

Court No. - 35

Case :- WRIT - A No. - 11561 of 2023 (Leading writ petition)

Petitioner :- Prabhanshu Kumar

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Navin Kumar Sharma, In Person

Counsel for Respondent :- C.S.C., Ajal Krishna, Avneesh Tripathi, Pratik Chandra

With

Neutral Citation No. - 2023:AHC:212457

Case :- WRIT - A No. - 6847 of 2022 (connected writ petition)

Petitioner :- Prabhanshu Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Lal Dev

Counsel for Respondent :- C.S.C., Ajal Krishna, Avneesh Tripathi

Hon'ble Vikas Budhwar, J.

1. Since the issues raised in both the writ petitions are connected with each other and have bearing on the said aspects, thus, with the consent of the parties the writ petition is decided at the fresh stage, for the sake of brevity Writ A No. 11561 of 2023 is treated as leading writ petition and Writ A No. 6847 of 2022 is treated as connected writ petition.

2. Heard Sri Shailendra, learned Senior Counsel assisted by Sri Naveen Kumar Sharma, learned counsel for the writ petitioner in both the writ petitions, Sri Santosh Kumar, learned Standing Counsel who appears for respondents No. 1 and 9 in the leading writ petition and respondent No. 1 in the connected writ petition, Sri Avneesh Tripathi, learned counsel who appears for respondents No. 2 to 6 in the leading writ petition and respondent No. 2 in the connected writ petition and Sri Ajal Krishna, learned counsel who appears for respondent No. 7 in the leading writ petition and respondent No. 3 in connected writ petition.

3. In view of the order which is being proposed to be passed today, notice is not being issued to respondent No. 8.

4. The facts of the case are not being adverted to particularly in

view of the fact that this Court had already taken note of the facts and the arguments advanced by the respective parties in its order dated 15.09.2023 which is quoted in extenso.-

"Heard Sri Prabhanshu Kumar, the petitioner, who appeared in person, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel for respondent nos.1 and 9, Sri Avneesh Tripathi, learned counsel for respondent nos.2 to 6, Sri Ajal Krishna, learned counsel for the 7th respondent and Sri Pratik Chandra, learned counsel for the 8th respondent.

This Court while entertaining the writ petition on 20.07.2023, passed the following orders :-

"Sri Navin Kumar Sharma, learned counsel for the writ petitioner submits that the Advertisement No.HBTU/Estt./01/2023 dated 9.6.2023 issued by Harcourt Butler Technical University, Kanpur suffers from various discrepancies as it is not commensurate to the provisions of All India Council for Technical Education notification dated 1st March, 2019 while drawing attention towards Clause 5.1 (C) under the heading qualification for Associates Professor (Level-13AI, Entry Pay 131400/-) as the qualification for the said post for direct recruitment is Ph.D. degree in relevant field and First Class or equivalent and either Bachelors or Masters level in the relevant branch along with the others. It is further contended on behalf of writ petitioner that the HBTU has framed Recruitment Rules (Direct Recruitment) for Faculty Positions (Assistant Professor, Associate Professor and Professor) in Biochemical Engineering while drawing attention towards page 49 relevant extract at page 50 whereby the essential qualification for Associate Professor (Level-13AI, Entry Pay 131400/-) is B.E./B.Tech./B.S. and M.E./M.Tech/M.S. or Integrated M.Tech. in relevant branch with first class or equivalent in any one of the degrees and Ph.D. in the relevant field.

The submission of learned counsel for the petitioner is though in A.I.C.T.U. Regulations for direct recruitment on the post in question Ph.D. degree in relevant field and first class or equivalent at either Bachelor or Masters level in relevant branch is required however in the Rules of HBTU B.E./B.Tech./B.S. and M.E./M.Tech/M.S. Ph.D. relevant branch with first class or equivalent in any one of the degree along with Ph.D. degree in the relevant field has been provided which is illegal.

Sri Sharma, who appears for the writ petitioner has also invited the attention of the court towards order dated 5.5.2022 in Writ-A No.6847 of 2022 preferred by the writ petitioner in which with respect earlier advertisement with regard to the said post, the writ petitioner was originally allowed to participate in the selections particularly the interview which was scheduled to be held on 6.1.2022, thus according to him one the said writ petition is pending no further exercise could have been undertaken.

