

(2014) 03 AHC CK 0147

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 70693 of 2013

Dr. M.D. Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 ADJ 92 : (2014) 4 AWC 4247 : (2014) 3 ESC 1338

Hon'ble Judges : Arvind Kumar Mishra-I, J;Arun Tandon, J

Bench : Division Bench

Advocate : S.P. Gupta, Shivam Agrawal and Shubham Agarwal, Advocate for the Appellant; Govind Saran, Shailendra, Triloki Singh and Vaibhav Kaushik, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri S.P. Gupta, Senior Advocate assisted by Sri Shivam Agarwal on behalf of petitioner. Sri K.C. Kaushik, Additional Solicitor General on behalf of Union of India as well as Indian Institute of Information & Technology, Allahabad (hereinafter referred to as I.I.I.T.-A1). Petitioner before this Court seeks quashing of the entire process of selection, initiated by Ministry of Human Resources Development, Union of India, for the post of Director, I.I.I.T.-A, interview whereof was scheduled on 23.12.2013. A mandamus has been prayed for, directing the Hon'ble Chancellor of I.I.I.T.-A to hold selections for the post of Director and for restraining the Search-cum-Selection Committee constituted by Union of India from holding any interview for the post of Director, and lastly, in the alternative for a mandamus commanding the authority concerned to call the petitioner for interview also for the post of Director, I.I.I.T.-A.

2. Facts in short, leading to present writ petition are as follows:

I.I.I.T.-A is a Deemed University within the meaning of an international repute, managed and administrated by a society in the name and style of India Institute

of Information & Technology, Allahabad Society. It is duly registered under the Societies Registration Act. The Society is run and managed in accordance with the Memorandum of Association and Rules (hereinafter referred to as the Rules). The Institute has a post of Director. The petitioner before this Court was selected and appointed as Director for the first time on 21.1.2002. The term of the Director was initially 3 years which was to expire on 22.1.2005. His term was extended by a period of 2 years. The extended term would expire in 2007. Process of selection by direct recruitment for the post of Director was, therefore, initiated in the year 2006. The petitioner applied and was again selected for appointment as Director on 21.1.2007. The term of appointment of the Director for the second term was 5 years, which expired on 6.1.2012.

3. The process of selection of appointment on the post of Director was, therefore, initiated afresh by publishing an advertisement on 3rd November, 2011. The eligibility condition as mentioned in the advertisement have been brought on record as Annexure 4 to the present writ petition. The petitioner applied in pursuance to the said advertisement. The date of interview had been fixed by the Search-cum-Selection Committee in terms of advertisement as 23.12.2013. No call letter was issued in favour of the petitioner. The petitioner was informed of the resolution of the Search-cum-Selection Committee dated 23.3.2013 whereunder he had not been short listed for the purpose of interview. Therefore, he made a representation for being called for interview. The Principal Secretary of the Board of Management of I.I.I.T.-A wrote a letter to the Secretary, Ministry of Human Resources Development, Department of Higher Education, New Delhi for appropriate action being taken and selection proceedings being stopped immediately. The Government did not respond to the same.

4. The Search-cum-Selection Committee in its meeting held on 3rd April 2013 after interaction with the short listed candidates recorded that none has been found suitable for the post. However, a note was added to the effect that the process of selection may continue by seeking names through nomination.

5. This according to the petitioner is bad, inasmuch as, once the Search-cum-Selection Committee on 3rd April, 2013 found that none was suitable for the post of Director, it became functus officio. It could not have proceeded with the selections any further. The respondents were under legal obligation to publish a fresh advertisement and to proceed with the selections thereafter. On the contrary, the Search-cum-Selection Committee after considering the names received through nomination on 22.4.2013, invited six candidates for interaction on 23.12.2013. It is at this stage the present writ petition has been filed.

6. Petitioner claims that he is possessed of all the prescribed qualifications for the post of Director. He possesses a good academic standing and having worked as a Director of I.I.I.T.-A for 10 years, it cannot be said that he lacks any experience in comparison to the 10 years experience of a Professor. It is his case that he has wrongly been excluded from, the zone of consideration because of the condition formulated by the -Search-cum-Selection Committee qua short

listing of the applicants on the basis of 10 years standing as a Professor.

