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**Court : Delhi**

**Decided On : Jul-18-2005**

**Reported in : 122(2005)DLT678**

**Judge : S. Ravindra Bhat, J.**

**Acts :** [Constitution of India](#) - Articles 12, 16, 226, 309 to 311, 323A and 324(6); [Delhi Right to Information Act \(RTI\), 2001](#) - Sections 7; Societies Registration Act; [Representation of the People Act, 1951](#) - Sections 26 and 159; [Administrative Tribunals Act, 1985](#) - Sections 14, 14(1) and 14(2); Parliamentary Act; Industrial Disputes Act

**Appeal No. :** W.P. (C) No. 20091/2004 and CM 14919

**Appellant :** Satya Pal

**Respondent :** Delhi Subordinate Service Selection Board and anr.

**Advocate for Def. :** Zubeda Begum, Adv. for Respondent No. 1 DSSB and ; Tarun Sharma, Adv. for Respondent No. 2 MCD

**Advocate for Pet/Ap. :** Udayan Jain and; Amit Sherawat, Advs

**Disposition :** Petition dismissed

**Judgement :**

## **S. Ravindra Bhat, J.**

1. The limited controversy arising in this proceeding, under Article 226 of the [Constitution of India](#), is whether the petitioner can claim the benefit of his past service with the Indian Veterinary Research Institute (hereafter called 'IVRI'), an affiliate/body controlled by the Indian Council of Agricultural Research (hereafter called 'ICAR') for the purpose of reckoning eligibility, for recruitment to the post of Junior Engineer in the Municipal Corporation of Delhi (MCD).

2. The first respondent issued an advertisement inter alia, calling for applications, for the post of Junior Engineer on 23rd July, 2003, in the MCD. The age prescribed for the post was 27 years. The relevant condition with regard to relaxation of age reads as follows:

'3. Age relaxation--Candidates belonging to SC/ST are eligible for age relaxation for 5 years and candidates belonging to OBC for 3 years. Candidates belonging to categories such as Ex-Servicemen, Govt. Servants, PH/Widower, etc. are eligible for age relaxation as per the orders of the Govt. of India in force. Applicants claiming age relaxation should enclose the necessary documents in support of such claim. Recruitment of meritorious sports persons wherever applicable will be made through a separate advertisement. thereforee, no age relaxation for meritorious sports persons will be given against these posts indicated in this advertisement.'

The petitioner, aged 29 years, claimed the benefit of the condition regarding relaxation, and applied for recruitment. There were 37 un-reserved posts of Junior Engineer (Civil) advertised on behalf of the MCD. The claim for benefit of age relaxation was on based on employment with the IVRI and, thereforee, the petitioner fell within the expression 'Government Servant'. The first respondent issued an admit card to the petitioner and allowed him to appear for the examination conducted for recruitment. The results of the examination were announced on 22nd February, 2004 in which only the results of 30 posts were declared. The petitioner's roll number was not published, in this list of successful candidates. On 16th March, 2004, the first respondent sought the experience certificate from the petitioner. This was supplied. The petitioner relies upon a

certificate issued by the IVRI to the effect that he was working since 31st March, 1999 as Junior Engineer (Civil) in the pay scale of 4500-7000. This certificate of the IVRI was issued on 20th March, 2004. The results for the balance 7 posts were declared on 21st September, 2004; the petitioner's name did not figure even in this list.

3. The petitioner sought for information under Section 7 of the Delhi Right to Information Act, 2001, from the first respondent; it disclosed that he had secured 76% marks in the examination whereas the cut of marks on the basis of which the last candidate was appointed was 74.5%. The petitioner's candidature however was declined on the ground that age relaxation was inadmissible to him since he was working in a society, registered under the Societies Registration Act and was not a 'Government servant'. This stand has been questioned.

