

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23706 of 2018

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Meera Kumari Wife of Ravi Shankar Rai, Daughter of Umesh Prasad
presently resident of FF-3, Plot No.90, Shailimar Garden, Ext-1 Sahibabad,
Ghaziabad (Uttar Pradesh) Permanent resident of Jhopri New Market C.T.O
Road Dhurwa, Ranchi Jharkhand

... .. Petitioner

Versus

1. The Indira Gandhi Institute of Medical Sciences, Shekhpura, Patna through its Chairman.
2. The Member Secretary, Board of Governors, Indira Gandhi Institute of Medical Sciences, Shekhpura, Patna.
3. The Director, Indira Gandhi Institute of Medical Sciences, Shekhpura, Patna.

... .. Respondent

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Appearance :

For the Petitioner : Mr. Prashant Sinha, Adv.

For the Respondent-

I.G.I.M.S. : Mr. Sunil Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 18-08-2022

Heard learned counsel for the petitioner and learned
counsel for the respondent- Indira Gandhi Institute of Medical
Sciences (for brevity ‘ IGIMS’).

2. The petitioner participated in the process of selection pursuant to Advertisement No. 03/IGIMS/Estt./2018 (Annexure-1 to the writ petition). She was an applicant for the post of Medical Social Service Officer Gr.-II (for brevity ‘MSSO Gr.-II’) under the unreserved (Female) category. The process admittedly comprised of a written test only.

3. The undisputed facts are that after completion of the process of selection, the Selection Committee had recommended



the petitioner for being selected. The recommendation was made to the Board of Governors (BOG) since it was the Competent Authority for the appointment. The BOG at its 101st meeting approved the petitioner's selection. The private Respondent No.4 was kept in the wait list. Thereafter, a provisional Merit List, which was valid till 24-10-2018, was published on 24-09-2018 (Annexure- 4(A) and uploaded on the website of the respondent- IGIMS, which is evident from Annexure-4(B).

4. Learned counsel for the petitioner submits that pursuant to publication of the Provisional Merit List, the petitioner got herself medically examined and made efforts to submit her joining before the Director, as well as Superintendent of the respondent- IGIMS on several dates in between 26-09-2018 to 10-10-2018. When the Authorities did not permit the petitioner joining, she got served a legal notice and thereafter approached this Court by filing the instant writ petition.

5. After filing of the writ petition, the private respondent No.4 was issued appointment letter. In view of this subsequent development, the appointment of respondent No.4 was assailed by filing Interlocutory Application No. 1 of 2019, which was allowed earlier leading to impleadment of the selected candidate as private respondent No.4.



6. It is submitted by the petitioner's counsel that the petitioner has been discriminated against in the process of selection. Once the selection Committee had made its recommendation in favour of the petitioner, and the same was duly approved by the Competent Authority (BOG), there was no scope for review of the decision. The submission is that the Selection Committee had become *functus officio* in view of the recommendation made in favour of the petitioner and it is also submitted that there is no procedure permitting review of the decision.

7. Petitioner's counsel has placed reliance on the decision of the Apex Court in the case of ***State Bank of India & Ors. vs. S.N. Goyal*** reported in ***(2008)8 SCC 92***.

8. It is also submitted that reliance placed by the Authorities on Annexure -E and F to the counter affidavit is wholly misplaced. The documents contained therein would not help the respondent Authorities in sustaining the decision since Annexure-E is the revised guidelines for direct recruitment under the DGQA which has no concern with the respondent- IGIMS. Reliance placed on Clause-19 of the said guidelines is unsustainable as it is not a guidelines, which is applicable in the respondent -IGIMS. The order of the Authorities purporting to review the decision



and the appointment letter issued, pursuant thereto are by an incompetent Authority, which had become *functus officio*. The order being bad in its very inception, *post facto* approval of the same by the BOG on 19-04-2019 would not validate the otherwise illegal order. In view of the aforesaid submissions, it is prayed that the selection of private respondent No.4 being unsustainable for want of any procedure known to law and otherwise illegal for grounds noted above, is fit to be set aside and the first selection notified by the provisional Merit List in favour of the petitioner should be given effect to by issuing appointment letter in favour of the petitioner and permitting her to join.

9. Learned counsel for the respondent- IGIMS has submitted that admittedly there was a tie of marks in between the petitioner and the private respondent No.4. The other undisputed fact is that respondent No.4 is of higher age than the petitioner. The petitioner has also not alleged any *mala fide* in the process of selection against any person. In view of the aforesaid circumstances, the decision of the respondent IGIMS to give preference to the person who is senior by virtue of age, placing reliance upon a decision of the Union of India is only in furtherance of the interest of justice. The issue of tie was required to be resolved with reference to some basis, acceptable to the



Union of India as the IGIMS is guided by the Rules applicable to the All India Institute of Medical Sciences (AIIMS). It is, under this circumstance, that the reliance has been placed on the guidelines which only provides a fair solution for resolving the tie which has admittedly arisen in the present selection process. It is also submitted that accordingly the file was moved from the level of the Administrative Officer and re-considered by the Selection Board. Appointment letter/s was issued to respondent No.4 on 05-12-2018 containing a clear stipulation that it was subject to approval of the BOG *post facto*. The approval having been accorded on 19-04-2019, it does not lie in the mouth of the petitioner to contend that the process for resolving the admitted issue which has arisen in the selection process is in any manner illegal or unjustified.

