

Dr Arun Kumar Vs. Science and Technology

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Court : Jharkhand

Decided On : Sep-06-2016

Appellant : Dr Arun Kumar

Respondent : Science and Technology

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4702 of 2013
Dr. Arun Kumar, Son of Dr. Ramchandra Prasad Sinha, Resident of Prema
Apartment in front of Sri Krishna Enclave, North Office Para, P.O. & P.S. Doranda,
District Ranchi. Petitioner Versus 1. The State of Jharkhand through the Chief
Secretary, Govt. of Jharkhand, Project Bhawan, P.O. & P.S. Dhurwa, District-
Ranchi.

2. The Secretary, Science and Technology Department, Nepal House, P.O. & P.S.
Doranda, District-Ranchi.

3. The Under Secretary, Science and Technology Department, Nepal House, P.O.
& P.S. Doranda, District-Ranchi.

4. The Jharkhand Public Service Commission through its Chairman, P.O. & P.S.
Lalpur, District-Ranchi.

5. The Development Commissioner cum Chairman, High Level Enquiry
Committee, State of Jharkhand, Nepal House, P.O. & P.S. Doranda, District
Ranchi. ... Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH

PATNAIK --- For the Petitioner : M/s Anil Kumar, Sr. Advocate Rupesh Singh, Chandana Kumari, Advocates For the Respondents : Mr. Dhananjay Kr. Dubey, Sr. S.C. I ----- CAV on 16.03.2016 Pronounced on 06/09/2016 Per Pramath Patnaik, J.

In the accompanied writ application, initially the petitioner challenged the show cause notice dated 11th July, 2013 as contained in Annexure-23 issued by the respondent no.3 and for quashing of the inquiry report of the High Level Enquiry Committee vide Notification No.1047 dated 23.03.2013 and further prays for allowing the petitioner to continue on the post of Director, Department of Science and Technology. During the pendency of the writ application, the notification as contained in Memo No.3048 dated 25.10.2013 (Annexure-28) pertaining to removal of the petitioner from the post of Director, Science and Technology and the order dated 23.10.2013 (Annexure-30) at the amended writ petition, which has been challenged by 2 the petitioner by way of filing an interlocutory application which has been allowed by this Court vide order dated 31.01.2014.

2. Bereft of unnecessary details, the facts as disclosed in the writ application is that the petitioner was appointed as Lecturer in S.R.E.S. College of Engineering, Kopargaon, District-Ahmadnagar, Maharashtra on 17.08.1990, which is an affiliated Engineering College under Pune University. Since, the petitioner possessed the qualification for being appointed as Assistant Professor w.e.f. 09.07.1992 in the said college of engineering and continued as such till 30.09.2000. In pursuance to public advertisement dated 05.06.2000 which was notified in the newspapers by the College of Engineering, Kopargaon, Amhadnagar (Maharashtra) inviting the applications for appointment on the post of Professor in Civil Engineering. Petitioner, being eligible, has applied for the post of professor and after due selection, he was appointed as Professor in Civil Engineering in the said College as is evident from Annexure-1 to the writ application and University of Pune vide letter dated 09.01.2001 granted approval to the appointment of the petitioner as Professor in Civil Engineering w.e.f 01.10.2000 as per Annexure-2 to the writ application. In the meanwhile, the petitioner was awarded Ph.D in Civil Engineering. The Government of Jharkhand vide resolution dated 23.08.2002 prescribed eligibility and requisite qualification for appointment on the post of