4. Mr. Udayan Jain, learned Counsel for the petitioner assails the stand of the first respondent. Learned counsel placed reliance on a circular issued by the Chief Labour Commissioner, New Delhi on 17th May, 1995 declaring the Central Government as the appropriate Government in respect of ICAR and various other units under its administrative control; similarly another circular dated 12th April, 2004 deputing officials from the ICAR on election duty have been relied upon to say that they are Government Servants.

5. Learned Counsel heavily relies upon the decision of the Supreme Court in P.K. Ramachandra Iyer v. Union of India, : (1984)ILLJ314SC as well as Dr. S.M. Ilyas and Ors. v. Indian Council of Agricultural Research and Ors., : AIR 1993 SC384 for the purpose of contending that ICAR and its affiliate bodies such as the IDRI and IVRI are comprehended within the expression 'State' under Article 12 of the Constitution. It was therefore urged that, the employees of such bodies or institutions are to be regarded as Government Servants.

6. Mr. Jain, learned Counsel also places reliance upon the judgment of the Supreme Court in Election Commission of India v. State Bank of India, : [1995]1SCR935 to say that while interpreting Section 26 and 159 of the Representation of the People Act, persons like the petitioner are treated as Government Servant and, therefore, for the purpose of present recruitment too

the petitioner ought to have been treated as a Government Servant and given the benefit of age relaxation. Counsel for the petitioner lastly relied upon another advertisement issued by the first respondent for a subsequent recruitment to fill other vacancies, where relaxation was granted to Government servants, as well as those working in Government bodies. It was contended that the intention behind the condition of relaxation is to ensure that those in public employment, generally, are to be regarded as Government servants; this is reflected in the thinking of the respondents themselves, who clarified this intention in the advertisement issued at a later point in time.

7. Ms. Zubeda Begum, learned Counsel appearing on behalf of the first respondent submitted that even though the petitioner was high in the merit list being at Serial number 27, he could not be included in the select list since he was over aged. She supported the stand of the first respondent that the petitioner was not entitled to age relaxation on account of his employment with IVRI. According to her, such employment would not qualify for the benefit of age relaxation since the expression used in the advertisement is 'Government Servant'. Employment under a society as such the IVRI, it is submitted cannot be termed as 'Government Service'. She relied upon the judgment of the Supreme Court in *Pradeep Kumar v. Indian Institute of Chemical Biology and Ors.*, : [2002]3SCR100 as well as *G. Bassi Reddy v. International Crops Research Institute, II* : (2003)11LLJ 1123 SC .

8. The Supreme Court in its judgments reported as *P.K. Ramachandra Iyer* had occasion to deal with the Constitution and status of ICAR as well as IVRI. It traced the history of both the organizations and noticed that in the advent of independence, the Imperial Council of Agricultural Research was renamed as ICAR; the administrative control of institutions such as IARI and IVRI were transferred to the ICAR; even Government Staff was placed at the disposal of ICAR. The Court observed that from birth and continued existence of these bodies they were an inseparable adjunct of the Government of India having an outward form being a society, but, nevertheless, set up by the State. It was, therefore, concluded that those organizations fell within the expression 'State' under Article 12 of the [Constitution of India](#). This ruling was followed in *Dr. S.M. Ilyas's case*

(supra) where it was also noticed that the ICAR follows the rules of the Government of India.

9. The issue involved in *Election Commission of India v. State Bank of India*, : [1995]1SCR935 was whether in terms of Sections 26 and 159 of [Representation of the People Act, 1951](#), the Election Commission could requisition the services of the persons working in statutory bodies/banks and other organizations. The Court had occasion to analyze the provisions of Article 324(6) of the Constitution which empowers the Election Commission to requisition the services of employees from amongst such staff as are to be deployed by the President of India or the Governor of a State. The Court concluded in paras 18 to 20 of the judgment that the Election Commission can legitimately requisition the services of those Government Servants who are appointed to Public Services and posts under the Central or State Governments; that it, however, follows that services of officers of bodies such as the State Bank of India could be requisitioned.

