

(2006) 07 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 4592 of 2000

CSIR Scientific Workers' Association

APPELLANT

Vs

Council of Scientific and Industrial Research (CSIR) and
Others

RESPONDENT

Date of Decision : 01-07-2006

Acts Referred:

Citation : (2006) 07 MAD CK 0071

Hon'ble Judges : K. Suguna, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : D. Nagasaila, for Sudha Ramalingam and V. Suresh, for the Appellant; V.T. Gopalan, Addl. Solicitor General for B. Saraswathi, for R2, AR.L. Sundaresan for A.L. Gandhimathi, for R10 to R13 and M. Krishnappan, for R4, R6, R7 and R9, for the Respondent

Final Decision : Dismissed

Judgement

K. Suguna, J.—This writ petition is filed as against the order passed in O.A. No. 960/97 dated 3.1.2000 by the Central Administrative

Tribunal, Additional Bench at Madras. The O.A. was filed for issue of a direction directing the respondents therein not to make any appointment to

the post of Scientist "B" Grade IV (1) pursuant to the interview conducted by the Selection Committee on 3.11.96 and 4.11.96 pursuant to the

advertisement in the Hindu dated 14.1.1996 and consequently direct the respondents to conduct the selection to the posts of Scientist "B" Group

IV(1) afresh in accordance with the rules. The said O.A. was dismissed by order dated 3.1.2000. As against the same, the above writ petition has

been filed. As far as the first petitioner is concerned, it is an association espousing the cause of 6 Technical Officers and one Senior Technical

Assistant. As far as the second petitioner is concerned, he is a member of the first petitioner association and he is a non-selected candidate in the interview conducted.

2. The facts leading to the case are:

The second respondent herein, by advertisement in ""The Hindu"" dated 14.1.96, called for applications for 9 posts of Scientist ""B"" (Group IV(1)) in

the scale of pay of Rs. 2200-4000. As per the said advertisement, out of these 9 posts, two posts were reserved for SC, two for S.T. and two for

OBC and the remaining three for others. Basing on the performance in the interview conducted on 3.11.96 and 4.11.96, the selection list was

published. Subsequent to this, the petitioners in this writ petition had filed O.A. No. 960/97 with the above said prayer. Before the Central

Administrative Tribunal, the ground of attack by the petitioners is that the entire selection for the post of Scientist ""B"" (Group (IV(1)) stands

vitiated because of the absence of the requisite quorum prescribed under the relevant service rules for recruitment of scientific and technical

support staff. Besides, as far as the selection with respect to Electronics and Instrumentation area is concerned, orders have been issued cancelling

the same and for re-interview. In spite of this, the second respondent herein has issued the selection list and taken steps to issue appointment

orders to the successful candidates. That apart, having issued the cancellation order in respect of Electronic and Instrumentation area, the official

respondents cannot make appointments in respect of other specialities because the selection was a single selection process for all specialities. But,

all these contentions have been rejected by the Tribunal and the O.A. has been dismissed.

3. In the writ petition, though many grounds have been raised, at the time of arguments of the learned Counsel for the petitioners, he raised only

two contentions namely, (i) in the advertisement dated 4.1.96 by which applications were called for selection and appointment to the post of

Scientist ""B"" (Group(IV)(1)), the roster point for each speciality was not mentioned and (ii) though, as per the said advertisement, applications

were called for filling up only 9 posts, basing on the interview conducted on 3.11.96 and 4.11.96, 16 vacancies were filled, which is contrary to

the decision of the Hon''ble Supreme Court.

4. On the other hand, learned Additional Solicitor General appearing for respondents 1 to 3 has contended that the number of posts reserved out of the posts advertised were specified in the advertisement. The issue of allocation of posts for reserved community was kept open in order to enable the selection of the reserved community candidate in the field wherever they are available. By adopting this method, the interest of the reserved community candidates was fully protected. With regard to the second contention of the learned Counsel for the petitioners, the learned Additional Solicitor General submitted that even as per the Judgment of the Hon"ble Supreme court also, in exceptional cases, extra posts can be filled and as far as the respondent department is concerned, though the advertisement was given on 14.1.96 and the selection list was prepared in November, 1996, during the interregnum period, 7 vacancies arose since there was no recruitment in Group IV for the past 6 years. Hence, in addition to the 6 posts mentioned in the advertisement, 7 additional posts were also filled. The Institute was handling projects sponsored by the strategic sectors like Defence, Atomic Energy and Space and also other departments like Railways, Department of Electronics and keeping viable strength of Scientists was an absolute necessity to maintain the tempo of R&D activities and the additional posts sought to be filled were within the revised sanctioned strength of 202 for Group IV. After complying with the formalities, 16 vacancies were filled.

5. According to the learned Counsel appearing for the selected candidates, as far as the first contention of the learned Counsel for the petitioners is concerned, i.e., roster point was not mentioned for each speciality in the advertisement, the procedure of post based roster has been given effect to only from 2.7.97. Apart from this, according to the learned Counsel, by following the rules and regulations alone, interview was conducted and selection was made. As such, there is no merit in the writ petition and the same has to be dismissed.