Director in the Department of Science and Technology. The resolution provided that a person having a Ph.D Degree with First Class Degree in Bachelor or Masters Level in Engineering and having 15 years experience in Teaching/Industry/Research, out of which, 5 years must be at the level of professor shall be held eligible as evident from Annexure-4 to the writ application. The Jharkhand Public Service 3 Commission vide Advertisement No.06/2005, which was published in National Newspapers including the Hindustan Times dated 19.09.2005 inviting applications for appointment for the post of Director under the Department of Science and Technology. There has been two posts of Director i.e. Director, BIT Sindri and Director, Science and Technology wherein the essential qualification is Ph.D Degree in any branch of Science/Engineering/Management and First Class Bachelor Degree or Master Degree in Engineering/Computer Technology as per Annexure-5 to the writ application. The Advertisement was published with the eligibility criteria as prescribed in the resolution dated 23.08.2002. In pursuance to the advertisement, the petitioner applied for the post of Director, Department of Science and Technology within the stipulated time period and the petitioner appeared before the Interview/Selection Board and vide notification dated 23.08.2006, the petitioner upon the recommendation of the Jharkhand Public Service Commission and upon the approval of the Cabinet of the Government was appointed as Director, Department of Science and Technology is evident from Annexure-6 to the writ application. In pursuance to the letter of appointment, the petitioner submitted his joining on the post of Director, Science and Technology under the respondent department on 05.09.2006. After appointment the petitioner discharged his duties with utmost honesty and sincerity. Basing on the frivolous complaints, the respondent Secretary vide letter dated 19.12.2006 wrote to the respondent Secretary of the Public Service Commission to enquire into the matter of eligibility and qualification of the petitioner. In response, the respondent Secretary Public Service Commission vide letter dated 12.02.2007 replied that the petitioner was selected by an Interview Board of Experts who have 4 prepared the panel and if there is any doubt regarding the certificates and the materials submitted by the candidate, the same could be verified. Challenge to the appointment of the petitioner has also been made by one Ram Kishore Singh who filed a writ application being W.P.(S) No.777/2010 with a

prayer for issuance of writ in the nature of quo-warranto to enquire into the legality of the appointment of the petitioner as Director, Science and Technology on the ground that the petitioner did not possess the requisite qualification and experience to hold the said post and the said petition was dismissed vide order dated 04.05.2010 and against the order passed by the Hon'ble Single Judge, L.P.A No.222 of 2010 was preferred by the said writ petitioner and the said LPA also has been dismissed vide order dated 23.08.2010 as per Annexure-12 to the writ application. Thereafter, one writ petition in the nature of Public Interest Litigation i.e. W.P(PIL) No.3904 of 2011 has been filed by one Girdhari Mahto challenging the appointment of the petitioner and the Division Bench of this Hon'ble Court vide order dated 09.09.2011, dismissed the Public Interest Litigation as per Annexure-13 to the writ application. Again one Santosh Kumar Jha also filed a writ application in the nature of Public Interest Litigation being W.P. (PIL) No.3551/2012 with a prayer for CBI investigation into the matter of appointment of the petitioner as Director, Department of Science and Technology and the PIL has been dismissed vide order dated 30.10.2012. Again one Kalicharan Rawani filed a writ application being W.P.(S) No.634 of 2012 with the prayer for issuance of a writ in nature of quo-warranto against the petitioner from holding the Office of the Director, Department of Science and Technology on the ground of lack of requisite qualification and experience. In the said writ petition, the counter- affidavit has been filed by the respondent department stating therein that the 5 petitioner was respondent no.6 in the writ application, satisfied with the eligibility criteria as prescribed in the Advertisement and the correspondences of the Pune University to the appointment of the petitioner as professor was in consonance with the law and rules and since there was no mandatory requirement of the Ph.D by the University as prescribed by the U.G.C. It has been stated that in the writ application there had been no mandatory requirement of Ph.D at the relevant point of time for being appointed or promoted as Professor. It has also been demonstrated in the writ application that several persons have been appointed as Professors on the basis of their M.Sc. Engineering/M. Tech. Degree from the downloaded profile of the professors at NIT Rourkela as is evident from Annexure-19 to the writ application. Therefore, the petitioner possessed the qualification for being appointed as a professor in the year 2000 and had the experience of five

years as required on the date of filing of an application and had been eligible in all aspects for being appointed as a Director, Department of Science and Technology and the subject matter of qualification and experience of the petitioner thoroughly enquired by the respondent department. In the aforesaid back drop, the entire issue relating to the qualification, experience and appointment of the petitioner was given quietus. The respondent department vide notification dated 23.03.2013 directed for another enquiry by a High Power Committee on the appointment of the petitioner as per Annexure-20 to the writ application and the petitioner was directed to submit evidences before the High power Committee in relation to the advertisement issued by the JPSC and the experience certificate by the Pune University. But the High Power Committee had proceeded at the back of the petitioner and submitted a report basing on the impugned show cause dated 11.07.2013 has been issued 6 to the petitioner as to why the services which has not been confirmed yet and is on extension of probation be not terminated as evident from Annexure-23 to the writ application and the petitioner vide letter dated 17.08.2013 replied to the show cause notice explaining in detail his qualifications and eligibility for being appointed as Director, Science and Technology but the additional Chief Secretary Science and Technology proceeded on the basis of ex-parte report of the enquiry committee headed by the Development Commissioner, recommended for dispensing the services of the petitioner vide order dated 23.10.2013 (Annexure-30 to the amended writ petition). Accordingly, vide notification dated 25.10.2013 the petitioner was dismissed from services. Being aggrieved and dissatisfied with the impugned order dated 23.10.2013 Annexure-30, and notification dated 25.10.2013 the petitioner, left with no other alternative efficacious and speedy remedy, has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Per-contra a counter-affidavit has been filed on behalf of the respondent nos. 1, 2, 3 and 5 controverting the averments made in the writ application. In the counter-affidavit, it has been submitted that the State of Jharkhand decided to fill up the post of the Director, Department of Science & Technology and accordingly memorandum for consideration before the council of Ministers has been placed as evident from Annexure-A to the counter-affidavit and as per the said memorandum

