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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110+1

CWP-1990-2021
Date of Decision: 16.01.2024

Rohit Mehra and others

...Petitioners

Versus

Dr. B.R Ambedkar National Institute of Technology, Jalandhar and
others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr Prateek Pandit, Advocate for petitioner Nos.3 and 9
Mr. Vivek Singla, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. Affidavit dated 15.01.2024 filed on behalf of the respondents is taken on record. Registry is directed to tag the same at appropriate place.
2. The present petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondents to complete the selection process for the post of Professor Pay Level-14A equivalent to grade pay of ₹10,500/- as advertised vide advertisement No. 11/219 (Annexure P-3). Further prayer has been made for issuance of an interim direction to the respondents not to treat the process under the advertisement in question as lapsed as per Statute 23 Sub-Statute-13 of the First Statutes of National Institute of Technology.
3. Vide order dated 05.09.2023 passed by this Court, the captioned petition stood dismissed as withdrawn qua petitioner Nos.1, 2, 4 to 8 and 10.

The contesting petitioners are petitioner Nos.3 and 9 only (for brevity ‘petitioners’). The answering respondent herein is Dr. B.R Ambedkar National Institute of Technology (for brevity ‘institute’) which is an institute of national importance. The petitioners are posted with the respondent-institute as Associate Professors. The petitioners are governed by First Statute of National Institute of Technology (Amendment) Statute, 2017. As per the said statute, the qualification, terms & conditions of appointment of academic staff or promotion shall be as specified in Schedule ‘E’ and as per Schedule ‘E’, a Professor is entitled to pay band 4 with grade pay of ₹10,500/- with minimum pay of ₹48,000/-. The essential qualification for the post of Professor is Ph.D. and work experience of atleast 10 years after Ph.D. or 13 years total working experience is required. A Professor is further required to secure 80 cumulative essential credit points.

4. The notes enclosed with the Schedule ‘E’ provide that any change in the grade pay will be through open advertisement and on the recommendations of duly constituted Selection Committee except where specifically exempted by rules. It is further provided that for the departments which are not having any vacancy, movement in higher academic grade pay shall be carried out as per specified selection process but it will be restricted to only for serving faculty members of the respective department. The relevant extracts of statute read as:

“12. XXXX XXXX XXXX
(c) in sub-statute (5), for clause (a), the following shall be substituted, namely:-
“(a) The qualification and other terms and conditions of appointment of Academic Staff (excluding Director), or

promotion shall be as specified in Schedule 'E' and the Selection Committee for making recommendations for appointment of Academic Staff (excluding Director) shall consist of the following members, namely:-

- (1) Director or Deputy Director - Chairman*
- (2) Visitor’s Nominee - Member*
- (3) two nominee of the board one being an expert, but other than a member of the Board - Member*
- (4) one expert nominee of Senate from outside the Institute - Member*
- (5) Head of the Department concerned (for other than the post of Deputy Director and Professor) - Member.”*

XXXX XXXX XXXX

Schedule ‘E’

[See Statute 23 (5) (a)]

*Qualification and other terms and conditions of
appointment of Academic Staff*

<i>Sl. No.</i>	<i>Designation, Pay Band and Academic Grade Pay</i>	<i>Essential Qualificatio n</i>	<i>Essential requirements</i>	<i>Cumulative Essential credit points</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>5.</i>	<i>Professor Pay Band-4 with Grade Pay of Rs.10500 with minimum pay of Rs.48000</i>	<i>Ph.D.</i>	<i>ten years after Ph.D. or thirteen years total working experience, out of which seven years should be after Ph.D. At least three years at the level of</i>	<i>80</i>

			Associate professor with Academic Grade Pay of Rs.9500 or four years at the level of Associate Professor with Academic Grade Pay of Rs.9000 or combination of Rs.9000 and Rs.9500 or equivalent in an Institution of repute or Research & Development lab or relevant industry.	
XXXX	XXXX	XXXX	XXXX	XXXX

Note 1:

(1) Any change in the grade pay will be through open advertisement and on recommendation of duly constituted selection committee, except where specifically exempted in these rules.

XXXX XXXX XXXX

(5) For the departments which are not having any vacancy, movement in higher Academic Grade Pay or cadre shall be carried out as per specified selection process but it will be restricted to only for serving faculty members of the respective departments.”

