
(2007) 08 AHC CK 0115
In the Allahabad High Court
Case No : Writ Petition No. 477 (SB) of 2004

U. C. Layania (Dr.)	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Citation : (2007) 08 AHC CK 0115

Hon'ble Judges : Sanjay Misra, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner Dr. U. C. Lavania aggrieved by the judgment dated 5th January, 2004 of Central Administrative Tribunal, Lucknow (hereinafter referred to as Tribunal), dismissing original application No. 431 of 2001 challenging selection and appointment of Dr. S. P. S. Khanuja, respondent No. 3 on the post of Director, Central Institute of Medicinal and Aromatic Plants, Lucknow [hereinafter referred to as CIMAP].

2. The facts in brief necessary for better understanding the dispute in question, are that the Council of Scientific and Industrial Research (hereinafter referred to as CSIR) is a society registered under the Society Registration Act established by Government of India to undertake scientific and industrial research in India. It has got several national laboratories in the country dedicated to scientific research and development work of medicinal and acromatic plants with respect to their genetic improvement, cultivation, production and chemical processing and CIMAP is one of the constituent national laboratories of CSIR. For the post of Director. CIMAP advertisement No. 1 of 2000 was published by CSIR prescribing the following qualification required for the post:

"M.Sc. 1st Class with 16 years of experience or Ph. D. (Science) with 13 years of experience in the relevant field of the Laboratory.

The candidate must be a creative innovative and well established scientist / technologist of distinction possessing leadership qualities, a proven track record of managing interpersonal skills and an ability to communicate effectively. The candidate should preferably be around 50 years of age (relaxation in age limit, qualification and/or experience is permissible in case of exceptionally meritorious candidates). This is a contractual appointment for a period of six years or up to superannuation (at the age of 60 years) whichever is earlier. The contract however could be extended in exceptional cases."

3. The petitioner worked as Lecturer since 1973 at PostGraduate Department of Botany, Hindu College, Moradabad affiliated to Agra University, obtained his Doctorate in Botany from University of Calcutta in 1980 and joined as Scientist C with CIMAP on 27th July, 1982. He was promoted as Scientist EI in CIMAP on 1st April, 1988 and Scientist EII on 1st April, 1991. He was further promoted as Scientist F on 1st April, 1996 and he was also awarded Doctorate of Science in Botany by University of Calcutta in 1998. Fulfilling the requisite qualification prescribed for the post of Director. CIMAP as per the advertisement, he applied for consideration of his candidature for the said post.

4. Respondent No. 3, Dr. S. P. S. Khanuja, it is said, had also applied for the said post. The last date of submission of the application forms was 10.4.2000. A Selection Committee/Search Committee was constituted by CSIR consisting of the following:

(i) Dr. M. S. Swaminathan Chairman

(ii) Dr. S. D. Seth Member

(iii) Prof. H. D. Kumar Member

(iv) Prof. A. N. Purohit Member

(v) Dr. D. B. A. Narayana Member

(vi) Dr. D. K. Sharma Member

(vii) Dr. C. R. Bhatia Member

(viii) DG. CSIR Exofficio Member

5. It is said that about 45 applications/Biodata were received by the Selection Committee, out of which it shortlisted 14 candidates for inviting them for personal discussion i.e. interview, which included the petitioner and respondent No. 3 also. The interview was held on 9.1.2001 and it recommended one Dr. Rakesh Tuli as the first choice and Dr. S. P. S. Khanuja, respondent No. 3 as second choice for appointment on the post of Director, CIMAP, Lucknow out of 12 candidates who actually appeared and participated in interview. The recommendation of the Committee was placed before the Director General, CSIR who forwarded the same to the VicePresident, CSIR i.e. the Minister. Agriculture, Government of India who also holds the post of ExOfficio VicePresident, CSIR;

and ultimately for approval of the President, CSIR i.e. the Prime Minister. As approved by the President, CSIR, the respondent No. 3 was appointed as Director, CIMAP vide letter of appointment dated 11.5.2001 issued by the Joint Secretary (Administration), CSIR, New Delhi. Aggrieved by the appointment of respondent No. 3, the petitioner alongwith respondent No. 6 approached the Tribunal in the aforesaid original application seeking the following reliefs:

"The selection/appointment of the respondent No. 3 as Director, CIMAP be quashed after summoning the relevant records pertaining to selection held on 9.1.2001 for the post of Director, CIMAP.

The entire selection held in consequence of Advertisement No. 1/2000 be quashed.

