

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.02.2019

PRONOUNCED ON :18.02.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE P.RAJAMANICKAM

W.P.No.11926 of 2018 and

W.M.P.No.13912 of 2018

1. The Director General
Council of Scientific & Industrial Research (CSIR)
No.2, Anusandhan Bhavan
Rafi Marg, New Delhi - 110 001.
2. The Director,
Central Electrochemical Research Institute,
Karaikudi - 630 006.
3. Dr.Vijayamohanan K.Pillai,
Director/Member Selection Committee,
CSIR-Central Electrochemical Research Institute
Karaikudi - 630 006.

... Petitioners

Vs.

- 1.The Central Administrative Tribunal
Madras Bench
Addl Building, City Civil Court
Chennai - 600 104.

2.Dr.R.Natarajan

3.Prof.C.L.Khetrapal

Chairman, Selection Committee,
CSIR - Central Electrochemical Research Institute,
Karaikudi - 630 006.

4.Dr.Venkateshan Singaram

Scientist, CSIR - Central Electrochemical Research Institute,
Karaikudi - 630 006.

5.The Assistant Director,

National Commission for Schedule Castes,
State Office, Floor 2, Block 5, Sasthri Bhavan
Chennai.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st Respondent Tribunal passed in OA.No.177 of 2013 dated 18.10.2016 and quash only that portion of the direction issued for considering the case of the Applicant/2nd Respondent herein.

For Petitioners : Mr.T.Ravikumar

For 1st Respondent : Tribunal

For 2nd Respondent : K.H.Ravikumar

For RR 3 and 4 : Served

For 5th Respondent : Mr.A.Veeramani, CGC

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2.The 1st Respondent/Central Administrative Tribunal, Madras Bench, Chennai, while passing the impugned order in O.A.No.177 of 2013 on 18.10.2016 (filed by the 2nd Respondent/Applicant), at paragraph 6 and 7, had observed the following:

"6.Considering these aspects, no doubt this Court cannot substitute as appointing authority and, therefore, we cannot pass any mandatory order directing the respondents to consider and appoint the applicant against any one of the vacant posts. However, it is seen the facts and circumstances of the case that the applicant had secured only 47.1% marks in the interview he belongs to reserved category and had passed M.Sc. Chemistry in first Division by securing 62.8% of marks, thereafter, has done his Ph.D. and had worked from 1999-2009 in the same department. Further, in the interview the respondents had given 47.1% marks and declared not selected but the selected candidate had been appointed after giving age relaxation whereas the applicant had worked from 1999-2009 in the same department is also not in dispute. It is needless to say that the Hon'ble Supreme Court had repeatedly held that based on the performance in the interview viz. Viva-voce, on that basis alone, 100% selection cannot

be made. In spite of that, the case of the applicant has been rejected on the basis that he had not fulfilled the bench mark.

7. Under these circumstances, once the respondents found that applicant had not reached to the Bench Mark, this Court cannot be substitute the decision of it as an appointing authority. Anyhow, as the posts are still lying vacant and if the respondents wish to fill up those posts now also by the same advertisement or to go by further selection, it is for them to consider the case of the applicant also now or it is for them to go for advertisement and take a decision within period of three months from the date of receipt of copy of this order."

and ultimately dismissed the Original Application without costs.

3. Assailing that portion of the direction issued by the 1st Respondent/Tribunal in O.A.No.177 of 2013 dated 18.10.2016 for considering the case of the 2nd Respondent/Applicant, the Petitioners have preferred the instant Writ Petition.

4. The Learned Counsel for the Petitioners submits that the impugned order of the 1st Respondent/Tribunal in O.A.No.177 of 2013 dated 18.10.2016 insofar as the direction given by it to consider the case of the 2nd Respondent is not in conformity with Law and Facts. Further, when the Selection Committee had already rejected the 2nd Respondent, the aspect of the post lying vacant cannot be a ground to consider the case of the 2nd Respondent/Applicant.