Sri Avaneesh Tripathi learned counsel for the respondents no. 2 and 6 on the strength of the instructions dated 19.7.2023 under the signature of the third respondent has sought to contend that the argument raised by the writ petitioner proceeds on fallacy particularly in view of the fact that the writ petitioner was not qualified as the provision which has been pointed out by the writ petitioner is to be read in conjunction with the provision under para 5.1 relating to minimum qualifications for direct recruitment as Assistant Professor which is at under graduate level as per the A.I.C.T.U. notification dated 1st March, 2019. He further submits that the earlier litigation has rendered infructuous as pursuant to the interim order accorded to the writ petitioner in the earlier writ petition, the writ petition was allowed to participate in the interview on 6.5.2022 and thereafter pursuant to the Executive Council meeting of the University held on 5.7.2022, none of the candidates were found to be suitable.

Since a writ of certiorari is being sought for quashing of the advertisement in question, thus before proceeding further the respondents may file their response.

Sri Santosh Kumar, learned Standing Counsel who appears for respondent no. 1 and 9, Sri Avaneesh Tripathi who appears for respondents no. 2 and 6 and Sri Ajal Krishna, learned counsel for the respondent no.3 and Sri Pratik Chandra who appears for respondent no.8 pray for and they are granted three weeks time to file counter affidavit. One week thereafter is allowed to the petitioner for filing rejoinder affidavit.

Put up this case on 28.8.2023 as fresh.

In the meantime, respondents shall file their response.

When the matter is next listed, the record of Writ-A No.6847 of 2022 be also tagged with the writ petition and showing the case title as well as counsel for the parties"

Thereafter, the matter was taken up yesterday i.e. 14.09.2023, wherein the following orders were passed :-

"In Re: Civil Misc. Application for Withdrawal of Vakalatnama No.4 of 2023

The captioned writ petition was filed on behalf of one Sri Prabhanshu Kumar by his counsel Sri Naveen Kumar Sharma.

In the said writ petition on 20.07.2023, the following orders were passed: -

"Sri Navin Kumar Sharma, learned counsel for the writ petitioner submits that the Advertisement No.HBTU/Estt./01/2023 dated 9.6.2023 issued by Harcourt Butler Technical University, Kanpur suffers from various discrepancies as it is not commensurate to the provisions of All India Council for Technical Education notification dated 1st March, 2019 while drawing attention towards Clause 5.1 (C) under the heading qualification for Associates Professor (Level-13AI, Entry Pay 131400/-) as the qualification for the said post for direct recruitment is Ph.D. degree in relevant field and First Class or equivalent and either Bachelors or Masters level in the relevant branch along with the others. It is further contended on behalf of writ petitioner that the HBTU has framed Recruitment Rules (Direct Recruitment) for Faculty Positions (Assistant Professor, Associate Professor and Professor) in Biochemical Engineering while drawing attention towards page 49 relevant extract at page 50 whereby the essential qualification for Associate Professor (Level-13AI, Entry Pay 131400/-) is B.E./B.Tech./B.S. and M.E./M.Tech/M.S. or Integrated M.Tech. in relevant branch with first class or equivalent in any one of the degrees and Ph.D. in the relevant field.

The submission of learned counsel for the petitioner is though in A.I.C.T.U. Regulations for direct recruitment on the post in question Ph.D. degree in relevant field and first class or equivalent at either Bachelor or Masters level in relevant branch is required however in the Rules of HBTU B.E./B.Tech./B.S. and M.E./M.Tech/M.S. Ph.D. relevant branch with first class or equivalent in any one of the degree along with Ph.D. degree in the relevant field has been provided which is illegal.

Sri Sharma, who appears for the writ petitioner has also invited the attention of the court towards order dated 5.5.2022 in Writ-A No.6847 of 2022 preferred by the writ petitioner in which with respect earlier advertisement with regard to the said post, the writ petitioner was originally allowed to participate in the selections particularly the interview which was scheduled to be held on 6.1.2022, thus according to him one the said writ petition is pending no further exercise could have been undertaken.

