



W.P.No.26163 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |                   |
|---------------|-------------------|
| Reserved on   | <b>13.10.2023</b> |
| Pronounced on | <b>01.11.2023</b> |

CORAM:

THE HON'BLE Ms.JUSTICE. **R.N.MANJULA**

W.P.No.26163 of 2021

and

W.M.P.Nos.27618, 27619 & 27620 of 2021

Shunmugavel G

... Petitioner

Vs.

1.Govt. of India, Ministry of Science and Technology,  
Department of Biotechnology,  
Rep by the Secretary,  
6th -8th Floor, Block 2 CGO Complex,  
Lodhi Road, New Delhi - 110 003.

2.Institute of Stem Cell and Regenerative Medicine,  
Rep. by the Director,  
GKVK Campus, Bellary Road,  
Bangalore 560 065.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the results published by the 2nd respondent through proceedings inStem/Rect/SO&MA/2020-21 (Post Code-17/2020) dated 08.10.2021 and the consequential Advertisement No.inStem/11/2021 dated 20.11.2021 issued by the second respondent for the post of Management Assistant and quash the



W.P.No.26163 of 2021

same and for a consequential direction to complete the selection as per the Advertisement No.inStem/08/2020 (Post Code 17/20) dated 30.01.2021 and to appoint the petitioner as Management Assistant in the 2nd respondent Institute.

For Petitioner : Mrs.Ritachandrasekaran for  
M/s.R.Meenakshi

For Respondents : Mr.ARL.Sundaresan,  
Additional Solicitor General of India for  
Mr.P.G.Santhoshkumar for R1 & R2

### **ORDER**

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the results published by the 2nd respondent through proceedings inStem/Rect/SO&MA/2020-21 (Post Code-17/2020) dated 08.10.2021 and the consequential Advertisement No.inStem/11/2021 dated 20.11.2021 issued by the second respondent for the post of Management Assistant and quash the same and for a consequential direction to complete the selection as per the Advertisement No.inStem/08/2020 (Post Code 17/20) dated 30.01.2021 and to appoint the petitioner as Management Assistant in the 2nd respondent Institute.



W.P.No.26163 of 2021

2. Heard Mrs.Rita Chandrasekaran, learned counsel for the petitioner and Mr.ARL.Sundaresan, learned Additional Solicitor General of India appearing for the respondents.

**3. The brief facts of the case are as follows:**

The petitioner who is a graduate in B.Tech (IT) has applied for the post of Management Assistant with Level - 7 in 7<sup>th</sup> Central Pay Commission. Out of the three posts notified in the advertisement, one post was reserved for OBC category and 2 posts were reserved for Unreserved. The selection process consists of (i) Tier - I (written test) and Tier - II (interview). It is specifically mentioned in the advertisement that the merit list would be based on the marks obtained in the written test.

3.1. The second respondent and all other similar autonomous institutions come under the first respondent Ministry. There are specific guidelines framed for the recruitment rules for the posts in Central Government funded Autonomous Institutes like the second respondent. As per the guidelines, no interview shall be conducted for recruitment to the post which have Grade Pay of below Rs.4,200/-. The petitioner claims that the



W.P.No.26163 of 2021

Management Assistant is a Group 'B' non-gazetted post and hence conducting interview is not mandated under the guidelines issued by the first respondent.

The petitioner has secured 63.29% of marks in the Tier - I written test. However, he was called for interview and later it was declared that no candidate was found eligible and none of the applicants including the petitioner has been selected.

**3.2.** Based on the Central Government notification, the petitioner claims that the requirement of the interview process itself is not needed and even after conducting the interview and finishing the process, the second respondent cannot say that suitable candidates were not available for appointment. The petitioner has secured 63.29% of marks which is more than the eligibility criteria contemplated under the notification and hence, a fresh recruitment notification issued by the second respondent on 08.10.2021 should be quashed and consequently, the second respondent should be directed to appoint the petitioner as the Management Assistant as per the advertisement dated 30.01.2021, in the second respondent Institute.



W.P.No.26163 of 2021

**4.** The learned counsel for the petitioner submitted that the first respondent issued a letter dated 19.07.2016 with the consolidated guidelines for framing / amendment of recruitment rules for the posts in Central Government funded Autonomous Institutes. In para 2 of the communication, the first respondent had instructed that the original instructions and their link on the DoPT (Department of Personnel and Training for short), DoE (Department of Expenditure) sites are also detailed and these instructions shall always prevail in addition to the instructions incorporated in the guidelines issued through the communication.

**4.1.** The post of Management Assistant does not fall under the gazetted category as per its definition found in the guidelines. Since the post of Management Assistant is not a gazetted post, there shall not be any interview as per the guidelines. Even if there is any amendment to the guidelines or change in the selection pattern, it requires the approval of the competent authority. The competent authority has approved the selection of the candidates only based on the written test and hence the modification made subsequent to the publication of the advertisement cannot be considered as something approved by the competent authority.



