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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19409-2020 (O&M)
Date of Decision:22.09.2023

SHELLY VADHERA AND OTHERS

..... Petitioners

Versus

**NATIONAL INSTITUTE OF TECHNOLOGY KURUKSHETRA
AND ANOTHER**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Tejpal Dhull, Advocate
for the petitioner.

Mr. A.S. Virk, Advocate
for respondent No.1.

Mr. Arun Gosain, Senior Government Counsel assisted by
Ms. Swati Arora, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of advertisement No.29/2019 (Annexure P-1) dated 01.10.2019 whereby respondent has invited applications for the post of Professor.

2. Respondent No.1 was earlier known as Regional Engineering College, Kurukshetra. It was upgraded as National Institute of Technology, Kurukshetra (Deemed University) and later on it was declared as Institute of National Importance under NIT Act, 2007. The petitioners are working with respondent-institute as Associate Professor.

3. The Government of India, Department of Personnel and

Training (for short 'DoPT') vide Office Memorandum dated 11.01.2016 has directed all the Ministries/Departments to complete selection process within 6 months from the date of advertisement. The respondent-NIT in its meeting of Board of Governors held on 05.04.2016 has adopted aforesaid Office Memorandum dated 11.01.2016.

The respondent vide advertisement dated 01.10.2019 advertised four posts of Professor. In the advertisement, eligibility to apply was prescribed. As per eligibility criteria, the applicant either must have completed 10 years' service post Ph.D. or have 13 years' experience, out of which 7 years should be post Ph.D. On account of lack of requisite experience, at the time of impugned advertisement, the petitioners could not apply for the advertised post.

4. The respondent with respect to aforesaid advertisement, as required by Office Memorandum dated 11.01.2016, could not complete selection process within 6 months from the date of advertisement. The selection process included scrutiny of applications and interview of eligible candidates. The petitioner No.1 on 24.02.2020 became eligible for the post of Professor as she secured 7 years' experience post Ph.D. and other petitioners at a subsequent point of time became eligible for the advertised post.

There are three petitioners in the present writ petition and out of these petitioners, two petitioners i.e. petitioner No. 2 & 3 alongwith another Associate Professor filed CWP No. 30552 of 2019 before this Court assailing advertisement on the ground that petitioners should be given relaxation in the eligibility criteria. This Court vide order dated 13.11.2019 issued notice of motion and further directed respondents not

to finalize selection of the advertised post, however, respondents were granted liberty to proceed with the selection process.

The respondent with respect to advertised posts conducted interview on 20/21.11.2020 and selected candidates, however, on account of aforesaid interim order and pendency of CWP No.30552 of 2019 before this Court, the result could not be declared.

The aforesaid writ petition on 31.08.2023 has been dismissed as withdrawn with liberty to file fresh with better particulars.

5. Learned counsel for the petitioners *inter alia* submits that in view of Office Memorandum dated 01.01.2016 read with minutes of meeting dated 05.04.2016 of Board of Governors, the respondents were bound to complete selection process within 6 months from the date of advertisement whereas respondents even did not initiate process within 6 months from the date of advertisement. The respondent issued advertisement on 01.10.2019 and as per aforesaid instructions, selection process was supposed to be completed by 01.03.2020. The instructions issued by DoPT have been adopted by Board of Governors of respondent, thus, instructions are binding and mandatory in nature. Strict non-compliance of aforesaid instructions has prejudiced future prospects of the petitioners because they became eligible for the advertised post on 24.02.2020 and by that date, the respondent had not conducted interview. The respondents were supposed to consider candidature of the petitioners either by way of issuing corrigendum to impugned advertisement or by way of issuing fresh advertisement. The instructions read with minutes of meeting of Board of Governors are mandatory in nature, thus, respondents were duty bound to complete the selection process within 6

months as prescribed in the instructions. As soon as period of 6 months expired from the date of advertisement, the advertisement itself ceased to exist and respondents were bound to issue fresh advertisement or in alternative consider candidature of the petitioners. The delay in completion of selection process has resulted into denial of opportunity to petitioners, thus, advertisement deserves to be set aside or modified to the extent the petitioners are also considered alongwith those candidates who applied pursuant to the impugned advertisement.

6. Learned counsel for the respondents submits that instructions issued by DoPT are not mandatory in nature. The instructions are advisory and directory in nature. The respondent issued advertisement on 01.10.2019 and three Associate Professors which included two petitioners of the present writ petition filed CWP No. 30552 of 2019 and this Court vide order dated 13.11.2019 directed the respondent not to finalize the selection. The 6 months period from the date of advertisement completed in March' 2020 and in the same month, on account of outbreak of COVID-19, complete lock down was imposed in the whole country. Thus, the process initiated in October' 2019 could not be completed within 6 months from the date of advertisement. The interview was conducted on 20/21-11-2020 and final result would be declared as soon as present petition is disposed of.

7. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

8. The conceded position emerging from the record is that respondent advertised four posts of Professor vide advertisement dated 01.10.2019. The last date for filing application was 31.10.2019. The

petitioners were ineligible, thus, they could not apply for the advertised posts. Three Associates Professors preferred CWP No.30552 of 2019 before this Court assailing aforesaid advertisement. This Court granted liberty to respondent to proceed with selection process, however, respondents were restrained from finalizing the selection process. The respondent conducted interview in November' 2020 and final result is yet to be declared. The petitioners, during the pendency of selection process stemming from the aforesaid advertisement, became eligible for the advertised posts. The petitioners want either impugned advertisement be set aside or they be considered alongwith those candidates who applied pursuant to impugned advertisement.

9. The dispute in the present petition lies in the narrow compass. As per petitioners, the instructions dated 11.01.2016 issued by DoPT are mandatory because Board of Governors of the respondent has adopted these instructions whereas claim of the respondent is that instructions are directory in nature.

10. For the ready reference Office Memorandum dated 11.01.2016 is reproduced as below:

F. No. Misc-14017/15/2015-Estt.(RR)

Government of India

Ministry of Personnel, P.G. & Pensions

Department of Personnel & Training

North Block, New Delhi

Dated: 11.01.2016

OFFICE MEMORANDUM

Subject: Instructions regarding time limit for holding examinations/interviews from the date of advertisement for the post under direct recruitment-reg.

The undersigned is directed to refer to the subject and to

say that it has come to notice of this Department that there are instances of a long time lag between the date of advertisement for the vacancy and date of examination or interview. This delay may deny the opportunity to fresh candidates who become eligible during that period, while creating an atmosphere of uncertainty to candidates who have applied.

2. All Ministries/Departments are, therefore, requested that while initiating the recruitment process to fill vacant posts (s) by the method of direct recruitment in their Ministries/Departments, it may be ensured that the entire recruitment process including and starting from advertisement, conducting written examination or holding of interview may be completed within six months.

3. The administrative Ministries/Departments may issue similar instructions to autonomous bodies/ PSUs/ statutory bodies under their administrative control.

10.1 The Board of Governors of the respondent institute in its meeting adopted aforesaid instructions. The relevant extracts of minutes of meeting of Board of Governors read as:

Minute of the 39th meeting of the Board of Governors, National Institute of Technology, Kurukshetra, held on 5th April, 2016 at 11:00 a.m. in the Committee Room (new Building), Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha, Qutub International Area, New Delhi-110016.

“39.9 To consider the DoPT Office Memorandum dated 11.01.2016 regarding time limit for holding examinations/interviews from the date of advertisement for the post under direct recruitment.

The Board considered the DoPT Office Memorandum F. No.Misc-1407/15/2015-Estt.(RR) dated 11.01.2016 regarding time limit for holding examinations/interviews from the date of advertisement for the post under direct recruitment.

After the detailed discussion on the matter, the Board

decided that the above DoPT Memorandum be made applicable prospectively and the Institute be allowed to conduct recruitment process for the already advertised faculty and non-faculty posts prior to the date of DoPT Office Memorandum F.No.Misc-14017/15/2015-Estt.(RR) dated 11.01.2016.”

11. It is settled proposition of law that a provision is mandatory if its non-compliance ensues consequences e.g. in case of non-filing of police report within 60/90 days from the date of remand, an accused in terms of Section 167(2) of Cr.P.C. becomes entitled to bail; as per Section 110 of the Customs Act, in the absence of show cause notice within 6 months from the date of seizure, a person becomes entitled to release of seized goods. In the absence of consequences emanating on account of strict non-compliance of a provision, it is directory in nature. The use of word ‘shall’ though is generally taken in a mandatory sense yet it does not necessarily mean that in every case it shall have that effect. Courts are supposed to look at intent of the legislature as well scheme and reference in which expression ‘shall’ has been used.

Section 14B of erstwhile PGST Act, 1948 used to provide that an officer shall complete adjudication within 14 days from the date of detention of goods in transit. A Division Bench of this Court while dealing with aforesaid provision in “*M/s Stelco Strips Ltd. Vs. State of Punjab and others (2019) 19 VST 498*” has held that period of 14 days prescribed for the completion of adjudication process is not a mandatory provision. The court has held:

“23. Keeping in view the various judgments referred to above, it needs to be examined whether the time limit of 14 years contemplated for the Officer to complete the quasi judicial proceedings can be said to be mandatory.