7. While entertaining the present writ petition, this Court on 8.1.2014 passed an interim order whereby the process of selection was permitted to continue, but no appointment was to be offered in pursuance to the said selections till further orders of the Court.

8. An counter-affidavit has been filed on behalf of respondents. Sri K. C. Kaushik, Additional Solicitor General with reference to the documents on record points out that in response to the advertisement published for the post of Director on 12th September, 2012, as many as 60 applications alongwith that of petitioner were received on-line. The Search-cum-Selection Committee, which was constituted thought it proper to short list the applicants for the purpose of interaction, on the basis of credential of the applicants. In order to be transparent, the Search-cum-Selection Committee framed six criteria's and decided that the candidates, who satisfies all the six criterion, would alone be short listed for interaction. The six points so formulated have been reproduced in paragraph 3 of the supplementary-affidavit filed on behalf of respondent No. 1. One of the conditions so formulated was that the applicant must have a standing of 10 years as Professor. It is stated that M.D. Tiwari did not satisfy the requirement of 10 years of standing as Professor, the Search-cum-Selection Committee, therefore, excluded him from the zone of consideration for short listing. It is further stated that only 5 applicants satisfied all the six conditions as formulated by the Search-cum-Selection Committee. They were invited for interaction, which took place on 3.4.2013. None was found suitable for the post. The Search-cum-Selection Committee further resolved that candidates may be solicited through nomination and the process may be continued accordingly.

9. It is stated that after nominations were received on 22.4.2013, names of 6 candidates were approved for the purpose of interaction in the meeting held on 11.12.2013 and ultimately, after interaction with the said 6 candidates on 23.12.2013, the Search-cum-Selection Committee has recommended the names of suitable candidate for appointment to the Ministry of Human Resources Development, Higher Education Department. The papers in that regard are waiting approval from the competent authority. It is only because of the interim order passed in the present writ petition that no farther action has been taken in the matter.

10. He further submits that in the facts of the case, the exclusion of Sri Tiwari from the zone of consideration is because of his having not satisfied one of the criteria's as determined by the Search-cum-Selection Committee namely, 10 years standing as a Professor. It cannot be said that any error has been committed, which may warrant interference from this Court. He explains that when large number of applications are received in respect of a single post then it is within the competence of the Search-cum-Selection Committee to lay down norms for short listing of the applicants. If there is no arbitrariness in the norms so fixed for the purpose then, this Court need not interfere, inasmuch as, the

Search-cum-Selection Committee is an expert body in the field. The Search-cum-Selection Committee had been constituted to recommend a suitable person for the post of Director in a prestigious institution like I.I.T.-A.

11. It is also the case of the respondents that irrespective of decision so taken by the Search-cum-Selection Committee, petitioner is liable to be non suited by this Court on the ground that he stands outside the zone of eligibility having already completed two terms as Director of I.I.T.-A. Such exclusion flows from simple reading of Clause 13.1 (ii) of the Rules (Reference Page 43 of the present writ petition). He explains that Clause 13.1 (ii) when it provides that a person can hold office for a term of 5 years and he will be eligible for second term it necessarily means that person, who has occupied the Office of Director for two terms, becomes ineligible to be considered for the third term.

12. Sri Kaushik has informed the Court that the proceedings of the Search-cum-Selection Committee were suspended between 22.4.2013 to 11.12.2013 only because of the interim injunction order dated 27.4.2013 passed in Original Suit No. 144 of 2013 filed by an employee of I.I.T.-A namely Sonali Agarwal by the Civil Court at Allahabad. This interim injunction was vacated only on 18.11.2013. Immediately thereafter, the process of selection re-commenced, to be precise on 19.11.2013.

13. He also informs the Court that two writ petitions were filed before the High Court after the process of selection recommenced. One in the nature of P.I.L. and the second is the present writ petition, for the same relief's.

