

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

WPA No. 15361 of 2017

**Association of Supervisors, GRSE Ltd (WB) & Anr.
Vs.
Union of India & Ors.**

For the Petitioner	: Mr. Pratik Majumder, Adv. Mr. A. Mullick, Adv.
For the Respondent Nos. 2 to 5	: Mr. Ranjay De, Adv. Mr. Basabjit Banerjee, Adv.
Hearing concluded on	: 11.11.2022.
Judgment on	: 22.11.2022.

Lapita Banerji, J.:- The writ petitioners have challenged the recruitment process vide Employment Notification No.OS:04/16 dated August 10, 2016 issued by the Garden Reach Ship Builders & Engineers Limited (for short, "GRSE") for appointment to the grade/post of Junior Managers. The petitioner No.1 is a registered Association of Supervisors working at GRSE, under the West Bengal Societies Registration Act, 1951. The petitioner No.2 claims to be a Joint Secretary of the petitioner No.1/ Association.

2. The petitioners claimed to be working in the posts of Junior Supervisors (S3 & S4) and that the next promotional grade is that of Junior Managers. It

was also claimed in the writ petition that some of the members of the Association/petitioner No.1 were entitled to be 'considered for promotion' and their right to be fairly 'considered for promotion' was jeopardized/adversely affected due to the issuance of Employment Notification No.OS:04/16 published on August 10, 2016.

3. The admitted facts in the writ petition are stated hereinunder Clause (xix) of the Application Procedure in OS: 04/16 stipulated that the recruitment to all the posts of Junior Managers would be through interview only and not by way of written examination coupled with interview. The same was a deviation from the previous Employment Notification No.OS1/16 dated February 11, 2016. As per the previous Notification, the candidates were required to appear in written tests for being recruited to the post of Junior Managers.

4. By a Departmental Order dated September 14, 2015 vide No. 526/15/D(A) issued by the Ministry of Defence, Government of India, it was notified that the Hon'ble Prime Minister announced that the Government would discontinue holding interviews for recruitment to the junior level posts in Government of India. It was stressed that the recruitment would be through written examination only with effect from January 1, 2016. In case where provisions for interview were prevalent for selection of the candidates, the said procedure would be amended accordingly so that selection could be made only on the basis of **written test**. The said procedure for recruitment would be applicable to all the civilian posts as well as for recruitment of service personnel. However, in the event there was a difficulty in implementation of

the aforesaid decision, a special dispensation was required to be made with justification from DoP&T after approval of the Minister concerned for allowing recruitment on the basis of **interviews** for Group 'C' or Group 'B' (Non-Gazetted Posts).

5. Vide Office Memorandum dated December 14, 2015, issued by the Director, Ministry of Heavy Industries and Public Enterprises, Government of India, it was notified that the DoP&T has decided to dispense with the practice of **interview** for Group 'C' and 'D' posts and Non-Gazetted Posts of Group 'B' category. The recruitment process through **interview** was required to be amended immediately. OS:04/16 was published in 2016 after the aforesaid guidelines.

6. Mr. Majumder, Learned Counsel appearing on behalf of the petitioners, argued that the fundamental right of the writ petitioners "to be considered for promotion" was unfairly curtailed by introducing the recruitment of the Junior Managers only by way of **interview** vide OS:04/16, whereas, the Supervisors, who are already working in the 'S3' and 'S4' grades with GRSE, would only be considered for 'promotion' to the post of Junior Managers through **written tests** along with **interview**. Despite Clause 55-58 of the promotion rules applicable to the Supervisors vide CMD Order No.06/15 dated September 10, 2015 of GRSE, 10% of the total strength of the Supervisors was not earmarked for promotion to the Junior Manager grade. Therefore, the existing Supervisors in S3 and S4 categories were deprived from consideration for Promotion.

