



2023:DHC:9448



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 15th December, 2023**
+ **W.P.(C) 6884/2022 & CM APPL. 19582/2023 & 57432/2023**

JATIN GROVER

..... Petitioner

Through: Mr.Sudeep Singh, Mr.Akul
Mehandru, Mr.Rishabh Sharma, Ms.
Tanya Singhal, Mr.Lovesh Goel and
Mr.Vaibhav Mahal Advocates

versus

**INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY
LIMITED & ORS.**

..... Respondents

Through: Mr.Chetan Sharma, ASG,
Mr.Sangram Patnaika, Mr.Aamir
Gupta, Mr.R V Prabhat, Mr.Vinay
Yadav, Mr.Saurabh Tripathi,
Mr.Vikramaditya Singh Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- a) *A writ of Certiorari directing the Respondent No. 1 to set aside the current recruitment process vide recruitment no. IREDA/RECRUITMENT/HR/01/2021;*
- b) *A writ of Certiorari directing the Respondent No. 1 to set aside the recruitment made under campus placement in particular from Xavier Institute of Management, Bhubaneshwar;*



- c) *A writ of mandamus directing the Respondent No. 1 to frame fair and transparent recruitment policy providing for eligibility requirement for various posts;*
- d) *Such further and other orders as this Hon'ble Court deem fit just and proper in the facts and circumstances of the case.*
2. The respondent no. 1 is a Government of India Enterprise under the administrative control of Ministry of New and Renewable Energy ("MNRE" hereinafter). As per Section 4 'A' of the Companies Act, 1956 it is a 'Public Financial Institution', registered as a Non-Banking Financial Company (NBFC) with the Reserve Bank of India (RBI) and is engaged in promoting, developing and extending financial assistance for setting up projects related to new and renewable sources of energy.
3. The petitioner has been working as a contractual employee with the respondent no. 1, at the post of an Accountant since May, 2014. The petitioner is a degree holder in 'Bachelor in Commerce' from 'University of Delhi' and secured rank 30 in the final examinations of the 'Institute of Cost Accountants of India'.
4. In the year 2014 the respondent no. 1 released an Advertisement for filling up various vacancies at E-0, E-1 and E-2 level which provided for the candidates to possess an experience of up to 2-3 years in the respective discipline and the maximum age was fixed at 35 years.
5. The respondent no. 1 published another Advertisement in the year 2016 for filling up vacancies at various levels, including E-0 level wherein the maximum age was fixed at 35 years.



6. The respondent no. 1 conducted a campus placement drive in June, 2018 at institutions such as IIT, IIM, IMI, ICAI, ICWA, TERI, NLU(Jodhpur) wherein they selected 17 people as 'Executive Trainees'.

7. The respondent no. 1 appointed Shri Pradip Kumar Das as the 'Chairman & Managing Director' ("CMD hereinafter") of IREDA in May, 2020. Mr. Das had previously served at ITDC, REC, BHEL, NPCIL, BHVP & KPL in different capacities. He is also a member of ICAI and holds a diploma from Xavier Institute of Management, Bhubaneswar.

8. The respondent no. 1 selected 2 candidates for the post of 'Management Trainee' *via* campus placement on the recommendation of the Selection Committee from Xavier Institute of Management, Bhubaneswar.

9. Further, the respondent no.1 *vide* recruitment no. IREDA/RECRUITMENT/HR/01/2021 invited applications for posts on regular as well as contractual basis to which the petitioner applied *vide* application No. 4000782.

10. As the petitioner's candidature was not considered by the respondent no. 1, the petitioner sent a legal notice dated 5th April, 2022 addressed to respondent no. 1 alleging that the recruitment policy followed by the respondent no.1 is unfair, unreasonable, illegal and unconstitutional.

11. The petitioner is challenging the recruitment process followed by the respondent no. 1 as he is aggrieved by the non-acceptance of his candidature for the said post, thus, the petitioner preferred the instant



petition.

12. Learned counsel appearing on behalf of the petitioner submitted that the recruitments done by the respondent no.1 by way of 'campus placements' and *vide* 'public recruitment advertisements' are violative of the fundamental right to equality of opportunity in matters of public employment.

13. It is submitted that the respondent no.1 is a public entity therefore all vacancies shall be filled by adopting a recruitment policy which ensures and qualifies the tests of 'justness', 'fairness', 'reasonableness' and 'equal opportunity' as it is a matter of public appointment.