6. We have considered the submissions of the learned Counsel for the petitioners as well as respondents.

7. With regard to the first contention of the learned Counsel for the petitioners, admittedly, in the advertisement called for, the number of posts reserved for the reserved community candidates has been clearly mentioned. As far as non-mentioning of post based roster is concerned, as per

the additional counter filed by the Director, post based roster was given effect to only from 2.7.97 whereas the advertisement was given on

14.1.96. That apart, it is the specific case of the official respondents that the issue of allocation of posts for reserved community was kept open in

order to enable the selection of reserved community candidates in the field wherever they are available and to see that the reserved vacancies are

filled and the interest of the reserved community candidates are fully protected. Besides, after the selection, the rule of reservation, as mentioned in

the advertisement, has been fully complied with. Learned Counsel for the petitioners, in support of her contention relied on the Judgment reported

in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, and also State of Uttar Pradesh Vs. Dr. Dina Nath

Shukla and another, . Admittedly, the advertisement was given on 14.1.1996. In pursuance of the advertisement, interview was conducted on

3.11.96 and 4.11.96. If, actually, the petitioners herein were aggrieved by the non-mentioning of the post based roster in the advertisement,

certainly, they would have challenged the advertisement itself. On the other hand, the members of the first petitioner as well as the second petitioner

had participated in the interview and only on their non-selection, the O.A. has been filed. As such, the first contention of the learned Counsel for

the petitioners is not maintainable on the date on which the original application was filed. That part, as rightly contended by the learned Counsel for

the selected candidates, as per the official memorandum, post based roster has been given effect to only from 2.7.97, whereas the advertisement

was given as early as 1996. Hence, the first contention raised by the learned Counsel for the petitioners will not stand.

8. The second contention of the learned Counsel for the petitioners that though advertisement was given only for 9 vacancies, 16 vacancies were

filled, which according to the learned Counsel is contrary to the settled principle and in support of which, she has relied on the judgments reported

in Hoshiar Singh Vs. State of Haryana and Others, and Surinder Singh and Others Vs. State of Punjab and Another, also cannot be accepted. As

far as the judgment reported in Hoshiar Singh Vs. State of Haryana and Others, is concerned, the issue involved is whether the appointment on the

additional posts on the basis of selection and recommendation would deprive candidates, who were not eligible for appointment to the posts on the

last date for submission of the applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity

of being considered for appointment on the additional posts, if the said additional posts are advertised subsequently. As far as the judgment

reported in *Surinder Singh and Others Vs. State of Punjab and Another*, is concerned, in view of the special circumstances of that case, the

Honourable Supreme Court did not invalidate the appointment made for the additional posts. Besides, as per the above said judgment, the State

can deviate from the advertisement and make appointments to posts falling vacant thereafter in exceptional circumstances and in an emergent

situation. As far as the respondent department is concerned, a specific averment has been made that between the date of advertisement and

selection, 7 more vacancies arose. That apart, the reason basing on which additional posts were filled were also given in the counter affidavit filed

by the respondent department as detailed below:

It is submitted that although nine posts of Scientist-B were advertised initially in January, 1996, sixteen posts were vacant at the time of interview in

November, 1996.

The Director felt the need to fill the remaining seven vacancies on the ground that-

(i) There was no recruitment in Gr.IV for the past six years;

(ii) The Institute was handling projects sponsored by strategic sectors like Defence, Atomic Energy and Space, apart from important departments

like Railways, Department of Electronics, etc. and keeping viable strength of Scientists was an absolute necessity to maintain the tempo of R&D

activities;

(iii) The additional posts sought to be filled were within the revised sanctioned strength of 202 for Gr.IV.

But this reasoning of the official respondents is not even denied by the counsel for the petitioners. As such, the second contention of the learned

Counsel for the petitioners also will not stand.

9. Even as per the averment of the petitioners in the original application as well as the writ petition, the first petitioner has filed the original

application as well as the writ petition espousing the cause of 6 Technical Officers and one Senior Technical Assistant. Out of the selected

candidates, six were departmental hands. That apart, these six candidates are members of the first petitioner association. Having made an averment

that O.A. has been filed espousing the cause of 6 Technical Officers and even after their selection, challenging the same, in our opinion, is against

the interest of the members of the association.

10. As far as the second petitioner is concerned, he was not selected in the interview conducted in the year 1996. Even in the subsequent interview

also, he was not selected. As such, the second petitioner, having failed to get selected even in the second selection and the first petitioner

association, six members of whom have been selected, cannot challenge the process of selection. The Hon"ble Supreme Court in the judgment

reported in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, has also held on the above lines:

9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the

said interview and who ultimately finds himself to be unsuccessful....

The above decision has been followed in a later Judgment of the Apex Court reported in Chandra Prakash Tiwari and Others Vs. Shakuntala

Shukla and Others, as well.

11. Besides, the O.A. and the writ petition have been filed for the following prayer:

Prayer in O.A.: To direct the respondents not to make any appointment to the post of Scientist ""B"" Grade IV (1) pursuant to the interview

conducted by the Selection Committee on 3.11.96 and 4.11.96 pursuant to the advertisement in the Hindu dated 14.1.1996 and consequently

direct the respondents to conduct the selection to the posts of Scientist ""B"" Group IV(1) afresh in accordance with the rules.

Prayer in W.P.: To issue a Writ of Certiorarified Mandamus to call for the records, set aside the selection for the post of Scientist ""B"" Gr.IV(1),

made pursuant to the advertisement in the Hindu dated 14.1.96 and direct the I and II respondents to issue a fresh advertisement for the same and

conduct the selection afresh as per the rules.

Initially, when the original application was filed, none of the selected candidates were impleaded as respondents. Some of the selected candidates

impleaded themselves as respondents. That apart, as per the Judgment of the

Hon"ble Supreme Court reported in Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, , ""appointments made long back pursuant to a selection need not be disturbed."" Altogether, by the said process of selection, 19 candidates were selected. Now, if the prayer in the writ petition is granted, 19 candidates will get affected. But, without even impleading them as parties, the writ petition is not maintainable. For these reasons, we find no merit in the writ petition and the same is dismissed. No costs.