

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.32430 of 2016

ORDER: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

Aggrieved by the order dated 20.06.2016, passed by the Central Administrative Tribunal ('the learned Tribunal' for short), whereby the learned Tribunal has dismissed the O.A. filed by the petitioner, Dr. J. Kedareswari has approached this Court.

The brief facts of the case are that on 07.09.1996, the petitioner was appointed as a Deputy Keeper of Salar Jung Museum, Hyderabad by the Secretary, Salar Jung Museum Board. Subsequently, on 04.12.2000, she was appointed as a Keeper (Education, Publications, Public Relations) by the Salar Jung Museum Board ('the Board', for short). Presently, she is working on the said post.

In 2008, the post of Director of the Museum fell vacant. Therefore, on 05.04.2008 the Board issued a notification inviting for applications for the said post. On 30.04.2008 twenty-six applications were received. After scrutinizing the applications, on 12.08.2008, the Search-cum-Selection Committee, ('the Selection Committee', for short) sent a call letter to one Ghanashyam Kusum, the then Keeper of the Museum, for interview. However, on 05.09.2008 when Ghanashyam Kusum was interviewed, the Selection Committee did not find him suitable for the post of Director. Therefore, on 01.01.2009 the vacancy was re-advertised.

Since the petitioner has hopeful of her selection, as she was already working as a Keeper at the Museum, she applied for the said post. However, on 01.04.2009 call letters for interviews were

issued to only eight candidates. The petitioner was not even invited for the interview. The Selection Committee held the interview on 15.04.2009; it found Mr. Kishan Rao, Professor of Osmania University, as a suitable candidate for the post of Director. Accordingly, on 29.04.2009, the Committee made its recommendations in favour of Professor Kishan Rao.

Meanwhile, since the petitioner was aggrieved by the fact that she was not even called for the interview, despite her qualifications, on 02.08.2009 she filed a Writ Petition, namely W.P.No.16036 of 2009 before this Court. Since this Court granted a stay in her favour, the appointment of Professor Kishan Rao could not be finalized. Eventually, by judgment dated 07.09.2009, a learned Single Judge of this Court allowed the writ petition, and directed the respondent, the Museum Board, to consider the petitioner's claim for being interviewed for the post of Director.

Since the Board was aggrieved by the said order, it filed a Writ Appeal, namely W.A.No.1177 of 2009 before a learned Division Bench of this Court. Although an application was filed by the Government before the learned Division Bench to suspend the operation of the order, dated 07.09.2009, the said application was dismissed by the learned Division Bench by its order dated 10.11.2009. Subsequently, by judgment dated 18.04.2011, the learned Division Bench dismissed the Writ Appeal filed by the Board.

Since the Board was aggrieved by the judgment, dated 18.04.2011, it filed a S.L.P., namely S.L.P.No.1408 of 2012, before the Hon'ble Supreme Court. However, by judgment dated

06.02.2012, the Apex Court dismissed the S.L.P. and directed the Board to call the petitioner for interview.

By letter dated 13.11.2013, the Ministry of Culture directed the Museum to call the petitioner for interview. Accordingly, in order to hold the interview, and considering the fact that some of the members of the earlier Selection Committee had retired, the Board constituted a new Selection Committee. The Board also felt that not only the petitioner should be invited for the interview, but even those who had appeared earlier for interview should also be invited for the same. Therefore, on 19.07.2014 all the candidates, including the petitioner, were interviewed. However, the Selection Committee did not find any of the candidates suitable for the post of Director. Accordingly, the Committee submitted its recommendations before the Board. On 26.09.2014, the Board accepted the recommendations of the Selection Committee. The Board directed that the vacancy should be re-advertised. Consequently, the post of Director was re-advertised; the notification was issued on 24-30th January, 2015.

For the purpose of this decision, it is pertinent to note that when the notification was issued initially for the post of Director in the year 2008, the recruitment for the said post was governed by the Recruitment Rules, 2008 ('the Rules, 2008', for short). However, subsequently, the Rules, 2008 were amended in the year 2014 with the Revised Recruitment Rules, 2014 ('the Rules, 2014', for short) which came into force on 21.11.2014.

