

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.2472 of 2013
and M.P.No.1 of 2014

Dr.P.R.L.Rajavenkatesan

... Appellant

vs.

The Tamil Nadu Dr.Ambedkar Law University
Rep. By Registrar
Poompozhil,
No.5, Dr.D.G.S.Dinakaran Salai
Chennai-28

...Respondent

Writ Appeal filed as against the order dated 05.08.2013 passed in W.P.No.24015 of 2012. Writ petition filed seeking for a Writ of Mandamus directing the respondent to forthwith consider approve and appoint the Petitioner to the post of Assistant Professor, Environmental Law Branch to the Tamilnadu Dr.Ambedkar Law University based on the marks and ranking list released by the respondent pursuant to the Interview conducted on 01.06.2012.

For Appellant : Mr.S.Ramesh

For Respondent : Mr.T.D.Vasu

JUDGMENT

(Judgment of the Court was made by R.SUDHAKAR,J.)

Heard Mr.S.Ramesh, learned counsel for the appellant and Mr.T.D.Vasu, learned counsel for the respondent/The Tamil Nadu Dr.Ambedkar Law University.

2. This Writ Appeal has been filed against the order made in W.P.No.24015 of 2012 dated 05.08.2013, wherein, the prayer of the appellant herein/Writ Petitioner seeking a direction to the respondent-University to consider, approve and appoint the petitioner to the post of Assistant Professor, Environmental Law

Branch to the Tamil Nadu Dr.Ambedkar Law University based on the marks and ranking list released pursuant to the interview conducted on 01.06.2012, was rejected on the following observation :-

"....the selection of the candidates had been done, by a selection committee, consisting of highly qualified persons. Further, the recommendations had been made by the Selection Committee, based on the merits of the candidates. Thereafter, the recommendations of the Selection Committee had been placed before the syndicate of the respondent University and the necessary approval had been obtained. Further, the petitioner has not been in a position to show that the selection process followed by the Selection committee is arbitrary or irregular. Therefore, the relief prayed for by the petitioner, in the present writ petition, cannot be granted. As such, the writ petition is liable to be dismissed. Hence, it is dismissed."

3. After elaborate arguments put forth on both sides on earlier hearings, this court, by order dated 09.03.2016, directed the respondent-Registrar, Dr.Ambedkar Law University to appear before the court today i.e.,14.03.2016, along with all records relating to selection. Accordingly, today, when the matter is called, the respondent appeared before this court and produced the original records relating to selection. We perused the same.

4. The only plea raised by the learned counsel for the appellant is to direct the respondent to reassess the candidature of the appellant and declare result, either way, giving reasons. According to the learned counsel, for all the other posts of Assistant Professor, the candidates who have secured more marks totally have been considered, however, as far as post of Assistant Professor(Environmental Law) is concerned, even though, the appellant herein secured more marks totally, his candidature was not selected for appointment. According to the learned counsel for the appellant, the grievance of the appellant is that the selection committee has not given any reasons for rejecting his candidature.

5. The learned counsel appearing for the respondent denied the factual averments raised in the grounds of writ appeal and submitted that the non-selection of the candidate is only based on the recommendation of duly constituted Selection

Committee and the same was approved by the Syndicate.

6. As a matter of record, the respondent filed an affidavit dated 27th August, 2015, wherein, in paragraphs 3 and 4, it is stated as under:-

"3. It is respectfully submitted that in the Advertisement published by the University calling for applications it was clearly mentioned that 'the decision to fill the posts rests with the University'. Also, in the interview letter it was clearly mentioned that 'the intimation is not a selection order and will not confer any right to claim appointment'. All the appointments were made only based on the recommendation of duly constituted Selection Committee and approved by the Syndicate at its 116th Meeting held on 04.06.2012.

4. It is further respectfully submitted that in view of administrative restructuring effected recently in the academic year 2014-2015, nine departments have been formed and each faculty member is attached with the department of the subjects in which he/she has specialized. Each department including the department of Environmental Law is headed by HOD who is a professor along with a minimum of two faculty members. The University is also maintaining a panel of Guest Lecturers who are fully qualified and competent to teach various law subjects in which they have specialized. Under this circumstance, there is no need to appoint a faculty member exclusively for the subject "Environmental Law." As and when the need arises, the University may fill the post of Assistant Professor in Environmental Law."

The respondent, who appeared before this court, submitted that for the reasons stated in the affidavit, the candidature of the appellant could not be approved by the Syndicate.

