

Central Administrative Tribunal, Allahabad Bench

Circuit Bench at Nainital

Original Application No. 331/01155/2017

This the 17th day of April, 2018

**Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Jayesh V. Bhairavia, Member (J)**

Mr. Ashu Kesar s/o Sri Barna Das r/o H.No. 26, Gali No. 5, Gopal Nagar, Majitha Road, Amritsar (Punjab) PIN-143001.

Applicant

By Advocate: Ms. Neetu Singh

Versus

1. Union of India through Secretary (Health & family Welfare), Govt. of India, New Delhi.
2. Director, All India Institute of Medical Sciences, Rishikesh, Dist. Dehradun.
3. Officer-in-Charge, Recruitment Cell, All India Institute of Medical Sciences, Rishikesh, District- Dehradun.

Respondents

By Advocate: Sri D.S. Shukla

ORDER

BY HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)

The applicant has filed the present Original Application u/s 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

"a) Issue an appropriate order, writ or directions in the nature of certiorari commanding the respondents to quash the impugned recruitment advertisement dated 17.6.2017 (Annexed herewith as Annexure No. 1) issued by the respondent No. 2 in the interest of justice to the applicant.

- b) Issue an appropriate order, writ or direction in the nature of Mandamus commanding the respondents to declare the final results of earlier conducted and completed recruitment process of 33 regular posts of Tutor/ Clinical Instructors advertised vide the Advt. No. 21/3/2014 (RIS) ADMN/460 dated 5.3.2014, in the interest of justice to the applicant.
- c) Issue any other order or any further directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to mould the relief and render justice to the applicant.
- d) Award the cost of the present application to the applicant."

2. The brief facts of the case are that advertisement No. 21/3/2014 (RIS) ADMN/460 dated 5.3.2014 (Annexure No. P-2 to the O.A.) was published by the respondents No. 2 and 3 for recruitment of faculty posts (Group A) at AIIMS, Rishikesh, which includes posts of Tutor/Clinical Instructor for college of nursing. The applicant had applied for the post. Respondents conducted written examination for the same and the applicant obtained 6th merit rank in the result of the written examination declared vide order dated 26.9.2015. The applicant was called for appearing in the interview vide letter dated 2.5.2016. It is submitted that in response to the applicant's application under RTI Act, the

reply was received by the applicant vide communication dated 20.4.2017 (Annexure No. 3 to the O.A.) whereby it was informed to the applicant that the result is pending for the approval of the competent authority with regard to recruitment process. Further, it is stated by the learned counsel for applicant that instead of declaring the result of recruitment process, the respondents have issued another advertisement dated 17.6.2017 (Annexure No. P-1 to the O.A.) for the same posts which were advertised earlier and there is no change in terms of either qualifications or conditions of service mentioned in the earlier advertisement. Thus, the applicant by means of the present O.A. has challenged the present advertisement dated 17.6.2017 and requested for direction to declare the final results of earlier completed recruitment process of 33 regular posts of Tutor/ Clinical Instructors.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that an advertisement dated 5.3.2014 was published by the respondents No. 2 and 3 for recruitment of 33 posts of Tutor/Clinical Instructor (Group A) at AIIMS. The applicant applied for the same and he was called for interview vide order dated 2.5.2016 but neither the recruitment process of the same was completed nor was mentioned as completed in RTI reply dated 20.4.2017. It is further submitted that in respect to recruitment process undertaken with regard to

advertisement dated 5.3.2014, the said recruitment process was cancelled vide notice dated 21.4.2017 (Annexure No. 3 to the Counter reply) due to administrative reasons and the said decision of cancellation of recruitment process was also further published on website by the In-charge of the recruitment cell. It is further submitted that after the cancellation of the recruitment process, the respondents had issued a fresh advertisement dated 17.6.2017 and the same was published in the newspaper for filling up the Faculty posts (Group A). It is further submitted that it is the prerogative of the respondents to cancel the recruitment process/advertisement if the same is found necessary and reasonable in the interest of administrative exigency. Accordingly, the respondents found it appropriate to cancel the said advertisement/recruitment process of the year 2014 and fresh advertisement was published on 17.6.2017 in the larger interest as well as for better employment. The applicant does not have any right to claim any appointment in pursuance to the earlier advertisement of year 2014, the said recruitment process was not concluded. Therefore, the applicant cannot claim any indefeasible right to be appointment. Hence, the applicant is not entitled for any relief as sought for in this O.A.

