

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1790 OF 2020
(Arising out of SLP (Civil) No.5083 of 2020
arising out of Diary No.32681 of 2019)

UNION OF INDIA

Appellant

VERSUS

DR. MITHILESH KUMAR JHA & ORS.

Respondents

O R D E R

Delay condoned.

Leave granted.

This appeal arises out of the judgment and order dated 14.05.2018 passed by the High Court of Punjab & Haryana at Chandigarh in L.P.A. No.709 of 2018.

An advertisement was issued in January 2015 inviting applications for the post of Director, Central Institute of Technology, Kokrajhar, Assam. Thereafter, a Search-cum-Selection Committee was constituted, which received 16 applications including one preferred by the respondent no.1. After holding interviews, the Committee recommended a panel of three candidates for further consideration.

In accordance with the prevalent practice, the matter was placed before the Minister of Ministry of HRD, who approved the

name of the respondent for consideration. It must be stated here that other two names got deleted at this stage, one for the reason that there was vigilance inquiry against the concerned candidate and the other on the ground that the said candidate did not have the requisite qualifications. The matter was thereafter required to be placed before the Appointments Committee of the Cabinet (ACC). The authority to take final decision in the matter was with ACC.

Before any final decision was taken, a writ petition was filed by the respondent against the NIT, Jalandhar submitting *inter alia* that though he was selected for the post of Director, CIT Kokrajhar, his employer i.e. NIT Jalandar was not giving him vigilance clearance certificate as a result of which his appointment as the Director, CIT, Kokrajhar was getting stalled.

Union of India or the Appointments Committee of the Cabinet or the Ministry of HRD were not made parties to said writ petition.

The Single Judge of the High Court in his order dated 10.10.2017 recorded as under:

"Petitioner is a candidate for the post of Director, Central Institute of Technology, Kokrajhar, Assam. For want of vigilance clearance certificate petitioner is not in a position to join the post at Assam. Thereafter, respondent no.1 is hereby directed to consider petitioner's grievance relating to issuance of vigilance clearance certificate for the purpose of reporting as a Director at Central Institute of Technology, Kokrajhar, Assam. Such decision shall be taken within a period of one month from today and communicate the same to the petitioner, failing which personal appearance of respondent no.1 would be ordered for appraisal of the matter.

List this matter on 05.12.2017."

Around the same time i.e. in the month of October 2017, the post of Director, CIT, Kokrajhar was advertised again. This course was adopted because the life of the panel of shortlisted candidates was over and yet no appointment was made.

Thereafter, Union of India and Ministry of HRD were made parties to the writ petition and a response was filed on behalf of the appellant submitting *inter alia*:

"7. As the names listed at Sl. No.(i) & (ii) were not meeting the requirement, a proposal was submitted to competent authority for approving the name of the petitioner at Sl. No.(iii) in the panel for the post of Director, CIT, Kokrajhar which was approved by the competent authority of the Ministry. As per the procedural requirement, a letter dated 07.09.2016 was sent to Director, NIT, Jalandhar to provide Vigilance Clearance Certificate in respect of the petitioner so that his name for the post of Director, CIT, Kokrajhar could be submitted to the Competent Authority i.e. Appointments Committee of the Cabinet (ACC) for its consideration/approval. As, no Vigilance Clearance Certificate was received from NIT, Jalandhar, it was cleared that the petitioner was not clear from vigilance angle."

While the matter was pending before the High Court, NIT Jalandhar issued Vigilance Clearance Certificate to the respondent on 07.12.2017 with a rider that in case any vigilance/criminal/prosecution case was contemplated against the respondent at a later stage, the Vigilance Clearance Certificate issued to him would stand withdrawn.

On 14.12.2017, the Single Judge of the High Court allowed the writ petition. It was observed that in view of the issuance of the Vigilance Clearance Certificate, the respondent could now approach the appropriate authority, so that he could report as the Director,

CIT, Kokrajhar.