14. The writ petition in the nature of P.I.L. was filed by a Member of Society for Values and Ethics in Higher Education, of which the petitioner is a lifetime member. He points out that surprising in the P.I.L., one of the relief's prayed was that the petitioner of the P.I.L. may be called for interview, The relief so prayed lead to only one conclusion that the P.I.L. is as a proxy litigation on behalf of Sri M.D. Tiwari, who had filed his independent writ petition on the same date.

15. Sri Kaushik has placed reliance on the judgments in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, , case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, , case of Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others, and in the case of Union Public Service Commission Vs. Hiranyalal Dev and Others, , for the propositions that once an incumbent has participated in the process of selection and has failed, he cannot be permitted to challenge the selection process.

16. Sri S.P. Gupta, Senior Advocate in rejoinder submits that the Search-cum-Selection Committee had no authority to lay down any qualifications in the matter of appointment on the post of Director. The prescription of the criterion of 10 years standing as Professor by the Search-cum-Selection Committee was, therefore, bad. This had led to the wrongful exclusion of the petitioner from the zone of consideration. He has placed reliance upon the judgment of the Apex Court in the case of Dr. Krushna Chandra Sahu and others Vs. State of Orissa

and others, , specifically paragraphs 31 to 35.

17. With regards to the objection taken qua petitioner being ineligible because of his having completed two terms as Director earlier, it is submitted that the contention is based on misreading of Clause 13.1 (ii) of the rules. The purpose of the rule is only to debar a Director from continuing after two terms without facing the process of direct recruitment. He explains that petitioner was selected for the post of Director on previous two occasions i.e. 2002 and 2007 through direct recruitment. It cannot be said that he had continued for the second term as Director after his selection in 2007 so as to make him ineligible for participation in the fresh recruitment process initiated under the advertisement of 2012.

18. We have heard learned counsels for the parties and have examined the records of the present writ petition.

19. For deciding the present writ petition, it is necessary for this Court to reproduce the Clause 13.1 of the Rules dealing with appointment on the post of Director, I.I.I.T.-A.

20. These rules of the society are practically reproduction of the University Grants Commission (Institutions Deemed to be Universities) Regulations, 2010 (hereinafter referred to as the Regulations, 2010). Clause 13.1 is verbatim copy of Clause 6.2 of Regulations, 2010, except for the word Vice Chancellor" being substituted by the word "Director".

Clause 13:1 reads as follows:

13.1 Appointment of the Director (i) The Director shall be a whole time salaried officer of the institution deemed to be university and shall be appointed by the Chancellor from a panel of three members suggested by a Search-cum-Selection Committee. The composition of the Search-cum-Selection Committee shall be:

1. A nominee of the Chancellor
2. A nominee of U.G.C.; who shall be an eminent academic nominated by the Government in consultation with the U.G.C.
3. A nominee of the Board of Management

(ii) The Director shall hold office for a term of 5 years. He shall be eligible for a second term, provided that in no case shall he hold office beyond the age of 70 years.

Provided that notwithstanding the expiry of the period of 5 years, he/she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever, is later.

21. From a simple reading of the aforesaid provision it is apparently clear that it declares that the Director shall hold the office for a period of 5 years and would be eligible for a second term.

22. Counsel for the petitioner would contend that this second term would mean extension for a period of 5 years after expiry of the first term, which does not involve any fresh selection by the Search-cum-Selection Committee. While, counsel for the University would submit that the clause is capable of only one reasonable interpretation namely, that a person can hold the office of Director of I.I.I.T.-A for a maximum period of 10 years i.e. 2 terms.

23. We tend to agree with the interpretation, which has been placed upon the said clause by the counsel for the I.I.I.T.-A namely, that under Clause 13.1 (ii) a person can be appointed as Director at best for two terms i.e. for maximum period of 10 years. The reason for such a condition being stipulated is more than obvious. Institutions like I.I.I.T.-A are pioneer institutions in the field of Information & Technology. The decision of U.G.C. that there should be fixed term for holding the office of Director and no person should continue as Director of such pioneer institutions for more than two terms, is for ensuring that same officer with same ideas do not continue. New officers as Director would in all likelihood would result in fresh ideas and innovative methods being adopted in such institutions of higher learning. We are of the opinion that the interpretation so placed serves the purpose of having new minds in the office of Director after the person has already worked for two terms i.e. 10 years so that there is always an opportunity to have innovative and fresh ideas in the matter of education to be imparted at such pioneer institutions, take effect.