the Government proposed to fill up the post of Director, Department of Science & Technology, Government of Jharkhand from among the Director, Principal, Professor who were already serving Government Engineering Colleges and Polytechnics. As per the eligibility criteria for filling of the post of Director, Department of Science & Technology, the candidate must be Ph.D. Degree holder, first class Bachelor and Master in engineering and technology, in addition to, the candidate must have the minimum experience for filling of the post of Director. Further, the candidate was required to possess 15 years of experience in teaching and industry, research out of which 5 years experience must be at the level of professor/principal in engineering & technology colleges. The second criteria of the candidate who could make an application for the post of Director could be candidates from Semi Government/Industry/Government Undertaking, State Government/Central Government. After the approval of the Councils of Ministers a Resolution vide memo No.1218 dated 23.08.2002 was issued by the State of Jharkhand, Department of Science & Technology wherein the Jharkhand Public Service Commission was requested to publish an advertisement inviting an application for the post of Director, Science & Technology. The requisition was sent to the JPSC, it made certain objections and finally the State Government vide letter dated 16.08.2005 sent the requisition after compliance of the objection raised by the JPSC as per Annexure-B to the counter-affidavit. But for the reasons best known to JPSC, after having changed the eligibility criteria JPSC published the said advertisement vide advertisement no.06/2005 as per Annexure-C to the counter-affidavit. From the perusal of the advertisement, it shall appear that the said advertisement did not restrict to Director/Principal/ Professor of Government Engineering Colleges and Polytechnic, rather it made it open to all candidates having Ph. D degree of any branch of Science/Engineering/Management with 15 years of experience out of which 5 years must be at level of Professor or in Computer Engineering/Computer Technology. As per the requisition sent by the Department of Science & Technology, the petitioner was ineligible for the appointment, since he was not serving on the post of Director, Principal, Professor in Government Engineering Colleges and Polytechnics. It has further been submitted that the State of Jharkhand, Department of Science & Technology vide letter dated 02.06.2003 has adopted the terms and conditions of AICTE and

as per the requirement of AICTE, the candidate applying for the post of Director must have worked as Professor for a period of 5 years and a candidate who is Professor can only be permitted, and if he had completed the Ph.D degree. In the instant case, the petitioner has submitted his thesis in October, 2002 and he was awarded Ph.D degree in March, 2003, thus on the date of making of an application, the petitioner had the experience of having acquired Ph.D degree for a period of 2 years 8 months and some days. Since, the candidate had required an experience of 5 years as Professor as per eligibility for the post of Director, the petitioner was ineligible on the date of making an application for the said post. Since the Department of Science & Technology realized that petitioner did not have the minimum eligibility criteria as provided in the Memorandum approved by the Council of Ministers, it made an objection and wrote to the JPSC vide letter dated 19.12.2006 requesting it to make it clear as to whether the petitioner fulfilled the eligibility criteria for the appointment of the post of Director in the Department of Science & Technology as per Annexure-D to the counter-affidavit. In response to the said letter, JPSC replied vide letter dated 12.02.2007 by which JPSC justified the process of appointment and it further allowed liberty to the department to examine the educational qualification of the petitioner in order to satisfy itself that the petitioner fulfilled the provisions of AICTE as per Annexure-E to the counter-affidavit. In terms of the liberty allowed by the JPSC, the Department of Science & Technology initiated a process for conducting an enquiry and to find out as whether the petitioner fulfilled the eligibility criteria or not. In course of conduct of such enquiry, the then Chief Secretary has given his opinion to this effect that file may be closed. However, the Hon'ble Chief Minister did not agree with the opinion of the Chief Secretary and made a query as to whether the appointment of the petitioner was in compliance with the requirement of AICTE. His Excellency, the Governor of Jharkhand approved to the noting of the Hon'ble Chief Minister and in terms of permission so granted by the Governor of Jharkhand and High Power Committee was constituted to enquire into issue of legality of the appointment of the petitioner on the post of Director. The High Power Committee was constituted vide memo dated 23.03.2013 (Annexure-20 of the writ application). The constituted High Power Committee submitted its report vide letter dated 12.06.2013 holding therein that the appointment of person on the

