

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 11498 of 2020

Nilabja Sikdar

vs

Union of India & Ors.

For the petitioner : Mr. Reetobroto K. Mitra, Adv.
Mr. Priyankar Saha, Adv.
Mr. Hemant Tiwari, Adv.

For the ISI : Mr. Dhiraj Kumar Trivedi, Ld. DSG.
Ms. Susmita Saha Dutta, Adv.
Ms. Sayani Roy Chowdhury, Adv.
Mr. Sunil Gupta, Adv.

Last Heard on : 10.05.2023.

Delivered on : 12.05.2023.

Moushumi Bhattacharya, J.

1. The petitioner is presently doing his Fellowship in the Human Genetics Unit of the Indian Statistical Institute (ISI) from 2.8.2013. The Fellowship is for

5 years. The Fellowship, namely, the Ramalingaswami Re-entry Fellowship was instituted by the Department of Biotechnology for Indian nationals working overseas who are interested in scientific research positions in India. The tenure of the petitioner as Ramalingaswami Re-entry Fellow was extended for a further period of 2 years from 1.8.2018.

2. The present writ petition was filed on 22.12.2020 for a mandamus on the respondent no. 4, the Indian Statistical Institute, to call the petitioner for an interview in terms of the petitioner's application dated 13.9.2018 in response to an advertisement published by the ISI for the post of Associate Professor. The advertisement was published on 14.6.2018. The petitioner also seeks to be absorbed in the post of Associate Professor after emerging successful in the interview.

3. The instant proceeding saw a contempt being filed by the petitioner on the basis of the stand taken by ISI at the initial stage of the writ petition. Learned counsel appearing for the parties subsequently however settled for hearing of the writ petition. The contempt proceedings are hence not being referred to in detail in the judgment since the Court proposes to deal with the issues raised by the petitioner and ISI on the petitioner's absorption to the post advertised by ISI on 14.6.2018.

4. According to learned counsel appearing for the petitioner, the action on the part of ISI in failing to consider the petitioner for the post advertised is arbitrary and bereft of credible reasons. Counsel submits that the petitioner

was kept in the dark as to the status of his application dated 13.9.2018 for the post of Associate Professor in Biological Sciences Division in ISI. It is submitted that the only unambiguous point taken in the affidavit-in-opposition of ISI is that the petitioner was considered for the posts of Assistant Professor as well as Associate Professor but since the petitioner was over-aged for the former, the petitioner's candidature was evaluated only for the latter i.e. Associate Professor. Counsel submits that the petitioner was 43 years when he applied for the posts in 2018 but has since crossed the age limit for both the posts. Counsel submits that the petitioner is entitled to be selected for the post of Associate Professor in the Biological Sciences Division as per the advertisement published by ISI.

5. The learned DSG appearing for the ISI places the documents in relation to the selection process of the Institute and submits that there has been no arbitrariness therein and the petitioner was not selected since the petitioner's candidature was not found to be suitable for the post of Associate Professor. Counsel places the Procedure for Faculty Recruitment of ISI where the Divisional Screening Committee – Recruitment (DSC-R) is in charge of evaluation of the candidates for the post advertised by ISI. Counsel submits that the petitioner was undergoing the Ramalingaswami Re-entry Fellowship under the Department of Bio-Technology (DBT) which was the funding agency and ISI was the host institute which provided the petitioner with

infrastructural support. Counsel submits that the petitioner cannot claim any right as a Ramalingaswami Fellow for appointment to a faculty position in ISI.

6. The Indian Statistical Institute was declared to be an “Institution of National Importance” by The Indian Statistical Institute Act, 1959. Section 3 of the Act declares that the object of ISI was to make it an institution of national importance while section 4 grants exclusive power to the Institute to hold examinations and grant degrees and diplomas in statistics, mathematics, quantitative economics, computer science and other subjects related to statistics as may be determined by the Institute notwithstanding the University Grants Commission Act, 1956 or any other law for the time being in force. Therefore, the respondent no. 4 ISI is empowered by the statute to hold examinations, assess and evaluate the applications of the candidates for a faculty position in the Institute.

7. There is little doubt that ISI can frame and formulate criteria for evaluation of candidates for an advertised position and select candidates in accordance with the evaluation procedure for the concerned post. The question is whether the rejection of the petitioner breaches the benchmark of reasonableness and transparency which is to be expected of a statutory body and would consequently call for interference under Article 226 of the Constitution of India.

