
(2013) 02 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : CWP No. 298 of 2012-J

Dr. Jaspreet Kaur Randhawa

APPELLANT

Vs

National Institute of Technology

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 142

Citation : (2013) 3 SCT 723

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ramakant Sharma, for the Appellant; Sandeep Sharma, Assistant Solicitor General of India for the Respondent No. 1, Mr. K.D. Sood and Mr. Sanjeev Sood, Advocate for the Respondent No. 2, for the Respondent

Judgement

Rajiv Sharma, J.—Respondent No. 1 has issued an advertisement No. 1 of 2008, whereby applications were invited for filling up the posts of Professors, Assistant Professors, Lecturers, Registrar & Medical Officer on 06.02.2008. Thereafter, a fresh advertisement No. 4 of 2008 was issued, inviting applications for filling up the posts of Professors, Assistant Professors, Lecturers, Registrar & Medical Officer. The last date of receipt of application was 3rd November, 2008. The candidates who had already applied vide advertisement notice No. 1 of 2008, were not required to apply again. However, they were permitted to submit their updated bio-data in response to current advertisement on prescribed form. Petitioner and respondent No. 2 submitted their applications for considering their candidature to the post in question. The Screening Committee was constituted for scrutinizing the applications received for filling up the posts pursuant to advertisement No. 4/08. The petitioner was found suitable for the post of Assistant Professor by the Screening Committee (Material Science) as per Annexure P-20. The respondent No. 2 was not found eligible as his name was also not included in Annexure P-21. The interviews were held on 25.02.2009. Petitioner was offered appointment as Lecturer in the subject of Material Science and Engineering. The name of respondent No. 2 was recommended for the post

of Assistant Professor (Material Science). Petitioner was offered appointment letter on 01.06.2009, pursuant to which she joined her duties on 06.07.2009. The respondent No. 1 has also issued fresh advertisement No. 01 of 2010 for filling up the posts of Processor, Associate Professor and Assistant Professor in Civil Engineering, Electrical Engineering, Mechanical Engineering, Computer Science & Engineering, Electronics and Communication, Engineering, Architecture, Applied Mathematics, Applied Physics, Applied Chemistry, Management & Social Science, Energy & Environment, Material Science & Engineering, Training & Placement Cell. However, the process was cancelled on 19.11.2010. The petitioner has also made a representation against the appointment of respondent No. 2 on 09.07.2010. The same was rejected on 08.10.2010. Mr. Ramakant Sharma, learned counsel for the petitioner has vehemently argued that the respondent No. 2 was not eligible for the post of Assistant Processor in the discipline of Material Science. According to him, the respondent No. 2 was not possessing 5 years' teaching experience at the time of last date of receipt of application, i.e., 03.11.2008 and even at the time of interview on 25.02.2009.

2. Mr. Sandeep Sharma, learned Assistant Solicitor General of India and Mr. K.D. Sood, learned Senior Advocate have supported the selection of respondent No. 2.

3. I have heard the learned counsel for the parties and gone through the pleadings carefully.

4. The petitioner has obtained her M.Sc. degree in Polymer Chemistry and Ph.D. in Chemistry. The minimum eligibility criteria for filling up the post of Assistant Professor prescribed as per advertisement No. 4 of 2008 was as under:

Good academic record with atleast 55% marks or an equivalent CGPA at the Master's level and Ph.D. degree in the relevant subject.

Experience:

5 years experience in Teaching and/or Research excluding the period spent for obtaining the degrees and has made some mark in the areas of Scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula.

5. This Court has passed the following order on 13.09.2012:

Respondent No. 1 is directed to file supplementary affidavit, stating therein, specifically, whether respondent No. 2 was eligible as per the advertisement issued vide Annexure P-3, dated 8th October, 2008 and corrigendum, at page 21 of the paper-book. Respondent No. 1 shall also place on record experience certificate of respondent No. 2. It shall also be clarified by respondent No. 1 whether the experience certificate was filed by respondent No. 2 before the last date of receipt of applications, as per Annexure P-3 or not. Respondent No. 1 shall also clearly spell out in the supplementary affidavit, to be file, as directed hereinabove, why respondent No. 2, who was not found eligible as per the

screening conducted by the Screening Committee, had been found suitable at the time of interview. The supplementary affidavit shall be filed on or before the next date of hearing.

In sequel to order, dated 13.09.2012, Sh. A.S. Singha, Registrar, NIT, Hamirpur has filed a supplementary affidavit. According to the averments contained in the supplementary affidavit, in sequel to the advertisement notice No. 1 of 2008, dated 06.02.2008, 25 applications were received and respondent No. 2 was also one of the candidates. Similarly, 25 applications were received in response to advertisement No. 4 of 2008, dated 08.10.2008. It is further stated in the supplementary affidavit that the respondent No. 2 has produced No Objection Certificate, dated 20.02.2009, wherein it was mentioned that he was working as Assistant Professor, School of Infrastructure Technology & Resource Management, College of Engineering at Shri Mata Vaishno Devi University w.e.f. 20th June, 2005. This certificate was duly considered by the interview Board at the time of interview. The petitioner was found eligible only for the post of Lecturer. It is further stated in the affidavit that the respondent No. 2 was found suitable for the post of Assistant Professor. According to the affidavit, the cuttings/over writings which appeared in the screening reports were the routine remarks of the Screening Committee. The respondent No. 3 being Chairman of the Screening Committee was also impleaded as respondent No. 3 by this Court on 02.11.2012. The respondent No. 3 has filed a supplementary affidavit on 02.01.2013. According to the affidavit, the Screening Committee was constituted under him vide order, dated 25.03.2008. The Screening Committee has submitted its report on 10.04.2008. The name of respondent No. 2 was not short listed due to less experience as on the last date of receipt of application. According to the supplementary affidavit filed by respondent No. 2, the selections of petitioner and respondent No. 2 were made on the basis of another advertisement notice No. 4 of 2008, dated 08.10.2008. This Screening Committee was headed by Sh. A.S. Singha as per office order, dated 24.11.2008. A similar affidavit was filed by Shri A.S. Singha on 02.01.2013.

