

06.07.2023

rpan/03

WPA 2699 of 2022

Dr. Swati Choudhury

– Versus –

The Indian Statistical Institute & Others

Mr. Sabyasachi Mukherjee,

Ms. Jayeta Mitra,

Mr. Bibek Dey,

Ms. Debarati Choudhury,

Mr. Mukesh Khanna,

Mr. Mrinmay Nandi

... for the petitioner.

Mr. Debapriya Gupta

... for the Respondents.

The petitioner, in invocation of the jurisdiction of this court under Article 226 of the Constitution, has prayed for cancellation of a memo dated 3rd February, 2021 (Annexure – 'P-4'). The petitioner has further sought for a direction upon the respondents to take enviable steps to appoint her in the post of Assistant Professor in the Indian Statistical Institute (in short, ISI).

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the writ petitioner was appointed in the post of an Associate Scientist – C at Machine Intelligence Unit of the ISI which is a non academic post. He contends that the writ petitioner is highly qualified and she is eligible for being appointed in the post of Assistant Professor. He further submits that some technical assistants, scientific assistants and associate scientists, who are similarly circumstanced with the writ petitioner, have been appointed in the post of Assistant Professor but the writ petitioner has not been favoured

with such appointment despite having requisite qualifications. He strenuously argues that one Dr. Suparna Mondal Biswas (in short, Dr. Biswas) has been appointed in that post by virtue of an order passed by the National Commission for Scheduled Castes (in short, NCSC).

Mr. Mukherjee further submits that the ISI being a model employer should give equal treatment to all of its employees and it should have appointed the writ petitioner in the post of Assistant Professor. He contends that admittedly, the writ petitioner has attained the age of superannuation but if she is appointed in the post of the Assistant Professor she would be able to render her service in that post till she attains 65 years of age. He submits that by giving numerous representations to the respondents she requested the respondents to appoint her in the post of Assistant Professor but to no avail. Grieved thereby, the writ petitioner has been constrained to approach this Court.

Mr. Gupta, learned advocate representing the respondents/ISI submits that for being appointed in the post of Assistant Professor in ISI one person has to come through a selection process. ISI initiated a selection process in 2010 and one advertisement was published inviting applications from eligible and intended candidates. Dr. Biswas and other intended candidates including the candidates detailed in paragraph -9 of the

writ petition responded to that advertisement and they offered their candidatures for that post and they participated in the selection process and emerged as successful candidates and accordingly, they were favoured with appointment to the post of Assistant Professor.

He contends that the writ petitioner did not participate in the selection process and hence, no question arises to give appointment to the petitioner in the post of Assistant Professor. He contends that annexure – 'P-4' was mere an intimation given to the writ petitioner to the effect that she was going to retire on attaining the age of superannuation. He submits that the writ petitioner has already retired from her service and no question arises to cancel the aforesaid memo (Annexure-P-4) and there is no rule to reinstate one retired employee either in the post of Assistant Professor or in the post of scientific assistant. He contends that candidates detailed in paragraph-9 of the writ petition are not identically circumstanced with the writ petitioner.

The documents relating to the appointment of Dr. Biswas, as produced, are taken on record.

Heard the learned advocates. Perused the materials on record.

Facts adumbrated in the Writ petition are that the writ petitioner was appointed in ISI as research fellow in 1985 and on 25.01.22, she was promoted to the post of

Assistant Scientist-C from the post of Assistance Scientist-B and the writ petitioner has retired from service on 28.02.2022 on attaining the age of superannuation.

Record, as produced by the respondent, reveals that in 2010, one selection process was initiated by the respondents to fill up the post of Assistant Professor in ISI. One advertisement was published inviting application from eligible and intending candidates. Internal employees having Ph.D. degree with published works were also asked to offer their candidatures for that post of Assistant professor. Writ petitioner herself admitted that her application, whereby she offered her candidature for the post of Assistant Professor, was rejected and she had never challenged sustainability and/or propriety of the rejection of her application before any forum.

The selection process was completed in the year 2015 and Dr. Biswas and other persons, detailed in paragraph 9 of the writ petition, were appointed on diverse dates within 2015.

Dr. Biswas approached the NCSC alleging that ISI did not maintain reservation roster for the candidates belonging to SC, ST and OBC candidates in case of Direct recruitment to the post of Assistant professor and since 2002, ISI appointed almost 50 candidates from general category only. Director of NCSC intervened into the matter. Director of ISI undertook to prepare reservation roster. Director, NCSC asked the ISI to review that case of

Dr. Biswas and Internal Council members recommended appointment of Dr. Biswas in that post of Assistant professor. Writ petitioner herself admitted in her writ petition that Dr. Biswas is eligible for that post and writ petitioner has not prayed for cancellation of appointment of Dr. Biswas.

Rules prescribing procedure relating to appointment to the post of Assistant professor in ISI do not contain any provision for promotion to the post of Assistant professor directly from the post of Assistant Scientist-C and writ petitioner could not place any rule permitting the ISI to reinstate any retired employee in any post and to promote any employee to the post of Assistant professor.

To justify judicial interference in any matter, one has to show existence of his legal or fundamental right and infraction of such right. I do not find any material to infer that writ petitioner acquired an indefeasible right for being appointed to the post of Assistant Professor. The Selection process had been completed in 2015. If due to appointment of Dr. Biswas, any cause of action arises in favour of the writ petitioner, she could have approached this court earlier. Now, she has retired. The writ petitioner suddenly waking up from her deep slumber after almost 7(seven) years has preferred this writ petition. Remedy under Article 226 of the Constitution is discretionary and relief may be refused if the writ petition

suffers from laches and unexplained delay. The writ petitioner is not entitled to any relief due to unjustified delay. At this stage compass of judicial review cannot be extended to such extent to direct the respondents to reinstate one retired employee and to promote such employee to her desired post.

In view of the discussion made hereinabove, no interference is called for in the writ petition. Ex consequenti, the writ petition is dismissed.

However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)