

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**Writ Petition No.2694 of 2010**

**Dated 02<sup>nd</sup> September, 2015**

**Between:**

S.Ayub Basha

**...Petitioner**

**And**

The University of Hyderabad, PO Central University Campus,  
Gachibowli, Hyderabad-500 046, rep.by its Registrar and others

**...Respondents**

**Counsel for the petitioner: Sri K.Rathangapani Reddy**

**Counsel for respondent Nos.1 & 2: Sri S.Satyanarayana Prasad,  
Senior Counsel,**

for Sri Vardhineni Krishna

Mohan

**The Court made the following:**

**ORDER:**

This writ petition is filed for a mandamus to declare the appointment of respondent No.3 as Executive Engineer of respondent No.1-University in pursuance of the selection held on 25.06.2009 as illegal, arbitrary, *mala fide* and unconstitutional and to appoint the petitioner to the said post on his merit.

The facts of this case in brief are as under:

Respondent No.1 has issued employment notification, dated 07.01.2009, *inter alia* notifying one post of Executive Engineer shown as unreserved. Clause 4.02 of the said notification prescribed a Bachelor's Degree in Civil Engineering with ten years experience in design and systems and construction of building, roads, sanitary and

water supply systems including maintenance of the same as the required qualification. It is also shown that Post-graduate Degree in Structures is a desirable qualification. In pursuance of the said notification, the petitioner who holds the Post-graduation Degree, i.e., M.Tech., (Structural) from Indian Institute of Technology, Bombay made his application, so has respondent No.3 who was an employee of respondent No.1. Respondent No.3 having been eventually selected and appointed as the Executive Engineer by respondent No.1, the petitioner filed this writ petition.

The petitioner has raised several pleas in support of his challenge to the validity of the appointment of respondent No.3 including that of *mala fides* against respondent No.4, Vice Chancellor of the time & Chairman of the Selection Committee and also against respondent No.5 who was the University Engineer & Member of the Selection Committee. The petitioner has also pleaded that respondent No.3 who does not possess the essential qualification of Degree in Engineering is not eligible for being called for the interview. It is the further case of the petitioner that while there was no relaxation of the essential educational qualification by the competent authority in favour of respondent No.3, even assuming that such relaxation was made, respondent No.1 had no power or authority to relax the essential qualification.

On behalf of respondent No.1, it is Registrar has filed a counter affidavit. It is *inter alia* stated therein that respondent No.3 made a representation on 16.02.2009 requesting for considering his candidature by citing the appointments made in other Central Government Organisations for the post of Executive Engineer and also his experience as Assistant Engineer for over a period of 17 years in the University, that the Screening Committee in its meeting held on 09.03.2009, while recommending the candidature of 08 candidates to be called for the interview, has also recommended that in view of the recommendation by respondent No.5 that respondent No.3 satisfies all

the qualifications except possessing B.Tech. Degree, he may be given an opportunity to present his credentials before the Selection Committee subject to approval by the competent authority and that when the said recommendation of the Screening Committee was placed before the Registrar, the latter has endorsed that "in view of the long field experience and the supervisory roles already carried out, the candidate may be called for the interview". That this recommendation of the Registrar was approved by the Vice Chancellor and respondent No.3 was accordingly called for interview. The counter affidavit further averred that respondent No.1 has the power to relax any of the qualifications, experience etc., in deserving cases and that as per the Ordinances, the Vice Chancellor is empowered to relax the qualifications, if necessary.

I have heard Sri K.Rathangapani Reddy, learned counsel for the petitioner, and Sri S.Satyanarayana Prasad, learned Senior Counsel appearing for respondent Nos.1 and 2.

The University of Hyderabad is constituted under the provisions of the University of Hyderabad Act, 1974 (for short 'the Act'). The said Act envisaged appointment of various functionaries, such as, Chancellor, Vice-Chancellor, Pro Vice-Chancellor, Deans of Schools, Registrar etc. Section 12 of the Act deals with the appointment of Vice Chancellor and also the nature of powers exercisable by him. Under sub-section (2) thereof, the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

Sub-section (3) of Section 12 of the Act which is pivotal for the present case reads as under:

"The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter;

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice- Chancellor.”

