

(2012) 01 DEL CK 0433

In the Delhi High Court

Case No : Writ Petition (C) No. 10916 of 2005

Dr. Virender Singh Lather

APPELLANT

Vs

The Secretary, Agriculture Scientists Recruitment Board, New
Delhi and Another

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Citation : (2012) 4 AD 608 : (2012) 2 SLJ 245

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Nidhesh Gupta, with Mr. Tarun Gupta, for the Appellant; Himanshu Bajaj for Respondent No.2, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—This Writ Petition is directed against the order dated 8.2.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal), whereby OA No. 1339/03 filed by the petitioner was dismissed.

2. Pursuant to an advertisement issued by Agriculture Scientists Recruitment Board, New Delhi (ASRB), the petitioner applied for the post of Principal Scientist (Genetics/Cytogenetics) and was selected by the Interview Board. No appointment letter, however, was issued to him. At the time of applying for the aforesaid post, the petitioner was working as Associate Professor in Haryana Agriculture University, Hissar. Agriculture Scientists Recruitment Board had prescribed the following qualifications for appointment to the post of Principal Scientist (Genetics/Cytogenetics):

(i) Doctoral degree in Genetics/Cytogenetics/Plant Breeding.

(ii) 10 (Ten) years experience excluding the period spent in obtaining the Ph.D degree (subject to maximum of 3 years) in research/teaching/extension education provided 3 years experience is as Senior Scientist (Rs.12000-18300)

or in an equivalent position (emphasis provided).

(iii) Evidence of contribution of Research/Training/Extension Education as supported by published work/innovations.

(iv) Specialization in Biometrical Genetics.

3. The petitioner was not appointed on the ground that on 16.6.2000, which was the last date for submission of the application, he did not have the requisite three years experience as a Senior Scientist (Rs 12000-18300) or in an equivalent position. The petitioner first filed OA No. 2564/2002, which was disposed of by the Tribunal on 1.10.2002 by directing the respondents to pass a reasoned order, for not appointing the petitioner to the aforesaid post. In compliance of the order passed by the Tribunal, the respondents passed the following order:

I am refer to Court order No.2564/2002 dated 1.10.2002 and to inform you that you do not fulfill the requirement of 3 years experience as a Sr. Scientist (Rs 12000-18300) as required as on 16.6.2000 (closing date of the application). By mistake screening expert, have recommended your name for the said on the basis that you are working as Associate Prof. in State Agriculture University in the scale of Rs 12000-18300. Acting on this basis you were recommended for the post of Principal Scientist. Interview for the said post scheduled on 23.7.2001. Later on a reference made to HAU, the University has confirmed that "Dr Lather having the designation of Associate Prof. in the pay scale of Rs 10000-15200 which is obviously less and not equivalent to the scale of Rs 12000-18300 as per the prescribed qualifications. Hence your candidature for the post of Principal Scientist IARI New Delhi was not accepted since you did not fulfill the condition of having 3 years experience as the Sr. Scientist in the grade of Rs 12000-18300 or in an equivalent position as per the prescribed qualifications.

4. The petitioner worked with Haryana Agriculture University as Associate Professor from 4.3.90 to 3.3.98 and as Professor from 4.3.98 onwards. Thus, on the cut-off date of 16.6.2000, he did not have 03 years experience as a Professor/Senior Scientist though he did have about 08 years experience as Associate Professor. The controversy before the Tribunal was whether the post of Associate Professor, held by the petitioner, was a position equivalent to that of a Senior Scientist (Rs 12000-18300). The contentions of the petitioner before the Tribunal were that - 1) the post of Associate Professor was equivalent to that of Senior Scientist (Rs 12000-18300) and therefore, he was qualified for appointment as Principal Scientist (Genetics/Cytogenetics) in IARI, 2) since the pay scale of post of Associate Professor was revised to Rs 12000-18300 w.e.f. 1.1.96, he had become eligible for appointment to the advertised post. This was also the contention of the petitioner that prior to 1.1.96 there were two schemes for promotion to the higher grades one being "Career Advancement Scheme" (CAS), which provided promotional avenues for Reader/Associate

Professors/Lecturers (Selection Grade) Scientists (Selection Grade) in the scale of Rs 3700-5000 with no promotion to the post of Professor and equivalent post and the other called "Merit Promotion Scheme" (MPS) which provided for promotional avenues to the post of Professor. Thus, at the crucial date of 16.6.2000, two categories of Associate Professor were in existence i.e. those promoted under MPS and those promoted under CAS. It was contended by the petitioner that since the Associate Professors, irrespective of whether they opted for CAS or they opted for MPS, were holding equivalent posts and those who opted for CAS were placed in the requisite revised scale of Rs 12000-18300 (pre-revised scale of Rs 3700-5000). He stated that despite having opted for MPS which carried lower pay scale, he was holding a post equivalent to that of a Senior Scientist and therefore was eligible to be appointed as Principal Scientist (Genetics/Cytogenetics). The contentions of the petitioner were, however, rejected by the Tribunal. As regards the revision of the pay scale of Associate Professor w.e.f. 1.1.1996, the Tribunal noted that the UGC guidelines relied upon by the petitioner could not be made applicable until they were proved by ICAR and therefore on the cut-off date of 16.6.2000, two categories of Associate Professor were in existence - one comprising those promoted under MPS and another those promoted under CAS. Since the petitioner was working in the revised pay scale of Rs 10000-15200 at the relevant time, the Tribunal was of the view that he was not holding a post equivalent to that of Senior Scientist and therefore was not eligible to be appointed as Principal Scientist (Genetics/Cytogenetics).