8. The undisputed facts which are relevant to answer the above question are that the petitioner applied for the post of Associate Professor in Biological

Sciences in response to an advertisement published by ISI on 14.6.2018. The petitioner's application on 13.9.2018 was accompanied with relevant documents as required under the advertisement. The petitioner filed a writ petition on 22.12.2020 as the petitioner was not informed of the outcome of the application. The petitioner sought for a direction on ISI for calling the petitioner for an interview and thereafter to absorb the petitioner for the post applied for (Associate Professor in Biological Sciences Division). The affidavit-in-opposition of ISI and the material referred to show that the petitioner's application contained several gaps in the form of non-furnishing of required documentation. For instance, the petitioner did not mention the intended post for which the application was made and also failed to mail the single PDF file to the Director and Professor in-charge of the Division.

9. The petitioner also did not submit a reference letter. The petitioner's application was however considered despite the technical errors, for both the posts of Assistant Professor and Associate Professor and scrutinized in accordance with the recruitment rules of ISI. Since the petitioner had crossed the age limit for the post of Assistant Professor – being 44 years of age as on the date of the advertisement - the petitioner's candidature was accordingly evaluated for the post of Associate Professor.

10. The evaluation was made by the Divisional Screening Committee-Recruitment (DSC-R). The DSC-R duly evaluated the petitioner's research publication profile, teaching experience in the relevant level, proposed research

and teaching plan. The evaluation was subsequently ratified by the Selection Committee of ISI. The petitioner's candidature was not considered to be suitable for the post of Associate Professor. No recruitment was however made by ISI since none of the candidates was found suitable for the advertised post.

11. There is no evidence on record to show that ISI or the DSC-R of ISI conducted the evaluation in a manner which would call for judicial interference. In any event, ISI, which is an Institute of national importance and is not fettered by the UGC Act or by any other law entities, is to make an independent evaluation of the suitability of a candidate for an advertised post in ISI.

12. The law is well settled that a Writ Court will not interfere in a selection process for an examination or for a position and substitute its own opinion for that of the statutory authority unless a case of arbitrariness, irrationality and procedural impropriety as well as bias and mala fides is conclusively made out by an aspirant. Reference in this context may be made to *Nelima Misra vs. Harinder Kaur Paintal*; (1990) 2 SCC 746, *M.V Thimmaiah vs. Union Public Service Commission*; (2008) 2 SCC 119. In *Madras Institute of Development Studies vs. K. Sivasubramaniyan*; (2016) 1 SCC 454, the Supreme Court reiterated that the decision of the academic authorities on the suitability of a candidate to be appointed as associate professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction and the appointment cannot be questioned on the ground of lack of qualification or

experience. In *Bhushan Uttam Khare vs. The Dean, B.J. Medical College; (1992) 2 SCC 220* the Supreme Court cautioned that courts must be very slow in passing orders in matters falling within the jurisdiction of educational authorities except where the interest of justice so mandates.

13. The fact that the petitioner was a Ramalingaswami Fellow under the Department of Biotechnology cannot improve the case sought to be made out by the petitioner. ISI is merely the host institute providing infrastructural support under the Fellowship to the petitioner. Therefore, the petitioner cannot claim that any right as such has accrued to the petitioner for being appointed to a faculty position in ISI. The petitioner also cannot claim to be holding a current position of a scientist or otherwise in ISI.

14. Moreover, filing of the writ petition itself and the relief sought for is against judicial precedents in the matter. The claim of the petitioner having the requisite qualifications for the post cannot automatically translate to a right to be appointed; that is entirely within the expert domain of the respondent Institute. It is inconceivable that a candidate would approach a Writ Court for a mandamus on an academic institution for calling the candidate for an interview and thereafter to absorb the candidate in the advertised position after succeeding in the interview.

15. The argument that the petitioner was within the age for the post of Assistant Professor in 2018 does not assist the petitioner since the petitioner's

application for the post of Associate Professor was also evaluated by the Expert Committee.

16. In view of the above reasons, this Court does not find any basis to interfere with the evaluation process of ISI or to declare the same to be falling short of the accepted standards of assessment of the suitability of the candidates. The Court also does not have the constitutional mandate to issue a mandamus on the ISI to select the petitioner for the advertised post. WPA 11498 of 2020 is accordingly dismissed without any order as to costs. Any interim orders granted earlier are accordingly vacated and merge with this judgment. All other connected applications are disposed of.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)