According to the Rules, 2008, the age and the qualification requirements for the post of Director were as under:

Age limit for direct recruits	Educational and other qualifications required for direct recruitment
50 years relaxable at the discretion of the Board	Eminent Museologist or Scholar with any of the following qualifications: <u>Essential:</u> (a) At least a second class Master's degree in Fine Arts including History of Indian or Foreign Art or Indian or European history from a recognised University or its equivalent and about 15 years experience in a senior administrative position in a Museum of repute. For a person with Diploma in Museology, the period of such experience may be about 10 years. Or (b) Doctorate in Fine Arts, History of Indian or Foreign Art or Indian or European History, with experience of working in a College, University or other academic institution or in a cultural organization in a responsible position with sufficient experience or original research or guiding of research work, as proved by Published books, or articles or monographs: <u>Desirable:</u> Knowledge of one or more languages from any of the following: Sanskrit, Prakrit, Persian, French or German.

However, according to the Rules, 2014, while the age limit was kept the same, the eligibility and qualification requirements were amended as under:-

Age-Limit for Direct Recruitments	Educational and other qualification required for Direct Recruitment
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Not exceeding 50 years. Relaxation in age-limit applicable as per the extant orders of the Govt. of India. Note:- The crucial date for determining the age-limit shall be closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of J & K State, Lahaul & Spiti district and Pangi Sub-Division of Chamba district of Himachal Pradesh, Andaman & Nicobar Islands and Lakshadweep)	“Essential: (i) (a) A Master’s degree from a recognized University; in Meseology/ History of Arts /Fine Arts/Archeology/History/ Conservation/Chemistry/Persian/Arabic with (b) 10 years experience of working in a reputed Museum/Cultural Institution/ University, out of which 5 years experience should be in Administration as the Head of the Museum/Institution/University Department. For Academicians: (ii) Professors in the Pay Band Rs.37400-67000 with a Grade pay of Rs.10,000 and possessing the qualification and teaching/research experience in any of the subjects mentioned in (i) (a) and experience as in (i) (b) above, Or Two years regular service as Associate Professor in the Pay Band of Rs.37,000-67,000 with a Grade pay of Rs.9,000 and possessing the qualification and teaching/research experience in any one of the subjects mentioned in (i) (a) and experience in as (i) (b) above. 2. Desirable: (a) Experience in Museum Administration and Management, (b) Computer Knowledge (M.S. Office), (c) Degree in Museology. Note 1:- Qualifications are relaxable at the discretion of the Appointing Authority on the recommendations of the Selection Committee/DPC, in case of candidates otherwise well qualified,
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	Note 2:- The Qualifications regarding experience are relaxable at the discretion of the Selection Committee/DPC in the case of candidates belonging to Scheduled Caste and Scheduled Tribes, if, at any stage of selection the selection committee/DPC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.”
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Rule 6 of the Rules, 2014 bestows a power to relax the provisions of the Rules with respect to any class or category of persons.

Although the petitioner was over-aged for the post of Director, she still applied for the said post under the notification issued in 2014, and prayed that the benefit of age relaxation should be given to her.

Subsequently, she challenged the constitutional validity of Rules, 2014, challenged the notification, dated 24-30.01.2015 by filing an Original Application before the learned Tribunal. However, by order dated 20.06.2016, the learned Tribunal has dismissed her O.A. Hence, this Writ Petition before this court.

Mr. J. Sudheer, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, the petitioner has been victimized by the respondent No.3, Dr. A.N. Reddy, the Joint Director of the Salar Jung Museum. Despite the fact that Dr. A.N. Reddy was never qualified to be appointed as the Joint Director, but he was appointed on *ad hoc* basis to the said post in the year 2001. Ever since then, he

has been continued on an *ad hoc* basis. Therefore, he wanted to ensure that the petitioner would never be appointed on the post of Director. In fact, Dr. A.N. Reddy has consistently tried to ensure that the post is kept vacant.

