

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Transferred Application No.3 of 2005

Jabalpur, This 24th the day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Shri Pranay Kumar Biswas, S/o Late Dr. A.K. Biswas
Aged about 38 years, Vanika, Flate No.14,
Kotra Sultanabad, Bhopal.
 2. Dr. Vijay Kumar S/o Shri H.H. Prasad
Aged about 39 years, Vanika, Flat No.8,
Kotra Sultanabad, Bhopal.
- Applicants

(By Advocate – Smt. S.Menon)

VERSUS

1. Indian Institute of Forest Management,
Society through its Secretary,
Reg. Office : Indian Institute of
Forest Management, Nehru Nagar,
Bhopal -462 003(M.P.)
and 19 others.
- Respondents

(By Advocate – Shri Hemant Shrivastava for official respondents
None for private respondents)

ORDER

By M.P. Singh, Vice Chairman –

A Writ Petition No.1054/1995 was filed before the Hon'ble High Court of Madhya Pradesh, which on transfer to this Tribunal has been registered as Transferred Application No.3 of 2005. In this TA, the petitioners (hereafter referred to as 'the applicants') have sought the following main relief :-


“(a) to issue an appropriate writ/writs order/orders, direction/directions, for quashing the advertisements dated Nos.IIFM/RCT/92/01, IIPM/RCT/93/01, IIFM/RCT/93/93 and IIFM/RCT/93/02 of the Institute and appointments of respondent Nos. 7 to 18 made in pursuance of these advertisements restraining further the management/

respondent Institute not to make any other appointment and also quash the appointments of respondents No.19 and 20 (made without any advertisement);

(b) issue an appropriate writ/writs, order/orders, direction/directions for calling further codifying rules and procedure selection norms, service conditions, seniority and academic functioning of the Institute and it be based upon principles of justness, fairness and equity covering all aspects of service matters at par with IIT's and Central Universities;

(c) issue a directive to management/respondent to prepare seniority list and a fresh faculty area wise recruitment plan giving due weightage to merit cum seniority, for providing equal and fair career growth opportunity to every faculty member without any bias or discrimination on the basis of his/her faculty area or mode of recruitment in the Institute, and to fill the posts in accordance with Rule 10 of the Faculty service Bye-laws, 1988."

2. The brief facts of the case are that the applicants belong to the first two batches of faculty, initially recruited in 1984-85 by the respondent-Institute. According to the applicants, the Faculty Service Bye-laws 1988, were approved by the Board of Governors of IIFM in its meeting on 27.7.1989 and were brought into force with immediate effect. In April 1991, Ministry of Environment and Forest sent a package scheme giving the pay scale and qualification for the post of Assistant Professor, Associate Professor and Professor. The Institute by their circular dated 15.1.1992 accepted the package scheme. By this circular the Institute has published the qualification experience and pay scale of the teaching staff. The respondent-Institute issued the following four advertisements in 1992-93 :- (i) IIFM/RCT/92/01; (ii) IIFM/RECT/ 93/01; (iii) IIFM/RECT/93/03; and (iv) IIFM/RCT/93/02 (Annexures-H, I, J & K respectively). The qualifications published in the first three advertisements were contrary to circular dated 15.1.1992 (Annexure-D), which was result of acceptance of a package scheme by respondents nos.1,3 & 4, levied upon them by respondents nos.2 & 6. None of the respondents alone had



jurisdiction or authority to amend, change or delete the same without obtaining concurrence of the other. By this circular (Annexure-D), the Institute had published and declared qualifications, experience and pay scheme of its teaching staff (Professors, Associate Professors & Assistant Professors). In Para 5.13 of the writ petition, the applicants have given the Text of the Institute prescribed qualifications and its underlined relevant portion, which have alleged to have been changed or deliberately not printed/published to pin-point the patent material irregularity contained in the aforesaid three advertisements. The applicants have also pointed out several irregularities in holding the selection. The applicants have further stated that the respondents did not have the codified recruitment rules and procedure declaring its application scrutiny/screening of candidates norms, constitution of selection committee including experts/subject matter specialists, and its quorum desired for holding the interview etc. , so as to establish and prove the procedural fairness at par with Universities, IITs or alike reputed institution of higher learning of country. Hence like the applicants, there may be many other eligible applicants to these advertisements, who have not been called even for the interview by the respondent-Institute due to its arbitrary policy of faculty recruitment. Therefore, all appointments against the aforesaid three advertisements (Annexures-H,I and J) have been challenged being prima facie illegal, consequence of patent material irregularities contained in the advertisement. In para 5.15 of the OA the applicants have given the details of the persons who have been appointed as a result of the aforesaid advertisements alleging that these appointments have been made by the Institute on pick and choose basis and in acute disregard to prescribed and approved educational qualifications and essentially desired teaching experience.