Sri Avaneesh Tripathi learned counsel for the respondents no. 2 and 6 on the strength of the instructions dated 19.7.2023 under the signature of the third respondent has sought to contend that the argument raised by the writ petitioner proceeds on fallacy particularly in view of the fact that the writ petitioner was not qualified as the provision which has been pointed out by the writ petitioner is to be read in conjunction with the provision under para 5.1 relating to minimum qualifications for direct recruitment as Assistant Professor which is

at under graduate level as per the A.I.C.T.U. notification dated 1st March, 2019. He further submits that the earlier litigation has rendered infructuous as pursuant to the interim order accorded to the writ petitioner in the earlier writ petition, the writ petition was allowed to participate in the interview on 6.5.2022 and thereafter pursuant to the Executive Council meeting of the University held on 5.7.2022, none of the candidates were found to be suitable.

Since a writ of certiorari is being sought for quashing of the advertisement in question, thus before proceeding further the respondents may file their response.

Sri Santosh Kumar, learned Standing Counsel who appears for respondent no. 1 and 9, Sri Avaneesh Tripathi who appears for respondents no. 2 and 6 and Sri Ajal Krishna, learned counsel for the respondent no.3 and Sri Pratik Chandra who appears for respondent no.8 pray for and they are granted three weeks time to file counter affidavit. One week thereafter is allowed to the petitioner for filing rejoinder affidavit.

Put up this case on 28.8.2023 as fresh.

In the meantime, respondents shall file their response.

When the matter is next listed, the record of Writ-A No.6847 of 2022 be also tagged with the writ petition and showing the case title as well as counsel for the parties."

Thereafter the said writ petition was taken up on 28.08.2023, wherein the following orders were passed: -

"Sri Ratnesh Shukla, learned counsel for the respondent-University and Sri P.K. Shahi, learned Addl.Chief Standing Counsel seek time to obtain instructions and file affidavit. On their request, put up as fresh on 04.09.2023 as a last indulgence.

It is expected that the counter affidavit shall be served upon the learned counsel for the writ petitioner positively by 01.09.2023."

Subsequently, on 04.09.2023, the following orders were passed: -

"It has been reported that the lawyers are abstaining from work today.

In the interest of justice, the case is adjourned.

Put up this case in the list of fresh cases on 25.09.2023."

Today the present application is before the Court being Civil Misc. Application for Withdrawal of Vakalatnama, No.4 of 2023 under Order XXII Rules 1 and 2 of Rules of the Court with an affidavit of the writ petitioner, Prabhanshu Kumar with a prayer to withdraw the Vakalatnama of his counsel Sri Naveen Kumar Sharma and to permit the petitioner in person to argue the matter.

Sri Prabhanshu Kumar has appeared in person today. He seeks withdrawal of the vakalatnama and wants to argue the matter in person.

Since there is already an affidavit filed by the petitioner in person for withdrawal of the vakalatnama of his counsel Sri Naveen Kumar Sharma, thus the application is allowed. The authority of Sri Naveen Kumar Sharma to represent and to argue the case of the writ petitioner is withdrawn and writ petitioner is permitted to argue in person.

In Re: Listing Application No. 3 of 2023

By way of the present listing application, the writ petitioner, in person, seeks

preponement of the date, which has already been fixed for 25.09.2023 on 04.09.2023. While drawing attention towards Annexure-4 at page-18 of the Civil Misc. Application for withdrawal of vakalatnama bearing number '4 of 2023', the petitioner in person sought to contend that the tentative date of direct recruitment to various teaching and non-teaching posts of the University was fixed. The petitioner in person has also forwarded a copy of a document, which is of two pages dated August 28, 2023, to Harcourt Butler Technical University, Kanpur so as to contend that the date of the interview has been fixed for 9-17 of September, 2023 and according to him, the interviews are to be conducted for the post of Associate Professor (Bio-Chemical Engineering) on 17.09.2023.

Normally, in ordinary circumstance, the Court does not accept any document being produced in the Court directly without there being any affidavit, but in view of the fact that the writ petition is appearing in person and the lawyers are abstaining from work, thus the Court is accepting the said document, just in order to assess the urgency of the matter.

In the peculiar facts and circumstances of the case, put up this case as a fresh case tomorrow at 11:00 A.M. along with records of both the writ petitions (leading and connected).