basis of altered terms and conditions could not be upheld since the power to change any requirement vested with the Council of Ministers. As on that basis, the appointment of the petitioner is held to be illegal and irregular as per the inquiry report vide Annexure-F to the counter-affidavit and the show cause which is impugned in the writ application has been issued in pursuance of the report of the High Power Committee and the copy of the enquiry report was already furnished to the petitioner. It has further been submitted that the functioning of the petitioner was not upto mark and it was therefore, probation period of the petitioner was extended. In fact, the petitioner filed a writ petition before this Hon'ble Court being W.P.(S) No.6326 of 2007, wherein the State Government had filed a counter-affidavit stating therein that functioning of the petitioner was not proper and out of the nine projects assigned to him none has been completed successfully. It has further been mentioned that the writ application being W.P.(S) No.6326 of 2007 which was filed by the petitioner to declare him to be confirmed in service was subsequently withdrawn by the petitioner as per Annexure-H to the counter-affidavit. It has further been submitted that in the counter- affidavit filed on behalf of the State being W.P. (PIL) No.3551/2012, the State Government had only made statement that the issue did not involve any extent of public interest. But no effort was made by the State Government to justify the appointment of the petitioner so far as W.P. (S) No.634/2012 is concerned and in the counter-affidavit filed by the State Government, no statement has been made to justify the appointment of the petitioner.

4. The counter-affidavit has also been filed on behalf of the respondent nos. 2 and 3 to the amended writ petition. In the said counter-affidavit, it has been mentioned that the appointment of the petitioner may have been regular in the State of Maharashtra in view of the amendment of Maharashtra Government. However, the same was not applicable in the State of Jharkhand and the recommendation of the AICTE has been accepted in toto. The State of Jharkhand adopted the recommendations of AICTE in totality, whereas the State of Maharashtra may not have adopted it in totality and hence there the petitioner being granted professorship in Maharashtra does not bind the State of Jharkhand to consider him as a professor. In fact each case has been verified as to whether the candidate fulfills the eligibility of being considered as professor by the standards

prevalent in the State of Jharkhand. Since the petitioner acquired the eligibility criteria for being appointed as Professor in the year 2003 and the advertisement for appointment of Director issued in the year 2005, there is no question of the petitioner possessing the minimum eligibility criteria of 5 years as Professor. 11 But, on account of metamorphic changes in the advertisement published by the Jharkhand Public Service Commission, the petitioner had been rendered eligible for appointment on the post of Director. Therefore, the myth created by the petitioner that a professor in the State of Maharashtra has been considered as Professor in the State of Jharkhand also stands dispelled. In fact, since 2006, the enquiry against the petitioner was in the process and the file relating to the appointment of the petitioner had not been closed. It has further been submitted that the reasoned order has been passed which does not reflect any bias against the petitioner, nor does it reflect that the decision was taken with a pre-determined mind. The decision to invoke Article 310 of the Constitution of India had been taken to the Council of Ministers, after passing of the reasoned order and the prayer has been made for disposal of the writ petition being devoid of any merit.

4. The rejoinder to the counter-affidavit has been filed by the petitioner, in which the recommendation of AICTE dated 15th March, 2000 (Annexure-