10. A larger Constitution Bench of Seven Judges of the Supreme Court in *Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors.* (supra) had occasion to review its previous judgments relation to the expression 'State' under Article 12. It concluded that the Council for Scientific and Industrial Research (CSIR) a society registered under the Societies Registration Act, is 'State'. In the course of judgment, the Supreme Court also took into consideration that the CSIR was notified under Section 14(2) of the Administrative Tribunals Act. The Court held as follows:

'64. A reading of Article 323-A of the Constitution and Section 14 of the 1985 Act makes it is clear that no notification under Section 14(2) of the Administrative Tribunals Act could have been issued by the Central Government unless the employees of CSIR were either appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.'

11. The judgment in *G. Bassi Reddy v. International Crops Research Institute* (supra), was concerned with the issue as to whether the International Crops

Research Institute, an international organization was 'State' under Article 12. The Court, after examining the manner in which that organization was set up, namely, by co-sponsorship of the Food and Agriculture Organisation, the United Nations Development Programme and the World Bank concluded that it was not 'State' and also that it was not a 'authority' to which a writ could lie under Article 226 of the [Constitution of India](#).

12. The [Constitution of India](#) uses two expressions. The wider terminology is found in Part-III of the Constitution; here, Article 16 uses the term 'Public Employment'. In Articles 309 to 311, the expressions used are 'public services and posts in connection with the affairs of the Union or of any State' (Article 309); 'member of civil service' (Article 310); 'member of a civil service of the Union or an All India Service or a Civil Service of a State' or holder of a 'Civil Post' (Article 311).

13. The Supreme Court in its Constitution Bench judgment reported as *State of Assam v. Akshay Kumar Dev*, : (1968)ILLJ288SC had examined the issue. It held that a person holding a post under a State or the Union, is a person serving or employed by the State; the Constitution envisages the relationship of master and servant between the State and the person holding a post under it. The Court held as follows:

'The existence of this relationship is indicated by the State's rights to select and appoint the holder to the post the right to suspend and dismissed him, its right to control the manner and method of doing the work and the payment by it of his wages or remuneration.'

14. In *S.L. Agarwal (Dr.) v. G.M., Hindustan Steel Ltd.* : (1970)ILLJ499SC , another Constitution Bench of the Supreme Court held that service with the Hindustan Steel Limited, a company entirely owned and managed by the Government of India did not amount to a civil post or civil service under the Central Government. The Court was of the opinion that in order to be called as a service or post under the Central Government, the person concerned had to be directly employed by the Central Government itself. This distinction was followed, particularly, in cases where the protection under Article 311 was claimed, in several other judgments. A similar reasoning appears to have appealed to the

Supreme Court while deciding that employees of public bodies such as the State Bank were not subject to the disciplinary control of the President so as to be requisitioned for election duty. These, as well as other judgments on the issue were considered in *Dr. Gurjevan Garewal v. Dr. Sumitra Dash* 4 (2004) SLT 559, where the issue was whether a person working in the Post-Graduate Institute of Medical Education and Research, Chandigarh, (PGIMER) set up under a Parliamentary Act could be characterized as one holding a civil post or working under the Central Government. The Court, applied the ratio in *Kanak Chandra's* case as well as *S.L. Agarwal's* case and held that though the employer was set up under an Act of Parliament nevertheless in the absence of a direct master-servant or employer-employee relationship between the Government or State Government and the concerned person, the latter could not claim to be the holding a civil post under the Union or State, and invoke protection of Article 311 of the [Constitution of India](#).

