
(2020) 07 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 149 Of 2020

Ajay Sharma

APPELLANT

Vs

IIT, Roorkee And Others

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 07 UK CK 0009

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Shobhit Saharia, Vipul Sharma

Judgement

Ramesh Ranganathan, CJ

WPSB No.149 of 2020

1. Admit.

Interim Relief Application (CLMA 4457/2020)

2. Heard.

3. An offer of appointment was made on 19.5.2015 offering the petitioner appointment to the post of Institutional Engineer on contract for a period of

5 years; and, on completion of this period, the term of service of the post of Institutional Engineer was to be, automatically, considered for a further

period of five yearsâ?? duration on the basis of Annual Confidential Reports, provided the ACRs had a minimum of â??very goodâ? and preferably

â??outstandingâ??. The petitioner was, thereafter, appointed on 17.7.2015, on the terms and conditions laid down in the earlier proceedings dated

19.5.2015 with effect from 26.6.2015. Since the order of appointment was to take effect from 26.6.2015, the original five year period of service

expired on 25.6.2020.

4. While matters stood thus, the respondent institute issued an advertisement on 13.12.2019 inviting applications from eligible candidates for the post of Institutional Engineer. It is not in dispute that the petitioner had also applied pursuant to the said advertisement. The fact, however, remains that the process of selection has not been completed so far, and interviews have yet not been held.

5. Office memorandum dated 10.6.2020 was issued extending the services of petitioner upto 30.09.2020, or till a new Institutional Engineer is appointed, whichever is earlier.

6. The petitioner claims to have made a R.T.I. application seeking information regarding his annual appraisal; and the information, furnished to him, disclosed that for four years, during which he worked, the petitioner was rated 'outstanding'.

7. When the matter came up before us on 3.7.2020, we had granted Mr. Vipul Sharma, learned Standing Counsel for the IIT, Roorkee, time till today

to obtain instructions. Today, Mr. Vipul Sharma, learned Standing Counsel, would state that the petitioner had applied, pursuant to the said

advertisement which was issued more than six months ago; having applied for the said post, the petitioner must be held to have acquiesced to the

selection process; and it is not open to him to now turn around and question the process of selection, merely because he may not be selected in such a process.

8. As noted hereinabove, the petitioner was appointed by proceedings dated 17.7.2015 in accordance with the terms and conditions stipulated in the

earlier offer of appointment dated 19.5.2015 which provides for further extension of five years in case the petitioner has obtained a minimum rating of

'very good' and preferably 'outstanding'.

9. Mr. Vipul Sharma, learned Standing Counsel, would fairly submit that the petitioner has been assessed 'outstanding' in 4 of the 5 years; and,

for the fifth year, the assessment exercise has not yet been completed. It is not even the case of the respondents that, for the fifth year, the petitioner

has been assessed as below 'very good'. In any event, by the time the advertisement was issued on 13.12.2019, the process of assessing the

petitioner's 5 years service had not even been undertaken, as he completed

his fifth year of service only six months thereafter on 25.6.2020. It is also not the case of respondents that any such exercise of appraisal for the fifth year has been undertaken, and completed, as on date.

10. While it is true that acquiescence may justify restraint being exercised by this Court, we must also bear in mind that no person can waive his

fundamental rights under Articles 14 and 16 of the Constitution of India (Olga Tellis & Ors vs Bombay Municipal Corporation, AIR 1986 (Supreme

Court) Page No.180). If, as is now contended before us, the petitioner has received a rating of "outstanding" for 4 years, it is only if he is given

a rating of below "very good" in the fifth year, would he be disentitled for automatic extension for a further period of five years. Even without

assessing the petitioner's performance for the fifth year, and six months prior to the date on which he completed his fifth year of service, the

respondents chose to issue the advertisement, inviting applications afresh, on 13.12.2019. Such an exercise undertaken by the respondents appears,

prima facie, to suffer from manifest arbitrariness and to, prima facie, violate Articles 14 and 16 of the Constitution of India. Any action in violation of

the fundamental rights, guaranteed under Articles 14 and 16 of the Constitution, cannot be upheld on grounds of acquiescence or waiver.

11. While we see no reason to interdict the process of selection which is underway, suffice it to direct the respondents not to appoint any person as

Institutional Engineer on completion of the selection process; and to continue the petitioner in service until further orders.