4. Heard learned counsel for parties and consider the rival submissions.

5. In the present case, the applicant had applied in pursuance to the advertisement No.21/03/2014 (RIS)/ADMN/460 dated 5.3.2014 issued by the All India Institute of Medical Sciences, Recruitment Cell for recruitment of Faculty of Posts (Group A) at AIIMS, Rishikesh. The said recruitment process consists of a competitive examination followed by interview. The applicant was successful in written examination and was placed at Sl. No. 6 of merit list of the said examination and thereafter, he was called for interview vide letter dated 2nd May, 2016. The interview was held on 29th May, 2016. The applicant was waiting for declaration of result of said selection process/recruitment. The applicant had sought information with regard to the result of the said examination under the RTI Act, and in pursuance to it, he received the information vide communication dated 20.4.2017 that the result is pending for the approval of the competent authority.

6. It is seen that the respondents vide their Notice dated 21st April, 2017 declared that the vacancies/post advertised vide advertisement dated 5.3.2014 were cancelled due to administrative reasons and thereafter, the respondents had issued fresh advertisement dated 17.6.2017. The said fresh advertisement dated 17.6.2017 issued by the respondents is under challenge in the instant O.A.

7. The applicant's grievance is against the fresh advertisement dated 17.6.2017 issued by the respondents on the ground that said action of the respondents is in violation of principle of natural justice and the cancellation of recruitment process is without any reason. It is the submission of the learned counsel for the applicant that the applicant was declared successful in the written examination and also called for interview, therefore, selection process was over and result ought to be declared. It was stated by the learned counsel for the applicant that just to avoid the selection of the applicant, respondents had issued fresh advertisement for filling up the same post and the said action of the respondents is in violation of Article 14 and 16 of Constitution of India.

8. We are of the considered opinion that the said grievances and submissions of the applicant are not tenable. It is seen that the terms and condition No. 11 of the advertisement dated 5.3.2014 stipulates that "*The Competent Authority reserves the right of any amendment, cancellation and changes to this advertisement as a whole or in part without assigning any reason or giving notice.*"

It is the stand of the respondents that due to administrative reasons, they could not complete the recruitment process and the competent authority decided to cancel the recruitment process initiated in pursuance to

advertisement dated 5.3.2014 and to re-advertise the vacancies and accordingly vide notice dated 17.6.2017, they have issued fresh advertisement.

9. It is settled principle of law that candidate who have participated in the recruitment process do not have any indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification amounts to invitations from qualified candidates to apply in the recruitment process and on their selection, they do not acquire any right to the post unless the relevant recruitment rules so indicates. The State is under no legal duty to fill up all or any of the vacancies. On the bonafide and for appropriate reasons, the State can cancel the recruitment process.

10. In the present case, the respondents have cancelled the recruitment process due to administrative reasons for which they are entitled to do in view of terms and conditions No. 11 of the advertisement dated 5.3.2014. There is no allegation of any malafide nor any material on record which can vitiate the decision of respondents for cancellation of earlier recruitment process.

11. The applicant had participated in the recruitment process by accepting all the terms and conditions of the advertisement. Therefore, the said terms and conditions are applicable to both the parties. Only participation in

recruitment process does not create any indefeasible right to claim the appointment. The applicant does not acquire any right to the post by virtue of this selection in written examination and is not entitled for claim of appointment in absence of any issuance of appointment order. It is seen that the recruitment process was not concluded and it was cancelled. In the circumstances, there cannot be any violation of principle of natural justice nor it can be said to be in violation of Article 14 and 16 of Constitution of India. The respondents had issued fresh advertisement in the month of June 2017 and it was open for all the eligible candidates to apply for it, however, the applicant did not choose to apply in pursuance to the new advertisement. Once it is established that there is no indefeasible right to be appointed, the application fails and the applicant is not entitled for any relief as sought in this O.A.

12. In view of the above discussion, the applicant has failed to establish any right whatsoever which can be said to be violated by the respondents in issuing fresh advertisement for filling up the Faculty posts (Group A) in AIIMS, Rishikesh. Accordingly, O.A. is devoid of merit and is dismissed. No order as to costs.

(Jayesh V. Bhairavia)
Member (J)

(Gokul Chandra Pati)
Member (A)

HLS/-

