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**THE HON'BLE SRI JUSTICE DILIP B.BHOSALE**

**AND**

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**WRIT APPEAL No.53 of 2015**

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**JUDGMENT:** (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard learned Additional Advocate General for appellants and learned Senior Counsel, Sri R.Raghunandan Rao for the first respondent.

2. This Writ Appeal is directed against the order dated 11.12.2014 passed in W.P.No.11203 of 2014 allowing the Writ Petition filed by the first respondent herein.

3. The first respondent has been working as Assistant Professor of Commerce in P.G.College, Secunderabad, on contract basis at the time of filing the Writ Petition. Earlier she worked for six years in various affiliated colleges under the control of the appellants' University. She belongs to Maratha Non-Brahmin, which is recognised as BC-B at serial No.25 of G.O.Ms.No.40 dated 07.08.2009. She passed B.Com, M.Com, Diploma in Computer Science, B.Ed., and Ph.D in Commerce. She published 8 research papers and submitted 3 paper for presentation in seminars.

4. While so, the appellant University issued a notification dated 06.02.2012 inviting applications for the post of Assistant Professors under Group-I in 19 faculties including 8 posts in the faculty of commerce. One out of the said 8

posts, one post was reserved for BC-B (W). The qualifications required for the said post of Assistant Professor are follows:

- “i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master’s Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited Foreign University.
- ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.
- iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause candidates, who are, or have been awarded a Ph.D.Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D.Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/ Institutions.
- iv. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.”

5. The first respondent applied to the said post within the prescribed time along with required documents. The Selection Commission interviewed the candidates from 17.05.2013 to 19.05.2013 and the first respondent was interviewed on 18.05.2013 and it recommended the names of 8 candidates for the 8 vacancies including that of the name of the first respondent. The selection list was placed before the 131<sup>st</sup> meeting of the Executive Council held on 18.01.2014, wherein a resolution was passed rejecting the candidature of certain selected candidates including that of the first respondent and ordered for issuance of re-notification. When the appellant University did not announce the result for a long time, the first respondent filed W.P.No.3306 of 2014 seeking announcement of the results of her interview and this Court disposed of the said Writ Petition on 07.02.2014 directing respondents 2 to 4 therein to declare the result and communicate the decision of the Executive Council to

the first respondent herein within a period of two weeks, while recording the statement of the learned Standing Counsel for the University that the matter is pending examination before the Executive Council. The appellants informed the first respondent vide letter dated 17.02.2014 that the Executive Council did not approve the recommendations of the Selection Committee for BC-B(W) post and resolved to re-notify the said post. After receipt of the said letter, the first respondent filed an application under RTI Act on 26.02.2014 seeking reasons for non-approval of recommendations in her case. But, the reasons were not furnished. Challenging the action of the University, the first respondent filed W.P.No.11203 of 2014.

6 . The learned Single Judge, after considering the pleadings, held that the contention of the appellant University that there is no procedure to record detailed discussions held at the meeting, which are confidential in nature could not be countenanced. He also held that the appellants are under obligation to provide information for rejecting the case of the first respondent, as she was selected by the Selection Committee and she had right to know the reasons for rejection of her candidature. Ultimately, he held as follows:

“...In the matter relating to public appointment the appointing authority is under obligation to disclose the reasons for rejection of the candidature of an applicant who was selected by the Selection Committee. No authority can be said to have processed such an absolute and enormous power not to disclose the reasons under the guise of confidentiality when the action of the authority is challenged in a judicial proceedings. From the manner in which the result of the petitioner was not published, the Court has to necessarily presume that there are absolutely no valid reasons for rejecting the candidature of the petitioner. The very fact that the appointing authority is unable to state the reasons even when the action is challenged in a judicial proceeding would obviously indicate that for no valid reason appointment was denied to the petitioner. Hence, this Court is of the considered view that the manner in which the candidature of the petitioner was rejected without any valid reasons, is violative of Articles 14 and 19 of the Constitution of India.

Consequently, the respondents are directed to withdraw the decision of the Executive Council to re-notify the post reserved under BC-B (W) category and appoint the petitioner as Assistant Professor in

Commerce under BC-B(W) category by adhering to the recommendation made by the Selection Committee.

The Writ Petition is allowed accordingly.”

Challenging the said order of the learned Single Judge, the present Writ Appeal was filed.

7. The appeals were initially argued by the learned Standing Counsel for the University, Sri Deepak Bhattacharjee, who filed an additional affidavit on 05.02.2015 stating that an enquiry was conducted by the Registrar to find out the reasons for the Executive Council not approving the recommendations of the Selection Committee and it came to light that the Executive Council, in exercise of the powers conferred by Section 19 (25) of the A.P. Universities Act, 1991 (for short, the Act), constituted a Committee consisting of 3 members to scrutinize the recommendations of the Selection Committee in view of certain complaints received about the selection. It submitted its report on 31.08.2013 and expressed its views. So far as the case of the first respondent was concerned, the Committee constituted by the Executive Council was of the opinion that she was entitled to get only 51 marks, but she was given 59 marks, whereas another candidate by name B.Sridevi, who applied for the same post against the same vacancy, was entitled to get 59 marks, but she was given only 55 marks. Since the candidature of B.Sridevi was not recommended by the Selection Committee, the Executive Council decided not to accept the recommendations of the Selection Committee and directed re-notification of vacancy for the said post. A copy of the report of the Committee constituted by the Executive Council was placed before us. The Committee was of the opinion that since no proof of publication of journal was attached, the first respondent was unduly awarded 8 marks for research and if those marks are deducted from the total marks, she would be entitled for only 51. After this counter-affidavit, the first respondent filed W.A.M.P.No.489 of 2015 for receiving certain documents along with an affidavit indicating the publication of papers and attending the seminars where papers were presented. Thereafter, another affidavit was filed by the Registrar of the University through the learned