14. It is submitted that the recruitment policy followed by the respondent no.1 is vague and capable of being misused to only induct a chosen few for permanent appointment.

15. It is submitted that the respondent no.1 has a 'HR Policy' wherein the Annexure – A is not available in the public domain and the petitioner has an apprehension that no such Annexure exists. The Annexure provides for criteria such as qualification and age limit for filling up of different posts. Therefore, taking advantage of this the respondent no.1 have twisted the qualification criteria to suit a few and carry out recruitment at their own whims and fancies.

16. It is submitted that the above-mentioned HR policy provides for inducting people *via* campus placements which acts as a medium of favoritism. It may also be noted here that the Department of Public Enterprise has desisted on recruitment *via* campus placements *vide* its



circular bearing No. DPE O.M No.24(4)/99(GL-023)/DPE(GM) dated 29th May, 2000, thus, campus placements during the natural course of events are violative of the fundamental right to equality of opportunity.

17. It is submitted that the respondent no. 1 selected 17 candidates as Executive Trainees in June, 2018 from institutions such as IIT, IIM, IMI, ICAI, ICWA, TERI, NLU(Jodhpur). Further, there exists no information, advertisement, or campus recruitment publication thus, the respondent no. 1 has resorted to campus placements by adopting a closed-door process, making the manner of selection of institutions as well as candidates opaque.

18. It is submitted that the petitioner sought regularization in the respondent no.1 as he held an experience of over 4.5 years and has approval of the Senior Manager (Finance & Accounts). Further at the time of campus placements in the year 2018, the petitioner was more experienced than the selected candidates thus, under the garb of campus recruitment deserving and better qualified people including the petitioner have not been considered.

19. It is submitted that the respondent no. 1 in the month of October, 2021 selected 2 candidates for the post of Management Trainee *via* campus placements from the Xavier Institute of Management, Bhubaneswar. It is pertinent to mention that there is no clarity as to the selection of the institution as well as the candidates, the selection process is non-transparent and reeks of *malafide*. The reason attributed to this is



the biasness of the current CMD Sh. Pradip Kumar Das who is an alumnus of the said institute.

20. It is submitted that the selection criteria have been modified by the respondent no. 1 for selection to post of E-0 level by increasing the maximum age from 35 to 50 years and a minimum experience of 10 years as well as exposure to government rules. Thus, the prescribed qualifications are suited and tailor made to induce known people of the higher officials. Therefore, this is illegal and unconstitutional and against the mandate of public sector undertaking guidelines and office memorandum issued by the department of personal training.

21. It is submitted that the petitioner too applied in the latest recruitment process *vide* application No. 4000782 whereas his candidature has not been considered despite possessing all prerequisite qualifications.

22. It is also submitted that the petitioner served a legal notice dated 5th April, 2022 to the management of respondent no.1 seeking to stop the unfair, unreasonable and opaque manner of recruitment however, the requests have gone unheeded, and the unjust recruitment still continues.

23. It is further submitted that the petitioner also filed an RTI with the respondent no.1 dated 12th April, 2022 seeking the recruitment policy and manner of selection followed by them in context to the campus placements.

24. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.



25. *Per Contra*, the learned counsel appearing on behalf of the respondent no.1 vehemently opposed the present petition submitting to the effect that the petitioner is challenging the manner of recruitment without challenging the ‘recruitment policy’ after having participated in the said process, which is averse to the settled position of law.

26. It is submitted that the pre-requisite qualifying criteria as stated in the advertisement to which the petitioner applied, provides for the following conditions:

- “(i) Bachelor Degree of minimum 3 years duration in any discipline with Post Graduate Qualification of minimum 2 years;*
- (ii) minimum 10 years Post-Qualification experience with exposure to Government Rules & Procedures in HR & Admin./Finance/Technical/Law/Company Secretary/Vigilance/Coordination and Protocol in Government/Public Sector Undertakings and*
- (iii) Maximum Age Limit shall not be more than 50 years as on 31st December, 2021.”*

Therefore, it is submitted that the petitioner is not eligible to apply for the said post as he does not possess the minimum eligibility requirements i.e., he lacks the minimum 10 years of experience and thus his candidature has been rightly rejected.

