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

Date of decision: 21.08.2019

+ W.P.(C) 8955/2019 & CM APPL. 36957/2019

MUKESH KUMAR SHARMA

..... Petitioner

Through Mr.V.K. Garg, Sr. Adv. with Mr.Amit
Kumar & Ms.Noopur Dubey, Advs.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through Mr.Ramesh Singh, Standing counsel
with Mr.Ankur Chhibber, Mr.Chirayu
Jain, Mr.Bhanu & Mr.Ishan Agrawal,
Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby declaring the action of respondents in passing an order of suspension dated 01.08.2019 as illegal, bad in law and accordingly quash and set aside the impugned inquiry reports dated 17.10.2018, 20.12.2018, order dated 28.02.2019 of 15th Governing Council and order dated 14.06.2019 of 16th Governing Council.

2. Further seeks direction thereby to declare that the Petitioner meets the eligibility criteria as prescribed in advertisement no. 01/2016 issued by R-2 for appointment to the post of Associate Professor in Ch. Brahm Prakash Ayurved Charai Sansthan and accordingly issue consequential directions to continue the Petitioner as Associate Professor with all consequential benefits.

3. The case of the petitioner is that on 11.06.2016, the respondent no. 2 issued an Advertisement No. 01/2016 to fill up the post of Associate Professor & Assistant Professor in different discipline. On 12.07.2016, the petitioner also applied for the aforesaid post as the petitioner was meeting the eligibility conditions as prescribed in the advertisement, therefore, he had all the reasons to be called by competent authority to participate in the selection process. However, before the aforesaid exercise could be undertaken by competent authority, the Respondent No. 3 namely Dr. Vidula S. Gujjarwar, threatened the Petitioner, who was serving under Respondent No. 2 as Associate Professor on contract basis. Initially, the Petitioner took the said threat lightly inasmuch as, he was aware that the selection to the post of Associate Professor was to be finalized by R-2 and said Respondent No. 3 being HOD in Rog Nidan Department had no role to

play in the recruitment. However, when the Petitioner came to know that the R-3 has been made part of Scrutiny Committee constituted for the purpose of scrutinizing the applications received for various posts which were advertised vide advertisement no. 01/2016 dated 11.06.2016, he immediately sent a mail dated 12.07.2016 to Respondent No. 2 to ensure that the respondent no.3 should not be successful in obstructing the selection of the petitioner to settle personal score. On 09.08.2016, the aforesaid report was duly examined and thereafter a comprehensive proposal was prepared for taking further action pursuant to the advertisement no.01/2016. The said proposal was considered by competent authority and it was directed that the candidates in respect of whom some clarifications are required may be treated as provisionally eligible, subject to verification of documents. Accordingly, a Committee under the Chairmanship of Dr. Santhosh S. R. Nair was constituted for the purpose of short-listing the applications received for various posts.

4. Accordingly, the office order dated 09.08.2016, the aforesaid Committee was constituted under the Chairmanship of said Dr.Santhosh S.R. Nair, D.D (Admn) and it was specified that the short-listing was required to be done as per the guidelines attached. On 23.08.2016, on receipt

of recommendations of said Committee, the respondents called the eligible candidates including Petitioner to appear in interview held on 23.08.2016. The respondents called total 8 candidates including Petitioner for appointment to the post in question. All the candidates called for interview were directed to bring the original documents to prove their eligibility. The Petitioner also submitted all original documents in support of his educational qualification and experience. The Petitioner also clarified the queries as raised by Short-listing Committee. Thereafter, the Petitioner was subjected to interview by the duly constituted Board. The Petitioner performed well in the interview and expected his selection and consequent appointment.

5. Mr.Vinay Garg, learned senior counsel appearing for the petitioner submits that after completion of all the interviews, the respondents prepared the final result and all the selected candidates were sent offer of appointment at their addresses. The Petitioner also received his offer of appointment dated 17.10.2016. The Petitioner accepted the said offer of appointment and joined on 27.10.2016. However, respondent no.3 crossed all the limits of arbitrariness and issued Show Cause Notice dated 18.02.2019 to the Petitioner with sole intention to take away his appointment itself and the same is proved from the said Notice itself. The 15th meeting of Governing

Council passed the final order against the Petitioner on 28.02.2019 for termination of services of the Petitioner.

