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

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Date of Decision: 13.02.2020.

% **LPA 710/2019 & C.M. No. 48667/2019**

JUGESH ASPAL

..... Appellant

Through: In person.

versus

ASSOCIATION OF INDIA UNIVERSITIES & ORS..... Respondents

Through: Mr. Rajinder Dhawan and Mr. B.S.
Rana, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsel for the respondent and the appellant – who appears in person, and proceed to dispose of the present appeal.
2. The present appeal is directed against the order dated 01.11.2019 passed by the learned Single Judge in W.P.(C.) No. 3762/2019. The said writ petition had been preferred by the appellant to assail the appointment of respondent No.7 in the writ petition, namely Shri Piyush Kumar Patanjali, to the post of Joint Secretary against the reserved post for OBC on the ground that the said candidate belonged to the creamy layer. The appellant had also sought a direction to respondent No.5 in the writ petition, namely the Association of Indian Universities to appoint him to the said post of Joint

Secretary reserved for OBC (NCL) on the ground that he was eligible and entitled to such appointment.

3. So far as the first relief sought by the appellant in the writ petition is concerned, the same became infructuous, since the respondent No. 7 was divested of his appointment as Joint Secretary. However, the claim of the appellant to the said post of Joint Secretary reserved for OBC (NCL) remained unanswered.

4. The learned Single Judge noted the stand taken by the respondent that the selection committee made recommendation only in respect of 2 General Category candidates and 1 OBC category candidate without drawing any panel. The learned Single Judge also observed that whether the selection committee rightly drew the order of merit without drawing any panel for either General category or the OBC category candidates, was not the subject matter under challenge. He also observed that assuming it to be so, in such eventuality the entire selection process would go. A statement was made on behalf of the learned counsel for the petitioner, on instructions, that the petitioner would not press the petition any further in view of the fact that the concern of the petitioner was not to seek quashing of the entire selection process, and his concern was that he should be considered against the reserved post for OBC category candidate, which was lying vacant on account of recall of appointment of respondent No.7. The learned Single Judge disposed of the writ petition with the following operative directions:

“In view of the foregoing, the writ petition is disposed of with a direction that for the vacant post of Joint Secretary (reserve) OBC (NCL), the process for the selection be initiated, as

expeditiously, as possible. It goes without saying that on the process so initiated, the petitioner would be at liberty to apply afresh. In doing so, the respondent no.5 shall take into account the plea of the petitioner for drawal of panel, as may be required to be prepared as per any notification, instruction or guidelines of the concerned Government or the Authority. ”

5. The appellant, who appears in person, submits that the selection committee did not adopt any transparent procedure for making the selection on the basis of merit, inter alia, in respect of the one post of Joint Secretary reserved for the OBC category candidate.

6. On 14.11.2019, we passed the following order:

“1. Issue notice. Learned counsel for the Respondent No. 1 accepts notice. The others are proforma Respondents.

*2. The case of the Appellant is that in respect of the post of Joint Secretary in the Respondent No. 1, one post was reserved for the OBC category for which there were four candidates, and Mr. Piyush Kumar Patanjali was selected for the same. He was later found to be not eligible on account of his OBC certificate being cancelled since he belonged to the creamy layer. The case of the Appellant is that he along with the two other OBC candidates who were interviewed should have thereafter been considered for appointment. At page No. 144 of the record, the typed copy of the recommendations made by the selection committee are placed which only notes that several candidates were called by the selection committee and thereafter makes the recommendation in respect of the persons recommended for appointment “in order of merit”. **We take it that since nearly twenty odd candidates were interviewed, including four OBC category candidates and there were four members of the selection committee, individual worksheets would have been maintained before compilation of the final result. We direct the Respondents to produce the worksheets and such other***

documents as may have been prepared during the course of conduct of the interview process. The same be produced along with an affidavit on the next date.

3. List on 02.12.2019.” (emphasis supplied)

7. In response to the said order, an affidavit has been filed on behalf of respondent No.1, dated 27.11.2019. This affidavit, filed by Dr.(Ms.) Pankaj Mittal, states that 3 posts of Joint Secretary, (including one for OBC) were advertised, inter alia, in Hindustan Times, dated 22.08.2017. For the said 3 posts, 117 applications (including 7 from OBC candidates) were received. Seven candidates belonging to OBC category were called for interview, out of which only four candidates appeared before the selection committee on 28.06.2018. The appellant was one of those candidates. The selection committee submitted its recommendations, recommending only three names, including one for OBC post. No waitlist was prepared by the selection committee. The recommendations made by the selection committee have been filed along with this affidavit. A perusal of the same shows that it merely enlists three candidates, namely Dr. Alok K. Mishra, Dr. Baljit Singh Sekhon – in respect of two unreserved posts, and Dr. Piyush Kr. Patanjali – in respect of reserved post for OBC. The said document also gives the serial number of the candidates who appeared before the selection committee, which totals 27 in number, including the 4 OBC category candidates. Paragraph 6 of this affidavit states “*On the basis of the records of AIU it seems that Members of the Selection Committee did not prepare any working sheet or any notes as no such paper was handed over to the AIU office and no such paper is available in records of AIU.*”