Section 20 of the Act deals with the Executive Council. Under this provision, the Executive Council shall be the principal executive body of the University and its constitution, term of office of its members and its powers and functions shall be prescribed by Statutes.

The schedule of the Act contains the Statutes of the University. Statute 12 deals with the composition of the Executive Council. Statute 13 envisages powers and functions of Executive Council. Sub-clause (ii) of clause (2) of Statute 13 empowers the Executive Council to appoint Professors/ Senior Fellows/ Readers/ Associate Professors/ Associate Fellows/ Lecturers/ Assistant Professors/ Fellows and other academic staff, as may be necessary. Under sub-clause (iii) thereof, the Executive Council is also empowered to create administrative, ministerial and other necessary posts subject to the approval of the University Grants Commission and to make appointments thereto in the manner prescribed by the Ordinance.

From these provisions, it is abundantly clear that not only the management and administration of the university is vested in the Executive Council, but also power to create administrative, ministerial and other necessary posts subject to the approval of the University Grants Commission and to make appointments thereto is inhered in it. Therefore, the competent authority in the matter of appointment of teaching and non-teaching staff is the Executive Council.

The sheet anchor of the petitioner's case is that respondent No.3, who does not possess the prescribed qualification, namely, Bachelors Degree in Civil Engineering was not eligible to be

considered for appointment as Executive Engineer. Respondent Nos.1 and 2 have relied upon Clause 4, 'General' of the employment notification, which reads as under:

"The University reserves the right to relax any of the qualifications, experience, etc., in deserving cases in respect of any post."

Mr. S. Satyanarayana Prasad, learned Senior Counsel, appearing for respondent Nos.1 and 2, has placed reliance on the judgments of the Supreme Court in *Virendrana Nath Gupta v. Delhi Administration*<sup>[1]</sup> and *Neelima Misra v. Harinder Kaur Paintal*<sup>[2]</sup> to support the appointment of respondent No.3.

In *Virendra Nath Gupta* (1 supra) the employment notification prescribed Master's Degree in Second Division. It was, however, provided therein that 'Condition of second division relaxable in case of candidates belonging to the same school and also in case of Scheduled Castes/Scheduled Tribes.' Challenge to this clause was repelled by the Supreme Court on the ground that the University has reserved the power to relax the essential qualification.

In *Neelima Misra* (2 supra) the Supreme Court held that where the University considered that a publishing work of high standards is equivalent to minimum qualification prescribed, the Court will not interfere with such decision.

No decision is brought to the notice of this Court by the learned counsel for the petitioner that in academic institutions essential condition cannot be relaxed where the employment notification itself reserves such power of relaxation in the university/educational institution. Therefore, the submission of the learned counsel for the petitioner that the relaxation of the essential condition is illegal, cannot be sustained.

The next question that needs to be considered is whether the respondent university has followed the prescribed procedure for relaxing the essential qualification of respondent No.3.

Admittedly, respondent No.3 does not possess the prescribed qualification of Bachelor's Degree in Engineering as he is only a Diploma holder. Therefore, unless the competent authority, i.e., the Executive Council, relaxes the qualification exempting respondent No.3 from holding the said qualification, he was not entitled to be considered. However, the Screening Committee, while short-listing eight candidates for being interviewed by it, recommended as under:

"The committee noted that his candidature has been recommended by the University Engineer In-charge. **Except the B.Tech/B.E. criteria**, he meets other parameters and committee felt that he may be given an opportunity to present his credentials to the Selection Committee **subject to the approval of the competent authority** as per rules."

The Registrar has made the following endorsement:

"(A) & (B) may be approved.

(C) In view of the long filed experience and the supervisory roles carried out, the candidate may be called for the interview."

