HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT APPEAL NOs: 889 and 898 OF 2023

WRIT APPEAL NO: 889 OF 2023

Writ Appeal under clause 15 of the Letters Patent Preferred Against the order Dated 28/08/2023 passed in W.P.No.31494 of 2016 on the file of the High Court.

Between:

Dr.Edpuganti Sree Latha, D/o E.Kondala Rao, Aged about 51 years, Occ-Assistant Director (PHM) R/o Flat No. C-102, Blossom Heights, Kollur, Hyderabad - 502 300

...APPELLANT/RESPONDENT No.3

AND

1. Mrs. Neelam Lavanya, D/o N.Kumara Swamy, Aged about 47 years, Occ-Scientific Officer, R/o Flat No.304, Shell Paradise Apartments. PJR Enclave. Gangaram, Hyderabad.

...RESPONDENT/WRIT PETITIONER

2. National Institute of Flant Health Management, Rep. by its Director General, Rajendranagar. Hyderabad

3. Union of India, Department of Agriculture. Cooperation and Farmers Welfare. Ministry of Agriculture and Farmers Welfare. Government of India, Rep. by its Secretary to Government of India New Delhi

...RESPONDENTS/RESPONDENTS-1 & 2

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to allow the Writ Appeal by setting aside the order dt. 28/08/2023 of the learned Single Judge in WP No. 31494/2016 with all consequential benefits and reliefs.

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order of the learned Single Judge in W.P. No. 31494 of 2016, dated 28.08.2023.

Counsel for the Appellant: SRI S.RAHUL REDDY

Counsel for the Respondent No.1: SRI Dr. K.LAKSHMI NARASIMHA

Counsel for the Respondent No.2 & 3: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERIAL OF INDIA

WRIT APPEAL NO: 898 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the Order dated 28/08/2023 passed in WP.No.31494 of 2016 on the file of the High Court.

Between:

Neelam Lavanya, aged 48 years D/o Sri N Kumara Swamy Occ Scientific Officer BP and MC O/o National Institute of Plant Health Management NIPHM Rajendranagar Hyderabad R/o Rat No 304 Shell Paradise Apartments PJR Enclave Gangaram Hyderabad 500050

...APPELLANT

AND

1. National Institute of Plant Health Management, rep by its Director General. Rajendra Nagar Hyderabad 500030
2. Union of India, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India rep by its Secretary to Government of India, New Delhi
3. Dr Edpuganti Sree Latha, Assistant Director (PHM) at NIPHM, O/o National Institute of Plant Health Management, Rajendra Nagar Hyderabad 500030

...RESPONDENTS

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent-1 to appoint the petitioner in the resultant vacancy.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to treat the additional affidavit/ additional material papers as part and parcel of the main Writ Appeal.

Counsel for the Appellant: SRI Dr. K.LAKSHMI NARASIMHA

Counsel for the Respondent No.1 & 2: SRI GADI PRAVEEN KUMAR, Dy. SOLICITOR GENERAL OF INDIA

Counsel for the Respondent No.3: SRI S.RAHUL REDDY

The Court delivered the following: COMMON JUDGMENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT. JUSTICE RENUKA YARA

WRIT APPEAL Nos.889 and 898 of 2023

COMMON JUDGMENT: *(Per Hon'ble The Acting Chief Justice)*

These *intra*-Court appeals are directed against order dated 28.08.2023 passed in W.P.No.31494 of 2016. W.A.Nos.898 and 889 of 2023 have been filed by the writ petitioner and respondent No.3 respectively challenging the findings that went against them in the impugned order. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Writ Court.

2. The parties have fought a long drawn battle in the corridors of the Court till the Supreme Court. There is a chequered history of litigation, which can be briefly stated as under:

Facts:

3. On 21.01.2016, advertisement Notification No.1/2016 was issued inviting candidature for the post of Assistant Director (Plant Health Management). The **National Institute for Plant Health Management (Recruitment, Service Bye-Laws, 2008** ('Bye Laws'), lays down the service conditions and the same can be treated as recruitment rules for the aforesaid post. The last date

for submission of applications was 31.05.2016. On 16.06.2016, written test was conducted for the said post and on the same day, the Selection Committee convened a meeting and conducted interviews and power point presentation for the candidates. On 23.06.2016, Dr. Edpuganti Sree Latha/respondent No.3 in the Writ Petition was selected and appointed by the Department. Aggrieved by the said appointment, Mrs. Neelam Lavanya/writ petitioner filed O.A.No.721 of 2016 before the Central Administrative Tribunal, which was dismissed on 31.08.2016 for want of jurisdiction. Subsequently, she filed W.P.No.31494 of 2016 before this Court and on 17.10.2016, this Court granted interim suspension on appointment of respondent No.3. On 28.08.2023, the said Writ Petition was decided by the learned Single Judge by setting aside the selection process and the appointment of respondent No.3. The learned Single Judge instead of directing to consider the candidature of the writ petitioner has ordered for issuance of notification afresh as per relevant criteria.

