

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

% **Date of decision: 1st February, 2021.**

+ **W.P.(C) 1196/2021**

S.L. MEENA

..... Petitioner

Through: Mr. Pankaj Mehta, Adv.

Versus

DELHI JAL BOARD & ANR.

..... Respondents

Through: Mr. Ajay Arora and Mr. Anuj
Bhargawa, Advs. for DJB.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

RAJIV SAHAI ENDLAW, J.

CM APPL. 3365/2021 (for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.
2. The application is disposed of.

W.P.(C) 1196/2021 & CM APPL. 3364/2021 (for stay)

3. The petitioner, a Chief Engineer aged about 53 years in the respondent No.1 Delhi Jal Board (DJB), has filed this petition (i) seeking declaration that Sections 3(2)(vii), 3(2)(viii), 3(2)(ix) & 3(2)(x) of the Delhi Water Board Act, 1998 are *ultra vires* Article 14 of the Constitution of India; (ii) seeking mandamus, directing the respondents DJB and Government of National Capital Territory of Delhi (GNCTD) to exercise the powers conferred upon them under Sections 54 and 109 of the said Act to formulate comprehensive guidelines, in consonance with the guidelines for

Board Level appointments in Central Public Sector Enterprises, for nomination of the employees DJB to the posts referred to in the impugned Sections 3(2)(vii), 3(2)(viii), 3(2)(ix), 3(2)(x) of the said Act; and, (iii) seeking quashing of the advertisement dated 2nd December, 2020 inviting applications for the post of Member (Water Supply) in the respondent DJB.

4. The counsel for respondent DJB appears on advance notice.

5. We have heard the counsel for the petitioner at length.

6. However, before dealing with the contentions of the counsel for the petitioner, we must record that the counsel for the respondent DJB has informed us that the petitioner, in the past, has applied twice for the post of Member (Water Supply) of the DJB and was not selected.

7. We have enquired from the counsel for the petitioner, whether the petitioner has pleaded the said fact in the petition.

8. The answer is in the negative and the counsel for the petitioner conveniently states that the petitioner did not inform him so and he was not aware of the same.

9. The petitioner is not present in the Court. Such actions of the petitioner, in spite of being an employee of a statutory body like the DJB, amount to concealment of relevant facts from the Court and abuse of the process of the Court and appropriate action needs to be taken against the petitioner for the same. The petitioner, in the matter of filing this petition, has purported to act in public spirit when it transpires that the petitioner has a personal interest in the matter. Such concealment of personal interest from the Court, in an attempt to get a favourable order, has got to be condemned.

The petitioner, if aggrieved from denial of his selection in the past for the posts aforesaid, ought to have preferred remedies available thereagainst and if of the view that the person selected for the posts in the past, did not qualify for the posts, ought to have preferred a writ of quo warranto.

10. Be that as it may, the counsel for the petitioner has argued that the Statute does not prescribe any guidelines for appointment to the posts referred to in Sections 3(2)(vii), 3(2)(viii), 3(2)(ix) & 3(2)(x) and which leaves an unguided discretion in respondent GNCTD to appoint whosoever it desires, to the said posts and which is violative of Article 14 of the Constitution of India. Attention is drawn to ground ‘(d)’ in the petition, where reference is made to ***Dr. Subramanian Swamy Vs. Director, CBI*** (2014) 8 SCC 682 holding that conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders, without any guidance or controls or checks, is violative of Article 14 of the Constitution of India.

11. Section 3(1) of the Act provides for constitution of the Water Board, by Notification in the Official Gazette and Section 3(2)(i) provides that the Board shall consist of a Chair Person (who shall be the Minister In-charge of the subject matter of Government) and a Vice-Chairman (to be appointed by the Speaker from amongst the Members of the Legislative Assembly of the GNCTD as per Clause 2(iii)). Thereafter, in Sub-clauses (ii) to (vi) of Section 3(2), provision is made with respect to the other Members of the Board and the impugned Sections 3(2)(vii), 3(2)(viii), 3(2)(ix) & 3(2)(x) are as under:-

"3(2) The Board shall consist of:

(vii). A member (Water Supply) to be nominated by government who shall be an engineer, drawing pay not less than that of a joint secretary to the Government of India, having specialized knowledge and experience in the matters relating to drainage.

(viii). A member (Drainage) to be nominated by government who shall be an engineer, drawing pay in scale not less than that of a joint secretary to the Government of India, having specialized knowledge and experience in the matters relating to drainage.

(ix). A member (Finance) to be nominated by the government drawing pay in the scale not less than that of a joint secretary to the Government of India, having specialized knowledge. and practical experience of accounting and financial matters.

(x). A member (administration) to be nominated by the Government drawing pay in the scale not less than that of a joint secretary to the government of India, having specialized knowledge and practical experience of personnel and administrative matters."

12. The argument of the counsel for the petitioner is that the aforesaid clauses do not even contain a provision for the number of years of experience required for appointment to the aforesaid posts.