5. The Learned Counsel for the Petitioners contends that the 1st Respondent/Tribunal had failed to appreciate that the 2nd Respondent had not fulfilled the minimum benchmark which was required to be adopted and the Selection Committee had rejected his case, since he was not found suitable for the post.

6. Expatiating his submission, the Learned Counsel for the Petitioners takes a plea that the 2nd Respondent secured only 47.1% marks whereas Dr.Venkatesan Singaram had obtained 72.1% mark and hence, the Selection Committee had not recommended the 2nd Respondent's name due to his poor performance in the interview.

7. The Learned Counsel for the Petitioners projects an argument that the 1st Respondent had committed an error in directing the Petitioners to consider the claim of the 2nd Respondent/Applicant for appointment based on earlier

application and the vacancy available, then, they were already filled up and the present vacancies which are arrived at due to subsequent retirement and creation of additional post recently.

8.It is represented on behalf of the Petitioners that the validity of the application had already lapsed and the qualification then and now are different along with the minimum age of recruitment which was already amended and as such, the issue of considering the 2nd Respondent's name does not arise, as it is against the rules in force.

9.The Learned Counsel for the Petitioners proceeds to point out that the 2nd Respondent/Applicant was a Senior Research in Fellow in the Institute under the control of the 2nd Petitioner/2nd Respondent between the period November, 1996 till October, 1999 and now he served as Assistant Professor in Alagappa Arts College in Chemistry Department. Further, the 2nd Respondent/Applicant had stated that he had applied for the post of Scientist in CECRI, Karaikudi from the year 2000 when the Advertisement was called. However, he was not called for an interview on the basis that he had not possessed the qualification marks of 65% in M.Sc. Graduation as against his mark of 62.8%. In reality, the minimum qualification for the post of Scientific Group - IV under CSRAP Rules, 2001 was later amended vide CSIR Letter No.1-5(1)/174/2009-RAB dated 01.06.2011 with the minimum qualification for the post of Scientist Group - IV(1) re-designated as Trainee Scientist for new recruit and Junior Scientist for existing Scientist Group IV(1) is B.E./B.Tech. with minimum 70% marks or 7.0 CGPA effective from 01.06.2011.

10.The Learned Counsel for the Petitioners brings it to the notice of this Court that Advertisement No.7/2004 in Special Recruitment Drive for two Scientist posts out of which one post was reserved for Scheduled Caste was issued. The post for Scheduled Caste could not be filled up because of the reason that none was found suitable and hence, the said post was re-advertised in Special Recruitment Drive in Advertisement No.5 of 2007. Further, the recruitment of the Candidates was in the area of material chemistry, molecular materials and nano particles, transmission, electron microscopy, batteries and related area, electro chemical science and technology etc. Moreover, as no suitable person was available, one more advertisement 1/2010 dated 10.09.2010 was issued for the post of Scientist Grade-IV (2) and the 2nd Respondent had applied for the same. There were five eligible candidates including the 2nd Respondent against four vacancies and only four candidates appeared for interview and the 2nd Respondent also attended the interview. However, the Selection Committee had not found him fit and therefore, his name was not recommended. Out of the four posts earmarked for SC

category, one post was filled by Dr.Venkatesan Singaram and his delay in publishing the result of the interview was due to the fact that the recommendation of the Selection Committee was to be approved by the Recruitment and Assessment Board of CSIR as per CSRAP Rules, 2001 and not otherwise.

11.The Learned Counsel for the Petitioners informs this Court that the 2nd Respondent/Applicant made a representation to the National Commission for Scheduled Caste and the said Commission had not communicated any finding of adverse nature as alleged by him. Added further, it is projected on the side of the Petitioners that the Selection Committee had interviewed the 2nd Respondent based on the performance in the interview had awarded only 47.1% mark to the 2nd Respondent and 72.1% mark was awarded to Dr.Venkatesan Singaram/5th Respondent in O.A.No. 177 of 2013 filed by the 2nd Respondent/ Applicant.