8. We are shocked at the manner in which the selections have been made by the Selection Committee, including for the post of Joint Secretary reserved for the OBC category candidates. The Selection Committee admittedly interviewed 27 candidates, including 4 OBC category candidates. The appointment had to be made on the basis of merit in respect of both the unreserved category candidates, and the OBC category candidates. We fail to understand as to how the Selection Committee could have assessed the relative merit of the candidates without preparing any work sheets, particularly when there were in all 27 candidates, and there were 4 members of the Selection Committee. The entire process by which the selection was made is completely suspect and shrouded in mystery. Such a selection process is completely arbitrary and non-transparent. The appellant has placed before us the decision of the Supreme Court in *State of Bihar v. Kaushal Kishore Singh and Others*, decided on 10.04.1997, (1998) 9 SCC 104. In this case as well, the Government failed to substantiate the merit list that it prepared. The Supreme Court upheld the decision of the Patna High Court which found the selection process arbitrary and violative of Article 14 of the Constitution.

9. Learned counsel for the respondent has argued that the appellant did not challenge the entire selection process, and challenged only the selection made to one post of Joint Secretary reserved for the OBC category. Thus, he is precluded from now assailing the same. We do not find any merit in this submission for two reasons. Firstly, it was not known to the appellant, or informed to the Court that Selection Committee did not undertake a transparent selection process. Had that position been disclosed which was

within the special knowledge of the respondents, the appellant would, obviously, not have made that statement. Secondly, when the above position has come to our notice by way of an admission made by the respondents, we cannot turn a blind eye and give our tacit approval to a wholly illegal and arbitrary exercise of filling posts to a public office.

10. The post of Joint Secretary reserved for OBC category, admittedly, is lying vacant and the respondents would therefore have to undertake the exercise of filling the same in accordance with law. Merely because the appellant is an OBC category candidate, he is not precluded from staking his claim in respect of unreserved posts filling in the vitiated selection process. One does not know, that if the respondents had transparently drawn up a merit list of all the candidates, the appellant may have found his name higher in merit, and may have staked a claim in respect of the unreserved post as well. Aforesaid being the position, we are inclined to quash the entire selection process. In our view, since the illegality and arbitrariness pervades the selection process – which only the respondent authorities had to defend, and we are not examining the aspect about the competence or eligibility of the other candidates who stood selected, the fact that they are not before us, does not create any impediment in us passing this order.

11. In *Union Territory of Chandigarh Vs. Dilbagh Singh & Others*, AIR 1993 SC 796, the Supreme Court observed that:

“a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he

could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected.” (emphasis supplied)

12. In *Dilbagh Singh* (supra) as well, like the present case, the illegality pervaded the entire selection process and it was not candidate specific. The individual candidates – who may have been shown to be selected, had no role to play in the illegal and arbitrary manner in which the Selection Board conducted its affairs. The Supreme Court repelled the challenge to the decision of the CAT on the ground of the successful candidates not being impleaded. In any event, we may also observe that respondent No.7/ Piyush Kumar Patanjali – who was the successful OBC category candidate, had been impleaded by the appellant in the writ proceedings. Thus, the interest of the successful candidates was duly represented, at least, in a

representative capacity. The official respondents have also stoutly defended their selection process and, in that sense, their interest and the interest of the selected candidates is the same. Thus, the interest of the selected candidates, in our view, stands adequately represented before us. Even if all or some of the unreserved category candidates were to be impleaded, they could have defended their appointment only by reference to the selection process conducted by the official respondents. The official respondents have admitted to have not conducted the selection process in a fair and transparent manner. Therefore, the non-impleadment of the selected/appointed candidates belonging to the unreserved category does not cause any prejudice to those candidates in the facts of the case.

13. The respondents would, therefore, undertake a fresh process of selection for all the posts of Joint Secretary by strictly ensuring a transparent process in accordance with law. It goes without saying that all such other candidates, who were appointed in the selection process in question, would also be entitled to participate in the fresh selection process.

14. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 13, 2020

N.Khanna