27. It is submitted that as per the Advertisement all candidates must fulfill the essential requirements to be eligible for consideration of their candidature. The petitioner has failed to substantiate any violation on part of the respondent no.1, as the recruitment process has been conducted strictly and as per the guidelines laid down in the said Advertisement.



28. It is submitted that the petitioner is precluded from challenging the recruitment process post participation merely because the selection is unfavorable to him, and the instant petition is barred as per the principle of waiver and acquiescence.

29. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merit, may be dismissed.

30. Heard the learned counsel for the parties and perused the records.

31. The present petitioner has approached this Court seeking issuance of a writ of certiorari for setting aside the recruitment process initiated by the respondent no. 1 *vide* recruitment no. IREDA/ RECRUITMENT/ HR/01/2021 and the recruitment carried out *via* campus placement from Xavier Institute of Management, Bhubaneswar. The petitioner also seeks a writ in the nature mandamus directing the respondent no. 1 to frame recruitment policies that are fair, just and transparent.

32. It is the case of the petitioner that he joined respondent no.1 after completing his Bachelor's in Commerce from 'University of Delhi' and securing rank 30 in the final examinations of the 'Institute of Cost Accountants of India'. It is a matter of fact that he has been working with the respondent no. 1 on the post of an Accountant since May, 2014 and in order to seek regularisation, he had applied *vide* application No. 4000782 under the Advertisement. The petitioner is aggrieved by the fact that respondent no. 1 has not followed a transparent selection process rather has tweaked the recruitment process to only suit a few, thus, putting the



petitioner to a disadvantage and rejecting his candidature despite meeting the essential criteria.

33. In rival submissions, the respondent is contesting the instant petition by stating to the effect that the petitioner does not possess the essential criteria as notified *vide* recruitment no. IREDA/RECRUITMENT/HR/01/2021, particularly, with respect to the 'post qualifying experience' criteria thus, he cannot seek appointment as a matter of right. The recruitment policy followed by the management changes from time to time in order to meet the need of the hour thus, the policy be it campus placement or *via* advertisement cannot be simply challenged if the petitioner fails to meet the stipulated criteria.

34. Before delving into the merits of the case, it would be apposite to look at the extracts of the Advertisement in question which provides the essential criteria for which the petitioner herein applied to. The relevant portion of the said advertisement is reproduced hereinbelow:

“Position/ Level – Protocol Officer/ Technical Assistant/ Officer on Special Duty E-0 Level (On Regular Basis):

- ***Educational/ Professional Qualification –***
Bachelors Degree of Minimum 3 years duration in any discipline with Post Graduate Qualification of minimum two years.
- ***Post Qualification Experience –***
Minimum 10 years Post-Qualification experience with exposure to Government Rules & Procedures in HR & Admin./ Finance/ Technical/ Law/ Company Secretary/ Vigilance/ Coordination and Protocol in Government/ Public Sector Undertakings.
- ***Maximum Age Limit (Years) (As on 31.12.2021)***



50 years”

35. It is settled legal principle that appointment to a particular post cannot be claimed as a matter of right. The recruiting authority must ensure equality of opportunity subject to following the recruitment rules and that the selection process is carried in a transparent and fair manner. It is also reiterated by this Court time and again that an advertisement inviting applications for appointment to a particular post does not create any legal or fundamental right in favor of an applicant which can be enforced by way of a writ jurisdiction.

36. It is prudent to note to this effect that unless *mala fide* on part of the recruiting authority can be established an applicant cannot assert any violation of a legal or fundamental right.

37. The position as to what must be observed by the High Court while exercising an issuance of writ in the form of certiorari can be fairly summed *via* two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or peruse the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put certiorari is issued for correcting of errors of jurisdiction exercised by inferior Courts, for Courts violating



principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not appeal.

38. Further, it is also imperative for this Court to briefly revisit the settled law regarding issuance of the 'writ of mandamus' for the reasons as prayed by the petitioner. Furthermore, it is also pertinent to decide whether this Court can pass any directions to the respondents directing them to frame a recruitment policy that is fair and transparent.

39. It can be simply understood that Mandamus literally means 'a command'. A writ of mandamus is issued in favor of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law.

40. In order to conclude its analysis on the issuance of writs of certiorari and mandamus as prayed by the petitioner, it is equally important to state the settled law in the context whether this Court can grant a relief that is not prayed by the petitioner and also whether a relief can be granted wherein the challenge is against the sub issue and not the entire policy.