4. Aggrieved by the said order, the present Writ Appeals have been filed by the writ petitioner and respondent No.3. These Writ Appeals were decided by common judgment of this Court dated

12.09.2023. Aggrieved by the said common judgment, respondent No.3 filed Civil Appeal No.13521 of 2024 before the Supreme Court, which was decided on 21.11.2024. The Supreme Court set aside the common judgment dated 12.09.2023 and remitted back the matter to this Court for fresh adjudication of the Writ Appeals. Thus, these Writ Appeals are now listed for hearing.

Contention of the writ petitioner/appellant in W.A.No.898 of 2023:

5. Dr. K. Lakshmi Narasimha, learned counsel for the writ petitioner/appellant in W.A.No.898 of 2023 submits that the Bye-Laws are silent about criteria for selection. The said criteria were accordingly laid down in advertisement Notification No.1/2016. The advertisement provides 'procedure for selection' and makes it clear that selection to the post in question will be based on written test, power point presentation and interview. Thus, the marks have been given to the candidates only under these heads. By placing reliance on the marks prepared by the official respondents, it is urged that if these three heads are taken into account, the writ petitioner secured 78.05 and respondent No.3 secured only 73.75 marks.

6. The bone of contention of the learned counsel for the writ petitioner is that the Selection Committee without there being any jurisdiction and authority, arbitrarily modified selection criteria by adding weightage to (i) M.Sc./Ph.D. qualification, (ii) publications, recognition and additional experience and (iii) additional training programmes. This modification by the Selection Committee amounts to change of rules of game in the midst of the game. Reliance is placed on the recent Constitution Bench judgment of Supreme Court in the case of **Tej Prakash Pathak v. Rajasthan High Court**[1].

7. By placing reliance on the impugned order passed by the learned Single Judge, learned counsel for the writ petitioner submits that the entire order is in favour of the writ petitioner except paragraph No.12 (3), where the learned Single Judge directed for issuance of fresh advertisement, whereas the learned Single Judge ought to have directed for consideration of candidates on the basis of criteria mentioned in advertisement Notification No.1/2016, dated 21.01.2016. Thus, the said paragraph of the judgment is liable to be set aside and modified to the said extent.

[1] 2024 SCC Online SC 3184

Contention of respondent No.3/appellant in W.A.No.889 of 2023:

8. Sri S. Rahul Reddy, learned counsel for respondent No.3/appellant in W.A.No.889 of 2023 submits that respondent No.3 is working since 2016. The writ petitioner was earlier selected for the post of Scientific Officer and for the said selection, the then Selection Committee applied the same criteria which was applied for the post of Assistant Director (PHM). After having participated in the previous selection for the post of Scientific Officer, it is not correct on the part of the writ petitioner to say that she was not aware about the criteria of selection.

9. The next submission is based on the judgment of Supreme Court in the case of **Srinivas K. Gouda v. Karnataka Institute of Medical Sciences**[2], wherein it was held that if selection is not called in question, the appointment cannot be interfered with. By taking this Court to the procedure of Selection Committee, Sri Rahul Reddy strenuously contended that the Selection Committee adopted its 2013 procedure which was known to the writ petitioner. The Bye-Laws permitted the Selection Committee to adopt any uniformly applicable criteria/procedure. All the

[2] (2022) 1 SCC 49

candidates were dealt on such uniform criteria. Therefore, the writ petitioner was not put to any step-motherly treatment or discrimination. Since all the candidates were treated equally and they were subjected to same set of criteria for the selection, no fault can be found in the selection procedure.

10. Furthermore, Sri S. Rahul Reddy, learned counsel for respondent No.3, submits that from the day of selection itself all the candidates concerned were orally informed by the Department about the criteria to be adopted by the Selection Committee. In the previous round of hearing of these Writ Appeals (before remand from the Supreme Court), the learned counsel appearing for the Department accepted the same. By taking this Court to the scheme of marks, Sri Rahul Reddy submits that in the head of written examination conducted on 16.06.2016, the marks were given out of 80 marks. However, the marks were rearranged while preparing consolidated marks awarded for written test, power point presentation and interview while inserting the weightage of M.Sc./Ph.D., written examination, advanced training, paper publication etc,. The corresponding modification of marks of

written examination has not caused any prejudice to any candidate.