6. As per the Recruitment and Promotion Rules and the advertisement issued, the candidate was required to possess 5 years experience in teaching and/or Research excluding the period spent for obtaining the degrees and he has also made some mark in the areas of Scholarship as evidenced by quality of publications, contribution to educational innovation, design or new courses and curricula. According to the material placed on record, the respondent No. 2 was Sr. Research Fellow from 08.03.05 to 17.06.05 in IIT Bombay and Assistant Professor from 20.06.05 in SMVD University, Katra. The last date of receipt of application was 03.11.2008. The respondent No. 2 has not annexed alongwith the application copy of experience certificate. In the supplementary affidavit sworn by Shri A.S. Singha pursuant to order, dated 13.09.2012, it is categorically stated that the respondent No. 2 has produced the no objection/experience certificate on 20.02.2009 and the date of interview was 25.02.2009. The respondent No. 2 was not even possessing five years experience at the time of

interview. It is, thus, evident that the respondent No. 2 did not possess five years teaching experience after obtaining Ph.D. degree at the time of submission of application. Thus, the action of the Selection Committee recommending the case of the respondent No. 2 vide Annexure P-17, dated 25.02.2009 was illegal. The respondent No. 2 was not eligible for the post of Assistant Processor as per the norms prescribed in the advertisement. Initially, the Screening Committee has rejected the case of respondent No. 2 pursuant to advertisement issued on 06.02.2008. His name was also not included in the list of eligible candidates as per Annexure P-20 issued pursuant to advertisement No. 4 of 2008. His name was only included on the opening sheet of Annexure P-16, pursuant to advertisement, dated 06.02.2008. According to the supplementary affidavit filed, the selections have been made pursuant to advertisement No. 4 of 2008 and his name was not cleared by the Screening Committee and, despite that, his name has been recommended by the Selection Committee erroneously. The representation made by the petitioner against the appointment of respondent No. 2 has also been rejected without assigning any reasons on 08.10.2010.

7. Their Lordships of the Hon"ble Supreme Court in State of Bihar and others Vs. Ramjee Prasad and others, have held that the choice of the date for advertising the posts had to depend on several factors, e.g., the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. In that case, it was not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off-date and merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31st January, 1988 to 30th June, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. Their Lordships have held as under:

7A. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as 31st Jan., 1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the interveners who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as 31st January, 1988, the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix 30th of June of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising

the posts had to depend on several factors, e.g., the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of any one that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31st Jan., 1988 to 30th June, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. We are, therefore, of the opinion that the High Court was clearly in error in striking down the Government's action of fixing the last date for receipt of applications as 31st January, 1988 as arbitrary.

8. Their Lordships of the Hon"ble Supreme Court in Bhupinderpal Singh and Others Vs. State of Punjab and Others, have held that the action of the State of Punjab for determining the eligibility condition as on date of interview was bad in law. Their Lordships have further held that this practice should be discontinued. Their Lordships have held as under:

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, ; A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, Dist. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, Dr. M.V. Nair Vs. Union of India (UOI) and Others, and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, , the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein

such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence.

9. In *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, , the Apex Court has held that in order to avoid any uncertainty in such matters, fixation of a cut-off date is must. Their Lordships have further held that in the absence of any cut-off date specified in the advertisement or in the rules, the last date for filing the application must be considered as a cut-off date. Their Lordships have held as under:

11. The question as to what should be the cutoff date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer *res integra*. It would be last date for filing application as would appear from the discussions made hereinafter.

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

10. The Apex Court in *Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another*, have reiterated that essential qualification must be possessed on the date of issuance of the notification or as specified in the rules. Their Lordships have held as under:

21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the rules and only in absence

thereof, the qualification acquired till the last date of filing of the application would be the relevant date. See Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, and Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions

11. Mr. K.D. Sood, learned Senior Advocate for respondent No. 2 has also argued that the present petition is barred by delay and laches. The petitioner has sought the information under The Right to Information Act, 2005 through her brother. It is only after obtaining the information, the present petition has been filed challenging the appointment of respondent No. 2. There is no inordinate delay in challenging the appointment of respondent No. 2 by the petitioner.

12. No other point was urged. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. The appointment of respondent No. 2 as Assistant Professor in the discipline of Material Science is quashed and set aside. The respondent No. 1 is directed to re-advertise the post of Assistant Professor (Material Science) and fill up the same in accordance with law, within a period of four months from today. The pending application(s), if any, also stands disposed of. No costs.