2.1 The applicants aggrieved by the action of the respondents had earlier approached the Hon'ble High court by filing

Misc.Petition No.354/1994, wherein it was directed by the Hon'ble High Court vide order dated 18.2.1994 to approach the University Grants Commission. Accordingly the applicants submitted their representation dated 14.7.1994 (Annexure-P). They had also sent reminders but without any result. Hence this petition.

3. The respondents in their reply have submitted that the petition suffers from laches; '*suppressio veri, suggestio falsi*'; as well as *constructive res judicata*. The applicants have deliberately suppressed dismissal of their earlier writ petition M.P. No.354/1994 vide order dated 17.2.1994, by the Hon'ble High Court of M.P, which was on identical facts and similar reliefs were claimed, as claimed by the applicants in the present petition. In the said writ petition MP No.354/1994, the applicants had prayed for the following reliefs:


- “(i) issue an appropriate writ/writs, order/orders, direction/directions to cancel the appointment orders issued in favour of Mrs.Uma Melkania and Shri G.A.Kinhal.
- (ii) quash the advertisement no.IIFM/RCT/93/01 issued in April,1993 and advertisement no.IIFM/RCT/93/03 issued in June,1993 (Annexure G&H) and selection if any made in pursuance to the advertisements.
- (iii) issue a directive to the management/respondents to prepare seniority list and to frame codified service laws as applicable to similar institutions of higher learning containing all aspects of service matters like study leaves, sabbatical, promotion, recruitment etc., and NOT to issue any faculty appointments till such rules are made and if any appointments are in process to stop/ quash the same OR if already issued to withhold/quash the same.
- (iv) issue any other writ, order, direction, relief as deemed fit and proper in the circumstances of the same”.

The aforesaid writ petition M.P. No.354/1994 was dismissed vide order dated 17.2.1994 (Annexure-R-1), by the Hon'ble High Court of M.P. The respondents have further submitted that besides the similarity of the reliefs as claimed by the applicants in earlier



M.P.No.354/ 1994, the issues involved in the present petition are identical and similar. In the present petition, the applicants have sought to challenge the recruitments made in pursuance of the recruitment advertisement no.IIFM/RCT/93/01 (Annexure-I) and recruitment advertisement No.IIFM/RCT/93/03 (Annexure-J), which the applicants had challenged earlier in MP No.354/04 and the Hon'ble High Court has rejected the same summarily. The respondents have further submitted that the only difference in the present petition and the earlier MP NO.354/04 is that the petitioner no.1 of MP 354/94 is the applicant no.2 in the present petition, and similarly the petitioner no.2 of MP No.354/1994 is the applicant no.1 in the present petition. Thus the present petition suffers on account of suppression of material facts and also on the principle of constructive res judicata and, therefore is liable to be dismissed with exemplary costs.

3.1 The respondents have further stated that the applicant no.2 was not only a prospective candidate in respect of recruitment advertisement No.IIFM/RCT/93/03 (Annexure-J), but was also interviewed by the selection committee, and on an over all assessment of applicant no.2's qualification and experience, the selection committee found him unfit for the selection and as such rejected him. Now, the same applicant, having been rejected by the duly constituted selection committee, is trying to challenge, his rejection and the terms and conditions in respect of educational qualifications and experience as contained in the recruitment advertisement, through the present petition. The applicant no.2 having availed the opportunity of facing the interview, is precluded from challenging the academic qualifications/ experience subsequently being an unsuccessful candidate. Thus, the applicant no.2, on the principle of waiver and stopper, is not entitled to agitate his non-selection in the present petition, by disputing the recruitments already made in terms of recruitment




advertisement no.IIFM/RCT/93/03, of which he was one of the prospective candidates, though not selected on merit.