24. The plea that M.D. Tiwari had undergone the process of selection afresh in the year 2007, therefore, it cannot be said that he had completed the second term, so as to be rendered ineligible under Clause 13.1 (ii), does not appeal to us. There is no other method contemplated by the Rules for appointment on the post of Director except the one quoted above i.e. on the recommendation of the Search-cum-Selection Committee. There is no concept of extension of the appointment of the Director for second term without recommendation of the Search-cum-Selection Committee.

25. In view of the conclusions so drawn by us based on the reading of the said clause, we are inclined to hold that M.D. Tiwari, who had completed two terms as Director of the I.I.I.T.-A, became ineligible to be considered for the post of Director, I.I.I.T.-A in view of Clause 13.1 (ii).

26. We also find no error in the decision taken by the Search-cum-Selection Committee in the matter of exclusion of M.D. Tiwari from the list of short listed candidates because of his having lacking one of the criterion namely, standing as a Professor for 10 years. The Search-cum-Selection Committee having regard to the large number of applications received in the matter of consideration for appointment on the post of Director, I.I.I.T.-A formulated the criterion for the purposes of short listing of the candidates, one of which was 10 years of standing as a Professor. M.D. Tiwari admittedly, does not satisfy the said requirement and, therefore, he was excluded from the list of short listed candidates. Such laying down of the principles for screening by the Search-cum-Selection Committee and

the consequential exclusion of Sri Tiwari cannot be termed as arbitrary in any manner. The decision of the Search-cum-Selection Committee is reasonable and in the larger interest of the Institution itself.

27. We are also of the opinion that the experience gained by M.D. Tiwari as a Director, I.I.I.T.-A cannot be equated with the requirement of standing of 10 years as a Professor, which was one of the criterion formulated by the Search-cum-Selection Committee. Merely working as a Director, which entitled Sri Tiwari to higher salary vis-?-vis that payable to a Professor, may not be the basis for holding that Sri Tiwari satisfies the required criterion of 10 years standing as a Professor. To determine the equivalence of working on the post of Director vis-?-vis that of working on the post of Professor is not the job of the Court. It is a decision to be taken by the experts on the subject. The Search-cum-Selection Committee, the Constitution where of is not under challenge, was the expert body constituted for the purpose.

28. The counsel for the petitioner is also not right in contending that the Search-cum-Selection Committee in fact laid down a qualification i.e. 10 years standing as Professor for appointment on the post of Director in addition to that which has been provided for under the rules. As already clarified above, the Search-cum-Selection Committee had only laid down the criterion in the matter of screening of the large number of candidates, who had applied for the post of Director, I.I.I.T.-A. Such guidelines laid down by the Search-cum-Selection Committee cannot be termed as additional qualifications nor the judgments in the case of Dr. Krushna Chandra Sahu and others (supra) relied upon by the petitioner has any application in the facts of the case.

29. We also find that the Search-cum-Selection Committee had not closed the selection proceeding under its Resolution dated 3.4.2013. Since applications through nominations had not been received till date, it has rightly decided to continue the selection after having application through nominations as is permissible under the " Rules. There is no good reason for us to interfere with proceedings of the Search-cum-Selection Committee.

30. For the reasons recorded above, we hold that M.D. Tiwari was not eligible to be considered for the post of Director after he had completed two terms as Director in terms of Clause 13.1 (ii). Secondly, his exclusion from the list of short listed candidates by the Search-cum-Selection Committee cannot be termed as arbitrary in any manner.

31. For the aforesaid reasons, we find no good ground to interfere under Article 226 of the Constitution of India at the behest of the petitioner. The writ petition is accordingly, dismissed. Interim order, if any, stands discharged.