Sri Prabhanshu Kumar, who appears in person, shall inform Sri Ajal Krishna, Sri Prateek Chandra and Sri Avaneesh Tripathi, learned counsel for the respondents in advance in writing today itself.

Learned Standing Counsel is present in the Court. They shall also obtain instruction in the matter.

The document dated 28.08.2023 is taken on record and marked as Appendix 'X'."

Pursuant to the order passed by this Court dated 20.07.2023, counter affidavit has been filed on behalf of the respondent nos.2 to 6, to which a rejoinder affidavit has been filed.

A counter affidavit has been filed by Sri Ajal Krishna, learned counsel on behalf of the respondent nos.7, which is also on record.

Sri Pratik Chandra, who appears for the respondent has made a statement at Bar that the eighth respondent is a proforma party in that regard and thus there is no requirement to file any response.

Principally, the challenge raised in the present petition is to the Advertisement No. HBTU/Estt./01/2013 dated 09.06.2023 issued by Harcourt Butler Technical University, Kanpur insofar as it pertains to advertising one post of Associate Professor in Biochemical Engineering. According to the learned counsel for the writ petitioner, there happens to be a notification issued by the All India Council for Technical Education, dated 01.03.2019, providing for AICTE REGULATIONS ON PAY SCALES, SERVICE CONDITIONS AND MINIMUM QUALIFICATIONS FOR THE

APPOINTMENTS OF TEACHERS AND OTHER ACADEMIC STAFF SUCH AS LIBRARY, PHYSICAL EDUCATION AND TRAINING & PLACEMENT PERSONNEL IN TECHNICAL INSTITUTION AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN TECHNICAL EDUCATION - (DEGREE), REGULATION, 2019.

AICTE regulations on pay scales, service conditions and minimum qualifications for the appointments of teachers and other academic staff such as library, physical education and training & placement personnel in technical institutions and measures for the maintenance of standards in Technical Education - (Degree), Regulation, 2019.

The petitioner in person has sought to argue that Clause 5.1 of the 2019 Regulations of AICTE provides for minimum qualification for recruitment as an Assistant Professor (Level-10, Entry Pay 57700/-), wherein sub-clause (a) under the heading of Engineering/Technology provides the essential minimum qualifications being B.E./B.Tech./B.S. and M.E./M.Tech /M.S. or Integrated M.Tech in relevant branch with first class or equivalent in any one of the degrees.

According to the petitioner in person, Clause 5.1 (c) provides for qualification for Associate Professor (Level-13A1, Entry Pay 131400/-), wherein for direct recruitment, the qualifications are Ph.D. degree in the relevant field and First Class or equivalent at either Bachelor's or Master's level in the relevant branch. The petitioner in person has also invited the attention towards Clause 7.5 at page no.59, which reads as under :-

"Existing incumbents recruited as a Faculty with the basic minimum qualifications such as M.Sc. (Mathematics), M.Sc. (Biotechnology), M.Sc. (Electronics), M.Sc. (Computer Science & allied subjects), M.Sc. (Physics), M.Sc. (Chemistry), MCA, PGDCA, AMIE/M.Com and any other similar qualifications which were considered eligible at the time of recruitment or taken admission in such courses before publication of the AICTE Gazette dated 13th March 2010 are to be considered as eligible for promotion as well as direct recruitment in the same or other institutions, subject to fulfilment of other eligibility criteria and higher qualifications as prescribed, if any, for various teaching posts."

The submission of the petitioner in person is that as apparent from Annexure No.7 at page no.70 of the paper book, which happens to be the Recruitment Rules (Direct Recruitment) for Faculty Positions (Assistant Professor, Associate Professor and Professor) in Biochemical Engineering, now a different set of qualifications have been made injected, which even in fact according to him is contrary to the notification of the AICTE. While interpreting Clause 7.5 of the 2019 AICTE notifications, petitioner in person seeks to argue that once the writ petitioner possess M.Sc. degree in Physics, then he qualifies for being recruited as Associate Professor and according to him the requirement of B.E./B.Tech./B.S. in the relevant field stands irrelevant, as the selections in question are being conducted for Associate

Professor and not for Assistant Professor.