3.2 The respondents have further submitted that the recruitment rules called 'Faculty Service Bye-laws', have no force of law, as they have not been framed in exercise of any statutory powers. The said 'Faculty Service Bye-laws' have been made by the respondent-Institute in terms of its Memorandum of Association, which cannot be construed in any manner as statutory one. Besides the aforesaid lack of statutory nature, the provision of internal promotion in terms of said faculty service bye-laws had been abandoned by the applicants themselves, while accepting the terms and conditions of the Revised Pay Structure Scheme (Annexures-R-5 and R-6).


4. We have heard the learned counsel of both the parties.

5. The learned counsel for the applicants Smt.Menon, has contended that the qualifications mentioned in the above referred advertisements issued by the respondent-Institute are not in accordance with the qualifications prescribed for the posts under the Memorandum of Association. She has also submitted that the procedure followed by the selection committee is also not in accordance with the laid down procedure. She has drawn our attention to the chart at pages 16 and 17 of the OA, which explains that the private respondents 7 to 20 did not possess the required qualifications for holding the post of Associate Professor. She has also submitted that the applicants have not suppressed any material information as alleged by the respondents in their reply. She drew our attention to Para 5.21 of the OA wherein the applicants have made mention of M.P. No.354/1994 filed by them before the Hon'ble High Court. She has also submitted that the contention of the respondents that the applicants have accepted the Revised Pay Structure Scheme (Annexures-R-5 and R-6) and, therefore, are not eligible for promotion is not correct. According to her, it is only a pay revision and does not take away the right of the applicants for



internal promotion. Since the private-respondents do not possess the requisite qualifications, they are not entitled for appointment and on the other hand, the applicants who have been working in the Institute from the very beginning have acquired the requisite experience and are eligible for appointment to the posts.

6. On the other hand, the learned counsel for the respondents has submitted that the applicants have suppressed the material facts. The applicants had earlier filed MP No.354/1994 before the Hon'ble High Court on the same facts and claimed the same reliefs which have been claimed in the present petition. Therefore, this TA is hit by the principle of constructive res judicata and is liable to be dismissed on this ground alone. He has further submitted that all the private-respondents, who were appointed on the basis of the impugned advertisements possessed the requisite qualifications and some of the officers ~~are~~ ^{who} belong^{ing} to Indian Forest Service who were taken on deputation, and by now they have left the Institute after completing their term of deputation. He has also submitted that since the applicants had accepted the Revised Pay Structure Scheme (Annexures-R-5 and R-6), they are not eligible. The learned counsel has further submitted that as per para six of the Revised Pay Structure Scheme issued vide letter dated 15.1.1992 (Annexure-R-5) "recruitment to faculty positions at all levels will be through open selection on All India basis and there will be no provision for internal promotion. The existing faculty members would have to meet the criteria for open selection and compete with outsiders for any faculty positions that may be advertised for recruitment". Therefore, since the applicants have accepted this Revised Pay Structure now they are not entitled for internal promotion and they have to compete with outsiders in open competition which would be made on all India basis. According to the learned counsel for the respondents, the selection has been made by the respondents as per the procedure and recruitment qualifications, by a duly constituted selection committee. The



applicant no.2 has also participated in the interview and has failed. The applicant no.2 had neither found any fault nor raised any grievance with regard to the selection procedure at the time of appearing in the selection. It is only after he was declared failed that he has found fault with the selection procedure and filed the present petition.


7. We have given careful consideration to the rival contentions of the learned counsel of both the parties.

8. We find that the applicants had earlier approached the Hon'ble High Court of MP by filing M.P.No.354/1994, and the Hon'ble High Court vide their order dated 17.2.1994 have rejected the said writ petition. The Hon'ble High Court had held as under :

"the purpose of the present petition is to get the advertisements (Annexure-G&H) quashed on the ground that experience qualifications prescribed therein do not tally with the qualifications prescribed in the package of the University Grants Commission (Annexure-B). The package evidently is not given under any law and therefore even if it is accepted that the condition of that package are not being followed, the same would not amount to any breach of mandatory condition for which a writ of mandamus should be granted. It would be for the University Grants Commission to enforce the package and conditions mentioned therein. As far as this court is concerned, it finds no jurisdiction for the challenge as reducing the experience qualification permits choice of best from a layer group. So the remedy of the petitioner, if any, would be with the said body and not in this Court.