13. We have however enquired from the counsel for the petitioner, whether not the requirement, of the prospective appointee drawing pay not less than that of a Joint Secretary to the Government of India is indication enough of the experience which the prospective appointee has gathered / collected till then; it has further been enquired, whether the counsel has any idea, after how many years does a Government of India employee become entitled to the pay of the Joint Secretary.

14. The counsel for the petitioner again states that he has no knowledge or instructions from the petitioner in this regard.

15. The counsel for the petitioner has however drawn our attention to the Delhi Development Act, 1957, Section 3 whereof provides for the Members of the Delhi Development Authority to be constituted thereunder but we find the same to be providing even lesser parameters for nomination/selection. The same provides for Member (Finance and Accounts) and Member (Engineer) to be appointed by the Central Government, without even specifying, as in the provisions above, the scale of salary which such persons should be drawing.

16. The counsel for the petitioner has further drawn attention to the advertisement inviting applications for the post of Engineer (Member) in the DDA but which advertisement, in the column 'Eligibility Criteria' is only prescribing that the incumbent should be holding the post of Chief Engineer or of equivalent level in the pay matrix prescribed therein or equivalent under the Central Government /State Government or Union Territories and having minimum of 5 years of regular service in the grade. It thus cannot be said that the eligibility criteria for appointment as Member, DDA is any more specific than that provided in the impugned provisions.

17. Even otherwise, the impugned provisions, in our opinion, contain sufficient guidance of the qualifications of the incumbent. The same not only provide for the level of pay which the incumbent should be drawing but also prescribe that the incumbent should be having specialised knowledge and experience in the subject which the incumbent would represent in the Board viz. of Water Supply or Drainage or Finance or Administration.

18. The contention of the counsel for the petitioner is that the assessment of knowledge has been left to the discretion of the GNCTD. Attention in this regard is drawn to Sections 53 & 54 as under, of the Act:

“Consultation with Union Public Service Commission

53. No appointment to any post above the rank of Asst. Engineer shall be made except in consultation with the Union Public Service Commission (hereinafter referred to as "the commission")

Provided that no such consultation with the Commission shall be necessary in regard to the selection for appointment of any person.

(a) In a temporary capacity for a period not-exceeding one year;

(b) To a post where at the time of such appointment a person to be appointed thereto possesses the qualifications prescribed for such post and is in the service of the central government or of the government in the same or a higher scale of pay.

Power of the Commission to make regulations and reference to the central government in case of difference between the commission and the board

54.(1) The commission may make regulations for the following matters namely:-

a. The procedure to be followed by the commission in advertising posts, inviting applications, scrutinizing the same and selecting candidates for interview.

b. The procedure to be followed by the commission for selecting candidates for appointment and by the Board for consultation with the commission.

c. Any other matter which is incidental to, or necessary for, the purpose of consultation with the commission,

(2) In the case of any difference of opinion between the commission and the Board on any matter, the Board shall refer the matter to the

central government and the decision of the central government thereon shall be final.”

and on the basis thereof it is contended that the DJB also, under the said provisions, though is required to frame guidelines/regulations as framed by the Central Government for appointment to Board level posts in Central Public Enterprises, but has not done so.

19. We are afraid, we are unable to find any merit in the aforesaid contention either. Sections 53 & 54 aforesaid are located in Chapter VI of the Act titled "Officers and Other Employees of the Board". The provisions thereunder including Sections 53 & 54 do not pertain to appointment of Members of the Board. Section 51 thereunder is titled "Appointment of Officers and Employees" and provides for appointments by the Board. Similarly, Section 52 in Chapter VI is titled "Discipline of Officers and Employees of the Board". Section 53 provides for such appointments to be made by the Board in consultation with the Union Public Service Commission (UPSC) and Section 54 only empowers UPSC to make regulations prescribing the procedure for inviting applications and for selecting candidates for appointment by the Board. We, in this petition, are not here concerned with the said aspect and are concerned with nomination/selection by the GNCTD of the Members aforesaid of the Board and for which the Statute empowers GNCTD and does not provide for GNCTD to consult UPSC and does not provide UPSC to make any regulations for appointment of the Members of the Board. As aforesaid, if any particular appointment by GNCTD is not found to be compliant with the provisions of the Statute, the remedy therefor is a writ of quo warranto.

20. As far as the argument of the counsel for the petitioner, of the unguided discretion left in the GNCTD being violative of Article 14 of the Constitution of India is concerned, all we can observe is that for proper functioning of the Government in unison with the various other agencies/bodies constituted for better administration of the city, it is essential that there is some unanimity/relationship between the GNCTD and the said bodies. If they were to be at loggerheads, the same, rather than benefiting the citizens, would only be to the prejudice of the citizens, as the city has been witnessing, in the recent past, qua friction between the GNCTD and other bodies also vested with running of some other services in the city.

21. Rather, the publication of the advertisement for filling up the post of Member (Water Supply) in the DJB, which is also impugned in this petition, shows that all those seeking appointment are given an opportunity to apply and only then does the GNCTD select from amongst the applicants.

22. There is no merit in the petition.

23. Dismissed.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

FEBRUARY 1, 2021
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