15. Coming to the facts of present case, there is no dispute that the IVRI squarely falls within the expression 'State' under Article 12, in view of the direct judgment of the Supreme Court in *P.K. Ramachandra Iyer's* case which was affirmed by seven Judges in *Pradeep Kumar Biswas's* case (supra). However, in my considered view, the expression 'Government Servant' has to be read in the context of the line of decisions commencing from *Kanak Chandra's* case and culminating in *Dr. Gurjeet Grewal's* case. The criteria applied to judge whether the person can be said to work for or under the Union or State, consistently applied, is the existence or otherwise of a jural relationship and the ability of the employer to exercise direct control over the discipline and work of the employee. The IVRI undoubtedly is an integral part of ICAR; it is administered by the latter. ICAR in turn may be considered an organ or instrumentality of the State. There can be no dispute, thus far. Both these bodies would be State and also bound Part-III of the [Constitution of India](#). Equally, writ jurisdiction can be exercised under Article 226 of the [Constitution of India](#). However, these factors by themselves do not lead to an automatic conclusion that employees of IVRI are Government Servants. There is nothing on record to show that the petitioner was selected or appointed by the Central Government or that the Central Government had any predominant say in his appointment, or over his discipline and functioning. The certificate produced on

record shows that he is an employee of IVRI. Hence, I am of the view that the petitioner cannot be called a Government servant.

16. The observations in Pradeep Kumar Biswas' case do seem to suggest that persons in respect of whose service jurisdiction can be exercised by Tribunals set up under the Administrative Tribunals Act may be regarded as working for the Central Government. However, those observations have to be read in the context that the issue before the Court, i.e. scope and content of the expression 'State'. Furthermore, the observations were in the light of Sections 14(1) and (2) of the Administrative Tribunals Act which enlarge the scope of jurisdiction of Tribunals to include persons working for local authorities and bodies controlled by the Central Government. It may also be noticed that the judgment in S.L. Agarwal's case was cited and appears in the body of the decision in Pradeep Kumar Biswas's case; the ratio of S.L. Agarwal's case as to whether a person working for a Government company could be termed as a Government servant, was not upset.

17. The Counsel for the petitioner had sought to rely upon a subsequent advertisement in which the relevant clause concerning age relaxation was couched in somewhat different language; it applied to Government Servants and also others working in Government bodies. It was submitted that the intention of the first respondent always was to give an expanded meaning for the expression 'Government servant' so that all forms of public employment could be considered and such employees could be given the benefit of age relaxation. The submission is no doubt attractive. However, in my view, it cannot be acceded to for the simple reason an advertisement is not statutory instrument or amendment. In the case of statutory instrument, particularly an amendment, possibly it could be contended and that the expressions used could be clarificatory of what was always intended. However, we are concerned with the terms of a public advertisement which is confined to the recruitment in question. The subsequent advertisement would govern the recruitment process to which that is concerned and cannot apply to one in issue here. As far as the submission about the intention to include experience of all persons in public employment is concerned, that view appears to be salutary, and in public interest, as it enlarges the zone of consideration; all those who serve the State in one capacity or the other and one or other of its agencies would in

such event, derive the benefit of age relaxation. The merit in that is highlighted from the facts of this case itself where the petitioner has performed well and is above the cut of marks obtained by the last candidate who was appointed. However, the intention of the first respondent is to be gauged not from the desirability of the particular course of action but upon the express terms of the advertisement. That clearly confines the benefit of age relaxation to Government servants. The petitioner did not fall in the category of Government servant although he was employed by an agency, which can be called 'State' under Article 12 of the [Constitution of India](#).

18. The reliance placed upon the notification issued under the Industrial Disputes Act, like the discussion about the IVRI being a State, does not advance the case of the petitioner. That notification merely delineates the jurisdiction of the Central Government to refer industrial disputes under the Act, in relation to establishments of the ICAR; the notification can be read as conferring such jurisdiction, no further.

19. In view of the foregoing discussion, I am of the view that the petitioner could not claim to be a Government servant, under the terms of the advertisement. There is no infirmity in the stand taken by the respondent in denying the benefit of age relaxation, spelt out in the advertisement in question. The writ petition is, therefore, dismissed.

20. All interim applications are also accordingly disposed of. No costs.