Secondly, since 2008, the petitioner has been fighting a constant legal battle by filing a writ petition before this Court. In 2009, despite her winning the writ petition and the writ appeal before this Court, the respondents dragged her before the Apex Court. Therefore, the age relaxation should be given to her; consequently, her claim to the post should be considered.

Thirdly, despite the direction of the Hon'ble Supreme Court that the petitioner should be interviewed, in spite of the fact that the petitioner was, indeed, interviewed, the selection process was left incomplete. Therefore, the respondents are not justified in initiating the selection process *de novo* by issuing advertisement dated 24-30th January, 2015.

Fourthly and most importantly, since the vacancy relates to the year 2008, the said vacancy, perforce, has to be filled in according to the Rules, 2008. However, the respondents are trying to fill up the post by applying the Rules, 2014. Therefore, the selection process deserves to be quashed and set aside.

Fifthly, the learned Tribunal is unjustified in concluding that the selection process, which commenced in 2008 was finally concluded in 2014.

Sixthly, the learned Tribunal is unjustified in concluding that since the vacancy was advertised in the year 2014, it would be governed by the Rules, 2014, and not by Rules, 2008. In order to buttress this plea, the learned counsel has relied on:

P. Ganeshwar Rao and Others v. State of Andhra Pradesh and Others¹, P. Murugesan and Others v. State of Tamil Nadu and Others², N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others³, DR K. Ramulu and Another v. DR S. Suryaprakash Rao and Others⁴, State of Rajasthan v. R. Dayal⁵.

Seventhly, the Recruitment Rules, 2008 have been amended with ulterior motive of disqualifying the petitioner. According to the learned counsel, the Union of India, in its reply, has accepted that the Rules, 2014 do make the petitioner ineligible for the post of Director. Therefore, an injustice would be caused to the petitioner if Rules, 2014 were applied to the vacancy of 2008.

Eighthly, the qualifications which were prescribed by Rules, 2008 have been diluted in the Rules, 2014. The Rules, 2008 had prescribed the educational qualification as M.A. in History with IInd Class, or Diploma with fifteen years of experience. However, the Rules, 2014 prescribe the educational qualification as only M.A. without specifying the division required. It has further deleted the requirement of a Diploma. While Rules, 2008 had required Eminent Musicologists, or Scholars to be appointed, the Rules, 2014 have excluded these two categories, and have made even Masters in Arabic, Persian, or even Chemistry, or even Academicians as eligible for the post of Director. According to the learned counsel, therefore, the eligibility and qualification requirements have been whittled down in the Rules, 2014. Hence,

¹ 1988 (Supp) SCC 740

² (1993) 2 SCC 340

³ (1990) 3 SCC 157

⁴ (1997) 3 SCC 59

⁵ (1997) 10 SCC 419

the Recruitment Rules, 2014 should be declared as unconstitutional.

Lastly, since Rules, 2008 and 2014 both contained the rules for age relaxation, the benefit of relaxation should be given to the petitioner. Therefore, the impugned order passed by the learned Tribunal deserves to be set aside by this Court.

On the other hand, Mr. R.S. Murthy, the learned counsel appearing for the Board, the respondent No.2, has strenuously raised the following counter-contentions before this Court:-

Firstly, the selection process that commenced in the year 2009 was duly concluded when the Board accepted the recommendations of the Selection Committee on 26.09.2014. Therefore, the entire selection process had ended on 26.09.2014. Hence, the learned counsel for the petitioner is unjustified in claiming that the selection process, which was initiated in 2009, was suddenly abandoned and left incomplete.

Secondly, in 2014, the Recruitment Rules were amended. Thus, when the Board decided to re-advertise the post of Director, the Rules, 2014 had already come into effect. Therefore, as the post of Director was re-advertised in the year 2014, perforce it has to be filled up in accordance with the Rules, 2014. In order to buttress this plea, the learned counsel has relied upon **State of Orissa v. State (Trysem) Live Stock Inspector Sangha**⁶. Therefore, the learned Tribunal was certainly justified in concluding that since the post of Director was re-advertised in the year 2014, the selection would, indeed, be regulated by the Rules, 2014.