7. It is seen from the original files produced before this court that for the post of Assistant Professor (Environmental Law), two candidates have participated in the interview viz., P.R.L.Rajavenkatesan/appellant and one Om Prakash Somkuwar. The appellant herein scored 46½ marks and the other person secured 20 marks. The following tabular column shows the evaluation details of all the candidates, including the appellant herein:-

Sl. No.	Name of the Candidates	Academic Records (50)	Screening Committee (20)	ICT Knowledge (10)	Selection Committee (20)	Cumulative Records (10)	Total (100)
I. BUSINESS LAW: - 4 CANDIDATES							
1	Tmt.M.Tamilmani	05	10	3	08		26
2	Thiru S.K.Balashanmugam	16	08	5	09		38
3	Thiru T.R.Arun	18	14	6	10	MBC	48
4	Thiru R.Rajyavardhanan	08	13	6	13		40
II. ENVIRONMENTAL LAW:- 2 CANDIDATES							
1	Thiru P.R.L.Rajavenkatesan	18	12½	4	12	MBC	46½
2	Thiru Om Prakash Somkuwar	05	05	2	08	SC	20
III. INTERNATIONAL LAW:- 8 CANDIDATES							
1	Thiru K.Centhil Kumar	06	10½	4	08		28½
2	Thiru R.Karthikeyan	07	11	5	12		35
3	Thiru K.N.Selvin Raj	05	06	3	07		21
4	Ms.C.Anita Fabiyola	06	11½	3	09		29½
5	Thiru R.Elumalai	13	13½	4	10		40½
6	Dr.P.Vasanthakumar	14	14½	5	10	SC	43½
7	Dr.M.Sundarrajan	06	11½	4	10		31½
8	Tmt.R.Kalpana	11	14	3	06		34
IV. INTELLECTUAL PROPERTY RIGHTS:- 5 CANDIDATES							
1	Thiru M.Sunil Gladson	17	16	5	10		48

Sl. No.	Name of the Candidates	Academic Records (50)	Screening Committee (20)	ICT Knowledge (10)	Selection Committee (20)	Cumulative Records (10)	Total (100)
2	Thiru P.R.L.Rajavenkatesan	18	14	4	09		45
3	Ms.R.Betsy Vinolia	18	15½	5	14	BC	52½
4	Thiru A.Nirmal Singh Heera	06					
5	Ms.S.Renuka	06					

8. However, the Selection Committee, without selecting the highest mark holder in the subject Environmental Law, as has been done in other cases, viz., Business Law, International Law and Intellectual Property Rights, merely made a score in the relevant columns of the form as under:

I. Selection List:-

Sl.No	Name & Address	Reservation
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II. Waiting List:-

Sl.No	Name & Address	Reservation
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9. A bare perusal of the tabular statement extracted above reveals that the candidates who have been selected, namely Mr.T.R.Arun, Dr.P.Vantha Kumar and Ms.R.Betsy Vinolia, secured highest marks in the respective subjects. However, for the subject Environmental Law, of the two candidates shortlisted, even though the appellant secured highest marks, his candidature was rejected.

10. We are appalled by the contention raised in the counter affidavit, inasmuch as the respondent/University seems to be running on the strength of Guest Lecturers. If that be the case, they can dispense with the appointment of regular Professors or Lecturers in respect of all the subjects. This is not the way an University can function. Every subject which is being taught in a University should be by a Full time Professor/Lecturer. A Guest Lecturer is by way of supplement and not a primary mode of imparting education. We find that the attitude of the University, that is to say that there are Guest Lecturers to teach various Law subjects and there is no need to appoint regular faculty members, would be an affront to our system of education and an abdication of its role as an educational institution. This approach goes against the basic tenet of education that regular teachers should be appointed be it schools, colleges or universities, so that the students are not deprived of a full-time regular teaching faculty. We therefore reject the plea of the University that a full-time Professor/Lecturer is not required. On the contrary it is a must.