5. The respondent-institute in terms of aforesaid Statute, issued advertisement No.11/2019 whereby applications were invited for the recruitment of faculty at the level of Professor in various departments. There

was no vacancy in Chemistry Department so there was no invitation of direct recruitment qua the said department. Despite absence of vacancy, the advertisement invited applications from in-house Associate Professors for the purpose of grade pay of ₹10,500/-. The relevant extracts of the advertisement are reproduced as under:

*“Faculty Recruitment Notification
(Advertisement No.11/2019)*

Online applications are invited on the prescribed format for the recruitment of faculty at the level of Professors in various departments as under:-

<i>Sr. No.</i>	<i>Name of the Post</i>	<i>Departments</i>	<i>Vacant Posts</i>
<i>1.</i>	<i>Professor Pay Level-14A (as per 7th CPC) Equivalent to Grade Pay of Rs.10500/- (as per 6th CPC)</i>	<i>Chemical Engineering</i>	<i>13</i>
		<i>Civil Engineering</i>	
		<i>Computer Science & Engineering</i>	
		<i>Electrical Engineering</i>	
		<i>Electronics & Communication Engineering</i>	
		<i>Instrumentation & Control Engineering</i>	
		<i>Information Technology</i>	
		<i>Mechanical Engineering</i>	
		<i>Mathematics</i>	
		<i>Humanities & Management</i>	
		<i>Total</i>	<i>13</i>

XXXX

XXXX

XXXX

Note 6: This being an advertisement governed by the flexible recruitment rules, the no. of positions for internal candidates are not restricted by no. of positions advertised at various levels. However, the total no. of faculty positions will not exceed the sanctioned position for the institute. Instruction from MHRD issued till the date of interviews will be applicable. Therefore, apart from the vacancy advertised in the above departments, the eligible internal candidates may also apply for the post of Professor in the following departments also in addition to 10 departments for which advertisement is given.

- 1. Biotechnology*
- 2. Industrial & Production Engineering*
- 3. Textile Technology*
- 4. Physics*
- 5. Chemistry”*

6. The petitioners applied for the grade pay of ₹10500/- which is payable to Professors. It is made clear that petitioners were neither invited nor they applied for the substantive post of Professors and the entire gamut of the case is confined to grade pay of ₹10,500/- available to the Professors. The applications of the petitioners came to be scrutinized by Screening Committee and petitioners were found eligible because they secured minimum requisite credit marks as well as fulfilled essential qualification. Interview was conducted on 01.02.2020 by the Selection Committee. The recommendations of the Selection Committee were kept in a sealed cover and forwarded to Board of Governors (for short ‘BOG’) which vide impugned order dated

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25.01.2021 (Annexure P-10), in view of the fact that reservation policy of Government of India as per Central Educational Institutions (Reservation in Teacher's) Cadre Act, 2019 (for short '**2019 Act**') has not been complied with, decided to disapprove recommendations of the Selection Committee.

7. Learned counsel for the petitioners submits that 2019 Act was not applicable to the petitioners because there was no direct recruitment and the said Act is applicable in the case of direct recruitment. The Ministry of Human Resource Development vide communication dated 05.11.2019 (Annexure P-13) has confirmed the fact that 2019 Act is applicable to appointment by direct recruitment. The BOG in its 41st Meeting has considered the fact that interview for the post of Professors in Chemistry Department was against no vacancy. The BOG has further noticed that internal candidate, if any, recommended by the Selection Committee shall be adjusted against the category in which he has joined the institute and will not come in the purview of reservation. Despite instructions of the Government and 41st Meeting, the BOG arbitrarily withdrew the selection process which has caused irreparable loss to the petitioners. The petitioners were found eligible by the Screening Committee and they had fulfilled the criterion, thus, they were entitled to grade pay of ₹10,500/-. The respondent has right to cancel recruitment process, however, it was a case of grant of higher grade pay, thus, it could not be mechanically cancelled.

8. *Per contra*, Mr. Vivek Singla, learned counsel for the respondents submits that advertisement No.11/2019 was a joint advertisement whereby applications were invited from external candidates for direct recruitment as well as internal candidates for granting higher grade pay. The

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2019 Act was applicable to direct recruitment and advertisement was common for direct recruitments as well as grant of grade pay, thus, BOG as per its wisdom decided to cancel the entire selection process. The petitioners were found eligible by the Screening Committee, however, it is BOG which is ultimate authority to grant grade pay. It was prerogative of the BOG to cancel advertisement and this fact was duly mentioned in the advertisement.

9. On being asked, Mr. Vivek Singla, learned counsel for the respondent confirmed the fact that 2019 Act was not applicable to petitioners for the grant of grade pay of ₹10,500/-. He further concedes that petitioners were subjected to interview by the Selection Committee and found eligible by the Screening Committee. The Selection Committee had submitted its recommendations, however, it could not be implemented because of decision of BOG.