7. He further submitted that the Notification dated September 14, 2015 issued by the Ministry of Defence and the Notification dated December 14, 2015 issued by the Ministry of Heavy Industries and Public Enterprises clearly stipulated that all **recruitments** were to be made by way of **written test** to all civilian posts as well as for all posts of service personnel. Since the Non-Gazetted Posts of Group 'B' and Group 'C' staff were also to be recruited by way of **written test** upon amendment of the previous recruitment rules providing for **interview**, the question of recruitment of managerial posts/Gazetted Posts through "**Interview** only" was not conceivable. The very purpose of introducing **written test** for Non-Gazetted Posts and Group 'C' staff also would be frustrated if Junior Managers were recruited by way of **interview** only.

8. Representations were made on behalf of the petitioner No.1 by the Joint Secretaries of the Association including the petitioner No.2 on March 24, 2017 and April 17, 2017 alleging total lack of transparency along with nepotism and bias in the recruitment process based only on **interview**. Prayer was made for staying and/or setting aside the recruitment process vide OS:4/16 since the Government Notifications dated September 14, 2015 and December 14, 2015 were mis-interpreted by GRSE. The reply given by GRSE vide Memo Ref. No.HR/P&RR/93/17 dated May 9, 2017 was completely in violation of the aforesaid Notifications and suffered from complete non-application of mind.

9. Furthermore, he submitted that the clarification as sought to be given by the Office Memo dated May 9, 2017 regarding reinstatement of **interview** for recruitment/induction of Junior Managers was in the interest of Supervisors

as well as in order to fulfil the recruitment process of the company was an interpretation that was completely untenable in view of the aforesaid Government Circulars of September and December, 2015. At best, **interview** could have been an additional consideration but under no stretch of imagination could it have been the only selection process for recruitment of Junior Managers.

10. Mr. De, Learned Counsel appearing on behalf of the respondent Nos.2 to 5 submits that the petitioners have no locus standi to maintain this writ petition being Supervisors working at GRSE. The right of the petitioners to be "*considered for promotion*" has not been curtailed in any manner and like in the previous years the petitioners were entitled to be "*considered for promotion*" vide OS:04/16 by way of a **written test** which was for 85 marks and **interview** which was for 15 marks. At no point in time the petitioners were discriminated against the other Supervisors while being "*considered for promotion*".

11. It is not disputed that by Employment Notification No.OS:1/16 the basis of **recruitment** of Junior Managers was by **written test**, whereas, by OS:4/16 the basis of **recruitment** of Junior Managers was through **interview**. The Employment Notification being OS:4/16 was issued in terms of the Circular dated December 14, 2015 issued by the Ministry of Heavy Industries and Public Enterprises, stated hereinabove. OS:01/16 was issued as per the prevalent recruitment rules at the material point in time, whereas, OS:4/2016 was issued in terms of the aforesaid Circulars issued by the Government of India. The respondents/GRSE being a public sector undertaking has to follow

the Notification/Circular issued by the Ministry concerned, of the Government of India. The respondents/GRSE has not arbitrarily modified the selection process.

12. He strongly denied that there was any malafide intention in altering the recruitment process for the purpose of favoring a candidate. The respondents/GRSE is a public sector undertaking and it was unimaginable that for the purpose of favoring one candidate or a few candidates, the entire selection process would be modified.

13. Mr. De also contended that no judicial review is permissible unless there is an infringement of fundamental rights of the petitioners and a judicial review of an administrative action/decision is extremely limited in scope.

14. Having considered the rival submissions of the parties and the materials placed on record, this Court finds that the Employment Notification OS: 04/16 clearly stipulated in Clause (xix) of the eligibility criteria for recruitment of the Junior Officers that the selection for all posts will be through **interview**.

15. Upon representations dated March 24, 2017 and April 17, 2017 being made on behalf of the petitioners, the General Manager (HR & Admin.) of respondent/GRSE sought to clarify the position with regard to the eligibility criteria for selection of the Junior Managers in Clause 2 of the Office Order dated May 9, 2017. Clause 2 of the Office Order reads as thus:

“After implementation of revised Promotion Policy of supervisors vide CMD order dated 10 Sep 15, two distinct

channels have been made for entry in junior managers grade, one is from internal supervisors through departmental examination from S3 and S4 grade (promotion channel) and other one is through direct recruitment channel wherein internal supervisors are also eligible to apply with outsiders if having the necessary qualification and experience with five years age relaxation criteria. Hence all the eligibility criteria for internal supervisors in promotion channel should not necessarily be same with that of eligibility criteria in direct recruitment channel.”