12.The Learned Counsel for the Petitioners submits that out of the five posts advertised for Scheduled Caste category, the Petitioners could fill up only two posts and the remaining three could not be filled up as none were found suitable.

13.The Learned Counsel for the Petitioners points out that the 2nd Respondent/Applicant made a representation on 01.11.2007 and the Department vide order dated 18.11.2011 replied clearly mentioning that he had not fulfilled the minimum Benchmark since he had scored only 47.1%. Therefore, he filed O.A.No.177 of 2013 in which the 1st Respondent/Tribunal had passed an order on 18.10.2016. The Petitioners had furnished a detailed Reply and ultimately the Tribunal passed an order on 18.10.2016 and since the Petitioners are aggrieved against the 1st Respondent/Tribunal's order dated 18.10.2016 insofar as it relates to the direction given by it for considering the entire case of the 2nd Respondent/Applicant, the Petitioners have filed the instant Writ Petition before this Court.

14.In Response, the Learned Counsel for the 2nd Respondent contends that the 2nd Respondent is the first and only graduate from his agricultural family to get selected many times for temporary posts and possessed nearly six years of experience and secured Ph.D. degree in Electrochemistry from CSIR-CECRI, Karaikudi from 1994 to 1999. During this period, he had worked in various R & D project with Senior level and Director level Scientists as a Team Member.

15.The Learned Counsel for the 2nd Respondent submits that the 2nd Respondent is possessing 62.8% marks (First Class) in M.Sc., Chemistry, secured eligibility and attended the interview for Gr.IV Scientist post during 1994 in different CSIR laboratories in India.

16.The Learned Counsel for the 2nd Respondent points out that CSIR had enhanced eligibility for Gr.IV Scientist post from 60% to 65% during June 1994 and 2000 and the relaxation was given to SC/ST candidates in age, qualification and experience, if sufficient number of candidates are not available to fill the post.

17.In this connection, the Learned Counsel for the 2nd Respondent takes a plea that it was mentioned in the first line that 'The recruitment to S&T in CSIR is done on the basis of qualification and experience laid down for each post' and during the aforesaid period, the CECRI followed only the enhancement of mark % and relaxation formalities were observed only to OC, BC and MBC categories and not for SC/ST, even when candidates were not available to fill up the post in SC category in 2000. His candidature was rejected in Advertisement No.1/1996, 1/1997 and 2/2000 and in short, the relaxation formality was not observed in his case.

18.The Learned Counsel for the 2nd Respondent comes out with a plea that a Botany Graduate by name S.Mohanan who worked as a Gardener was irrelevant in qualification with no work experience, but was appointed as Electrochemical Scientist through Advertisement No.1/1996. Further, during 1994 and 1997 Director G.V.Subbarao had considered recommendations, other than merit. Also, it is projected on the side of the 2nd Respondent that the enhanced 65% in M.Sc. was relaxed in the year 2001 and there was no justification for enhancement and relaxation in % of mark during 1994 and 2000. Further, he had applied for the unfilled corrosion post vide 5/2002 with Ph.D. in corrosion science. but the advertisement was cancelled without any justification.

19.The Learned Counsel for the 2nd Respondent contends that the 2nd Respondent was interviewed for Advertisement No.7/2004 under Special Drive Category and was not selected and that the post was not filled. During 2005 and 2009, the unfilled corrosion science post for SC category was intentionally not advertised through Advertisement Nos.9/2006, 4/2007, 5/2007, 7/2008 and 1/2009 and Advertisement 1/2010 case connected to Reference 1. Moreover, the Director IICT, Hyderabad had inducted all temporary status workers into regular stream dated 19.07.2001 and in fact, no response was given by the Director Dr.K.Vijayamohanan to Reference 1 and 3 within the stipulated period.