6. Being aggrieved, the Petitioner challenged the show cause notice dated 18.02.2019 vide Writ Petition being W.P.(C) No.2087/2019, wherein vide order dated 28.02.2019, a notice was issued to the respondents and till further orders, the respondents were restrained to take further action upon the said show cause notice.

7. Further, on 07.05.2019, the petitioner withdrew the aforesaid writ petition on the observation made by this Court that there was no adverse order against him and, accordingly, the Petitioner was permitted to file reply to the show cause notice dated 18.02.2019. Thereafter, the Petitioner filed his reply on 20.05.2019 to the show cause notice dated 18.02.2019. But respondent no.3 without considering the Petitioner's reply dated 20.05.2019, malafidely and arbitrarily passed an order dated 01.08.2019 of suspension from service against the Petitioner. The Petitioner, who has earned reputation by rendering outstanding services, requires protection of this Court in the interest of Justice.

8. Mr.Garg, learned senior counsel submitted that the petitioner was selected through the procedure and based upon his experience and

documents submitted before the selection committee. The competent authority approved the same and thereafter a show cause notice was issued to the petitioner which is contrary to the settled law.

9. The respondents did not follow due procedure and further vide order dated 01.08.2019 issued suspension order against the petitioner.

10. To strengthen his arguments, learned senior counsel has relied upon the case of ***U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rahan with Director, Rajya Krishi Utpadan Mandi Parishad & Anr. Vs. Narendra Kumar Malik & Anr.: 1993 Supp (3) SCC 483*** whereby the Hon'ble Supreme Court observed that "*whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.*"

11. Mr.Ramesh Kumar, learned Standing counsel appearing on behalf of the Government of NCT of Delhi submits that the candidature of the petitioner was rejected by the First Scrutiny Committee and thereafter Scrutiny Committee was constituted. The case of the petitioner was cleared

in the second scrutiny committee. There is nothing on record to show that the recruitment of Reader/Associate Professor was carried out in accordance with the provisions of the RRs. It is also not clear as to why a proposal was moved to fill up the post by direct recruitment, whereas, as per the provisions of the RRs, the post belonged to promotion quota. This is a glaring mistake and all the higher authorities including Hon'ble Minister (Health)-GNCTD officials of the CBPACS declined to follow the RRs to fill up the newly created posts of Associate Professor/Reader. Even, if there was an urgency, the officials should have first tried to fill up the posts by promotion i.e. by conducting DPC meeting, and the posts could have been filled up easily. If the posts could not be filled up by promotion due to non-eligibility of departmental candidates, then the process to fill the posts by deputation should have been followed, failing which the method of direct recruitment should have been adopted.

12. Learned standing counsel further submits that the entire noting in the file no.F1(788)/16/CBPACS/Adm./recruitment of faculty for PG courses is silent about the provisions of RRs. It is apparent that the same were concealed intentionally for the vested interest of the officers/officials involved in the entire recruitment process.

13. Learned standing counsel has pointed out that another glaring/ conspicuous mistake regarding recruitment to these posts is the adoption of objective marking criteria for 100 marks on the basis of 08 points namely 1. Teaching experience, 2. Patent/copy right obtained as individual/team, 3. Ph.D., 4. Research work published in peer reviewed journals, 5. Books published as single author and co-author related to the subject concerned, 6. Participated in national and international seminar as organizing secretary or as member of organizing committee, 7. Paper presented in national or international seminar, 8. Participated in national or international seminar on any topic concerned with Ayurveda as speaker. This criterion was arbitrarily adopted in violation of provisions of RRs and guidelines issued by the Governing Council. As stated earlier RRs prescribes only three desirables qualifications, viz. (i) Patent/copyright obtained as individual/team (2) Research work and publication in Peer reviewed journals, (3) Ph.D. apart from the essential qualifications.