No interference by this Court is called for. The petition is rejected summarily.

9. It is also a fact that the applicants have accepted the Revised Pay Structure Scheme dated 15.1.1992, and in terms of the provisions of para 6 of the scheme, there will be no provision for internal promotion and the applicants are required to meet the criteria for open selection and compete with outsiders for any faculty positions that may be advertised for recruitment. The applicant no.2 had participated in the selection but has not been selected.



10. It is a well settled legal position by the Hon'ble Supreme Court that the Courts/Tribunals cannot substitute themselves as selection committee and start making selection. As far as the essential qualifications are concerned, we have perused the record of the selection committee procedure produced by the respondents.

11. We find that as per the advertisement, there is no provision for appointment on deputation basis as a faculty member. However, this provision was ^{available in} in the Faculty Service By-laws, 1988 (Annexure-C), Paragraph 8 of these Faculty Service By-laws provides as under:

"8. Recruitment by Deputation

The Board of Governors may appoint any person as a faculty member for a specified period on deputation from any State Government or the Government of India or any other Institution, recognized universities, **provided he/she possesses the essential and desirable qualifications laid down in these Rules"** (emphasis supplied by us).

Thereafter, vide letter dated 15.1.1992, the Ministry of Environment & Forests have issued the Revised Pay Structure Scheme, para 6 of the said Scheme stipulates as under:-

Mode of recruitment

6. Recruitment to faculty positions at all levels will be through open selection on All India basis and there will be no provision for internal promotion. The existing faculty members would have to meet the criteria for open selection and compete with outsiders for any faculty position that may be advertised for recruitment".

In the aforesaid Revised Pay Structure Scheme, there is no provision for appointment of the candidates on deputation basis. This scheme included the revised structure of pay which became effective from 1.1.1986.

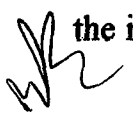
12. The impugned advertisements for selection of the faculty members to the posts of Assistant Professor, Associate Professor and Professor have been made in the years 1992 and 1993. We have gone through the selection proceedings. We find that the

selection committee while holding the selection has decided in different meetings held by them during the years 1992 and 1993 that candidates to be found suitable for the job has to get at least 60% marks in the aggregate. In the case of one Dr.(Smt) Madhu Verma, (private-respondent no.17) who was considered along with Dr. Vijay Kumar (applicant) had secured only 59.44% marks. There is also an over-writing in the marks allotted to her by one of the members of the selection committee. Moreover, there is a note written by one of the members of the selection committee, in which it has been stated as under:-

"Re: Dr. Vijay Kumar, he is one of the signatories to a letter dt 21.12.93 to Shri R.Rajamani, Chairman, Board of Governors, IIFM (copy to me received in the post yesterday) asking that the current proceedings of the Personal Selection Committee should be stopped (i.e. the interviews scheduled for 29-31 Dec. be stopped), among other things. When Dr. Vijay Kumar was asked about this letter he said he would not say anything (to the Selection Committee) about it. I am not sure that Dr. Vijay Kumar's taking part in the attempt to stall the Selection process should not be taken as detracting from his suitability for the higher post of Assoc. Professor in IIFM when he is now Asst. Professor".

The aforesaid remarks given by one of the members about the representation of Dr.Vijay Kumar were enclosed along with the minutes of the meeting of the selection committee and the other members had agreed with the remarks of the said member.

13. We are of the considered view that the letter written by the applicant Dr. Vijay Kumar to the ^{chairman of} Board of Governors for stalling the selection scheduled to be held in December, 1993 would ^{not} have been taken cognizance of by the selection committee consisting of three experts which met to assess the suitability of the applicant along with other candidate. In all fairness the suitability of the candidates should have been assessed on the basis of academic/technical qualifications possessed by him, and the performance in the interview. It is not expected of the selection committee to take




such extraneous matter which had nothing to do with the ability or the performance of the candidates during the selection. The sole criteria for selection of the candidates should have been merit and performance in the interview ^{alone}. This shows clear bias and mala fide on the part of the members of the selection committee.