Contention of respondent Nos.1 and 2/Department:

11. Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent Nos.1 and 2 in the Writ Petition submits that Clause 9 of the Bye Laws permits the Selection Committee to select the candidates for various posts. Thus, no fault can be found in the action of the selection committee in preparing its own criteria which was made applicable uniformly to all the candidates. In obedience of the order of the Writ Court, the Department may proceed to issue fresh advertisement.

Rejoinder submissions:

12. In rejoinder submissions, learned counsel for writ petitioner by placing reliance on the judgment of the Supreme Court in **Oswal Fats and Oils Limited v. Additional Commissioner (Administration), Bareilly Division, Bareilly**[3], submitted that the parties while approaching the Court for grant of relief is solemnly obliged to candidly disclose all the material and important facts which have bearing on the adjudication of the

[3] (2010) 4 SCC 728

issues raised in the case. In the instant case, before the Supreme Court in the Civil Appeal No.13521 of 2024, respondent No.3 took a specific stand that on 16.06.2016, the Selection Committee informed orally about guidelines adopted by the Committee, but the Department while filing its counter before the Supreme Court denied and refuted it. Thus, respondent No.3 has not approached the Court with clean hands. The next reliance is placed on the judgment of Supreme Court in **Parimal Kumar v. State of Jharkhand**[4], to submit that after having seen the criteria for appointment in the advertisement, the writ petitioner has legitimately expected that her selection will be under the same criteria.

13. The parties have confined their contentions to the extent indicated above.

14. We have heard the parties at length and perused the record.

Findings:-

15. Before dealing with rival contentions, it is apposite to refer to certain relevant clauses from the Bye Laws and advertisement. Clause 9 of the Bye Laws reads thus:

[4] 2025 SCC OnLine SC 210

"9. Selection of Candidates for Recruitment to Various Posts:

(i) Selection of Candidates to various posts shall be made by Selection Committee to be constituted by respective appointing authorities for the purpose from time to time."

16. The 'Procedure for Selection' in relation to post in question is defined in the advertisement as under:

"B. **PROCEDURE FOR SELECTION**

1. Assistant Director (PHM): **Selection to the post will be based on written test, power point presentation and interview.**"

(Emphasis Supplied)

17. A careful reading of Bye Laws and in particular Clause 9 shows that it only talks about constitution of Selection Committee which will undertake the exercise of selection. However, no clause could be brought to our notice by the learned counsel for the parties, which deals with criteria/method of selection. Thus, on this aspect Bye Laws are of no assistance.

18. The advertisement deals with procedure for selection and makes it clear that selection will be based on (i) written test, (ii) power point presentation and (iii) interview.

19. This is trite that if there is inconsistency between the Rule, Bye Law or advertisement, Rule will prevail. However, in the

peculiar facts of this case, as noticed above, the Bye Laws are silent about the criteria of selection. The advertisement Notification No.1/2016 makes it clear about the procedure/criteria for selection, hence, adding of new criteria/weightage certainly runs contrary to the recent Constitution Bench judgment of the Supreme Court in **Tej Prakash Pathak** (supra), relevant portion of which reads as under:

"65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in *K. Manjusree* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] lays down good law and is not in conflict with the decision in *Subash Chander Marwaha* [*State of Haryana* v. *Subash Chander Marwaha*, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] . *Subash Chander Marwaha* [*State of Haryana* v. *Subash Chander Marwaha*, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] deals with the right to be appointed from the select list whereas *K. Manjusree* [*K. Manjusree* v. *State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

> 65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;
>
> 65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;"
>
> (Emphasis Supplied)

20. The advertisement does not have any statutory force, but it can be equated at least with an executive instruction. In view of above judgment, this criteria laid down in the advertisement is binding and shifting or inserting of new criteria in the midst of selection amounts to change in the rule of game in midway. Thus, we are unable to countenance the stand taken before us by the Department and unofficial respondent i.e., respondent No.3.

21. Learned Single Judge rightly opined that there is no express or implied enabling provision with the Department which enables the Selection Committee to adopt and introduce its own criteria and take a shift from a criteria prescribed in the advertisement.

22. So far, the argument of Sri S. Rahul Reddy that the writ petitioner was selected in the year 2011 for the post of Scientific

Officer, wherein the method of selection was same and therefore, she cannot plead ignorance about the method of selection is concerned, we are only inclined to observe that we do not find any merit in this contention. The selection in the post of Scientific Officer was altogether independent and separate selection. In the selection in question, an independent advertisement i.e., advertisement Notification No.1/2016 was issued, which is pregnant with a clause which deals with the 'procedure for selection'. After having prescribed the procedure of selection, in the absence of any enabling provision existing as on the last date of submission of candidature, it was not open to the Selection Committee to adopt a different criteria.