24. Section 14-B (6) of the State Act contemplates for release of the goods and vehicle within 72 hours. The said provision has been enacted so as not to hinder the movement of the goods and the vehicle even if there is allegation of evasion of tax. Once there is a provision for release of the goods and the vehicle, the conclusion of enquiry proceedings within 15 days is to impose a duty on the enquiry officer to complete the proceedings expeditiously but it does not follow that any departure from it shall taint the proceedings with fatal blemish. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of desirability in strong terms. But it falls short of creating any kind of substantive right in favour of the petitioner so as resulting into adjudicating proceedings pertaining to evasion of tax as abated.

25. The provisions of Section 14-B have been enacted for avoiding evasion of tax during the course of movement of goods from one State to another. For facility of movement, the provision of releasing of the goods and the vehicle ensures the release of the goods and the vehicle within 72 hours but the adjudication process of evasion of tax is dependent upon number of factors including co-operation of consignor or consignee, as the case may be. The principles of natural justice are also required to be complied with. The officer entrusted with the duty of adjudication may have certain limitations to decide such cases of evasion of tax within 14 days either on account of large number of cases or otherwise. Keeping in view the tests laid down in P.T. Rajan's (supra) and number of judgments referred above, the adjudication process is a public duty cast on a public officer for a public good. The purpose is to check evasion of tax. Failure to complete the adjudication process within 14 days will only give premium to the action of the tax evader.

26. Therefore, we are of the opinion that the provisions of Section 14-B (7) (ii) and (iii) of the State Act are directory in nature and consequently failure to decide such

proceedings within the time prescribed will not result into abatement of proceedings.”

12. In **Delhi Airtech Services Private Limited & another Vs. State of Uttar Pradesh & another (2011) 9 SCC 354**, the Supreme Court has adverted with question of mandatory versus directory nature of the provisions and after considering principles of construction as well as judicial precedents has elucidated law as below:

“117. In Principles of Statutory Interpretation, 12th Edn., 2010, Justice G.P. Singh, at pp. 389-92 states as follows:

“... As approved by the Supreme Court:

‘The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.’ ‘For ascertaining the real intention of the legislature’, points out Subbarao, J.,

‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the noncompliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’.

If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas

if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored but only that the prima facie inference of the intention of the legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative constructions. Thus, the use of the words ‘as nearly as may be’ in contrast to the words ‘at least’ will prima facie indicate a directory requirement, negative words a mandatory requirement, ‘may’ a directory requirement and ‘shall’ a mandatory requirement.”

118. Maxwell, in Chapter 13 of his 12th Edn. of The Interpretation of Statutes, used the word “imperative” as synonymous with “mandatory” and drew a distinction between imperative and directory enactments, at pp. 314-15, as follows:

“Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessarily arising out of its enactments and on which it has remained silent.

The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of noncompliance, is the requirement to be regarded as imperative (or mandatory) or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. ‘An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or

fulfilled substantially’.

It is impossible to lay down any general rule for determining whether a provision is imperative or directory. ‘No universal rule,’ said Lord Campbell, L.C. ‘can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.’

And Lord Penzance said:

‘I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.

119. In a recent judgment of this Court, *May George v. Tahsildar* (2010) 13 SCC 98, the Court stated the precepts, which can be summed up and usefully applied by this Court, as follows:

(a) While determining whether a provision is mandatory or directory, somewhat on similar lines as aforenoticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;

(b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;

(c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;

(d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance with such provisions;

(f) Phraseology of the provisions is not by itself a determinative factor. The use of the word “shall” or “may”, respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The court has to give due weightage to whether the interpretation intended to be given by the court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

120. Reference can be made to the following paragraphs of May George (2010) 13 SCC 98: (SCC pp. 103-05, paras 16-17 & 22-23)

“16. In *Dattatraya Moreshwar v. State of Bombay* AIR 1952 SC 181 this Court observed that law which creates public duties is directory but if it confers private rights, it is mandatory. Relevant passage from this judgment is quoted below: (AIR p. 185, para 7)

‘7. ... It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the

same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.’

17. A Constitution Bench of this Court in *State of U.P. v. Babu Ram Upadhyaya* AIR 1961 SC 751 decided the issue observing: (AIR p. 765, para 29)

‘29. ... For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the noncompliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.’

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22. In *B.S. Khurana v. MCD* (2000) 7 SCC 679 this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

23. In *State of Haryana v. Raghubir Dayal* (1995) 1 SCC 133 this Court has observed as under: (SCC pp. 135-36, para 5)

‘5. The use of the word “shall” is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word “shall” prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word “shall”, therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word “shall” as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.’

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129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See *Maxwell on The Interpretation of Statutes*, 12th Edn. by P. St. J. Langan.)

