



2023:DHC:7368



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 15th September, 2023**

+ **W.P.(C) 12121/2023 & CM APPL. 47680/2023**

**BUREAU OF INDIAN STANDARD LABORATORY
EMPLOYEES ASSOCIATION (BISLEA) THROUGH ITS
GENERAL SECRETARY SHRI SANKIT SHARAN..... Petitioner**

**Through: Mr. Nasir Ahmed, Mr.
Hussain, Mr. Shahbaz Khan
and Mr. Azad Hussain,
Advocates.**

versus

UNION OF INDIA THROUGH SECRETARY & ORS.

..... Respondents

**Through: Mr. Rajendra Sahu, Sr. Panel
Counsel with Mr. Ravindra
Vikram, GP with Ms.
Sunayana Nassa, Advocate for
R-1.**

**Mr. Anil Kaushik and Ms.
Anju Kaushik, Advocates for
R-2 and 3.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India, praying as follows:

“(i) To issue a writ of mandamus or any suitable writ in the interest of natural justice thereby direct the respondents to notify the proposed Post Restructure Amendment dated 11/03/2022 in BIS (Recruitment to Laboratory Technical



*Posts), Regulations 2019 sent by the Establishment Department of Respondent to the Petitioners, AND/OR
(ii) To pass any other order (s) or direction(s) as this Hon'ble Court may deem fit and proper in favour of the petitioners in the interest of natural justice."*

2. The Bureau of Indian standard laboratory employees Association (BISLEA) (hereinafter "petitioner association") is a registered association of Lab Cadre employees of Bureau of Indian Standard under the societies of registration Act 1860. The Petitioner is duly recognised by the respondent department under the provision of CCS(RSA) Rules 1993 vide letter dated 2nd September 2019.

3. On 19th February 2021, a meeting was convened by the Management of the Respondent Department for a proposed amendment to the BIS Recruitment to Laboratory Technical Post Regulations, 2019 (hereinafter "BIS Regulations") which was headed by the Director General, BIS (hereinafter "DG BIS"). Subsequent to the meeting, the Director General of BIS was directed to make a detailed representation regarding the restructuring of the post of Laboratory Technical Staff and the amendment in the recruitment rules of the same post. Subsequently, on 19th February 2021, a detailed representation regarding amendment in BIS Regulations for creation of 5 levels as per ISRO, BARC, DRDO was submitted by the petitioner to the Respondent department.

4. On 17th June 2021, the Southern Region Office Laboratory (SROL) employees submitted a Joint representation dated 14th June 2021, to the DG BIS for Career progression of Laboratory Technical Post for Restructuring or Amendment in the BIS Regulations.



5. Thereafter, on 2nd August 2021, a meeting was called by the DG BIS which was attended by six members of the petitioner association, thereby deciding to constitute a committee to look into the different aspects and provisions of BIS Regulations. Further, vide letter dated 4th August 2021, the respondent department proposed to constitute a committee consisting of four members to look into the different aspects and provisions of BIS Regulations. It was further resolved to include a representative from the petitioner association. The constitution of said committee was approved by the DG BIS and directions were issued to submit a report addressing the abovementioned issues within 30 days.
6. The petitioner association received information about the same on 12th August 2021 and subsequently informed the respondent department of the nominated representative.
7. The petitioner association submitted their written proposal on 31st August 2021, whereby consideration for review of career progression of Laboratory Technical Post - Amendments to the BIS Regulations was discussed.
8. On 8th February 2022, the petitioner sent a reminder to the respondent regarding the BIS Laboratory Cadre employees' promotion matter and asked for a status report of the same.
9. On 24th February, 2022, the petitioner sent a response to the respondent department along with a cover letter with the comments and observation in the proposed structure of posts and designations with Pay levels and minimum qualifying period for the next promotions.
10. On 20th June 2023, Department of expenditure, Ministry of Finance replied to the petitioner's RTI Application, whereby they informed the



petitioner association that the RTI application has been transferred to the Nodal Officer & CPIO, Ministry of Consumer Affairs with request to provide the requisite information, if any, available with them, directly to the applicant within the stipulated time under RTI Act, 2005 but till date petitioner has not received any information.

11. Further, the respondent department sent their observations regarding restructuring the post in BIS Laboratory Cadre which were finalised after making amendments to the BIS Regulations however, since 11th March 2022 no action has been taken despite repeated reminders.

12. Aggrieved by the non-action of the respondent department, the petitioner has preferred the present petition.

13. Learned counsel appearing on behalf of the petitioner submitted that the respondent department is delaying the amendment in BIS Regulations, inspite of the directions given by the DG BIS in the meeting held on 19th February 2021, the Director General of BIS was directed to give a detailed representation regarding the restructuring of post and amendment in recruitment rules 2019 of the Laboratory Technical Staff.

14. It is submitted that other employees of the Lab Cadre SROL (Southern Region Office Laboratory) employees New Delhi now called as SRL (Southern Region Laboratories) have also submitted a Joint representation for Career progression of Laboratory Technical Post for Restructuring or Amendment in BIS (Recruitment to Laboratory Technical Posts) Regulations, 2019 but the respondents are also ignoring the demands of the BIS laboratory cadre employees.



15. It is further submitted that the respondent department has failed to take timely steps even though the committee was constituted on 31st August 2021.