16. Therefore, the Supervisors, who were at grade ‘S3’ and ‘S4’ could apply for promotion being internal Supervisors of the company through departmental examination. However, in the event they chose to appear through direct recruitment channel, they were also eligible to apply along with rank outsiders if they had the necessary qualifications and experience. Furthermore, 5 years of age relaxation was also applicable for internal Supervisors. The said relaxation was done in order to eliminate the discrimination between the Candidates who are freshers and the candidates already working as supervisors with GRSE and seeking to apply through recruitment channel.

17. In this writ petition, the petitioners have failed to bring on record the number of their members who applied through promotional channel “which

included a written test and an oral interview” vis-à-vis the members who applied through direct recruitment channel and failed to qualify due to the modification in the recruitment process. The petitioners have squarely failed to show this Court how they were unfairly prejudiced/ aggrieved by the recruitment process being OS:04/16.

18. Without appearing for **written tests** in the promotional channel or appearing for the **interview** in the direct recruitment process, the petitioners in a proceeding under Article 226 of the Constitution of India cannot theoretically argue that they could have been unfairly prejudiced by the selection process. The petitioners were not only eligible to apply through the promotional channel but were also eligible to apply as rank outsiders through the direct recruitment process with relaxation in the age criteria. The pleadings in paragraphs 9 and 11 of the writ petition along with the pleadings made in the affidavit-in-reply are vague and fail to establish the legal right of the petitioners. The petitioners have not even stated whether any of the members of the petitioner No.1 applied under the aforesaid two channels and failed to qualify due to the modification of the recruitment policy under Employment Notification OS: 04/16.

19. The hearing of this writ petition was concluded initially on September 5, 2022. The said case was reopened on September 13, 2022 at the behest of this Court asking the petitioners to satisfy this Court on the question whether any of its members were aggrieved by the Employment Notification being OS:4/16 since this court found no satisfactory pleadings in that respect. The petitioners

were allowed to bring further and better particulars on record by way of a supplementary affidavit.

20. On the adjourned date of hearing i.e. November 11, 2022, Mr. Majumder, appearing on behalf of the petitioners, submitted fairly that no further/better particulars could be produced by the members of the petitioner no. 1 association who applied through the aforesaid channels and were unfairly prejudiced by the alteration of the recruitment policy as stated in Employment Notification OS:04/16

21. This is not a public interest litigation, whereby, a policy can be challenged in the larger public interest (PIL) without the petitioners being unfairly prejudiced/aggrieved by the same. As per the Supreme Court guidelines, service matters are outside the scope of PIL. Only when a person is aggrieved can the high prerogative writ jurisdiction be invoked.

22. It appears to this Court that the entire thrust in the writ petition was for cancellation/setting aside of OS:04/16 for the purpose of nullifying/setting aside the employment given to the private respondent No 6 by the respondents/GRSE. Without first establishing their legal rights, the petitioners have strenuously challenged the selection process only by way of **interview** losing sight of the fact that they were also eligible to apply by way of the same selection process along with the relaxation in age. The petitioner no. 1 has failed to establish that its members appeared in the **interview** and not selected due to nepotism/ bias or despite being selected were not eligible for the posts for being over aged.

23. This Court is not satisfied on the issue of **locus standi** of the petitioners to maintain this writ petition. Hence, **WPA 15361 of 2017** is **dismissed** without any order as to costs. Since this Court did not go into the merits of the writ petition in assessing the fairness of the recruitment policy vis-à-vis the Government Notifications dated September 14, 2015 and December 14, 2015, it is not necessary to decide the issues raised regarding the scope of judicial review in respect of an administrative decision in the present writ petition.

24. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

25. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(LapitaBanerji, J.)