

**Central Administrative Tribunal
Principal Bench**

OA No.726/2014

Reserved on : 24.07.2018
Pronounced on : 31.07.2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Shri Harjeet Singh Chadha
S/o Sh. Darshan Singh Chadha
WZ-220/J-41,
Vishnu Garden,
New Delhi 110 018.
2. Shri Mahesh Kumar Saini
S/o Sh. Ram Niwas Saini
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Near Palam Railway Crossing,
Delhi Cantt 110 010.
3. Ms. Richa Kaushik
W/o Dr. Amit Kaushik
F-1/373, Sector-4, Vaishali,
Ghaziabad (UP) 201012.
4. Shri Pankaj Sharma
S/o Sh. Vinod Kumar
H. No.825/2, Vivekanand Nagar,
Bahadurgarh 124507,
Distt. Jhajjar (Haryana)
5. Dr. Jayati Ghoshal
D/o Mr. D. P. Sanyal
3/128, Sunder Vihar,
New Delhi 110 087.
6. Mr. Anayatullah Nayaji
S/o Md. Mushtaque Saifi
Nazra Village, PO Meghwan,
Voa Basaitha, Distt Madhubani,
Bihar 847 102.
7. Shri Rakesh Kumar
S/o Sh. Peeru Singh

Rail Chauhan, Abdullahpur (Kilanagar)
Distt. Meerut (UP) 25001.

8. Mr. Gulzar Ahmad
S/o Mohammad Moammil
RZ-62/B, Street No.12,
Vashist Park, Sagarpur,
New Delhi 110 046.
9. Ms. Ruchi
D/o Mr. Rampha Antl
H. No.779, Sector-14,
Sonapat, Haryana 131001.
10. Mrs. Sakshi Verma
W/o Sh. Sumit Nangia
J-7/23, Rajouri Garden,
New Delhi 110 027.
11. Mr. Aditya Tandon
S/o Dr. Asha
M-9, Street No.1, Shastri Nagar,
Delhi 110 052.
12. Mr. Mohit Wadhwa
S/o Sh. Satish Kumar Wadhwa
BG-6/195 B, Paschim Vihar,
New Delhi 110 063.
13. Ms. Mimansa Gulati
D/o Sh. Surinder Gulati
2/58, Shivaji Nagar,
Gurgaon, Haryana 122001.
14. Mr. Shashank Saroop
S/o Late Ram Saroop
57/4406, Reghar Pura, Karol Bagh,
New Delhi 110 005. ... Applicants.

(By Advocates, Shri K. C. Mittal, Ms. Ruchika Mittal, Shri
Yagnish Mittal and Shri Amit Prakash Shahi)

Versus

Govt. of NCT of Delhi through

1. Chief Secretary
Delhi Secretariat
IP Extension
Delhi.

2. Secretary
Directorate of Higher Education
“B” Wing, 5 Sham Nath Marg,
Govt. of NCT of Delhi
New Delhi.
3. Principal
Ch. Brahm Prakash Govt. Engineering College,
Jaffarpur,
New Delhi 110 073.
4. Union Public Service Commission
Dholpur House,
Shahjahan Road,
New Delhi 110 003. ... Respondents.

(By Advocates, Ms. Harvinder Oberoi, Shri Harpreet Singh and Shri G. D. Chawla)

: O R D E R :

Justice L. Narasimha Reddy, Chairman :

The Higher Education Department of Government of National Capital Territory of Delhi (GNCTD) established new Engineering Colleges in the year 2007. The applicants were appointed as Lecturers in 2010 in various subjects, on contractual basis, initially for a period of one year and extendable thereafter up to a maximum of three years. The Recruitment Rules governing the posts created for those colleges were notified on 29.06.2012. The Rules prescribe the method of recruitment to the posts.

2. The Union Public Service Commission (UPSC), i.e., Respondent No.4, issued advertisements in the month of December, 2013 inviting applications for the posts of

Assistant Professor in Civil Engineering in Ch. Brahm Prakash Engineering College, and other similar institutions.

3. This OA is filed challenging the recruitment process notified through Advertisement No.05/2014 (Annexure A-1), Advertisement No.20/2013 (Annexure A-2) and Advertisement No.01/2014 (Annexure A-3). The contention of the applicants is that the Recruitment Rules are framed in contravention of Article 239 AA of the Constitution of India, and the 4th respondent is playing role in the recruitment, contrary to the letter and spirit of the Constitution. It is also pleaded that once the UPSC cannot be said to be having any role in relation to appointments in the institutions established by the GNCT of Delhi, the advertisements cannot be sustained in law. Reference is made to certain representations made to the State Government, taking exception to the impugned advertisements.

4. The respondents filed a detailed counter affidavit. It is stated that the Rules framed by the State Government are strictly in accordance with law and the so called violation of Article 239 AA is just an imagination. It is also stated that Article 315 of the Constitution of India

provides for establishment of Public Service Commission at Union and States, and it also enables the State Governments to utilize the services of UPSC if such Governments have not established their own Commissions. The respondents further pleaded that the appointment of the applicants was just for a period of one year, that too, on contractual basis, and they do not have any legal or constitutional right to obstruct the process of recruitment to the post in engineering colleges.