The respondent Nos. 1 and 2 be directed to hold a fresh selection for the post of Director, CIMAP, Lucknow after giving due opportunity to the petitioners; Any other suitable relief may also be granted. Cost of the application be awarded in favour of the petitioners."

6. After exchange of the pleadings and hearing concerned parties/the Tribunal has upheld selection and appointment of respondent No. 3 on the post of Director, CIMAP vide its judgment impugned in this writ petition.

7. Sri Anil Tiwari, the learned Counsel for the petitioner has assailed the judgment of the Tribunal as also appointment of respondent No. 3 before us mainly on the ground that the respondent No. 3 did not possess requisite qualification as prescribed in the advertisement and also that he has been appointed disregarding the merit list prepared by the Selection Committee which was the expert body to evaluate merit of the respective candidates.

8. We propose to consider firstly the question as to whether the respondent No. 3 did fulfill the requisite qualification prescribed in the advertisement or his selection and appointment is vitiated on account of lack of such qualification. Broadly from the record and particularly the application submitted by the respondent No. 3 to CSIR pursuant to the advertisement in question. He has disclosed his qualification as M. Sc. (Agriculture) from Krishi Evam Pradyogik Visvidyalaya passed in August, 1982. He worked as Scientist at National Research Centre of Plant Biotechnology, Indian Agriculture and Research Institute, New Delhi (hereinafter referred to as "IARI") from July, 1986 to July, 1991 and during this period was awarded Ph. D. on 29th March, 1989. He worked as Senior Scientist from July, 1991 to April, 1996 at IARI and as Scientist E2 at CIMAP from April, 1996 till the date of selection and appointment. The respondent No. 3, therefore, admittedly had a total research experience of more than 13 years but it is contended by the learned Counsel for the petitioner that he lacks 16 years research experience after obtaining M. Sc. Qualification and 13 years research experience after obtaining his Doctorate qualification and, therefore, lacks requisite qualification as per the advertisement. The learned Counsel for the petitioner also submitted that the Tribunal has apparently erred

in law by considering that since the respondent No. 3 did his M.Sc. in 1982 and, therefore, fulfilled the requisite qualification up to 2000 when the advertisement was published which is more than 16 years by taking into account the entire period of 18 years irrespective of the fact that the experience required was a research experience and not mere time elapsed between the educational qualification irrespective of the actual research experience and, therefore, the Tribunal has erred in law in holding the respondent No. 3 as possessing the requisite qualification. On the other hand, the respondents have justified selection and appointment of respondent No. 3 submitting that 13 years research experience after obtaining M.Sc. qualification by a person possessing Ph.D. qualification is sufficient to satisfy the requisite qualification as per the advertisement and the manner in which the petitioner is trying to read the qualification advertised for the post of Director, CIMAP is misleading and incorrect. It is true that on this aspect the Tribunal has not considered the matter in proper prospective and the issue has not been considered by discussing the matter giving appropriate reasons, in normal course we would have remanded the matter to the Tribunal to reconsider the issue on this aspect but since all the learned Counsels for the parties have advanced their submissions on all aspects of this matter and it is requested that any order of remand would only further delay disposal of this matter, particularly when it involves only interpretation of the clause pertaining to qualification mentioned in the advertisement, therefore, this issue may be decided by this Court here itself instead of remanding the matter to the Tribunal, considering the elaborate oral submissions as also the written arguments submitted by the learned Counsel for the parties, and also considering the fact that the matter pertains to selection and appointment of top position in a premium research institute of the country, delay in adjudication of the matter would not help anyone but may frustrate the very purpose of the issue, we propose to consider ourselves and decide this issue here at as to whether on the basis of the facts and material on record the respondent No. 3 can be said to possess requisite qualification prescribed in the advertisement.

9. It is contended on behalf of the petitioner that 16 years of experience or 13 years of experience as the case may be must be possessed by the candidate after obtaining the requisite educational qualification, namely, M.Sc. 1st Class or Ph.D. (Science) as the case may be, placing reliance on the Apex Court judgment in *Indian Airlines Ltd. and others v. S. Gopalkrishnan*, (2001) 2 SCC 362 and *N. Suresh Nathan and another v. Union of India and others*, (1992) Supp. (1) SCC 584. On the contrary, the learned Counsel appearing for the respondents contended that the words "with 13 years of experience" does not mean that the same must be obtained after Ph.D. but it can be an experience obtained before securing Ph.D. qualification. The reliance has been placed in support of the aforesaid submission by the learned Counsel for the respondents on the Apex Court judgment in *A. K. Raghurani Singh and others v. Gopal Chandra Nath and others*, (2000) 4 SCC, 30; *Anil Kumar Gupta and others v. Municipal Corporation of Delhi and others*, (2000) 1 SCC 128; *D. Stephen Joseph v. Union of India and*

others, (1997) 4 SCC 753; A. Jayaram and another v. State of A.P., (1995) Supp. (3) SCC 333; M. B. Joshi v. Satish Kumar Pandey, 1993 Supp. (2) SCC, 419 and N. Suresh Nathan (supra).