16. It is submitted that despite repeated reminders, it was only on 23rd February 2022, respondent department sent a copy of the proposed structure of posts and designations with pay levels and minimum qualifying period for the next promotions and informed the petitioner association that secretary, Ministry of Consumer Affairs has accepted the proposal up to level 11 (deputy head) and level 8 (senior laboratory officer).

17. It is submitted that petitioner sent an RTI Application to the Department of Expenditure, Ministry of Finance and sought information regarding creation of new posts in BIS Lab Cadre employees and amendment in BIS Regulations, however the petitioner did not receive any information regarding this matter.

18. It is submitted that employees of BIS are governed by the CCS (CCA) Rules. Hence, the DoPT rules and guidelines are also applicable upon the petitioner. The DoPT rules provide for self- in APAR and the same is used by all the ministries/Departments of Government of India which are governed under CCS (CCA) Rules.

19. It is submitted that it is very necessary that the performance of every government servant is assessed annually through his Annual Performance Assessment Report (APAR), so the amendment in BIS Regulations is necessary. Due to which their promotional avenues will increase, and they will get timely promotion in their service.

20. It is submitted that the non-conformity with the statutory rules by the respondent is the violation of Articles 14, 16 and 21 thereby is



unconstitutional, void, illegal, arbitrary, unreasonable, discriminatory and unsustainable in the eyes of law.

21. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed.

22. *Per Contra*, learned counsel appearing on behalf of the respondents have vehemently opposed the arguments advanced on behalf of the petitioner submitting to the effect that the respondent department *vide* letter dated 11th March 2022, informed the petitioner of the observations made by the DG BIS, with regard to the amended BIS regulations, however the same was unacceptable to the petitioner association.

23. It is submitted that matters of promotions are a matter of internal consideration and even though the petitioner associations provided their recommendations towards the same, the respondent department is not bound to accept it. The petitioner has failed to make out any case for issuance of writ or direction as prayed in the instant writ petition.

24. Hence, it is prayed that the instant petition, being devoid of any merit is liable to be dismissed.

25. Heard learned counsel appearing on behalf of the parties and perused the record.

26. The present case pertains to certain amendments that were proposed to the BIS Regulations for restructuring of the post of Laboratory Technical Staff and the amendment in the recruitment rules of the same post. The DG BIS invited the petitioner association to put forth their recommendations, however the petitioner association remained dissatisfied with the extent to which their recommendations were implemented in the draft of the said amendment.



27. It is contended by the petitioner association that despite making various representations regarding the status of the promotion matter, draft/revised recruitment rules and regulations for laboratory cadre employees of BIS and Copy of job profile for laboratory cadre, the petitioner association has not received any response till date.

28. The petitioner associations seeks this Courts intervention by issuing a writ of mandamus in order to notify the proposed Post Restructure Amendment dated 11th March 2022, in BIS (Recruitment to Laboratory Technical Posts), Regulations 2019.

29. Bearing in mind the facts of the instant petition, it becomes imperative to analyse the power of this Court while issuing a writ of mandamus. The law is well settled with regard to the scope of mandamus issued by High Courts. A writ of mandamus may be issued but remains limited to cases wherein there exists a legal right in the petitioner with a corresponding legal duty of-the respondent. Even in such circumstances, the Courts will refrain from interfering unless, a clear-cut case for interference is made out.

30. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of “State” as per Article 12 of the Constitution of India, for the purpose of fulfilling their constitutional/ statutory public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention; there will be a denial to justice to the party invoking such writ.

31. Considering the facts of the instant petition as well as the settled law with regard to the scope of mandamus issued by this Court, the issue before



this Court is whether a writ court can issue a writ of mandamus thereby directing an authority to produce a draft/ proposal of rules or regulations.

32. A perusal of the record shows that the proposal of the amended BIS Regulations has not acquired a legal status of regulations. The Hon'ble Supreme Court in case titled *Harla v. State of Rajasthan*, AIR 1951 SC, has observed that a law can come into force only if it is published in a manner that is recognised by the people who are affected by it. Since there has been no official publication in the gazette, therefore the regulations cannot have acquired a legal status. The relevant paragraph of the said judgment is reproduced herein:

“9. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

33. The Hon'ble Supreme Court in a catena of judgments has held that only when a challenge is raised that a policy decision infringes on the fundamental rights protected by the Constitution or any other statutory right, the Court are to evaluate its legitimacy.



34. It is within the executive's domain to make policy decisions based on the current circumstances for better administration and to meet the needs, but the Court cannot intervene with such processes, often.

35. This court is of the view that it cannot, by way of issuance of Mandamus, direct the Government or any executive body to frame regulations, unless the acts of the Executive are arbitrary and/or the framing of regulation shall be is violating the larger public interest.

36. In the present case, the petitioners are seeking the Court's intervention to notify the BIS Regulations, however there seems to be no fundamental right or statutory right being violated. It is also submitted that the respondent has made a draft or proposed amended bill which has not yet been finalized, therefore, the prayer of the petitioner to make said proposed amendment in public cannot be granted.

37. In view of the discussions in foregoing paragraphs, this Court is of the view that the instant petition is devoid by any merit and accordingly, stands dismissed along with pending applications, if any.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 15, 2023

pa/ds/av

Click here to check corrigendum, if any