Sri Tripathi, who appears for the University on the other hand submits that the University in question is basically relying upon in making selections in pursuance of the notification issued by the AICTE dated 1st March, 2019 and according to him, the minimum qualifications for Assistant Professor being entry level under Engineering/Technology is B.E./B.Tech. and M.E./M.Tech/M.S. or integrated M.Tech in relevant branch with first class or equivalent in one of the degrees, which pre-supposes that an incumbent has to have the four years course (degree) as B.E./B.Tech./B.S., then he can step the ladder for pursuing M.E./M.Tech./M.S. He further submits that deliberately the words P.hd. in the relevant field and first class or equivalent at either bachelors or masters level in executive branch has been inserted, as the qualifications for Associate Professor and thus merely possessing the degree of M.Sc. in Physics would not cloth the writ petitioner of the qualifications for being held to be eligible to participate in the selection for Associate Professor.

Sri Tripathi has also produced before this Court the document dated 19.07.2023 issued under the signatures of the Registrar of the University in question, whereby the writ petitioner was found to be not eligible, pursuant to the permission accorded to him by virtue of an interim order dated 05.05.2022.

Sri Tripathi has further argued that it is the AICTE, which has to give a final call, as to whether for the purposes of selection on the post of Associate Professor in Biochemical Engineering, the degree of M.Sc. in Physics would be a relevant qualification pertaining to the relevant field or not. He further submits that the University also intends to get the issue resolved finally, as the same is cropping up umpteen number of time. He thus submits that the AICTE be directed to clarify the said stand. He further submits that it is always the stand of the University that the selections be made on merit and they should not be compromise and in case there are deserving candidates then they should be allowed to participate in the selections.

Sri Ajal Krishna, learned counsel submits that though he has filed a counter affidavit, however according to him, he would seek instructions in the matter and file an affidavit by 27.09.2023.

Sri Tripathi, learned counsel for AICTE thus submits that in case clarification is being sought from the AICTE, thus the matter be decided on the next date fixed, particularly in view of the fact that in case the selections are deferred, then they should not be deferred for time immemorial.

Looking into the peculiar facts and the circumstances of the case, put up this case on 27.09.2023, as fresh.

In the meantime, since only one post is being sought to be advertised that is of Associate Professor in Biochemical Engineering, thus the University shall defer the selections till 03.10.2023."

5. Pursuant to the order dated 15.09.2023 this Court while taking note the arguments raised by Sri Ajal Krishna who appears for All India Council for Technical Education (AICTE), Nelson Mandela Road, Vasant Kunj, New Delhi this Court required him to file an affidavit on 27.09.2023. Pursuant to the same a supplementary counter affidavit has been filed by the Assistant Director, Northern Region, All India Council for Technical Education (AICTE), Headquarter Nelson Mandela Road, Vasantpur, New Delhi sworn on 06.10.2023 wherein in para 4 the following was mentioned.-

"4. That it is submitted that in view of above facts and provisions, on receiving in the details regarding the Department and the courses with its curriculum offered by the said department of the Institution to which the candidate has submitted his candidature for the post of Associate Professor, the Council shall constitute a committee of experts and submit its opinion after review."

6. Today, when the matter has been taken up Sri Ajal Krishna, learned counsel who appears for AICTE has produced before this Court the recommendations of the Committee constituted by All India Council for Technical Education comprising of Director (Retd.), DTE Maharashtra (Member) and Director LBS Centre, Government of Kerala (Member) wherein the following has been mentioned.-

"On perusal of the qualification acquired by Dr. Prabhanshu Kumar and the relevant clauses in the AICTE regulations as mentioned above, the committee opines that Dr. Prabhanshu Kumar, possess the qualification criteria for the post of Associate Professor in Biochemical Engineering, subject to the fulfilment of other eligibility criteria as per University norms."

7. Perusal of the recommendation of the Committee reveals that it has been opined by the Committee that the qualifications acquired by the petitioners herein and the relevant clauses in the AICTE Regulations mentioned herein the Committee was of the opinion that the writ petitioner possesses the qualification criteria for the post of Associate Professor in Bio-Chemical Engineering, subject to the fulfillment of other eligibility criteria as per University norms.