10. Though there is a minor variation between the dates of research experience of the respondent No. 3 as disclosed by him in his application and Biodata submitted to the CSIR and as placed before by the petitioner, but the learned Counsel for the petitioner agreed and proceeded on the assumption that based on the research experience disclosed by the respondent No. 3 in his application that he was working as Scientist since July, 1986 and taking the same to be correct the matter should be considered whether he did possess requisite qualification. Therefore, we have to consider on these facts as to whether the respondent No. 3 possess requisite qualification or not.

11. As noted above, the advertisement provides that the candidate must possess the qualification for the post as M.Sc. 1st Class with 16 years experience or Ph.D. (Science) with 13 years of experience in the relevant field of laboratory. It further provides that the candidate must be a creative, innovative and well established Scientist/Technologist of distinction possessing leadership qualities, a proven track record of managing interpersonal skills and an ability to communicate effectively. The candidate should preferably be around 50 years of age (relaxation in age limit, qualification and/or experience is permissible in case of exceptionally meritorious candidates). Though some arguments have been advanced on the latter mentioned conditions in the advertisement but in our view it would be appropriate firstly to consider the meaning of the words "M.Sc. 1st Class with 16 years of experience and Ph.D. (Science) with 13 years of experience in the relevant field of the Laboratory".

12. We have given our serious thoughts to the issue in question and find ourselves in agreement with the contention advanced on behalf of the respondents. It is not disputed by the parties that minimum qualification is M.Sc. 1st Class and any person who is not M.Sc. 1st Class cannot be considered at all. An experience in the relevant field of laboratory with 16 years of experience is required for making a candidate eligible for appointment to the post of Director, CIMAP, if he possesses only M.Sc. 1st Class qualification and not Ph.D. degree. Obviously this 16 years of experience, in our view, must be an experience acquired by the candidate after obtaining his M.Sc. 1st Class qualification and there is no dispute between the parties on this aspect of the matter. Now, the only dispute which has narrowed down in the case in hand is whether "13 years of experience" which is mentioned with respect to the candidates who are Ph.D. (Science) is referable and should be read after Ph.D. or it is substitute of 16 years of experience which is required by a candidate possessing M.Sc. 1st Class, if he has also obtained Ph.D. degree. We have gone through the matter from various angles. We have no hesitation in observing that the 13 years of experience is a reduced experience which a person may have after obtaining M.Sc. 1st Class provided he has also secured Ph.D. degree. Any other

interpretation would make unequal as equal and would also result in absurdity. For example, a person who is mere M.Sc. 1st Class with 16 years of research experience thereafter may be treated to be qualified but a person who is M.Sc. 1st Class with 10 years of experience thereafter but after obtaining his Ph.D. (Science) has just 3 years of experience, may not be treated to be qualified since he lacks 13 years of experience after Ph.D. (Science) though he possesses higher qualification, namely, he is Ph.D. holder. So far as the experience is concerned he has 10 years of experience after M.Sc. 1st Class and 3 years PostDoctorate experience and has also worked in research while undergoing his Doctorate at least for 2 years. If we try to read that even if one is having Ph.D. degree but lacks subsequent 13 years of experience then he must have 16 years of PrePh.D. experience, this would also result in similar anomaly as pointed above, inasmuch, as in that case there would be no difference between the persons possessing Doctorate degree and mere PostGraduate Degree and both would be required to have 16 years of experience though a bare reading of the qualification prescribed in the advertisement shows that there is no reason for reading the same, so as to put a Ph.D. holder and M.Sc. holder at par with respect to the experience. The words "with" in the context and in reference may well mean "and"; "as well". Giving this plain meaning to the phrase in the context in which a qualification has been prescribed in the advertisement, we do not find any justification to employ the word "subsequent" after the word "with" in respect to the experience of the candidates possessing Ph.D. Degree. We find that in A. K. Raghumani Singh (supra), the Apex Court considered qualification worded in a similar language which was required for promotion to the post of Superintending Engineer and worded as under:

"Executive Engineer (Civil)/(Mech.) and Surveyor of Works possessing degree in Civil/Mechanical Engineering or its equivalent from a recognised institution with 6 years" regular service in the grade."