32) has been incorporated, wherein the minimum qualification and experience prescribed for teaching post of Professor, a person must have a qualification of Ph. D Degree with first class at Bachelor or Master level. In para 2.2 of the said recommendation, it has been inter-alia provided that the revised pay scale shall be effective from 01.01.1996 or from such later date as the respective State Governments/UT Administration may decide. The other terms and conditions of service shall come into force w.e.f. the date of notification by the State Government/UT Administrations. In pursuance to the said recommendation dated 15th March, 2000 the same was applicable in the University of Pune vide circular dated 24.03.2006 (Annexure-33) and thereafter, only a person can be said to be eligible for the appointment to the 12 post of Professor having Ph.D Degree and prior to that in the University of Pune, there was no requirement of having a Ph.D Degree for the post of Professor. It has further been submitted that the notification dated 5 th March, 2010 issued by the AICTE inter-alia provides in para (ii) that one

shall be eligible to be appointed/promoted or designated as Professor unless he/she possesses a Ph.D degree and satisfied other academic conditions as laid down by AICTE from time to time. This shall however, not effect those who are already designated as professor and the recommendation has been annexed as Annexure-1/1 to the 3rd Supplementary affidavit filed by the petitioner. Therefore, from the regulation as published on 5th March, 2010 and the earlier Notification dated 15th March, 2000 if both the notifications issued by the AICTE are being taken into consideration, then it will be evident that the recommendation issued in the year 2000 was to be applied to different States according to the adoption by the concerned State itself. However, the regulation which has been issued by AICTE in the year 2010 is applicable from 5th March, 2010 as it has been provided specifically and the same is a binding law upon all concerned.

5. Mr. Anil Kumar, learned senior counsel for the petitioner has assailed the impugned order as contained in Annexure-30 to the amended writ petition on the following grounds:- (I) Learned senior counsel has submitted that the grounds assigned in the impugned reasoned order dated 23.10.2013 that the petitioner did not possess necessary qualification and his appointment was illegal because of manipulation in the terms of the advertisement. The persons who were working as Director/Principal/Professor in the Govt. Engineering College or Polytechnic were eligible for the appointment on the post and further the 13 persons who were working in the post of Jharkhand State, Central Government, Semi Government, Industries were also entitled but from the policy decision as contained in memo dated 23.08.2002 (Annexure-4), it will appear that other persons were also held to be eligible for appointment on the post as the said word is appearing in the policy decision itself and accordingly, JPSC while issuing the Advertisement has not classified that the said post is only meant for the aforesaid two categories and as such, it cannot be said in any manner that there was any change with respect to the eligibility criteria as mentioned in the policy decision dated 23.08.2002 and the advertisement. Further the qualification and experience has been prescribed in the policy decision dated 23.08.2002, and the similar qualification and experience has been prescribed in the advertisement issued by the JPSC, and as such, there is no change in eligibility criteria either to the qualification of the persons or experience required for the post, the findings given in the impugned order dated

23.10.2013 that there has been a change in issuance of advertisement by the JPSC with respect to the eligibility criteria is absolutely perverse and against the materials on record and as such, the said reason assigned by the respondent authorities is not sustainable in the eyes of law. (II) Learned senior counsel has submitted that the second ground for assailing the impugned order by which the impugned order dated 23.10.2013 is also not sustainable in the eyes of law from the advertisement itself, it appears that the said criteria for filling the post of Director/Principal/Professor of the Government Engineering College/Polytechnic has not been mentioned in the advertisement but only requirement with respect to the post was that the person must have Ph. D Degree in any Branch of Science/Engineering/Management and 15 years of 14 experience in teaching/industries/research, out of which, 5 years must be at the level of Professor or above in Computer Engineering/Computer Technology but neither policy decision dated 23.08.2002 nor in the advertisement it is being mentioned that the persons must have eligible criteria as provided by the AICTE to be appointed on the post of Director/Principal/Professor of the Government Engineering College/Polytechnic. Therefore, the ground has been mentioned in the impugned order dated 23.10.2013 is only an imaginary. (i) In order to buttress the submissions, learned counsel for the petitioner has referred to the decisions of the Hon'ble Supreme Court in the case of State of Orissa and Another Vs. N.N. Swamy & Ors. reported in 1977 (2) SCC508 in Paragraph 17 and 18 of the said judgement which is quoted hereinbelow:- 17... The question is entirely different when, as in the present case, the respondents answering the test of education qualifications, as well as, experience of teaching in a recognized private college are discriminated amongst the very category of readers on an irrational and illusory consideration. Denial of an opportunity to these respondents even for being considered for the post of Reader is clearly violative of Article 16 of the Constitution. 18... But to say that the teaching experience of the readers in the private institution is completely effected to the extent that they will not be even eligible, on the plea of absence of teaching experience in Government service, for consideration for appointment as Readers is a seriously grim issue.....

