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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : September 16, 2009

Judgment delivered on : October 06, 2009

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W.P. (C) No.9200/2009

% Raghunath Prasad Saket ... Petitioner
Through: Mr. K.S. Chauhan, Mr. Kartar Singh,
Mr.Chand Kiran and Mr. K.C. Lamba,
Advocates

versus

Satyawati College & Others ... Respondents
Through: Ms. Priya Kumar and Mr. Neeraj
Chaudhary, Advocate for Satyawati
College.
Mr. Mohinder Rupal, Advocate for
University of Delhi.
Mr. Amitesh Kumar, Advocate for
University Grants Commission.
Mr. Manmohan Singh Sethi, Advocate
for Respondent No. 5.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. In pursuance to advertisement of June, 2008 (Annexure P-3) floated by the Respondent – College, Petitioner had applied for the post of Lecturer in Economics and vide letter (Annexure P-4) he was called for interview but was not selected. Instead, Respondent No. 5

was selected as Lecturer in Economics. Petitioner claims that despite being eligible, he has not been selected for the post of Lecturer in Economics, whereas Respondent No. 5 had not cleared the Net Examination, which was an essential requirement and thus, was ineligible but she has been selected.

2. The challenge in this petition is to the selection of Respondent No. 5 as Lecturer in Economics being illegal and contrary to University Grants Commission Regulations (Annexure P-2). Petitioner claims to be at Serial No.2 and seeks a direction to Respondent to appoint him on the post of Lecturer in Economics in the Respondent - College.

3. Respondent – College, in its counter affidavit, has taken a stand that eligibility criteria as laid down by University Grants Commission has not been ignored and there is no violation of any regulation as the performance of Respondent No. 5 was found to be excellent by the Selection Committee, which consisted of senior persons and to select best available talent for the teaching job, had recommended Respondent No. 5 for appointment to the post of Lecturer in Economics but this was subject to the condition that her appointment would be confirmed on completion of M.Phil or upon qualifying NET. Respondent No. 5 has gone a step further in asserting that she had informed the Selection Committee that she had already appeared in the NET examination in December, 2008 and even if her result was delayed, and was declared in May, 2009,

she will be deemed to have been qualified in NET in December, 2008.

4. Respondent – University, in its counter affidavit, has acknowledged that the name of the Petitioner was placed at second place in the panel for appointment to the post of Lecturer in Economics (SC category) and the advertisement for the selection to the post in question was made on 17th June, 2008 and the University had informed the Respondent - College vide communication of 22nd May, 2009, (Annexure R-1/1) that Respondent No. 5 did not fulfill the eligibility criteria. The precise stand taken by the Respondent - University is as under:-

“That as stated above in para no.6 Respondent No. 5 Ms. Madhavi Moni K. does not fulfill the minimum eligibility criteria for appointment to the post of Lecturer (Assistant Professor) at the time of her selection in the respondent college and her appointment is irregular and violative of University Ordinances and UGC Regulations, 1998.”

5. Respondent – University Grants Commission, in its counter affidavit, has endorsed the stand of Respondent - University in asserting that ‘NET’ shall remain the compulsory requirement for appointment as Lecturer in Economics even for the candidates having Ph.D degree.

6. After having heard counsel for the parties and upon perusal of material on record and the decisions cited, this Court finds that even in the minutes of meeting of the Selection Committee, held on 11th

February, 2009, it stands acknowledged that Respondent No. 5 did not have the required eligibility. What is recorded in the aforesaid minutes of the meeting, deserves notice and it reads as under:-

“Therefore, the Selection Committee recommended her name for the permanent post although she does not have the required eligibility. She may be appointed for the post but her appointment will be confirmed when she completes her M.Phil or qualifies NET (whichever is earlier), till then she will be under probation.”

7. The legal position on the point in issue needs to be looked into. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. It has been so endorsed by the Apex Court in *“Dolly Chhanda vs. Chairman, JEE and others”* (2005) 9 SCC 779.