Additional Advocate General on 12.03.2015 stating that the recommendations made by the Selection Committee in respect of 12 individuals including that of the first respondent were not approved and their cases were not referred to the State Government as provided under Section 19 (5) of the Act due to inadvertence. It was also stated that pursuant to the decision of the Executive Council, no re-notification has been done and the Executive Council convened a meeting on 13.02.2015 and passed a resolution to refer the matter of 12 candidates, in respect of whom the Executive Council did not approve the recommendations of the Selection Committee, to the State Government for its decision in accordance with Section 19(5) of the Act. In fact, such a decision was taken by the Executive Council when we pointed out to the learned Standing Counsel with regard to the lacunae in the decision of the Executive Council to direct re-notification of the vacancies without referring the matter to the Government. During the course of arguments, time was taken by the learned Standing Council and after convening of the meeting of the Executive Council, the decision to refer the cases to Government was taken. At that stage, the learned Additional Advocate General took over the case from the learned Standing Council and argued the case on behalf of the appellants before us.

8. The learned Additional Advocate General fairly submitted that the finding of the Committee that the first respondent has not enclosed the list of publications was not correct as the list was found enclosed along with original application. However, he submitted that the papers were not published in the approved journals. Then we called for list of approved journals and took up the task of comparing the articles published in the journals furnished to us with the approved list of journals maintained by the University. We noticed that at least in respect of three publications, the articles were published in the approved journals. In any event, this information relating to the findings of the Committee appointed by the Executive Council was withheld from the knowledge of the first respondent as well as the learned Single Judge. In these matters, the Selection Committee is the competent authority and it recommended the case of the first respondent for appointment. The Executive Council did not indicate any reason while passing the resolution of not approving the candidature of 12

candidates including that of the first respondent. It did not even refer to the report of the Committee appointed by it. The relevant portion of the proceedings of the Executive Council held on 18.01.2014 reads as follows:

“(ii) Advertisement No.1/2012 dated 26.03.2012 and its Addendum-Approval of the recommendations of the Selection Committees for the post of Assistant Professors under (Group-I and Group-III) – Reg.

**RESOLVED** that the recommendations of the Selection Committee for the appointment of Assistant Professors in the remaining subjects, be **approved**.

**FURTHER RESOLVED** not to appoint the following posts and to issue re-notification for filling up of left over vacancies of Assistant Professors posts after the entire selection process is completed, **be approved**.

**Group-I** (Unfilled vacancies vide adv.No.1/2006-other than SC/ST)

Urdu - OC

**Group-I (General Recruitment)**

Commerce – BC-B (w)

Economics - OC (W)

Journalism - SC

Kannada - BC-B”

9. The above extracted portion of the proceedings clearly show that there is no reference to the recommendations of the Committee appointed by it. The case was argued before the learned Single Judge as if there was no recommendation of the Committee appointed by the Executive Committee. The findings of the Committee as per its report dated 31.08.2012 so far as the first respondent is concerned are follows:

**“Marks awarded: 59 (Research:11 Academics:12 & Interview:36) Out**

**of 11 marks awarded for research, 8 awarded for research and 3 for papers. But no journal publication proof is attached.”**

10. As already stated above, the respondent has enclosed the list of publications and hence the finding recorded by the Committee appointed by the Executive Council has no basis. In letter No.MR-77/5/2009/Adm.II-1, dated 06.05.2013, while calling the first respondent for interview, it was specifically stated that one set of xerox copy of all certificates and one set of research publication, if any, were asked to be furnished and in view of the assertion made by the learned Senior Counsel for the first respondent, we cannot uphold the finding recorded by the Committee appointed to review the selections made by the Selection Committee with regard to non-furnishing of proof of publication. Obviously, the Selection Committee recommended the name of the first respondent based on its satisfaction.

11. In view of the above facts and circumstances, we hold that the recommendation by the Selection Committee recommending the candidature of the first respondent against BC-B(W) vacancy for the post of Assistant Professor in Commerce was proper and the Executive Council should have approved the same. We are in complete agreement with the finding recorded by the learned Single Judge, though for different reasons as indicated above, and accordingly we dismiss the Writ Appeal. Consequently, the reference made by the Executive Council to the Government pursuant to the resolution dated 13.02.2015 so far as the candidature of the first respondent is concerned, is unnecessary and we direct the appellants to appoint the first respondent to the post of Assistant Professor forthwith. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

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**DILIP B.BHOSALE, J**

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**A.RAMALINGESWARA RAO, J**

Date: 26.03.2015

TJMR