requires no interference from this Court.

17. In the result, the Writ Petition fails. Therefore, the Writ Petition is dismissed. No costs.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

srn

To

1. Director General  
Bureau of Indian Standards,  
and Chairman of the Executive Committee  
Manak Bhavan, No.9, Bahdur Shah Zafar Marg,  
New Delhi - 110 002.
2. Director and Head Human Resources Department,  
Manak Bhavan,  
No.9, Bahdur Shah Zafar Marg,  
New Delhi - 110 002.
3. Deputy Director General (South)  
Bureau of Indian Standards,  
Taramani, Chennai - 600 013.
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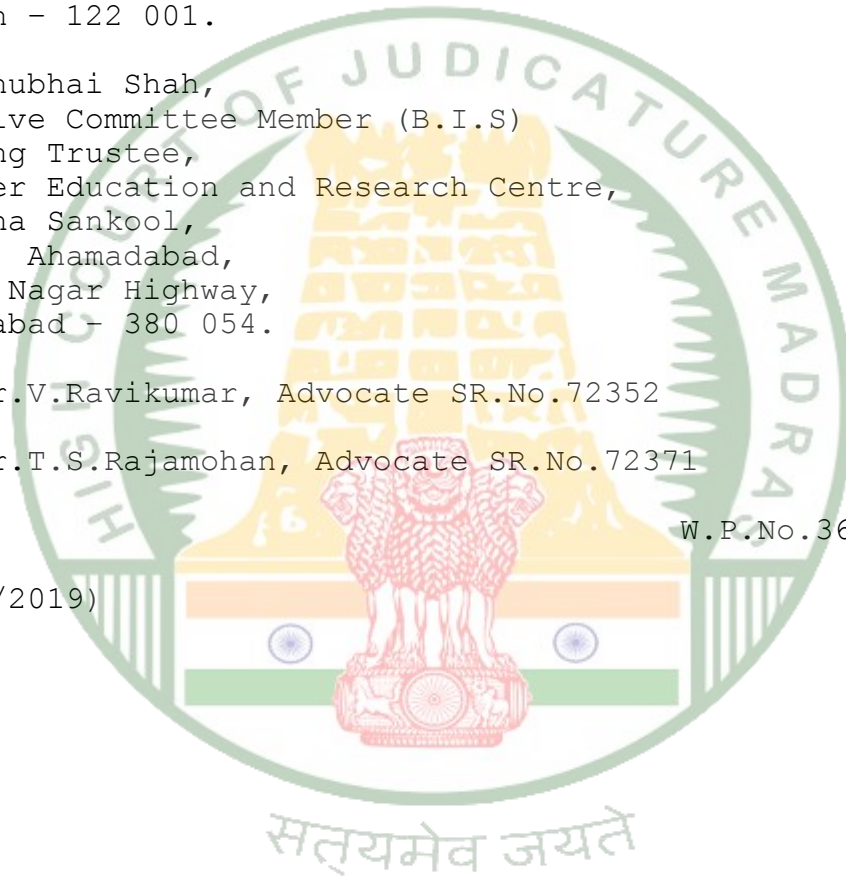
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W.P.No.36975 of 2002

CP (CO)

GMV (27/02/2019)



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