41. In ***Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491**, the Hon'ble Supreme Court had discussed the purpose of pleadings at length and held that allowing a particular relief without there being a prayer for the same would lead to miscarriage of justice. The relevant paragraph is reproduced herein:

"12. The object and purpose of pleadings and issues is to



ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”



42. In ***Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi***, (2010) 1 SCC 234, the Hon'ble Supreme Court discussed the scope of Writ Court and held that even though the courts have wide discretion in deciding the writs, they cannot grant a relief not prayed by the petitioner. The relevant paragraph is as follows:

“29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Civil Procedure Code, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.”

43. On perusal of the aforesaid judgments, it can be concluded that even though the scope of writ might permit the Courts to issue the same in the petitioner's case, however, the principles governing a grant of relief cannot be ignored. It is fairly settled principle of law that the courts should not delve into the aspects which are not prayed by the petitioner, and it is fundamental that a relief can only be granted in a case wherein it is prayed by the petitioner. Therefore, any relief, not prayed by the petitioners, cannot be granted by this Court under Article 226 of the Constitution.

44. In the instant case, the petitioner has prayed for issuance of a writ of certiorari to set aside the 'recruitment process' of the said Advertisement but has not challenged the 'recruitment policy' *per se*, through which the said



manner of recruitment stems out. Hence, this Court is of the considered view that it cannot set aside the recruitment policy when the relief as prayed by the petitioner only pertains to the setting aside of the recruitment process. Thus, this Court is not inclined to issue a writ of certiorari to set aside the recruitment process as provided *vide* recruitment no. IREDA/RECRUITMENT/HR/01/2021, as the same is impermissible as per the settled law on principles governing a grant of relief.

45. At this juncture, it is apposite to state that even though the petitioner's plight is regarding the opaqueness of the recruitment process under the said advertisement, he still chose to apply for the position but challenged the manner of recruitment only after not getting shortlisted in the final list. Thus, it is pertinent for this Court to set out the settled law in this regard.

46. In *Madan Lal v. State of J&K*, (1995) 3 SCC 486, the Hon'ble Supreme Court discussed the issue pertaining to the selection process challenged by the parties once they failed in getting selected to the vacant posts. The relevant portion is reproduced herein:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find



*themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043]** it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”*

47. The Hon’ble Supreme Court in **Tajvir Singh Sodhi v. State (UT of J&K), 2023 SCC OnLine SC 344** observed that if a person having participated in the selection process without any demur or protest, the person is precluded from turning back and challenging the selection process unless the same is tainted with *malafides*. The relevant portion is reproduced hereinbelow:

“69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a



Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light the principle of waiver and acquiescence.”

48. The conclusion that can be drawn on perusal of the above stated cases is that a party cannot impugn the procedure *via* which they have already chosen to take a fair chance by applying to the said vacancies.

49. Therefore, it is an admitted fact that the petitioner applied under the said Advertisement for the E-0 entry level vacancies *vide* application No. 4000782 and it is when his candidature did not make to the final list the petitioner approached this Writ Court challenging the procedure *per se*.

50. It may also be noted by this Court that the petitioner having applied under the post of E-0 level, does not possess the essential requirements such as the 10 years of post-qualifying experience in order for his candidature to be considered by the respondent no. 1.

51. Since, the petitioner has not prayed for considering his candidature to the said post and has merely sort for a relief challenging the manner of recruitment not being transparent on the ground that it is violative of fundamental right to equality of opportunity, this Court deems it irrelevant to go into the merits of his candidature.



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52. This Court after perusing the law laid down by the Hon'ble Supreme Court and the factual matrix of the instant petition is of the considered view that *firstly*, the petitioner cannot challenge the recruitment process subsequently after having participated in it merely because the selection was unfavourable for him and *secondly*, although the courts have wide discretion in issuing writs, **they** (yet) cannot grant a relief which is not prayed by the petitioner.

53. Therefore, in view of the above said discussion on facts as well as law, this Court does not find any cogent reasons to grant reliefs as prayed by the petitioner.

54. Accordingly, the instant petition is dismissed being devoid of merits.

55. Pending applications, if any, also stands dismissed.

56. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH,J

December 15, 2023
SV/AV/DB