1. (ii) It has lastly been observed by the Hon'ble Supreme Court, that eight years' teaching experience in a college and the fulfillment of other requisite qualifications

make a person eligible for appointment as a Reader, but whether he is suitable for selection for the post is an entirely different matter. (iii) Therefore, learned senior counsel submits that in absence of any such requirement for eligibility criteria in the advertisement, the respondent authorities have no jurisdiction at all to consider such ground for holding the petitioner ineligible and such reason assigned by the respondent authorities is absolutely perverse and illegal. (III) The third ground taken by the learned senior counsel in assailing the impugned order is that the eligibility criteria as provided by the Government does not speak about it that the person must have the eligibility criteria for appointment on the post of Director/Principal/Professor of the Government Engineering College/Polytechnic college. Definitely, the persons who were holding the aforesaid posts in the Government Engineering College/Polytechnic college were eligible for appointment but that does not mean that the persons who were not holding the said post were not entitled to be eligible as the word any other person has also been incorporated in the said decision of the Government. Moreover, the person who is holding the post of Professor was to be taken into consideration with respect to the 5 years experience to the said post and in the present case, the petitioner's appointment on the post of Professor has been confirmed by the Pune University w.e.f 01.10.2000, on the query made by the State Government and the letter dated 23.11.2011 was issued by the Registrar, Pune University. 16 (IV) The 4th ground taken by the learned senior counsel for the petitioner is that in letter dated 15th March, 2000 issued by the AICTE was adopted by the State of Jharkhand in the year 2003 and in Pune University, it was adopted in the year 2006 i.e. 24.03.2006, therefore, it cannot be said that the person who was holding Ph.D Degree only can be said to be eligible for appointment to the post of Professor and the appointment of the petitioner to the post of Professor in Pune University has never been doubted in the said University rather it has been confirmed upon the query made by the State Government. (V) Since the last date for submission of the application form was 08.10.2005 and if the AICTE Regulation which has been said to be adopted by the State of Jharkhand on 02.06.2003 is being taken into consideration then no person from the Govt. Engineering College in the State of Jharkhand can be said to be eligible for appointment to the post of Director as since June, 2003 to October, 2005 no persons who have been

appointed to the post of Professor after June, 2003 and have an experience of 5 years. Which shows the arbitrary action and exercise of capricious power on the part of the respondent authorities for removal of the petitioner from the post of Director. (VI) Learned senior counsel has further submitted that the petitioner was eligible for appointment to the post and the Expert Committee after due selection appointed the petitioner on the post and the petitioner worked continuously from the date of appointment till the date of removal as acquired the experience around 8 years. Therefore, the impugned order passed by the respondent authorities is perverse. In this respect, learned senior counsel for the petitioner has referred to the decisions of the Hon'ble Supreme Court in the case of S.R. Tewari Vs. Union of India and Another reported in (2013) 6 SCC602 at paragraph nos. 30 and 31, which is quoted hereinbelow:- 17

30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn., Kuldeep Singh v. Commr. of Police, Gamini Bala Koteswara Rao v. State of A.P. and Babu v. State of Kerala.) 31. Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible. (VII) Learned senior counsel has further submitted that in the show cause notice as contained in letter dated 11.07.2013 (Annexure-23 to the writ application) it appears that the appointment has been held to be illegal by the Enquiry Committee although, no opportunity of hearing was given to the petitioner by the Enquiry Committee and the show cause notice itself shows that there was not a definite conclusion of the alleged illegality. In this respect, learned senior counsel for the petitioner has referred to the decisions of the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited Vs. Union of India and Others reported in (2010) 13 SCC427 at paragraph nos. 31, 32, 33

and 35, which is quoted hereinbelow:-

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it. 18

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself. (VIII) Learned senior counsel for the petitioner has also submitted that in the present case, the respondent authorities on the basis of the Enquiry Committee's Report has already been taken a decision and the issuance of show cause notice was an empty formalities and on this ground, the impugned order is liable to be set aside. (IX) Learned senior counsel for the petitioner has further submitted that since the appointment to any of the post made on the eligibility as mentioned in the advertisement and nothing can be added or subtracted by any authority including the Hon'ble Court and the same is to be read as it is as it has been provided in the advertisement. In this respect, learned senior counsel for the petitioner has referred to the decisions of

the Hon'ble Supreme Court in the case of B. Ramakichenin @ Balagandhi Vs. Union of India and Others reported in (2008) 1 SCC362 at paragraph nos. 21 and 23, which is quoted hereinbelow:-

21. Learned counsel for the appellant has shown us several advertisements issued by the Union Public Service Commission in which it was specifically mentioned that experience must be after getting the postgraduate degree. However, in the present case, the advertisement does not mention that the two years experience must be after getting MSc degree in Agriculture. Hence, we cannot add words to the advertisement and we must read it as it is.