The Vice-Chancellor has made the following endorsement:

"(A), (B), (C) approved."

The Selection Committee in its meeting held on 25.6.2009 has recommended to appoint respondent No.3 to the post of Executive Engineer.

As noted hereinbefore, in the counter affidavit it is stated that under the Ordinance, Vice Chancellor is the competent authority to exempt a candidate from possessing the prescribed qualification. However, no such Ordinance has been placed before this Court. Under Section 12(3) of the Act extracted hereinbefore, even if the Vice-Chancellor feels that immediate action is necessary on any matter, and exercises any power conferred on any authority of the University by or under the Act he shall report to such authority the action taken by him on such matter. It is not the pleaded case of the University that after approving the recommendation of the Screening Committee as endorsed by the Registrar to permit respondent No.3 to appear for

interview before the Selection Committee, he has placed the matter before the Executive Council.

At the hearing Mr. S. Satyanarayana Prasad submitted that in the 145<sup>th</sup> meeting respondent No.1 has approved the appointment. In my opinion, granting relaxation from possessing prescribed educational qualification in favour of a candidate is different from approving his appointment after the entire selection is over. Evidently, being conscious of the requirement of the approval by the competent authority, the screening committee has recommended the candidature of respondent No.3 "subject to the approval of the competent authority as per rules". As reflected in the counter affidavit, evidently the University proceeded on the premise that respondent No.2 is the competent authority to give such approval and accordingly he has approved the recommendations of the Screening Committee. As undisputedly, it is the Executive Council which is the competent authority to give relaxation, the action of respondent No.2 in approving the recommendations of the screening committee is not in conformity with the provisions of the Act and the Statute made thereunder. In the considered opinion of this Court, before respondent No.3 was permitted to appear before the Selection Committee, it was necessary for the competent authority, i.e., the Executive Council, to relax the prescribed qualification in his favour. Unless such relaxation is made, respondent No.3 has no legs to stand before the Selection Committee for consideration of his candidature. Thus, in my opinion, there was a serious procedural illegality in allowing respondent No.3 to appear before the Selection Committee and in selecting and appointing him as Executive Engineer. The approval of such illegal selection and appointment by the Executive Council of respondent No.1 cannot lend legitimacy to the otherwise illegal action of considering respondent No.3 for appointment without relaxation by the competent authority.

The learned Senior Counsel for the university has placed before the Court the judgments of the Supreme Court in *University of*

*Mysore v. C.D. Govinda Rao*<sup>[3]</sup>, *Swarna Lata v. Union of India*<sup>[4]</sup> and *Dalpat Abasaheb Solunke v. B.S. Mahajan*<sup>[5]</sup> to drive home his submission that Courts seldom interfere with the selections made by the academic bodies. While there can be no dispute on the proposition laid down in the said cases, on the facts of this case those judgments have no bearing, since respondent Nos.1 and 2 have acted contrary to the procedure prescribed by the Act and the Statute vitiating the very selection and appointment of respondent No.3. In the face of such patent illegality, it is not open to respondent Nos.1 and 2 to contend that the Court may refrain from interfering with the decision.

For the above mentioned reasons, the selection and appointment of respondent No.3 is quashed. Respondent Nos.1 and 2 are directed to undertake a fresh selection process for the post of the Executive Engineer.

The writ petition is accordingly allowed.

As a sequel to disposal of the writ petition, W.P.M.P. Nos. 51035 of 2012 and 42425 of 2014 shall stand disposed of as infructuous.

**C.V.NAGARJUNA REDDY, J**

02<sup>nd</sup> September, 2015

VGB/BNR

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<sup>[1]</sup> (1990) 2 SCC 307

<sup>[2]</sup> (1990) 2 SCC 746

<sup>[3]</sup> AIR 1965 SC 491

<sup>[4]</sup> (1979) 3 SCC 165

<sup>[5]</sup> (1990) 1 SCC 305