14. Another irregularity noticed related to the constitution of the Security Committee, the Hon'ble Minister (Health)-GNCTD had approved the Scrutiny Committee Comprising the following members vide Office Order dated 23.06.2016:-

1. Prof. (Dr.) Tanuja Nesari, H.O.D./Addl. Director (Academics), Chairperson
2. Prof. (Dr.) Unnikrishnan S. Professor, Swasthvritta, Member
3. Prof. (Dr.) Vidula Gujjarwar, Professor Rognidan, Member
4. Sh. K.K. Yadav, Sr. Accounts officer, Member

15. This Committee was not apprised about the details of scoring by objective marking without any justification. However, the said Scrutiny Committee scrutinized all thirty-nine applications so received for the post of Reader and determined the eligibility as per the criteria mentioned in advertisement. Later on, all of a sudden, the O.S. (Admn.), CBPACS, Sh. Rajesh Tanwar proposed constitution of a fresh Scrutiny/Short Listing Committee comprising the following members:

1. Dr. Santhosh S. R. Nair, DD-Admin-CBPACS – Chairman
2. Dr. Sudhir Kumar, Asso. Prof. -Member
3. Dr. Kamleshwar Kalia, Asso. Prof. - Member
4. Dr. A. N. tiwari, Asso. Prof. - Member

16. Accordingly, fresh Committee was approved by the Director – Principal, CBPACS himself without obtaining approval of the competent authority i.e. Hon'ble Minister (Heath)-GNCTD. The newly constituted

Scrutiny/Short listing Committee again scrutinized thirty nine applications so received and shortlisted eligible candidates haphazardly/randomly/on pick and choose basis without giving marks in objective criteria to all the applicants. One of the criteria for selection was that where for a particular subject, more than 10 applications were received, only 10 candidates will be called for the interview. However, if the number of application would be less than 10, then all eligible candidates would be called for interview. But the candidates were called for the interview without preparing the merit list of all the candidates.

17. Learned standing counsel further submitted that the second Scrutiny Committee made them eligible and short listed for interview. Surprisingly, they were selected and allowed to join the department. Regarding the case of the petitioner, it has been observed that on the date of interview he submitted various certificates including experience through a covering letter by quoting “*as required*” whereas in the interview letter it was specified that the candidate has to bring all the original certificate/testimonials (w.r.t. copies of the certificates/documents submitted by the applicant along with his/her application before the cut-off date) for verifications and it was nowhere specified that he/she has to submit any additional

certificates/documents. Further the DV Committee in its proceeding sheet has mentioned, '*verify the teaching experience in the concerned subject at the time of interview*'. Surprisingly, the same Committee on the date of interview i.e. 23.08.2016, mentioned that '*experience in the concerned subject verified*'. Thus, it is a clear case of manipulation of records by the DV Committee to favour him for his illegal selection to the post of Associate Professor/Reader.

18. Learned counsel further submits that since the selection of the petitioner is contrary to the rules and procedure and without approval of the competent authority, therefore, the respondents have first issued show cause notice and thereafter put the petitioner under suspension which is under challenge before this court.

19. The chargesheet is almost ready and same will be issued against the petitioner within a week or 10 days time, as stated by learned standing counsel.

20. Therefore, in the facts and circumstances and submission of the standing counsel recorded above, it is not appropriate to intervene in this matter at this juncture.

21. It is made clear as argued by counsel for the petitioner that there is no misconduct on the part of the petitioner at the time of passing the suspension order, therefore, the petitioner is at liberty to challenge the chargesheet in accordance with law.

22. Moreover, the suspension order can be issued under Rule 10(i)(A) if the departmental inquiry is pending or contemplated against the delinquent officer.

23. In view of above, I find no merit in the present petition and the same is, accordingly, dismissed.

24. Pending application stands disposed of.

25. Order *dasti* under the signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 21, 2019
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