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

+ **W.P.(C) 8373/2024 & CM APPL. 34489-34490/2024**

SADDAM ALI

..... Petitioner

Through: Mr. Sanobar Ali Qureshi and Ms.
Shobhna Sharma, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar, Advocate
for UOI

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Date of Decision: 01st June, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 34489-34490/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 8373/2024

1. Present Public Interest Litigation ('PIL') has been filed seeking relief of quo warranto qua the appointment of Respondent No.4 i.e., Dr. Subhransu Sekhar Acharya as Chairman-cum-Managing Director, National Small Industries Development Corporation Ltd. ('NSIDC') who was appointed in pursuance of Advertisement No. K-01/20/2021-SME dated 11th July, 2023



(said Advertisement). The appointment is sought to be challenged on the ground that the same has been done in violation of Clause 5 of Annexure-1 of the said Advertisement.

2. It is stated that the said advertisement was issued by Respondent No.1 i.e., Ministry of Micro, Small and Medium Enterprises, Government of India (UOI).

3. It is averred that the Petitioner is an Advocate practicing in District Court Jhansi and is a RTI Activist working for the development of weaker section.

4. Learned counsel for the Petitioner contends that the procedure adopted by the Respondent Nos. 1 to 3 is in complete derogation and non-compliance of Clause 5 of Annexure-1 of the said advertisement. He states that Clause 5 of Annexure-1 stipulates that the minimum length of service required in the eligible scale will be one year for 'internal candidates', and two years for others as on the date of advertisement of the post. He states that the Respondent No. 4 is admittedly not an 'internal candidate' and therefore Respondent No.4 was required to satisfy the condition of having minimum length of service of two years in the eligible scale. He states that Respondent No. 4 did not fulfil the said criteria as he was promoted to the post of Chief General Manager, Small Industries Development Bank of India ('SIDBI') in September, 2022 and the advertisement for NSIC was issued on 27th September, 2022.

5. He states that non-compliance with the said Clause 5 of Annexure-1 makes the appointment of Respondent No.4 void-ab-initio. He states that no clearance from the Central Vigilance Commission ('CVC') was obtained prior to the appointment. He states that despite his non-eligibility,



Respondent No. 4 was nevertheless interviewed. He states that the reasons for relaxation of the criteria set out at Clause 5 of Annexure-1 has not been disclosed by the Respondents. He states that the decision of appointment of Respondent No.4 without looking into the relevant material is vitiated on the ground of official arbitrariness.

6. He states that the Petitioner filed a complaint to the Cabinet Secretary, Government of India and also with the CVC on 07th December, 2023, which has been acknowledged by the said authorities on 05th January, 2024. He states that the Petitioner sent a follow up e-mail to the Cabinet Secretary on 04th February, 2024; however, no concrete action has been taken yet.

7. He states that thereafter, on 24th January, 2024 the Union Minister of MSME taking note of the complaint of the Petitioner, sent a note sheet to the Prime Minister's Office (PMO), seeking cancellation of the appointment of Respondent No.4, emphasizing his under-qualification. He further states that the said concerned minister also recommended the name of Sh. Jitender Tiwari. He fairly states that this information is not substantiated from any document placed on record.

8. Having heard the learned counsel for the Petitioner, we are not inclined to entertain the present PIL.

9. It is no longer *res integra* that a PIL is not maintainable in service matters and, only non-appointees can assail the legality of the appointment or extension procedure. It is imperative to refer to a Supreme Court judgment of *Girjesh Srivastava & Ors. vs. State of Madhya Pradesh & Ors.*¹, wherein the Supreme Court held as under:-

¹ (2010) 10 SCC 707.



“15. In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802] a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held: (SCC p. 281, para 18)

“18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

*16. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] this Court held that **in service matters only the non-appointees can assail the legality of the appointment procedure** (see SCC p. 755, para 51 of the Report).*

17. This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra [(2005) 1 SCC 590] by pointing out that despite the decision in Duryodhan Sahu [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802] , PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in Duryodhan Sahu [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802] (SCC p. 596, para 16).

18. Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349] (SCC at p. 358, para 16)”

(Emphasis supplied)

10. Similarly, in the case of **Vishal Ashok Thorat & Ors. v. Rajesh Shrirambapu Fate & Ors.**², it has been held as under:

40. Although, the learned counsel for the parties have made elaborate submissions on the validity of Rule 3(iii) proviso, Rule 3(iv) proviso and Rule 4 but in the facts of the present case, where the writ petitioner i.e. Respondent 1 was held by the High Court not competent to challenge Advertisements Nos. 2 and 48 of 2017, the High Court committed error in proceeding to examine the validity of the 2016 Rules. The challenge to the 2016 Rules in the background of the present case ought not to have been allowed to be raised at the instance of the writ petitioner. Respondent 1, who did not participate in

² (2020) 18 SCC 673.



*the selection and the High Court had specifically rejected the entitlement of Respondent 1 to challenge Advertisements Nos. 2 and 48 of 2017, as held in para 49 of the judgment [Rajesh v. State of Maharashtra, 2018 SCC OnLine Bom 17538], permitting him to challenge the validity of the Rules in reference to the same advertisements is nothing but indirectly challenging something which could not be challenged directly by Respondent 1. The High Court in the facts of the present case, where Respondent 1 was not allowed to challenge the advertisements or the select list should not have been allowed to challenge the 2016 Rules insofar as the selection in question was concerned. The writ petition filed by Respondent 1 was not styled or framed as PIL. **It is well settled that with regard to service jurisprudence, PIL are not entertained.***

41. In *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* [*Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465: (2013) 2 SCC (Civ) 658 : (2013) 2 SCC (L&S) 296], **this Court has reiterated that PIL should not be entertained in service matter.** In para 15 the following has been laid down: (SCC p. 477)

“15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide *Duryodhan Sahu v. Jitendra Kumar Mishra* [*Duryodhan Sahu v. Jitendra Kumar Mishra*, (1998) 7 SCC 273: 1998 SCC (L&S) 1802], *Dattaraj Nathuji Thaware v. State of Maharashtra* [*Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590] and *Neetu v. State of Punjab* [*Neetu v. State of Punjab*, (2007) 10 SCC 614])”

(Emphasis supplied)

11. In view of the above, this Court finds no merit in the present writ petition. Accordingly, the same is dismissed. It is clarified that this Court has not expressed any opinion on the merits of the issue raised in the present petition.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JUNE 1, 2024/hp/sk