

Court No. - 35

Case :- WRIT - A No. - 16599 of 2023

Petitioner :- Saras Dwivedi

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Devansh Misra

Counsel for Respondent :- A.S.G.I., Ankur Agarwal, Dhananjay Awasthi, Diptiman Singh, Kunal Ravi Singh, Vinayak Mithal

Hon'ble Vikas Budhwar, J.

Heard learned counsel for the writ petitioner and learned Standing Counsel for the State-respondents.

This Court entertained the writ petition on 05.10.2023 and passed the following orders:

"1. Counter affidavit filed today on behalf of the respondent no.3 is taken on record.

2. Heard Sri Devansh Mishra, learned counsel for the writ petitioner.

3. Notice on behalf of the first respondent has been accepted by A.S.G.I.

4. Sri Kunal Ravi Singh, learned counsel appears for the second respondent.

5. Sri Vinakay Mithal along with Sri Ankur Agarwal, learned counsels appears for the third respondent and notice on behalf of the fourth respondent has been accepted by Sri Dhananjay Awasthi.

6. The contention of learned counsel for the writ petitioner is that there has been gross illegality committed in conducting the selections for the post of Assistant Professor in the Department of Defence and Strategic Studies, pursuant to the Advertisement No. ADC/01/2022, dated 28.11.2022, particularly for the reason that though as per the terms and the conditions set out in the advertisement in question being Clause - VIII, the minimum educational qualification stands specified, as per the stipulations contained under UGC REGULATIONS ON MINIMUM QUALIFICATION FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018, but there happens to be a stipulation also that screening and short listing of the applicants for appearing before the selection committee will be done, as per U.G.C. Regulations, 2018 and subsequent amendments made from time to time before the first date of advertisement.

7. Learned counsel for the writ petitioner has invited the attention of the

Court towards U.G.C. notification of the year, 2018, dated 18.07.2018, while inviting attention towards page no.71, which happens to be under the heading of Direct Recruitment under sub-heading 4.1 for the Disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education and Journalism & Mass Communication under further sub heading Eligibility (A or B), wherein reference has been made to the note, which reads as under :-
Note :- The Academic score as specified in Appendix II (Table 3 A) for Universities and Appendix II (Table 3B) for Colleges, shall be considered for short-listing of the candidates for interview only, and the selections shall be based only on the performance in the interview.

8. However, while drawing attention towards Page No.126 of the paper book, it is further sought to be contended that Amar Singh, Avneesh Kumar Verma, Kuldeep Verma and Mahendra Pratap Yadav, who had applied under O.B.C. category for the post in question, Assistant Professor and were called for interview on 07.10.2023, their candidature has been migrated to the General Category (UR) on the same date for interview i.e. 07.10.2023, as according to the writ petitioner migration at the stage of screening is not permissible as he seeks to rely upon the judgment in the case of Pushpendra Kumar Patel and Others. vs. High Court of M.P. Through Registrar General Principal Seat At Jabalpur (Madhya Pradesh and others), decided on 02.01.2023. Though, learned counsel for the writ petitioner has sought to contend that he was entitled to two marks under the heading of research but he has not pressed on the said issue.

9. Counter affidavit has been filed on behalf of the third respondent and it is being sought to be argued by Sri Vinayak Mithal along with Sri Ankur Agrawal that the writ petitioner has no locus to maintain the writ petition, particularly in view of the fact that he has obtained only 81 marks, which is much below the cut off being 83 marks under the unreserved category.

10. Sri Devansh Mishra, learned counsel for the writ petitioner in this regard has invited the attention of the Court towards page no.20 of the counter affidavit that the aforesaid incumbents, who were shifted from OBC category to General category had they not been shifted, then it would have given a room to the writ petitioner to have been accommodated in that regard and the merit would be considerably dropped.

11. Since, a writ of certiorari has been sought, let a response be filed by the counsels appearing for the respondent nos.1, 2 and 4.

12. Counter affidavit shall be filed by 16.10.2023. Rejoinder affidavit, if any, may be filed by 18.10.2023.

13. Put up this case on 19.10.2023, as fresh.

14. At this juncture, Sri Vinayak Mithal along with Sri Ankur Agarwal, learned counsels for the third respondent, Principal, A.D.C., Prayagraj have made a statement at Bar that the writ petitioner would be permitted to appear in the interview scheduled on 07.10.2023. However, according to them, the results may not be declared in that regard.

15. *In view of the stand taken by the learned counsels for the third respondent, the writ petitioner is permitted to appear in the interview scheduled on 07.10.2023, however the results shall not be declared till 19.10.2023."*

Thereafter the matter was placed before this Court on 19.10.2023, when the following orders were passed:

"Pursuant to the order dated 05.10.2023 the matter has been listed today as a fresh matter.

In the previous order though the writ petitioner was allowed to participate in the interview, however, results is not to be declared.

Today, Sri Ankur Agarwal, learned counsel for the respondent submits that already interviews are over and the results are kept in sealed cover. According to him, in case, the writ petitioner has not cleared the interview then the writ petition would be rendered infructuous in view of the relief so couched in the writ petition. Otherwise, this Court may hear the matter on merits.

The said submission of Sri Ankur Agarwal has been farily accepted by Sri Devansh Mishra.

Considering the submission of the counsel for the parties and in order to give a logical end to the submission.

Let the matter be posted as a fresh case on 27.10.2023 at 2:00 P.M. on that date Sri Ankur Agarwal shall place the outcome of the interviews in the sealed cover so as to enable the Court to peruse the same and to pass the appropriate order."

Today pursuant to the order dated 19.10.2023, the recommendations of the duly constituted selection committee was produced before this Court in sealed cover by Shri Ankur Agarwal who appears for the third respondent. This Court opined the sealed cover in the Court itself in the presence of the rival parties and found that the writ petitioner was permitted to appear as under unreserved category for the post of Assistant Professor in the Defence and Strategic Studies but he was not recommended for being accorded selection/appointment.

Confronted with the said situation, Shri Devansh Misra, learned counsel for the writ petitioner submits that the writ petition at the present stage, in view of the relief couched in the writ petition has rendered infructuous, however liberty to be accorded to the writ petitioner to challenge the acts and omissions of the respondent while drawing proceedings at an appropriate stage.

In view of the said facts, the writ petition is **dismissed** as

infructuous, with the aforesaid liberty. The recommendation of the selection committee are being returned back to Shri Ankur Agarwal.

Order Date :- 27.10.2023

A. Prajapati