20.The Learned Counsel for the 2nd Respondent submits that the 2nd Respondent had applied through proper channel for Gr.IV (5) Senior Principal Scientist Post vide Advertisement No.1/2018 with the qualifications required in the Advertisement. However,

Dr.K.Vijayamohan, intentionally to avoid his candidature, had enhanced the eligibility criteria (more than what was fixed in advertisement and by CSIR, New Delhi which had not taken place in the previous recruitment history in CSIR and CECRI 60% to 70% in M.Sc.,) in screening stage and the post was kept as vacant. Further, 70% in M.Sc., was not fixed as eligibility criteria even for Director Post and also for Dr.K.Vijayamohan.

21.The Learned Counsel for the 2nd Respondent comes out with a plea that the 2nd Respondent was wondering how the interview Committee desired that he was not suitable for a permanent position and in fact, others belonging to OC, BC, MBC category who worked with him in temporary positions in CECRI was selected and appointed as Scientists in CECRI. Also, it is projected on the side of the 2nd Respondent that the 2nd Respondent was the only person belonging to Scheduled Caste Category rejected in Scientist Selection in CECRI.

22.The Learned Counsel for the 2nd Respondent contends that Majority of Committee Members are Director's Subordinates and others are his influenced people and they acted and were directed by Director Dr.K.Vijayamohan. Also that, the term Benchmark was used for defence purpose of the Director and no record was maintained for interview activity and in every interview process, the final decision was done by Director of concern institute.

23.The Learned Counsel for the 2nd Respondent submits that during interview they were put marks using pencils and finally they were corrected as per the wishes of Director Dr.K.Vijayamohan. Apart from that, it is the stand of the 2nd Respondent that many candidates belonging to other than Scheduled Caste Category possessing qualification, work experience irrelevant to Electrochemistry and possessing II and III class in their M.Sc., degree are appointed as Scientist in CECRI. However, his candidature for Scientist post in the 2nd Petitioner's Institute (CECRI) was rejected by using different scales in different times.

24.While summing up, it is represented by the Learned Counsel for the 2nd Respondent that the 2nd Respondent was struggling for the past 24 years for a Scientist Post with required qualifications and work experience, but the same was rejected by the Petitioners for the reasons best known to them. In short, it is the contention of the 2nd Respondent that no transparency was followed in the 2nd Petitioner's Institute while recruiting persons and whenever the same was questioned, they would simply say that the said person was not upto the Benchmarks or otherwise, they would enhance the qualifications/experience Bench to suit their convenience.

25. Before the 1st Respondent/Tribunal, the 2nd Respondent/Applicant had filed O.A.No.177 of 2013 praying to call for the entire records in connection with the impugned orders of the 2nd Respondent/2nd Petitioner dated 18.11.2011 and that of the 2nd Respondent/2nd Petitioner dated 17.07.2012 and to quash the same by declaring the selection pursuant to Advertisement No.01/2012 dated 10.09.2010, insofar as the post of Scientist Gr.IV(2) [Post Code: SRD-01], as null and void and consequently direct the 2nd Respondent/2nd Petitioner in the present Writ Petition, to appoint him to the post of Scientist Gr.IV(2) [Post Code: SRD-01].

26. Before the 1st Respondent/Tribunal, the 1st Petitioner/1st Respondent, the 2nd Petitioner/2nd Respondent and the 3rd Petitioner/ 4th Respondent (in O.A.No.177/2013) had filed a Reply stating that as per Rule 8 of the CSIR Service Rules, 1994, the minimum qualification for the post of Scientist, Group-IV(1) was 1st class M.Sc.,/1st Class B.E., recognized equivalent qualification with not less than 65% marks or M.Tech/M.E./M.B.B.S./MVSc/M.Pharm/Ph.D. (Science) and the said rule was in force up to 31.03.2002. Further, as per Rule 6.2 of CSRAP Rule, 2001 with effect from 01.04.2002 the minimum qualification for the post of Scientist Group IV(1) was 1st class M.Sc.,/B.E.,/B.Tech/MBA/M.Lib.Sci./MCA/MBBS or equivalent qualifications or Ph.D.