8. In *“Ashok Kumar Sharma & Anr. vs. Chander Shekhar and Anr.”*, 1993 Suppl. (2) SCC 611, the question for consideration was whether or not candidates who were fully qualified to be appointed as Junior Engineers on the dates of interview, but whose results had not been declared on the dates of submission of their applications, were entitled to be considered for appointment to the post of junior engineer. The aforesaid question would not arise in the instant case

for the reason that the candidates in the aforesaid decision were fully qualified on the day of the interview. In the instant case, Respondent No. 5 had not qualified the NET examination, when she was interviewed as is evident from the minutes of the meeting of Selection Committee on 11th February, 2009. Reliance placed upon decision reported in (1995) 3 SCC 120, is misplaced as the schedule tribe candidate, though available, was lacking requisite experience and the reserved post was filled up by the general candidate and in that context, it was said that the appointment of schedule tribe candidate lacking requisite experience was not *per se* illegal. Another decision reported in AIR 1978 SC 1536, holding appointment to be irregular but not void on account of lack of experience, is of no help to the case of the Respondent No. 5.

9. The pertinent observations made by the Apex Court in the case of *“Municipal Corporation of Greater Bombay and others vs. Dr. Sushil V. Patkar and others”* **AIR 1991 SC 1733**, which applies to the case in hand, are as under:-

“The candidate who did not possess the necessary eligibility qualification on the date of application and who was given an opportunity even at the belated stage of interviews to show that he possessed the necessary qualification for selection, having failed to furnish the certificate showing acquisition of qualification cannot be allowed to upset the selection and thereby interfere with the rights of third parties for his default. The selection board in such cases had no option but to ignore his

candidature on his failure to satisfy it on the question of eligibility by producing the certificate of his having acquired the necessary qualifications. He could not, therefore, be heard to say that his default should be condoned and the selection be upset notwithstanding its adverse impact on the rights of third parties.”

10. In the decision reported in JT 2008 (11) SC 73, appointment order had permitted the Research Assistants to acquire NET/M.Phil qualification within a period of three years, failing which they would not be entitled to future increments. This decision does not come to the aid of the Respondent No. 5, for the reason that as per the counter affidavit of University Grants Commission, Circular of 10th February, 1993 had granted some exemption from appearing in the Eligibility Test, i.e., NET examination. However, this is not a position now as stands already acknowledged by the Respondent in the minutes of the meeting of the Selection Committee, referred to above.

11. Decision reported in 1993 II LLJ 1159, pertained to a Principal of a private college and the challenge to his appointment on the ground lacking requisite educational qualification was repelled as he had acquired the experience of teaching senior classes since the year 1981 and the challenge to his appointment was made in the year 1990. Aforesaid decision was on its own facts and is of no help to the case of Respondent No. 5.

12. This Court is conscious of the fact that normally, the recommendations of the Selection Committee cannot be challenged

except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine recommendations of the Selection Committee like Court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a Court of appeal to examine selection of candidates nor is it the business of Court to examine each candidate and record its opinion.

13. It is true that selections cannot be faulted with, while sitting in writ jurisdiction but the eligibility of the selected candidate certainly can be gone into. The Selection Committee in its minutes of meeting held on 11th February, 2009 has itself acknowledged that Respondent No. 5 does not have the required eligibility of qualifying NET examination. Strangely, Respondent No. 5 has been recommended for appointment on the permanent post of Lecturer in Economics subject to her qualifying the NET examination or of her completing M.Phil, whichever is earlier, and till then, she has been put on probation.

14. It is abundantly clear that Respondent No. 5 had not passed the NET examination even on the date of interview, i.e., on 11th February, 2009 and since passing of this examination was an essential qualification, which could not have been waived, therefore, her appointment was an utter violation of the University Grants Commission Regulations of 1998. Respondent - University has fairly acknowledged the above said factual position. For this very reason,

Respondent No. 5 was not called for interview for the post of Lecturer in Economics in Laxmi Bai College affiliated to University of Delhi as is evident from communication of 14th July, 2009 (Annexure CM-2).

15. Since Respondent No. 5 did not possess the minimum eligibility of passing NET examination on the date of the advertisement, and even on the date of interview, therefore, her appointment as Lecturer in Economics is not merely irregular but is *void ab initio* and it cannot be sustained and is accordingly set aside. Since the Petitioner was placed second in the panel drawn by the Selection Committee in its meeting on 11th February, 2009, for the appointment to the post of Lecturer in Economics (SC category), as per the counter affidavit of Respondent – University, therefore, Respondent - College is directed to finalize the selection to the post of Lecturer in Economics (SC category) in reference to advertisement of 17th June, 2008 within eight weeks.

16. This petition stands allowed in the aforesaid terms.

17. No costs.

Sunil Gaur, J.

October 06, 2009
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