⁶ 2018 SCC Online SC 1217

Thirdly, the cases relied upon by the learned counsel for the petitioner are distinguishable from the present case. For, the case of **N.T. Devin Katti and Others** (supra) deals with the factual situation where the selection process was still continued when the amended Rules were brought into force. However, in the present case, the selection process had come to an end on 26.09.2014 when the Board had accepted the recommendation of the Selection Committee. The case of **Dr. K. Ramulu and Another** (supra) is not a case of direct recruitment, but is a case of promotion. Further the case of **P. Murugesan and Others** (supra) and the case of **R. Dayal** (supra) dealt with promotional post. Therefore, the case law cited by the learned counsel for the petitioner does not support the petitioner's case.

Fourthly, as far as the validity of the Rules, 2014 is concerned, the learned counsel has pleaded that the Recruitment Rules are a legislative policy, which cannot be lightly interfered with by this Court. Even if the eligible requirements had been expanded to include Academicians, and M.A. Degree Holders from other subjects, even then, the Recruitment Rules cannot be faulted. For, this Court would not be justified in changing the eligibility criteria prescribed under the Rules, 2014.

Fifthly, even if the Rules, 2014 do contain an age relaxation provision, the petitioner cannot claim that she has a right to have the age relaxed in her case.

Lastly, the petitioner is simultaneously blowing hot and cold. For, on the one hand, she has applied for the post of Director under the freshly issued advertisement, dated 24-30th January, 2015, and has prayed for relaxation under the Rules, 2014. Yet,

on the other hand, she has challenged the validity of the Rules, 2014. Therefore, the stand of the petitioner is rather confusing. Hence, the learned counsel has supported the impugned order of the learned Tribunal.

Heard the learned counsel appearing for the parties, examined the impugned order, and considered the case law cited at the Bar.

Admittedly, the vacancy for the post of Director was re-advertised on 01.01.2009. Since the petitioner was not called for the interview, she had filed a writ petition before this Court, namely W.P. No. 16036 of 2009. A learned Single Judge had allowed the Writ Petition by judgment dated 07.09.2009. The Writ Appeal filed by the Board was dismissed by judgment dated 18.04.2011. Undoubtedly, the Board approached the Hon'ble Supreme Court by filing a S.L.P. However, by judgment dated 06.02.2012 the Apex Court dismissed the S.L.P., and directed the Board to call the petitioner for interview. Consequently, on 19.07.2014, not only the petitioner, but even the candidates, who were interviewed earlier, were also interviewed by the Selection Committee. Admittedly, the Selection Committee did not find any of the candidates suitable for the post of Director. It made its recommendation to the Board. On 26.09.2014, the Board not only accepted the recommendation of the Selection Committee, but also directed that the post be re-advertised. Since the recommendation of the Committee was accepted by the Board, the learned counsel for the petitioner is unjustified in claiming that the selection process, which had commenced in 2009, was left

incomplete. For, with the acceptance of the recommendation of the Selection Committee, the selection process had come to an end.

In the case of **Union of India v. Yogendra Singh**⁷ the Hon'ble Supreme Court has held that "*No candidate who does not possess the currently prescribed qualifications, but who may possess the educational qualifications prescribed earlier, can be said to qualify or have any vested right to appointment even against any such earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed*". The same opinion has been reiterated in the case of **State (Trysem) Live Stock Inspector Sangha**(supra). Therefore, the conclusion drawn by the learned Tribunal that the vacancy has to be filled in, in accordance with the Rules, 2014 cannot be faulted.

Rule 6 of the Rules, 2014 does empower the Museum to relax the provision of the Rules with respect to any class or category of persons. However, it being an enabling provision, the petitioner is not justified in claiming that the benefit of the provision should be extended to her. Since it is a discretionary power, a court of law cannot compel the Board to exercise the discretion in favour of the petitioner. Therefore, the contention raised by the learned counsel for the petitioner that considering the long years of battling for her rights, the benefit of relaxation should be extended to the petitioner, cannot be accepted. Therefore, the learned Tribunal was justified in not issuing any such direction to the Board in favour of the petitioner.