10. I have heard the arguments of learned counsels for both parties and perused the record with their able assistance.

11. The Ministry of Human Resource Development vide communication dated 05.11.2019 has opined that 2019 Act is applicable to appointment by direct recruitment. The relevant extracts of the said communication read as:

“6. As per provisions under the Act, the Institutes are required to maintain their rosters according to the strength of the teachers’ cadre. The NITs/IIEST, while continuing with the prevailing flexible faculty structure, shall provide for the reservation of posts in appointments by direct recruitment.”

12. The BOG in its 41st Meeting considered the question of grant of grade pay to the petitioners. In the said meeting, it was noticed that interview for the post of Professor in Chemistry Department was against no vacancy. It was further noticed that internal candidate, if any, recommended by Selection Committee, shall be adjusted against the category in which he has joined the institute and will not come in the purview of reservation. The relevant extracts of the said meeting read as:

“In response to these advertisements the following applicants as mentioned against respective departments were called for the interviews scheduled from 28.01.2020 to 01.02.2020 (copy enclosed as Annexure XIV Page 61).

Sr. No.	Department	Professor		Associate Professor	
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
04	Chemistry	04	-	-	-
05	Hum & Mngt.	01	-	-	-

In the departments at Sr. No.1 to 5, only internal candidates has been considered for interview for the post of Professor as these departments were either having no vacancy or no other eligible external candidate was available.

XXXX XXXX XXXX

Also it is mentioned here that the internal candidate, if any recommended by the Selection Committee shall be adjusted against the category in which he has joined the institute and will not come under the purview of above

reservation considering the note 1(5) of Schedule E of NIT Statutes (Gazette notification dated 24th July 2017).

The sealed envelopes of the selection committee recommendations are being placed during the meeting before the Board of Governors.”

13. From the record and arguments of Mr. Vivek Singla, it comes out that BOG has cancelled the entire process because of 2019 Act. It is conceded fact that 2019 Act was not applicable to the petitioners. The petitioners were not going to be appointed on the post of Professors and they were just going to be granted grade pay of ₹10,500/- which is available to the Professors. The BOG has cancelled the process of direct recruitment as well as grant of grade pay on the sole ground that reservation policy as contemplated by 2019 Act has not been complied with. As per learned counsel for the respondents, the advertisement was a joint advertisement and it could not be bifurcated, thus, BOG was bound to cancel the entire process.

14. The BOG has cancelled advertisement on the sole ground that reservation policy was not complied with. The reservation policy concededly was not applicable to the petitioners. The BOG has right to cancel advertisement, however, power vested by any Act or instrument in any public authority cannot be exercised in arbitrarily and whimsically manner. The authorities are duty bound to record reasons and reasons must germane to the purpose to be achieved.

15. In ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248***, a Constitution Bench elaborated and expounded the relationship between different articles guaranteeing fundamental rights and enunciated that every action of the State is violative of article 14 which is arbitrary. Equality is

antithetic to arbitrariness. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Justice Bhagwati speaking for the bench has held:

*7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its allembracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3 namely, that “from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14”. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding*

omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

16. From the perusal of reasons recorded by BOG and arguments of Mr. Singla, it is evident that process qua petitioners was cancelled on the sole ground that advertisement was common and 2019 Act was not applied. The Screening Committee had found petitioners eligible. The Selection Committee had already conducted interviews and forwarded its recommendations to BOG. Once it is conceded that 2019 Act was not applicable to the petitioners, this Court finds that it was unjust, arbitrary and unreasonable on the part of respondents to cancel the process qua petitioners which had already completed subject to decision of BOG to accept or reject recommendations of the Selection Committee. The object of the cancellation of selection process was to comply with reservation policy which was inapplicable to the petitioners. It was a matter of chance that joint advertisement was issued. There was no hurdle in deciding fate of the petitioners. The reason assigned for cancellation of process qua petitioners is not germane to the object to be achieved. The respondent mechanically has cancelled entire process whereas case of the petitioners could be bifurcated from candidates who had applied for direct recruitment.

17. In the wake of above facts and findings, this Court finds that action of BOG was not as per rule of law, thus, it was in violation of Article 14 of the Constitution of India. The impugned order dated 25.01.2021 (Annexure P-10) deserves to be set aside and accordingly is hereby set aside

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qua the petitioners and respondents are directed to consider recommendations of the Selection Committee and pass appropriate orders within 3 months from today.

(JAGMOHAN BANSAL)
JUDGE

16.01.2024
Mohit Kumar

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