W.P.No.26163 of 2021

WEB COPY

**4.2.** The petitioner appeared for the written examination on 28.08.2021.

Though CPT (Computer Proficiency Test) has to be conducted on the same day, it was not conducted due to some technical problem. However the second respondent conducted CPT only for those who had scored above the cut off mark in the written examination. Though the petitioner has secured an aggregate of 63.29% and stood second in the written test as per the information obtained through Right to Information, he was found not suitable. Hence, this decision is arbitrary and contrary to the guidelines.

**4.3.** The second respondent is a premier organisation carrying out research in the area of Bio-technology and it is an organ of the Government of India. Hence it is expected to maintain highest degree of fairness and equity to the candidates aspiring to serve the Institute. The petitioner is deprived of his legitimate expectation based on the arbitrary manner of selection without considering the approved manner of selection by the competent authority and also the instructions of the Government. Hence, this Writ Petition should be allowed.



W.P.No.26163 of 2021

WEB COPY

**5.** The learned Additional Solicitor General of India appearing for the respondents submitted that there is no distinction between non-gazetted and gazetted post. Initially the advertisement was given in the Employment News dated 30.01.2021 in Advertisement No.08/2020. The said advertisement was given in a limited space and so the candidates were required to check the complete advertisement, mode of application, other terms and any subsequent revisions / corrigendum etc. by visiting the website of the second respondent. So in the detailed advertisement seen in the website itself it is noted that the second respondent has the right to withdraw or cancel the recruitment at any stage of the process and keep the advertised vacancy unfilled. The petitioner ought to have seen the details only in the second respondent's website.

**5.1.** In the general conditions stated in the advertisement, it has been stated that the selection process will consist of Tier - I written test and Tier - II interview. Any amendment related to this recruitment shall be made available only in the Institute's website. In the light of the above clause, the required revision of Tier - I pattern was carried out and it is notified well in advance in the website. The second respondent Institute is in Bangalore. Everything with



W.P.No.26163 of 2021

regard to the notification had taken place in Bangalore. In fact, the second respondent reserved the jurisdiction of Bangalore and hence the petitioner has wrongly invoked the jurisdiction of this Court.

**5.2.** Merely meeting the minimum eligibility criteria will not automatically entitle a candidate to be called for Assessment Test. The prospective applicants should align with the requirements of a scientific and research institute and must be willing to work in a competitive environment with full enthusiasm and dedication. The petitioner has invented his own calculation for arriving at the aggregate percentage of Tier - I and Tier - II individually. But in actuality, the aggregate is calculated by the combination of both Tiers in total. The petitioner has scored 44.25 marks in Tier - I and 8.45 marks in Tier - II, totalling to 52.70% and hence he did not obtain final qualifying percentage in either of the categories. Further the candidate ought to have challenged the selection process before participating in the interview. Having participated in the interview, the petitioner cannot claim that the process of selection is arbitrary or not valid. There is no *malafide* intention on the part of the second respondent because the second respondent has not selected any one including the petitioner and hence the petitioner cannot



W.P.No.26163 of 2021

impute any motive against the second respondent. No merits in this Writ Petition and hence, this Writ Petition should be dismissed.

**Discussion:**

6. The petitioner who had participated in the selection process has got disappointed due to the closure of the selection process by the second respondent by stating that no one is suitable. The applications have been called for the Management Assistant post which is a non-gazetted category. However, in the advertisement details found in the website of the second respondent and even in the paper advertisement itself, the selection process is said to have been consisting of 1) Tier - I (written test) 2) Tier - II (interview). The petitioner relied upon the first respondent's guidelines, in which a policy has been taken in respect of non-gazetted posts that written examination alone is sufficient; if interview is absolutely essential, the clearance from Department of Personnel and Trainee should be obtained.

7. No doubt, the second respondent Institute comes under the first respondent Ministry. It is not the first respondent's claim that the second respondent had chosen to conduct any interview to the post of the



W.P.No.26163 of 2021

Management Assistant without getting necessary approval from the Department. The petitioner has given much significance to the above technical issue as the core of his contention. The advertisement details in the second respondent's website clearly states that the selection process will consist of Tier - I (written test) and Tier - II (interview). So far as Tier - I written test is concerned, it consists of objective multiple choice questions and descriptive questions. The Score of Tier - I would be normalised as per the requirement. So far as the interview is concerned, it is stated that the interview will be based upon the cut off mark fixed by the Institute. But the petitioner claimed that the website details did not have anything about the interview at the first instance, but it has been amended belatedly.