27. Continuing further, the Petitioners (Respondents 1, 2 & 4 in O.A.No.177/2013) had categorically mentioned that the minimum qualification for the post of Scientist Group IV(1) under CSRAP Rules, 2001 was subsequently amended vide CSIR Letter No.1-5(1)/174/2009 - RAB dated 01.06.2011 with the minimum qualification for the post of Scientist Group -IV(1) [re-designated as Trainee Scientist for new recruit and Junior Scientist for existing Scientist Group IV(1) is B.E./B.Tech. with minimum 70% marks or 7.0 CGPA effective from 01.06.2011. Besides this, as per Rule 6.3.3 of CSRAP Rules, 2001, relaxation in age, qualification and/or experience may be permitted by the DG, CSIR if the Director of the Lab, based on the recommendation of Screening Committee is of the opinion that sufficient number of candidates possessing requisite qualification and/or experience are not likely to be available to fill up the posts.

28. In Reply, before the 1st Respondent/Tribunal, the Respondents 1, 2 and 4 (Petitioners herein) had stated that the 2nd Respondent/2nd Petitioner/CECRI, Karaikudi issued an Advertisement (No.7/2004) in Special Recruitment Drive for two Scientist Posts, out of which one was reserved for Scheduled Caste and that the Scheduled Caste post could not be filled up as none was found suitable and therefore, the Scheduled Caste Post was re-advertised in Special Recruitment Drive vide Advertisement No.5/2007 and the same was filed by a Scheduled

Caste candidate. Furthermore, the 2nd Respondent had issued Advertisement for the post of Scientist in the year 2005, 2006, 2007, 2008 and 2009 and the requirement for the recruitment of the candidates was in the area of materials chemistry, molecular materials and Nano particles, transmission electro microscopy, batteries and related area, electro chemicals science and technology, electrochemistry and material science etc. In fact, the posts could be filled up in any discipline including corrosion science depending on their requirement, number of scientist available in an area, projects undertaken etc., at a certain point of time.

29. It comes to be known that the Advertisement was issued by the 2nd Respondent/2nd Petitioner for the posts of Scientist Group-IV(2) and the 2nd Respondent/Applicant applied for the post code S-03 (SC Post) and post code SRD - 01 (3 Posts - SC) and there were five eligible candidates including the 2nd Respondent/Applicant and all of them were called for an interview against four vacancies and further that, only four candidates appeared for interview. Indeed, on the basis of performance of the 2nd Respondent/Applicant in the interview that took place, the Selection Committee found him not fit and hence had not recommended his name. Moreover, out of the four posts earmarked for Scheduled Caste category and one post was filled with 4th Respondent/5th Respondent in O.A.No.177 of 2013 and the delay in publishing the result of the interview was due to the fact that the recommendation of the Selection Committee was to be approved by the Recruitment and Assessment Board of CSIR as per CSIRAP Rules, 2001 and as such, the result could not be published immediately.

30. Before the 1st Respondent/Tribunal, the Writ Petitioners/Respondents 1, 2 and 4 had taken an emphatic stand that in Advertisement No.1/2010, two SC posts were filled by the 2nd Petitioner Institute and some posts advertised under UR and OBC categories in various advertisements given were also not filled up as the Selection Committee had not found the candidates suitable for Appointment. Besides this, the 2nd Respondent/Applicant's representation to the National Commission for Scheduled Castes was considered by the said Commission and no adverse finding was communicated. Also that, the Writ Petitioners/Respondents 1, 2 and 4 forcefully takes a plea that the Selection Committee based on the performance of the candidates in the interview had awarded only 47.1% marks to the 2nd Respondent/Applicant and 72.1% marks was awarded to the 4th Respondent/5th Respondent who was recommended by the Selection Committee. Because of the poor performance in the interview by the 2nd Respondent/Applicant, he was not recommended by the Selection Committee. Further that, out of five posts for Scheduled Caste in Advertisement No.1/2010, the 2nd Respondent/2nd