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131. If I analyse the above principles and the various judgments of this Court, it is clear that it may not be possible to lay down any straitjacket formula, which could unanimously be applied to all cases, irrespective of considering the facts, legislation in question, object of such legislation, intendment of the legislature and substance of the enactment. In my view, it will always depend upon all these factors as stated by me above. Still, these precepts are not exhaustive and are merely indicative. There could be cases where the word “shall” has been used to indicate the legislative intent that the provisions should be mandatory, but when examined in light of the scheme of the Act, language of the provisions, legislative intendment and the objects sought to be achieved, such an interpretation may defeat the very purpose of the Act and, thus, such interpretation may not be acceptable in law and in public interest.”

13. From the conspectus of Office Memorandum read with minutes of meeting of Board of Governors, it can be gleaned that DoPT has issued advisory to different Ministries/Departments to complete recruitment process within 6 months from the date of advertisement. The instructions have neither been issued in exercise of any statutory power nor to a particular department. No consequence, in case of non-adherence, has been provided for. It has been instructed that selection process/recruitment process ‘may be’ completed within 6 months. A public duty has been enjoined up authorities dealing with recruitment process but no right in favour of applicants or future candidates has been created. The instructions do not seem to intend that the process would be vitiated in case of its strict non-compliance. Adoption of instructions by BOG of the respondent does not change their colour and contour. If instructions are declared directory, no prejudice, at least violation of

fundamental or vested rights, is going to cause to the petitioners, whereas, if these instructions are declared mandatory dire consequences are going to take place. The case in hand cannot be examined in isolation because these instructions are applicable to each advertisement of posts and every Central Government Department. There may be couple of reasons for not completing selection process within 6 months from the date of advertisement e.g. large number of applicants, preliminary followed by final examination, interview of large number of candidates, scrutiny of documents with limited staff etc. If the instructions are declared mandatory, every selection process would be vitiated on the expiry of 6 months from the advertisement. It would prejudice public at large at least where it is not humanly possible to conclude the process. There may be a case where selection is at its fag end but period of 6 months from the date of advertisement expires. In such cases, invalidation of selection process would cause irreparable loss to applicants as well as recruitment agency.

This Court finds that neither consequences in case of non-compliance of instructions are prescribed nor any right has been created in favour of future candidates or applicants, thus, if contention of the petitioner is countenanced, non-completion of selection process within specified period, certainly and in every case, would affect rights of applicants of the advertisement and question of future candidate would be secondary. The instructions dated 11.01.2016 are certainly directory in nature and there is no occasion to hold these instructions as mandatory.

15. There is another aspect of the matter. In the present petition, there are three petitioners and two of them i.e. petitioner No. 2 & 3 alongwith another Associate Professor preferred CWP No. 30552 of 2019

before this Court which on 13.11.2019 passed interim order as below:

“While issuing notice of motion, specific notice regarding stay was also issued. Notwithstanding, neither any return has been filed nor anything otherwise has been placed on record to controvert the averments qua interim relief sought by the petitioner.

In the premise, respondents are directed not to finalize the selection to the posts advertised vide impugned advertisement No.29/2019 (Annexure P-9). It is, however, made clear that the respondents shall be at liberty to proceed with the selection process.”

15.1. On account of outbreak of COVID-19, during March–April’ 2020, there was complete lock down in the whole country and thereafter for quite long time, the education institutions were not allowed to work with full strength.

In the wake of above-mentioned interim order passed by this court read with movement restrictions imposed during COVID 19, it is difficult to conclude that there was intentional lapse on the part of respondents in the completion of recruitment process within 6 months from the date of advertisement.

16. The respondent conducted interview in the month of November’ 2020. As per instructions, the recruitment process should be completed within 6 months from the date of advertisement. In the case in hand, 6 months completed on 01.04.2020 and respondent conducted interview in November’ 2020, means at the most, there was delay of 8 months. In case of flagrant violation of a directory provision, considering scope & nature of directory provision vis-a-vis rights of aggrieved parties and responsibility of public authority, High Court may interfere, however, it is not a case of exorbitant delay, thus, there is no reason to set

aside impugned advertisement or modify as suggested by petitioners.

The petitioners are claiming that delay in the completion of recruitment process has caused prejudice to the petitioners, however, they have feigned ignorance of the fact that pendency of CWP No.30552 of 2019 and present petition has indubitably caused prejudice to those candidates who despite expiry of almost three years from the date of interview have not been declared successful. They must have become Professor in 2020 whereas till date they are wearily looking at the door of this Court.

17. In the wake of above facts and discussion, this court is of the considered opinion that the instructions issued by Central Government vide memorandum dated 11.01.2016 read with minutes of meeting of Board of Governors of the respondent-NIT are directory in nature. Impugned advertisement dated 01.10.2019, inviting application for the post of professor, cannot be declared invalid on the ground of non-completion of selection process within 6 months from the date its publication.

The present petition being devoid of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)

JUDGE

22.09.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>