13. It was argue⁴ that the 6 years regular service must be after educational qualification is obtained. Rejecting it, the Apex Court in paras 7, 8 and 9 of the judgment held as under:

"(7) The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means: "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense "and""as well".

(8) Applying the definition to the eligibility criteria it is clear that it requires the prescribe educational qualification and 6 years" experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with".

(9) Even on a point of principle it would be unreasonable to distinguish between

the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. In fact no such case has been made out."

14. Besides from a plain reading of the qualification mentioned in the advertisement as we have read, we are also of the view that the authorities who are the best Judge of the issue, the manner in which they understand the qualification is also a relevant guiding factor for interpreting a qualification prescribed for a post. In *N. Suresh Nathan (supra)*, the qualification for promotion to the post of Assistant Engineer prescribed under the rules was as under:

"1. Section Officer possessing a recognised Degree in Civil Engineering or equivalent with three years" service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years" service in the grade 50 percent. Section Officers possessing a recognised Diploma in Civil Engineering with six years" service in the grade 50 per cent."

15. The Court in giving meaning to the aforesaid qualification took into consideration the post practice followed in the department that the period of service in the grade would commence from the date of obtaining the degree and earlier period would not be counted. In the case in hand, the Selection Committee/Search Committee and CSIR all have read the qualification, namely, if a person has Ph.D. Degree 13 years of experience is sufficient irrespective of whether it is pre-Ph.D. experience or subsequent i.e. in respect of Ph.D. Degree holders, the requirement of 16 years of experience stood reduced to 13 years which obviously would include the research experience prior to obtaining Ph.D. Degree.

16. The learned Counsel for the petitioner has tried to place before us CSIR Service Rules, 1994 and by referring to various rules he has ought to argue that there is no scope of relaxation of qualification and since no specific qualifications were prescribed in the rules for the post of Director, therefore, once a qualification is prescribed in the advertisement, the same could not have been relaxed and the respondent No. 3 lacking requisite qualification of 16 years of experience in all or 13 years of experience after Ph.D. could not have been appointed as Director, CIMAP. In our view, reference to various rules, in view of the interpretation and the manner which in we have read the qualification in the advertisement, is only irrelevant and does not help the petitioner in any manner. We, therefore, do not find any discrepancy or illegality in the selection of respondent No. 3 on the ground of alleged deficiency in qualification since, in our view, he did possess the requisite qualification as per the advertisement.

17. Now, we come to the second question that though the Selection Committee/Search Committee has recommended the name of Dr. Rakesh Tuli as first choice and the respondent No. 3 was recommended as second choice yet the

VicePresident of CSIR acted illegally by making recommendation in favour of the respondent No. 3, as a result thereof, the merit list has been disturbed and the respondent No 3 has illegally been appointed, therefore, his appointment is liable to be set aside. In our view, the argument is wholly misconceived and cannot be entertained at this stage that too at the instance of the petitioner even otherwise. Once the selection of the respondent No. 3 is found to be valid since he possesses requisite qualification the petitioner lacks any further locus standi to challenge his appointment. It is not disputed that the petitioner was not a person who was selected and recommended or placed in the merit list. Dr. Rakesh Tuli has not challenged selection and appointment of respondent No. 3 and he is not before the Court. Moreover, no such argument was raised by the petitioner before the Tribunal and this aspect of the matter for the first time has been raised before this Court, which we do not propose to allow and entertain for the first time in this writ petition which arises out of the judgment of the Tribunal dismissing his original application against selection and appointment of the respondent No. 3 wherein the aforesaid issue has not at all been argued. The learned Counsel for the petitioner further sought to press the aforesaid submission by contending the VicePresident i.e. the then Minister of the department has acted with malafide and, therefore, it vitiates the selection and appointment of the respondent No. 3 but in our view any plea of malafide cannot be entertained since the person against whom the allegations are being made, that too by way of written argument, is not a party impleaded eonomine. With respect to the allegations of malafide the law is well settled that the Court shall not entertain allegations of malafide unless the person against whom the allegations are made is impleaded and has an opportunity to reply the allegations made against him. Moreover even in the writ petition no such argument has been advanced and it is only by means of written arguments the petitioner has sought to raise a new plea which cannot be entertained at this stage.

18. In the result, we do not find any reason to interfere with the judgment of the Tribunal impugned in the writ petition. The writ petition lacks merit and is accordingly dismissed. No order as to costs.