On 23.12.2017, a decision was taken by the Board of Governors, NIT, Jalandhar, in its 30th Meeting, that prosecution be sanctioned against the respondent. This decision of the Board of Governors was however stayed by the High Court in Writ Petition No.1704 of 2018 filed by the respondent.

In the appeal preferred by the appellant against the order dated 14.12.2017, the Division Bench of the High Court took the view that for the delay on the part of the NIT, Jalandhar in issuing the Vigilance Clearance Certificate, the respondent could not be put to prejudice and that since the Vigilance Clearance Certificate was now granted and the post was lying vacant, the direction issued by the Single Judge of the High Court did not warrant any interference.

In this appeal, challenging the view taken by the Single Judge as well as by the Division Bench of the High Court, we heard Ms. Madhavi Divan, learned ASG for the appellant and Mr. Vinay Navare, learned Senior Advocate for respondent no.1.

It was submitted by Ms. Divan that at no stage, Union of India or its instrumentalities were parties to the original proceedings. The *lis* as was brought before the Court was only between the respondent no.1 and the NIT, Jalandhar and the submissions were advanced on the premise that the respondent was already selected and the only hindrance was the non-issuance of the Vigilance Clearance Certificate. According to her, the assumption that he was selected was completely erroneous. The fact of the matter was that the issue was referred to the Appointments Committee of the

Cabinet which was the final authority to take decision in the matter.

Ms. Divan invited our attention to the office memorandum dated 14.03.2019 which indicates that the Appointments Committee of the Cabinet had discussed the matter and it was decided that the concerned post be re-advertised and the Ministry was to take appropriate steps to complete the process as expeditiously as possible.

Mr. Vinay Navare, learned Senior Advocate on the other hand submitted that if out of three persons, names of other two persons stood deleted, the respondent was within his rights to assume that he was the only candidate in the reckoning and since the only obstacle was lack of Vigilance Clearance Certificate, the matter was agitated in that light.

He further submitted that the Board of Governors of the NIT Jalandhar in its 37th meeting held on 03.06.2019 had taken a final decision that no sanction for prosecution of the respondent be granted and all earlier decisions taken by the Board of Governors would stand superseded.

Be that as it may, since the decision has been taken by the Appointments Committee of the Cabinet in its proceeding dated 14.03.2019 that fresh selection process be undertaken, in our view, ends of justice would be met if we direct as under:

- (a) Within two weeks from today, the entire matter shall be placed before the Appointments Committee of the Cabinet including the fact that the respondent now has Vigilance Clearance Certificate in his favour;

and

(b) The decision shall be taken by the Appointments Committee of the Cabinet within six weeks thereafter, whether to accept the candidature and grant appointment to the respondent or whether the facts and circumstances demand that fresh selection be undertaken.

We leave it entirely to the Appointments Committee of the Cabinet to take appropriate decision in the matter.

The appeal stands disposed of, in the aforesaid terms. No costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
FEBRUARY 24, 2020

ITEM NO.49

COURT NO.6

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No.32681/2019

(Arising out of impugned final judgment and order dated 14-05-2018 in LPA No.709/2018 passed by the High Court Of Punjab & Haryana At Chandigarh)

UNION OF INDIA

Petitioner(s)

VERSUS

DR. MITHILESH KUMAR JHA & ORS.

Respondent(s)

(IA No.150110/2019 - FOR CONDONATION OF DELAY IN FILING; and, IA No. 150110/2019 - FOR CONDONATION OF DELAY IN FILING)

Date : 24-02-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Ms. Madhavi Divan, ASG
Mr. Rajat Nair, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Sahil Monga, Adv.
Mr. Gurmeet Singh Makker, AOR

For Respondent(s) Mr. Vinay Navare, Sr. Adv.
Mr. Himanshu Gupta, Adv.
Mr. Manoj C. Mishra, AOR

Mr. Manik Garg, Adv.
Mr. Varun Bedi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Balraj Dewan, AOR
Mr. Shafiq Khan, Adv.
Ms. Sundri, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal stands disposed of, in terms of the Signed Order.
Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
ASSISTANT REGISTRAR

(Signed Order is placed on the File)