23. Had Para 3.1 not been in the advertisement of UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to UPSC to resort to any rational method of shortlisting of its choosing (provided it was fair and objective). However, in the present case, a particular manner of shortlisting has been prescribed in Para 3.1. Hence, it is not open to UPSC to resort to any other method of shortlisting even if such other method can be said to be fair and objective. (X) Learned senior counsel for the petitioner has strenuously urged that in the instant case, no fault can be attributed to the petitioner nor the petitioner has been made guilty of suppression of fact or playing fraud at the time of 19 submissions of the application form and there has been no illegality or irregularities committed on the part of the petitioner. As such, it cannot be said that the petitioner has any fault in the process of the appointment to the said post. Therefore, the impugned orders dated 23.10.2013 and 25.10.2013 being illegal and without jurisdiction, the petitioner is entitled for salary and other service benefits. In this respect, learned senior counsel for the petitioner has referred to the decisions of the Hon'ble Apex Court in the case of Shobha Ram Raturi Vs. Hariyana Vidut Parsaran Nigam Limited & Ors. reported in AIR 2016 SC157 wherein the Hon'ble Apex Court by setting aside premature retirement and has been pleased to hold that the fault lies and the principle of no work no pay cannot be allowed in such situation. Therefore, the case of the petitioner is squarely covered by the aforesaid decisions.

6. As against the submission of learned counsel for the petitioner, learned counsel for the State has reiterated the submissions made in the counter- affidavit. Learned counsel for the State has assiduously submitted that on the basis of the inquiry report of the High Level Committee constituted by the State Government, the petitioner has been removed from the post of Director, Science and Technology and the reasoned order has been passed vide order dated 23.10.2013 (Annexure-30) which does not warrant any interference by this Court.

7. After hearing the counsel for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated hereinbelow: (I) The petitioner was eligible for appointment to the post and the expert committee after proper process of selection and on scrutiny of educational 20 qualification and records, appointed the petitioner on the post of Director, Science and Technology. The petitioner worked continuously from the date of initial appointment till the date of impugned order has been passed by the respondent authorities vide order dated 23.10.2013 (Annexure-30) to the writ application but the grounds has been mentioned in the impugned order dated 23.10.2013 are not consonance with guidelines issued on 23.08.2002 for appointment to the post of Director. On that score, the impugned order is not legally sustainable. (II) On perusal of the letter dated 12.02.2007, the Secretary, JPSC, Ranchi communicated to the respondent authorities, it would appear that the appointment of the petitioner was made on the basis of the recommendation made by the expert committee and the department Secretary was also one of the member of the said committee. Since, the recommendation of the appointment to the post of Director, Science and Technology has been made by the expert selection committee and to turn down findings of the expert committee by issuing the impugned order of removal of the post of Director, Science and Technology legally untenable grounds rendered the impugned order vulnerable for exercise of judicial review under Article 226 of the Constitution of India. Since the appointment to any post is being made on the basis of eligible conditions as mentioned in the advertisement then nothing can be added or subtracted by an authority and whatever eligibility conditions are prescribed in the advertisement the same is to be adhered to, otherwise that would amount to tinkering the process of selection.

(III) From the pleadings the irresistible undisputed facts emerges that there was no fault of petitioner, nor the petitioner has restored to suppression of facts or has played fraud at the time of submissions and no illegality or 21 irregularities committed by the petitioner. Moreover, the petitioner has rendered almost eight years services on the said post prior to removal from services. Therefore, in the interest of equity and justice, the petitioner deserves to be reinstated in the services. (IV) On the cumulative effect of the aforesaid reasons stated hereinabove the impugned order of removal dated 23.10.2013 vide Annexure-30 and notification dated 25.10.2013 (Annexure-28) are quashed and set aside and the respondents are directed to reinstate the petitioner in services on the post of Director, Science and Technology and the petitioner shall be entitled to continuity of services from the date of termination/removal till its reinstatement and the said period shall be counted towards pensionary benefits except arrears of salary of the said period. With the aforesaid direction, the writ petition stands allowed. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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