Petitioner filled up only two Scheduled Caste posts and remaining three could not be filled up as none was found to be suitable. Because of the reason that the 4th Respondent/5th Respondent had secured more than 50% of the marks in the interview, he was recommended by the Committee, but the 2nd Respondent/Applicant had performed badly in the interview.

31. At this stage, it is brought to the notice of this Court that the Selection Committee constituted as per Rule is having the Scheduled Caste community Member who had recommended the candidate scoring good marks in the interview and the 2nd Respondent/Applicant had not do well in the interview and as such, the alleged malafide in selection is an incorrect one. Furthermore, there is no record to show that the Scheduled Caste Applicants possessing equal or more credentials were neglected by the Screening Committee recommending relaxation of age.

32. As far as the present case is concerned, the 2nd Respondent/Applicant obtained only 47.1% mark in the interview, although he passed M.Sc. Chemistry in First Division by securing 62.8% of marks. Later, he did his Ph.D. and served in the same Department for 10 years from 1999-2009. As regards the recruitment of Scientists in the 2nd Petitioner/2nd Respondent Institute, it is the plea of the Petitioners that the said Recruitment is made not only on the basis of qualification and experience of candidates in the relevant field, but also on the basis of performance of the candidates in the interview also and in fact, the 4th Respondent/5th Respondent (in O.A.No.177/2013) secured 72.1% marks and ultimately, he was recommended by the Selection Committee. Because of the reason that the 2nd Respondent/ Applicant had performed poorly, he was not selected by the Selection Committee in the interview and in short, the 2nd Respondent/Applicant had not obtained the Benchmark and as such, the non-selection cannot be found fault with, since a Court of Law is not to replace/erase the conclusion arrived at by the Competent/ Appointing Authority. To that extent only, the view taken by the 1st Respondent/Tribunal is legally tenable, in the considered opinion of this Court. However, insofar as the other portion of the impugned order dated 18.10.2016, to the effect that 'Anyhow, as the posts are still lying vacant and if the respondents wish to fill up those posts now also by the same advertisement or to go by further selection, it is for them to consider the case of the applicant also now or it is for them to go for advertisement and take a decision within a period of three months from the date of receipt of copy of this order' is not a justifiable one by any means, in the eye of Law, because the 1st Respondent/Tribunal after finding that a Court cannot substitute the decision of the Appointing Authority, shall not issue further direction (as stated supra). Looking at from any angle, the aforesaid second portion of the order is set aside by

this Court on the ground that the positive observations/directions issued by the 1st Respondent/ Tribunal are not necessitated/warranted on the basis of the facts and circumstances of the present case, which float on the surface. Accordingly, the said observations are set aside by this Court, to prevent an aberration of Justice and to promote substantial cause of Justice. Consequently, the Writ Petition succeeds.

33.In fine, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Central Administrative Tribunal
Madras Bench
Addl Building, City Civil Court
Chennai - 600 104.
2. Prof.C.L.Khetrapal
Chairman, Selection Committee,
CSIR - Central Electrochemical Research Institute,
Karaikudi - 630 006.
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Scientist, CSIR - Central Electrochemical Research Institute,
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4. The Assistant Director,
National Commission for Schedule Castes,
State Office, Floor 2, Block 5, Sasthri Bhavan
Chennai.

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.14552

+1 cc to Mr.A.Veeramani, Advocate, S.R.No.15049

+1 cc to Mr.K.H.Ravikumar, Advocate, S.R.No.14549

ORDER in
W.P.No.11926 of 2018

SPP(CO)
SSM(08/03/2019).