11. It is contended on behalf of the respondent/University that in the notification they have stated that "the decision to fill the posts rests with the university". We find no error in the University reserving such right. But, in the present notification for appointment and the manner in which the whole process of selection is done in respect of different subjects, as extracted in para (7) above, we find that the assessment in all the subjects has been done based on Academic Records; Screening Committee recommendations; Information and Communication Technology knowledge; Selection Committee recommendations and the Cumulative Records. Based on an overall assessment, total marks have been awarded. Thereafter, the highest scorers in respect of the individual subjects - Business Law, International Law and Intellectual Property Rights, were selected. We fail to understand as to why insofar as Environmental Law the present appellant, who has obtained the highest mark, has not been selected. When the assessment has already been done as has been recorded in para (7) above, without there being any justification, the candidature of the appellant has been rejected. This, we are able to discern, is nothing but arbitrariness in approach. The exercise of assessment on appraisal of all parameters has been given a go-by only in respect of Environmental Law without there being any justifiable cause. Fairness in approach avoiding arbitrariness in the process of selection are basic principles, which have to be adhered to by any selection committee at all levels. This cannot be confused with the contention that the decision to fill up the post will rest with the University.

When they have adopted one method or yardstick in respect of three subjects, viz., Business Law, International Law and Intellectual Property Rights, why the same was dispensed with in respect of Environmental Law is the question that stares on our face and we are unable to accept the plea of the University on mere ipsi dixit that their decision is final.

12. The question of non selection does not arise in this method of selection adopted by the Committee because on the basis of the overall assessment, whoever is the highest mark holder, he gets selected. That is evident from the selection in respect of Business Law, International Law and Intellectual Property Rights. If they wanted to reject the candidature of the appellant for some reason in contradistinction to other subjects like Business Law, International Law and Intellectual Property Rights, something more should be found in the file. Putting two scores in the columns, as found in the table in para (8), would be of no avail. The candidature of a person, who secured highest marks in the selection process cannot be brushed aside by this arbitrary method of drawing a line. Even assuming for the sake of the argument that the reasons for rejecting the candidature of the appellant need not be communicated to the candidate, some reasons relevant for non-selection should at least find place in the files of the respondent/ University to justify as to why he was not selected despite scoring highest marks on overall assessment. The files produced before us did not contain anything to show as to why they are rejecting the candidature of the appellant, the highest scorer in that subject. If in the interview the appellant had not performed well he should be given less or no marks. But that is not the case here as the appellant scored higher marks. The total marks of the selected candidates in other subjects is also similar to that of the appellant. When the selection committee makes an assessment after considering the Academic Records, Screening Committee Records and ICT Knowledge and Selection Committee Assessment marks, i.e., to say that marks are given under four heads and the candidate, who gets the highest marks as between his rivals is selected, it appears to us that the selection committee has gone in a fair manner in respect of selection of candidates for Business Law, International Law and Intellectual Property Rights. But in the case of Environmental Law, based on the very same four parameters, viz., Academic Records, Screening Committee Records, ICT Knowledge and Selection Committee Assessment, the candidate in this case has been granted 46 ½ marks as against his rival, who had secured 20 marks. It does not appeal to us as to why the appellant, who holds the highest marks is denied selection and, therefore, the non-selection of the highest mark holder, in the considered opinion of this Court, appears to be arbitrary.

13. In respect of three out of four subjects detailed in para-7. the Selection Committee has gone by a particular method for awarding marks and selecting the candidate who has obtained the highest marks on the overall assessment in that subject we find that in the case of the appellant there has been a miscarriage of justice and there appears to be no basis as to why the appellant holding the highest marks in Environmental Law has not been selected. We have been informed that the post of Assistant Professor in Environmental Law is vacant even as on date. Keeping in mind that the faculty of Environmental Law is vacant, which cannot be supplemented by Guest Lecturer, the respondent/University is bound to appoint a regular faculty member.

14. We, therefore, direct the respondent/University to redo the selection process in respect of Environmental Law by appointing appropriate Committee and complete the said process on the basis of the records already available. The Committee is also entitled to assess the merits of the rival candidates as has been done in the case of Business Law, International Law and Intellectual Property Rights. Discretion is left to the respondent/University to maintain the earlier coram as far as possible and if there is difficulty in getting the full complement as before, they can choose competent alternative members. The respondent/University shall complete the said exercise within a period of four weeks from the date of receipt of a copy of this judgment. The writ appeal is allowed on the above terms. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

nvsri/sasi

To

The Registrar

Tamil Nadu Dr. Ambedkar Law University

Poompozhi,

No.5, Dr.D.G.S.Dinakaran Salai

Chennai-28

+1 cc to M/s.S.Ramesh, Advocate, sr.16122

W.A.No.2472 of 2013

sns co

kra 20.04.2016