10. Considering the rival submissions, this Court would find that the petitioner is claiming appointment to the post of MSSO Gr.-II based on the Provisional Merit List dated 24-09-2018. It is also an admitted position that pursuant to the Provisional Merit List dated 24-09-2018, the petitioner has never been permitted to submit joining on the post of MSSO Gr.II. In substance, the submission of the petitioner's counsel is that declaration of the petitioner being selected in the Provisional



Merit List “be treated as her final selection”. The petitioner, thus, is claiming that the Provisional Merit List “be treated as Final Merit List”. This is clearly impermissible. There is no declaration of the petitioner being selected by any Final Merit List.

11. There is no dispute that the BOG is the Competent Authority and that it had approved the recommendation of the Selection Committee declaring the petitioner selected and respondent No. 4 in the wait list. This admitted position, however, has to be considered keeping in background the other admitted fact that based on approval of the BOG, there was no declaration/publication of a Final Merit List based on which, the petitioner can claim any vested/indefeasible right to be appointed. Apart from this fact, the Court would also consider that the admitted position is that there was a tie in the marks awarded to the petitioner *vis-a-vis* respondent No.4. Since both were having the same marks, the issue was required to be resolved by a *bona fide* and fair procedure.

12. This Court also directed Authorities to produce the original records relating to the selection in-question, which were produced before this Court. The Court has gone through the records and finds that in view of the stalemate arising out of a tie between the petitioner and respondent no.4 the Authorities have



relied upon a guidelines for resolving this issue, but the guidelines is of different Organization under the Govt. of India. The Authorities have placed reliance on the revised guidelines for direct recruitment under the DGQA, Govt. of India. They have justified placing reliance on this revised guidelines in the counter affidavit by stating that the IGIMS is guided by the rules applicable to the AIIMS. The argument advanced by the petitioner's counsel that the revised guidelines is for a different Organization is ,therefore , noted by this Court only to be rejected.

13. The petitioner has not demonstrated any flaw in the solution opted for resolving such stalemate prescribed in the revised guidelines. It is also not the petitioner's case that there is any other Rules/guidelines/direction or decision within the IGIMS or applicable to IGIMS for resolving a stalemate arising out of tie between two candidates in a process for selection. That being so, this Court is inclined to accept the fair resolution for such stalemate provided under the revised guidelines for being applied in the instant case. Based thereon, the respondent No.4, who is admittedly senior to the petitioner in age, was rightly given preference over the petitioner, in view of the tie of marks. The submission of the petitioner's counsel that there was no provision for review and therefore Authorities could not have reviewed the



recommendation made by the Selection Committee in favour of the petitioner's selection, which was duly approved by the BOG, also does not find favour with this Court. In view of the admitted tie between the petitioner and respondent No.4, this Court would note with approval the stand of the respondent that they took steps for resolving the stalemate, before declaring the Final Merit List or before the petitioner's joining. Since, till then no indefeasible right was vested in favour of the petitioner, the Authorities, in fact, were obliged to resolve the issue by a fair procedure, as has been done in the instant case. The reliance placed by the petitioner's counsel on decision of the Apex Court in case of ***State Bank of India & Ors.*** (supra), to contend that after the recommendation had been made by the Selection Committee duly approved by the BOG, the Committee became *functus officio* is untenable. The judgment deals with exercise of quasi judicial function and a decision taken in discharge of quasi judicial function by the Authority. The instant case does not arise from exercise of quasi judicial jurisdiction/function. That apart paragraph Nos. 18 and 19 of the judgment makes it abundantly clear that "when an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons". Under such circumstance, the



Apex Court has clearly stated that it cannot be said that the Appointing authority became *functus officio*. The issue whether an order is tentative or final has been dealt with and considered by the Apex Court based on the pronouncement/publication/notification or communication of the order and, under such circumstances, the Court has held that an Authority may become *functus officio*.

14. In the instant case the Merit List relied upon by the petitioner itself indicates that it is a Provisional Merit List. The Authorities were, therefore, well within their powers to review the result in view of the admitted position with respect to tie in marks between the petitioner and the respondent No.4. Since from perusal of the original records, this Court found that file relating to the selection of the petitioner was moved from the level of the Administrative officer for resolving the issue arising out of tie between the petitioner and respondent no.4. The file was thereafter placed before the Selection Board which had sent the earlier recommendation in favour of the petitioner. The Selection Board had taken steps to resolve the stalemate based on procedure which this Court has already held to be fair. The appointment letter, pursuant to such resolution, was also given to the respondent No.4 on 05-12-2018, but with a clear stipulation that it was subject to



approval of the BOG *post facto*. The approval of the BOG having been accorded on 19-04-2019, it does not lie in the mouth of the petitioner to contend that there was any infirmity in the appointment of respondent no.4 as the petitioner has herself contended that the BOG was the Competent Authority for appointment in the respondent- IGIMS. This Court would further observe that stalemate in the marks between the petitioner and respondent No.4 as well as the factum of respondent No.4 being senior by virtue of age is admitted by the petitioner.

15. The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

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