8. Even for the sake of argument, if the submission of the petitioner is correct, the fact remains that the selection process has been clearly mentioned as two tier process which is inclusive of both written test and interview. The petitioner who had participated in the written exam was also called for the interview. Though the petitioner claims that as per the first respondent's guidelines, the selection should be only based upon the written examination, he subjected himself for the interview also. Had the petitioner got selected



W.P.No.26163 of 2021

after completing the interview process, he would not have challenged the selection process. Hence, there need not be much fuss about the inclusion of interview in the selection process.

9. The advertisement was an open offer for all those who are interested in applying the post called for. The petitioner willingly participated in the selection process by knowing that the selection process consists of two stages, one is written test and another is interview. In fact, specific marks have been allotted individually for written test and the interview. The pattern of written exam is combination of both multiple choice questions and descriptive answers. The total marks for the written test is 70 marks and the interview is 30 marks. Out of the 70 marks allotted for written test, 50 marks will be for multiple choice questions through online and 20 marks for descriptive answers.

10. Since the petitioner's written test marks qualified him to participate in the next part of Tier I viz., Computer Proficiency Test, he participated in the same and cleared it. The petitioner converted 44.25 marks, he obtained for 70 marks in the written examination which is 63.29%. As this is above the



W.P.No.26163 of 2021

50% of the written exam marks, which is the minimum eligibility fixed by the second respondent for inviting the candidates to the next stage of the selection process, the petitioner got qualified to the next stage. The said fact was not denied.

**11.** In the details of advertisement, it has not been stated that the minimum qualifying marks should be the aggregate of both tiers and it should be not less than 60%. The minimum qualifying marks is different from the cut off marks. The cut off mark is the last mark obtained by the candidate who is found to be eligible for selection to a post available in a particular category. That means, the remaining candidates who are found to have been qualified and successful would have got marks above the cutoff marks. However, the cut off mark will differ in accordance with the category for which the reservation is made. The qualifying marks prescribed by the second respondent is just the minimum mark in the written examination for screening the candidates to call for a skill test and thereafter for Tier - II interview or otherwise, if the candidate has secured 50% or 45% in written test under Unreserved and OBC category respectively, he can expect a call letter from the second respondent to attend the skill test. The skill test is nothing but the



W.P.No.26163 of 2021

Computer Proficiency Test and the marks fixed for the said test is 15 . If the candidate has obtained 50% in the skill test (i.e) above 7.5 marks, out of 15 marks, he can expect call letter for the interview.

**12.** Ultimately the total of the marks obtained in written test, skill test and the interview will be taken up for selection and the candidates will be selected from the topper of the each category. The marks obtained by the last person who could secure the last post would determine the cut off mark. Though the second respondent has reserved right to cancel or stop the process during any point of the process that should be for any valid reasons and not unreasonably or arbitrarily. Stopping the selection process can not be done for no worthy reason and that too after the completion of two stages of the selection process.

**13.** The petitioner was qualified to be called for the skill test and thereafter for the interview as well. There may be other candidates who were also found to have been eligible for skill test and thereafter interview. The minimum marks fixed by the second respondent is only for fixing the minimum eligibility in the written exam and to be called for skill test which is



W.P.No.26163 of 2021

the second part of Tier I and 50 % is the minimum eligibility in the same for moving to the next level, that is interview. No condition is found in both the paper notification and the website information that the candidates ought to have obtained minimum marks in the interview. Unless the above condition is stipulated, the second respondent cannot claim that the selection process mandates the minimum 50% and 45% for Unreserved and OBC category respectively for each of the Tier 1 and Tier II of the selection process. Only because the second respondent has read out an additional condition that did not form part of the whole selection process, the petitioner has filed this petition stating that the process of interview itself is something extra-ordinary for the non-gazetted posts and the second respondent ought not to have made much ado like minimum qualifying marks in the interview and then declared that no one was suitable for the post.

**14.** After Tier II is completed, the second respondent ought to have declared the results by considering the topper in each category as the first person to be selected for the first post and till the cut off for the last post. The marks obtained in the interview can be an important factor for a candidate to have a competitive edge over other candidates and not otherwise.



W.P.No.26163 of 2021

WEB COPY

**15.** The second respondent has conducted the interview despite the first respondent had taken a policy decision of limiting the selection process to written test and not to conduct interview for non-gazetted posts. As per the official memo of the first respondent dated 18.02.2016 and as per the memo of the first respondent dated 13.04.2017, it is clarified that the decision to discontinue the interview in the junior level post in the Government is applicable to recruitment to all posts upto Group 'B' irrespective of mode of appointment i.e. deputation, promotion and direct recruitment etc.