14. As regards the Revised Pay Structure Scheme, there is no provision for making selection of the candidates on deputation basis. Even in the Faculty Service Bye-laws, 1988 which provide for recruitment by deputation, it has been clearly stipulated that the Board of Governors may appoint any person as a faculty member on deputation, provided he/she possesses the essential and desirable qualifications as laid down in the said Faculty Service Bye-laws.

15. We also find that some of the private-respondents, who belong to Indian Forest Service have been appointed on deputation basis ^{but} and they did not possess the essential qualification of Ph.D in the appropriate Branch. We also find from the statement given by the respondents showing the essential qualifications required to be possessed by the candidates and the actual qualifications possessed by the candidates, that in some of the cases the candidates did not possess the Ph.D degree in the appropriate branch. We, therefore, find that ^{apart from arbitrariness} there are many irregularities having been committed by the official-respondents while making the impugned selection of the candidates in the years 1992 and 1993.

16. The respondents in their written arguments have stated that during the pendency of this TA, private-respondents nos. 8, 9, 12 & 18 have resigned from service and private-respondents 7, 10, 19 & 20 have been repatriated to their parent department on completion of their deputation period. Only private-respondents nos. 11, 13 to 17 are left on the strength of the institution.



17. Taking into consideration the over all view of the matter and the fact that the appointments were made during the years 1992 and 1993, the respondents have not followed the laid down procedure and have also committed many irregularities particularly in the case of private-respondent no.17, Smt. Madhu Verma, who had not even secured the minimum required marks of 60% as laid down by the selection committee ^{itself.} On the other hand, the suitability of the applicant Dr. Vijay Kumar has been assessed by taking into consideration the extraneous material which was not at all required and expected from such a selection committee consisting of ~~high ranking~~ ^{high} eminent experts. Even the note recorded by the committee with regard to the extraneous mater relating to the letter written by the applicant Dr. Vijay Kumar, forms part of the selection committee proceedings.

18. In the light of the above discussion, we are of the considered view that the impugned selection made by the official respondents during the years 1992-93 for the post of faculty members are not sustainable in the eye of law. However, we find that during the pendency of the present TA, out of 14 private-respondents only six are left on the strength of the institution, whereas 4 have resigned and 4 have been repatriated. Applicant No.2 Dr. Vijay Kumar has been called for the interview and his suitability has also been assessed along with private-respondent no.17. Since the private-respondent no.17 had not acquired the minimum marks for selection and there has been some over-writing while awarding marks in her case by one of the members of the selection committee, her selection and appointment made by the selection committee is not sustainable and is, therefore, quashed and set aside. The respondents are directed to make the selection by holding a review selection committee to review the proceedings of the selection committee held on 29.12.1993 ^{L also on other dates, if any} within a period of four months from the date of receipt of a copy of this order.

Judgment
corrected vide
order 920/05
dt 15.12.05

Tb 11-1000
DR

19. Before we may part, we may observe that we do not find any merit in the plea taken by the respondents that this case is hit by principle of constructive res judicata, particularly in view of the above findings and the fact that the Hon'ble High Court in M.P.No.354/1994 while passing the order dated 17.2.1994, at the admission stage, have not discussed the grounds raised by the applicants in the present TA.

20. In the result, the OA is partly allowed with the above directions. No costs.

21. The Registry is directed to enclose a copy of memo of parties along with this order, and supply the same to the concerned parties while issuing certified copy of this order.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Rkv

पृष्ठंकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिनिधि अन्ये धिल:-

- (1) सतिन, उक्त न्यायालय धर एलेमिशन, जबलपुर
- (2) आदेशक श्री/श्रीमती/शु.....के काउंसल S. Menon Ad-200
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल Hemant Singh verma Ad-200
- (4) संयोजन, संयोजन, जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु
उप सचिव

Filed
23/10/95

पृष्ठंकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिनिधि अन्ये धिल:-

- (1) सतिन, उक्त न्यायालय धर एलेमिशन, जबलपुर
- (2) आदेशक श्री/श्रीमती/शु.....के काउंसल S. Menon Ad-200
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल Hemant Singh verma Ad-200
- (4) संयोजन, संयोजन, जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु
उप सचिव

Filed
23/12/95

23/12/95