5. Shri K. C. Mittal, learned counsel for the applicant has advanced his extensive arguments. He submitted that though several prayers are made in the OA in relation to challenge to the Recruitment Rules, he is not pressing them all, and the relief is confined only to the challenge to advertisements, and prayed for regularization of the services of the applicants. He placed reliance upon the judgments of Hon'ble Supreme Court in ***Nihal Singh and Others vs. State of Punjab and Others*** (2013) 14 SCC 65; ***Nagpur Improvement Trust vs. Yadaorao Jagannath Kumbhare and Others*** AIR 1999 SC 3084; ***Abraham Jacob and Others vs. Union of India*** (1998) 4 SCC 65, and that of Bombay High Court (Nagpur Bench) in W.P. No.2046/2010 ***Sachin Ambadas Dawale and Others vs. The State of Maharashtra & Anr.***

6. Learned counsel for the respondents, on the other hand, submits that once the challenge to the Recruitment is not pressed, virtually nothing remains to be decided in the OA, and at any rate, the applicants do not have any legal right to obstruct the process of selection, and appointment to the posts of Assistant Professors. He further submits that when regular appointments are made, the candidates appointed on contractual basis must give way.

7. The prayer clause in the OA contains six paragraphs, the seventh being formal in nature. They read as under:-

- “(a) Quash and set aside the recruitment process pursuant to advertisement No.5/2014 at Serial No.5, Advertisement No.19/2013 at Serial No.9 and 10, Advertisement No.20/2013 at Serial No.18 and Advertisement No.01/2014 at Serial No.4 issued by the UPSC and not to proceed or make any recruitment against the posts held by the applicant from any source or method and consider the cases of the applicants for regularization as per the direction of the Hon’ble Court of Delhi and/or the decision of the respondents to regularize applicants.
- (b) Hold and declare that after coming into force of Article 239 AA of the Constitution of India, the Govt. of NCT of Delhi is competent and authorized to make recruitments of Class-I posts through State Public Service Commission and Union Public Service Commission is not competent and authorized to advice or give consultation and/or to make recruitments in respect of posts in Govt. of NCT of Delhi.
- (c) Hold and declare that OM No.24/78/68-DH (S) dated 24.09.1968 being prior to the coming into

force of Article 239 AA of the Constitution and was issued by the Govt. of India when the legislative and executive powers were not transferred to the Govt. of NCT of Delhi, is not enforceable in view of the Article 239 AA of the Constitution of India, since Govt. of NCT of Delhi has its own independent powers in matters of recruitments.

- (d) Hold and declare that the Recruitment Rules, 2012 framed by the respondents in consultation with the UPSC and providing for consultation of UPSC for recruitment for the post of Assistant Professor are illegal, unconstitutional and violative of Article 239 AA of the Constitution of India and are therefore, illegal unenforceable and the impugned recruitment rules, therefore, liable to be quashed and set aside and be quashed accordingly.
- (e) Direct the Govt. of NCT of Delhi to frame Recruitment Rules in exercise of power in Article 239 AA of the Constitution of India providing for initial cadre of service for the post of Assistant Professor at par with the post of Assistant Professors in other college of Govt. of NCT of Delhi and hold that the impugned Recruitment Rules, 2012 are discriminatory and the same may be quashed and set aside on the ground of discrimination.
- (f) Hold and declare that the recruitment process initiated for the post in question by the UPSC pursuant to the impugned Recruitment Rules is illegal, arbitrary, unconstitutional and violative of Article 14 and 16 of the Constitution and without authority as such liable to be quashed and set aside.”

From a perusal of this, it becomes clear that prayers contained in paragraph (b), (c), (d) & (e) are referable to the alleged violation of Article 239 AA of the Constitution of India, in the context of framing the Recruitment Rules. In all fairness, learned counsel for the applicants stated that

he is not pressing the prayers contained in paragraphs (b), (c), (d) & (f). Though, he did not mention anything about the prayer in para (e), it does not have any independent legs to stand. The relief against the 4th respondent, i.e., the UPSC, is contained in paragraphs (c) & (f). Once, it is not pressed, and the challenge to the Recruitment Rules given up, it becomes difficult to sustain any challenge to the advertisements.

8. The entire OA is based on the assumption that the UPSC is usurping the powers of State Government, and it is contrary to the very structure under the Constitution of India. A perusal of Article 315 of the Constitution of India makes it clear that not only each State can have its own Public Service Commission, but also two or more States can have their common Public Service Commission. In addition to that, facility is created for the States to avail the services of UPSC, of course, if they do not have their own Public Service Commissions. Therefore, the whole assumption of the applicants is without any foundation.

9. Reliance is placed upon the judgments of Hon'ble Supreme Court and Bombay High Court for pressing the relief as to regularization of services of the applicants. Much would depend upon the circumstances under which

an employee is appointed. If the procedure prescribed for regular appointment is followed and the appointment is simply treated as contractual or temporary, the same can be regularized with passage of certain time. However, the applicants are not able to demonstrate that the procedure that is prescribed for recruitment to the post of Assistant Professors was followed, when they were appointed. In a professional college, teachers, holding the requisite qualifications, as well as expertise, are required to be appointed on being found fit. It is only when a specialized agency or a selection committee evaluates the performance of a candidate that appropriate recruitment can take place. Institutions are not established just to provide employment to the intending persons, that too, otherwise through the prescribed procedure. It is only when persons of high caliber are appointed, that the Institute can produce quality professionals.

10. We do not find any basis to interfere in the selection process. The OA is, therefore, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/