**16.** Even for any extraneous reasons, if the second respondent thought it fit to conduct the interview process such a decision ought to have got clearance from the Department of Personnel and Trainee. The second respondent has not produced any approval obtained from the Department of Personnel and Trainee for having the process of interview along with the written test and Computer Proficiency Test. Even if the second respondent claims that it is between himself and the first respondent, the fact remains that he has successfully conducted the interview also. But at the stage of declaring the results after completion of the interview, the second respondent cannot



W.P.No.26163 of 2021

turn back and say that the minimum eligibility in the interview should also be followed.

17. The learned counsel for the petitioner submitted that the criteria for selection should not be changed arbitrarily to the detriment of those candidates who had already undergone the whole of the selection process. The above position has been upheld by the Hon'ble Supreme Court in the case of ***Ramjit Singh Kardam and Others Vs. Sanjeev Kumar and Others reported in (2020) 20 SCC 209***. The relevant portions of the judgment are extracted hereunder:

*"52. We may in this context refer to three-Judge Bench judgment of this Court in Tamil Nadu Computer Science BED Graduate Teachers Welfare Society(1) vs. Higher Secondary School Computer Teachers Association and others, 2009(14) SCC 517. In the above case Computer instructors were appointed on contract basis to various Schools. The Government decided to hold a special test by the Teacher Recruitment Board for selection of computer instructors. On 10.10.2008 the State Government took decision that minimum qualification marks would be 50%. Special Recruitment Test was announced as 12.10.2008. On the night of 12.10.2008 a list of candidates for appointment to the post of computer*



WEB COPY

*instructors based on the special recruitment test was put on the Internet. While publishing the said marks of the candidates, it was made clear that all candidates who have secured 35% marks in the test would be called for certificate verification. The State Government reduced the minimum qualifying marks to 35%. This Court did not approve the reduction of qualifying marks from 50% to 35%. Following was laid down in paragraph 33:*

*“33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in [Hemani Malhotra v. High Court of Delhi](#), (2008) 7 SCC 11, has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.”*

.....

*62. We having held that change in criteria of selection was never notified by the Commission and about the*



*change in process of selection candidates were kept in total dark and for the first time the criteria applied in selection process was published along with result dated 10.04.2008, the writ petitioners cannot be estopped in challenging the arbitrary criteria so applied. The submission of Shri Sibal cannot be accepted. The petitioners have never questioned the criteria which was published on 28.12.2006 i.e. written test of 200 marks and viva voce of 25 marks, merely because they participated in the process of selection after the change of criteria, their right to challenge the arbitrary change cannot be lost. Estopping the petitioners from challenging the change of criteria will be giving seal to arbitrary changes affected by Chairman as noted above."*

**18.** The petitioner's expectation that he had secured more than the cut off and that he ought to have got selected to the post along with the other suitable candidates is not akin to a child's expectation based on any inflated imagination. It is a legitimate expectation of a person who had subjected himself to the serious process of selection as per the rules already notified and become successful. Extending the terms and conditions suiting to the whims of the second respondent after the whole selection process is completed and at the back of the aspirants who had already cleared the process and thereby



W.P.No.26163 of 2021

frustrating the entire selection and restarting it once again by giving a fresh notification is unfair, unacceptable and unsuitable for a model employer like the Government. And the resources spent on the selection process ought not have been wasted, unless there is any inevitable reason to stop the selection process. There is no such situation seen to be present either to stop or cancel selection process. In fact, the entire selection process has been completed excepting the declaration of the result in accordance with the marks notified in the advertisement and obtained by the candidates in the selection process. The second respondent had changed his rules, according to his convenience and notified that no one was qualified in the selection process. In my view, this is fundamentally wrong and unfair.

**19.** In the result, this Writ Petition is allowed and the new advertisement for selection in Advertisement No.inStem/11/2021 dated 20.11.2021 is set aside and the second respondent is directed to complete the selection process as per the Advertisement No.inStem/08/2020 (Post Code 17/20) dated 30.01.2021 and declare the results based on the top marks obtained by the candidates in each category and appoint them to the post of Management Assistant in the 2nd respondent Institute within a period of four weeks from



W.P.No.26163 of 2021

the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

**01.11.2023**

Index : Yes  
Internet : Yes  
Speaking  
Neutral Citation : Yes  
gsk



WEB COPY



W.P.No.26163 of 2021

**R.N.MANJULA, J.**

gsk

To

1.The Secretary,  
Govt. of India, Ministry of Science and Technology,  
Department of Biotechnology,  
6th -8th Floor, Block 2 CGO Complex,  
Lodhi Road, New Delhi - 110 003.

2.The Director,  
Institute of Stem Cell and Regenerative Medicine,  
GKVK Campus, Bellary Road,  
Bangalore 560 065.

**W.P.No.26163 of 2021 and**  
**W.M.P.Nos.27618, 27619 & 27620 of 2021**

**01.11.2023**