⁷ (1994) Supp (2) SCC 226

A bare perusal of the eligibility and qualification requirement mentioned in Rules, 2008 and in Rules, 2014 clearly establish that the eligible requirements in the latter Rules have been enhanced. However, the requirement rules being part of “legislative policy” cannot be interfered lightly by a court. It is, indeed, trite to state that the recruitment authority has the power to vary eligibility and qualification requirements as per the requirements of the post. Moreover, a court of law cannot sit as an appellate authority over the decision of the recruitment authority. Furthermore, merely because Masters in other subjects are included in the Rules, 2014, merely because academicians are now included as being qualified for the post of Director, the petitioner cannot claim that any prejudice is caused to her. Therefore, her challenge to the constitutional validity of Rules, 2014 is highly misplaced. (Ref. **State of Gujarat and Others v. Arvindkumar T. Tiwari and Another**⁸, **Rajya Sabha Secretariat and Others v. Subhash Baloda and Others**⁹, and **P. Suseela and Others v. University Grants Commission and Others**¹⁰).

It is settled principle of law that the constitutional validity of a provision of law can be challenged on three grounds, namely (i) lack of competency; (ii) violation of fundamental rights; or (iii) manifest arbitrariness of the law. (Ref. to **Nikesh Tarachand Shah v. Union of India**¹¹). However, the petitioner has not challenged the constitutional validity of Rules, 2014 on the first two grounds. She has merely challenged the constitutionality on the ground of the “unreasonable qualifications” prescribed by Rules, 2014.

⁸ (2012) 9 SCC 545

⁹ (2013) 5 SCC 169

¹⁰ (2015) 8 SCC 129

¹¹ (2018) 11 SCC 1

However, Museums are no longer a curio shop; Museums are no longer a collection of antiques, or art works, or of biological specimens. Salar Jung Museum is world famous for its collection of painting and scriptures, porcelains and clocks, of manuscripts and curios. Needless to say, painting and scriptures periodically require chemical restorations. Therefore, if the Rules, 2014 make a person eligible, who has a degree in Chemistry, it is not unreasonable. Moreover, the broad-basing of eligibility requirement cannot be held to be unreasonable by this Court. Therefore, the Rules, 2014 cannot be declared to be unconstitutional.

The amendment in a recruitment rules are bound to adversely affect a few persons. But merely because of this reason, it cannot be concluded that the rules were amended in order to keep the persons at bay. Therefore, the contention of the learned counsel for the petitioner that the Rules, 2008 were amended in 2014 solely with the purpose to prevent the petitioner from being appointed as the Director of the Museum is clearly unsustainable.

The learned counsel for the petitioner has strenuously pleaded that the petitioner has been fighting a long series of legal battles only because of respondent No.3, Dr. A.N. Reddy, who has tried his level best to pre-empt her selection. Although this may be a personal view of the petitioner, but it has no legal basis. Once a case is instituted at the lowest rung, there is no guarantee that it will not be taken to the highest arena. Therefore, if the petitioner had filed a writ petition before a learned Single Judge of this court, she should have known that the legal battle will culminate at the Apex Court. Having won the three rounds of the legal boxing

matches, the petitioner was, indeed, interviewed by the Selection Committee. However, unfortunately, the Selection Committee did not find any of the candidates, including the petitioner, as suitable for the post of Director. Therefore, the petitioner is unjustified in claiming that her non-selection is due to the *mala fide* intentions of Dr. A. N. Reddy. Hence, her contention with regard to Dr. A. N. Reddy is clearly untenable.

For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, stand closed.

RAGHVENDRA SINGH CHAUHAN, J

T. AMARNATH GOUD, J

Date: 25.03.2019

Note: Registry shall return the original records to the Respondent No.2

(B/o) Tsr