5. As noted earlier, in order to be eligible for appointment as Principal Scientist (Genetics/Cytogenetics), the applicant was required to have 03 years experience as Senior Scientist (Rs 12000-18300) or in an "equivalent position". In para I of the grounds taken in the Writ Petition, the petitioner inter alia stated that he was occupying an equivalent position since he was working as Associate Professor, which is the equivalent post in Haryana Agriculture University. While replying to the aforesaid ground, respondents No. 1 & 2 inter alia stated that although the petitioner was having the equivalent position but the grade fixed for the petitioner was Rs 10000-15200 which was also confirmed by the HUA. (emphasis supplied) Thus, the respondents have expressly admitted that the position of Associate Professor in HAU was an equivalent position. Once, it is admitted that the petitioner was having the equivalent position, the grade of the post which he was occupying becomes irrelevant. The essential qualification laid down in the advertisement being that the applicant should have 03 years experience as Senior Scientist (Rs 12000-18300) "or in an equivalent position", once it is admitted that the petitioner was holding an equivalent position, that is the end of the matter as far as the essential qualification for the post is concerned. In view of the aforesaid categorical admission made in the counter affidavit, we need not examine at our level whether the post of Associate Professor irrespective of whether the person holding the post had opted for CAS, which provided for a higher pay scale or MPS, which provided for a lower pay scale, were equivalent to

the post of Senior Scientist (Rs 12000-18300) or not. We, basing our decision on the aforesaid admission made by the respondents in the counter-affidavit, therefore hold that the petitioner on account of his holding an equivalent position, was eligible to be appointed as Principal Scientist (Genetics/Cytogenetics).

6. During the course of arguments, the learned Counsel for the respondents informed that one vacancy for the post of Principal Scientist (Rs 12000-18300) in ICAR is available. The petitioner can, therefore, be considered against the aforesaid vacancy. The learned Counsel for the respondents, however, submitted that as per the advertisement published in the newspapers, the applicant should not have been more than 50 years of age on the closing date of receipt of applications and though on the cut-off date the petitioner was less than 50 years of age, he, at present, has already crossed that age and therefore is no more eligible for appointment to the said post. Since the age of the candidate was to be seen on the closing date for receipt of applications i.e. 16.6.2000, the respondents cannot say that on account of his having crossed the age of 50 years, after 16.6.2000, the petitioner is no more eligible for appointment to the aforesaid post. To take an example if an applicant to the aforesaid post was say 49 years 11 months and 29 days old on 16.6.2000, he would be eligible for being appointed to the post advertised by Agriculture Scientists Recruitment Board such a person could not have been refused appointment on account of his crossing the age of 50 after the cut-off date. Therefore, the respondents cannot deny benefit of appointment to the petitioner on account of his having crossed 50 years of age as on today. This is more so, when the petitioner has been agitating the issue firstly before the Central Administrative Tribunal and then before this Court. It will not be fair to the petitioner, to deny the appointment to him, when he has been wronged against, and he has relentlessly been perusing his remedy before legal fora. A perusal of the applications of the petitioner would show that his date of birth as 5.4.1955 therefore, not only on the date of his filing OA No. 2564/2002 which was disposed of on 1.10.2002 but also on 18.2.2005 when the Tribunal dismissed OA No. 1339/2003 filed by him, the petitioner had not crossed the age of 50 years. In any case, when it is found that the petitioner has continuously been agitating the issue firstly before the Tribunal and then before the Court, the Court is competent to relax the age requirement, if it finds that a wrong has been done to the petitioner and he was not appointed to the post despite selection, only on account of an erroneous view having been taken by the respondents with respect to his qualification for the post of Principal Scientist (Genetics/Cytogenetics). The learned Counsel for the petitioner in support of his contention that the Court can, in appropriate cases, relax the upper age limit relied upon *Anup Singh v. Haryana State Agricultural Marketing Board* 1999 SCC (L&S) 723 and *Dilip Kumar Tripathy and others etc. Vs. State of Orissa and others*, . In the case of *Anup Singh (supra)*, the Supreme Court while directing that the appellants would be considered against the vacancies which had occurred also directed that their claim for being appointed to the post in question

shall not be rejected on the ground of age bar because they have been pursuing the remedy before the court of law. In Dilip Kumar Tripathy (supra) while directing the respondents to issue advertisement indicating the number of vacancies available, adjudge the suitability of the applicants in accordance with the prescribed procedure and then take steps for filling up of the posts in question also directed that if, by passage of time, any of the persons who were included in the second list have been age-barred in the meantime and if they make an application for the post in question pursuant to the fresh advertisement then the competent authority may relax their age and consider their case in accordance with law. We, therefore, find no difficulty in directing the respondents not to consider the petitioner to be "over-aged".

7. For the reasons given in the preceding paragraphs the Writ Petition is allowed to the extent that respondents are directed to appoint the petitioner to the available post of Principal Scientist (Genetics/Cytogenetics) in ICAR subject to his fulfilling all the requirements post interview in which he was selected. The respondent shall comply with this order within 08 weeks. In the facts and circumstances, there shall be no order as to costs.