8. Insofar as the connected writ petition is concerned principally, the prayer made in the present petition is for quashing of the second objection dated 18.04.2022 and the objection dated 02.05.2022 of the second respondent-University insofar as it

relates to non-suiting of the writ petitioner. In the said writ petition, this Court proceeded to pass an interim order dated 05.05.2022 which is quoted hereunder.-

"Heard Shri Vinod Kumar, Advocate holding brief of Shri Lal Dev, learned Counsel for the petitioner, learned Standing Counsel for respondent no.1, Shri Avneesh Tripathi, learned Counsel for respondent no.2 and Shri Ajal Krishna, learned Counsel for respondent no.3.

The instant writ petition under Article 226 of the Constitution of India has been filed for quashing the second objection dated 18.04.2022, sofar as it relates to the non-suiting/screening out of the petitioner.

Learned Counsel for the petitioner submits that the petitioner is eligible candidate to participate in the process of selection of Associate Professor in the respondent no.2, University as he possesses M.Sc. (Physics) and M.Tech (Biotechnology) but the respondent no.2, University is not permitting the petitioner to participate in the process of selection as he obtained the M.Sc. degree in Physics.

Learned Counsel for the petitioner submits that the petitioner has obtained the M.Tech degree in Biotechnology and as such as per regulations issued by All India Council for Teachers Education, the petitioner is eligible to participate in the said selection.

Learned Counsel for the respondent nos.2 & 3 prays for and is granted three weeks' time to file counter affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.

List in the Second Week of July, 2022 in the additional cause list.

In the meantime, the petitioner is directed to participate in the Interview process, which is scheduled to be held w.e.f. 06.05.2022 provisionally.

The result of the said selection shall be subject to final decision of this writ petition.

Learned Counsel for the respondent no.2, University is directed to inform the University about this order in writing during the course of the day.

9. However, as per the stand of the respondent-University though the writ petitioner herein was allowed to participate in the interview which was scheduled to be held on 06.05.2022 but he was not qualified to be accorded any benefit in this regard on the count that he was not eligible.

10. Sri Shailendra, learned Senior Counsel assisted by Sri Naveen Kumar Sharma, learned counsel for the writ petitioner in both the writ petitions submits that now once a stand has come from the AICTE that too in the shape of a recommendation holding that the writ petitioner is eligible and qualified for the post in question, thus, according to him the matter needs re-consideration by the respondent-University. At this stage, Sri Avneesh Tripathi, learned counsel who appears for the respondent-University submits that though as per the counsel who appears for the AICTE there happens to be a recommendation of the Committee so constituted

therein holding that the writ petitioner possesses qualification criteria for the post of Associate Professor in Bio-Chemical Engineering subject to the fulfillment of other eligibility criteria as per University norms but a conscious decision is to be taken by the Vice Chancellor of the Harcourt Butler Technical University, Kanpur as per the statutes and ordinance so prevalent therein he submits that let the matter be remanded to the second respondent, Vice Chancellor, Harcourt Butler Technical University, Kanpur who shall do the needful in the time bound manner.

11. To such a submission, neither the learned Senior Counsel for the writ petitioner nor the learned Standing Counsel or Sri Ajal Krishna has any objection.

12. Considering the submission of the rival parties as well as the stand taken by them, the writ petition stands disposed of requiring the second respondent, Vice Chancellor, Harcourt Butler Technical University, Kanpur or any other authority as competent and designated to deal with the matter as per the statute and the ordinance of the University to consider and to pass appropriate orders with relation to the recommendations of the AICTE dated 19.10.2023 and till a decision is taken the respondent-University shall not proceed with advertisement in relation to the post of Associate Professor in Bio-Chemical Engineering and the interim protection so accorded by this Court shall continue till the passing of the fresh order.

13. With the aforesaid observations, both the writ petitions stand disposed of.

14. In case, occasion arises wherein a new cause of action comes into play it will be open for the writ petitioner to again approach this Court.

15. The recommendations of the AICTE dated 09.10.2023 is taken on record and marked as Appendix 'X'.

16. A copy of the said recommendations of AICTE be furnished to the parties in question by Sri Ajal Krishna.

Order Date :- 6.11.2023

Rajesh