23. The another argument of Sri S. Rahul Reddy which was strenuously advanced is that on the date of selection itself, the Selection Committee informed all the candidates about the new heads on which they will be assessed. Thus, there was a uniform criteria which was made applicable to all the candidates. We are not impressed with this argument for the simple reason that even assuming this to be correct that Selection Committee informed on the date of selection about change of criteria, the criteria stood

changed midway after selection process commenced from the date of issuance of the advertisement.

24. Apart from this, curiously, the pleadings shown to us which were taken by respondent No.3 before the Supreme Court and relevant paragraph of counter of Government shows that both of them have taken a diametrically opposite stand on the factum of giving any such information to the candidates. The Department in clear terms stated that no such information was given to the candidates. Thus, this argument cannot cut any ice.

25. The record of Selection Committee shows that initially, the marks of written examination were given from total marks of 80. The writ petitioner secured 50 marks, whereas respondent No.3 secured 40 marks. Later on, the Selection Committee prepared consolidated marks for written test, power point presentation, interview and added marks on the head of M.Sc., Ph.D., work accomplishment, experience, advance training and paper publication. Thus, the total marks given on the head of written examination were reduced from 80 to 20. Because of a new methodology and criteria adopted by the Selection Committee which runs contrary to the criteria prescribed in the

advertisement, the difference of marks in written examination between respondent No.3 and the writ petitioner was only 2.50 marks. Whereas when marks in the written examination only were given, the writ petitioner secured 10 more marks than respondent No.3.

26. In view of Constitution Bench judgment in **Tej Prakash Pathak** (supra), we are inclined to hold that this methodology adopted by the Department is impermissible whereby they tested the candidates on the basis of certain criteria which was not prescribed in the advertisement.

27. Learned Single Judge, in our judgment, was justified in giving findings of this nature, but committed an error on the operative portion of the impugned order whereby direction was given to issue new comprehensive notification for the post of Assistant Director (PHM) containing all norms for selection and accordingly select the candidates.

28. In our considered opinion, if the selection was found to be erroneous and Selection Committee considered new criteria which was not prescribed in the advertisement and accordingly gave

marks on those heads, the proper course would be to set aside those findings of the Selection Committee and issue a direction to the Selection Committee to take into account only those marks which are arising out of the criteria laid down in the advertisement. Thus, Selection Committee, in the instant case, needs to take into account the marks obtained by the candidates in the head of written examination, power point presentation and interview. On the basis of these marks already secured by the candidates and, after deleting the marks given on other heads which were not in the advertisement, a new select list needs to be redrawn and most meritorious candidates needs to be selected and appointed. To this extent, the impugned order of learned Single Judge deserves interference and modification.

29. Paragraph No. 12(3) of impugned order of learned Single Judge stood modified accordingly. Merely because respondent No.3 worked for quite some time, no right or equity is created in her favour because writ petitioner was diligently and constantly contesting for her rights. Thus, on the ground of equity, the appointment of respondent No.3 cannot be saved.

30. As a result, the order of learned Single Judge is partly confirmed and interference is made only in respect of paragraph No. 12(3) of impugned order to the extent indicated hereinabove. Resultantly, W.A.No.898 of 2023 filed by Mrs.Neelam Lavanya is **allowed** to the extent indicated above and W.A.No.889 of 2023 filed by Dr.E.Sree Latha is **dismissed**. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/-K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary to Government of India, Department of Agriculture. Cooperation and Farmers Welfare. Ministry of Agriculture and Farmers Welfare. Government of India, New Delhi, Union of India.
2. The Director General, National Institute of Plant Health Management, Rajendra Nagar Hyderabad 500030
3. One CC to SRI S.RAHUL REDDY, Advocate [OPUC]
4. One CC to SRI Dr. K.LAKSHMI NARASIMHA, Advocate [OPUC]
5. One CC to SRI GADI PRAVEEN KUMAR, Dy. SOLICITOR GENERAL OF INDIA, High Court for the State of Telangana at Hyderabad [OPUC]
6. Two CD Copies

BSR
BS

HIGH COURT

DATED: 09/04/2025

COMMON JUDGMENT

WA.Nos.889 and 898 of 2023



PARTLY ALLOWING THE W.A.No.898 of 2023 &

DISMISSING THE W.A.No.889 of 2023,

WITHOUT COSTS

(8) Copies

16/4/25