

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.397 of 2015

IN

Civil Writ Jurisdiction Case No. 3296 of 2014

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Dr. Maonj Kumar Choudhary, son of Shri Shobha Kant Choudhary, resident of village-Rampur Jalalpur, P.S.-Dalsingsarai, District-Samastipur, presently residing in the house of Prof. R.N. Sharma, Jai Prakash Nagar, Amarnath Mandir Road (East of T.V. Tower), K.Bagh, District-Patna-800026

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. Board of Control through Chairman, A.N. Sinha Institute of Social Studies, Patna-800001.
3. The Director, A.N. Sinha Institute of Social Studies, Patna-800001.
4. The Registrar, A.N. Sinha Institute of Social Studies, Patna-800001.
5. Dr. Neetu Choudhary, daughter of Sri Chandra Kant Choudhary, resident of House No.2M/62, Bahadurpur Housing Colony, Patna-800026, Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Adv.

For the Institute : Mr. Lalit Kishore, Sr.Adv.
Mr.Piyush Lall, Adv.

For the Respondent no.5 : Mr.Sanjeev Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 23-08-2017



Heard learned counsel for the parties.

2. The writ petitioner, being aggrieved by and dissatisfied with the order dated 27.11.2014 passed by the learned Single Judge of this Court in CWJC No.3296 of 2014, is in appeal before us. By the order impugned, the learned Single Judge has refused to go into the legality and validity of the appointment of the respondent no.5 on the post of Assistant Professor in Economics with three advance increments in A.N. Sinha Institute of Social Studies, Patna. The learned Single Judge left the question assailing the appointment of respondent no.5 open. Further as regards the claim of the petitioner for a direction to the institute to appoint him on the post of Associate Professor in Economics, the learned Single Judge held that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not sit in appeal and make a microscopic examination of the correctness of the decision of the selection Committee unless and until it is demonstrated that the same was influenced by bias and mala fide.

3. Before we examine the challenge made to the impugned order passed by the learned Single Judge of this Court, it would be just and proper to glance over the facts as appearing from the records.

Case of the writ petitioner-appellant

4. It is the case of the writ petitioner-appellant that pursuant to an advertisement dated 9th February, 2013 inviting



applications for appointment on the post of Professors, Associate Professors and Assistant Professors, amongst others he as well as respondent no.5 applied for the post of Associate Professor in Economics. The advertisement prescribed the requisite qualification of possessing Ph.D. degree as on the date of notification of UGC (Minimum Standards and Procedure for award of M.Phil/Ph.D. Degree) Regulation 2009 (hereinafter referred to as the 'UGC Regulation 2009') along with those candidates who are awarded Ph.D. degree through a process of admission, registration, course work and external evaluation as laid down in the UGC Regulation 2009 and so adopted by the University shall be exempted from NET/SLET/SET. The petitioner had his Ph.D. degree on the date of notification of UGC Regulation 2009 and also qualified in the eligibility test i.e. Bihar Eligibility Test (BET), he applied for the post of Associate Professor in Economics as also for the post of Assistant Professor in Economics in the said Institute. It is the case of the writ petitioner-appellant that he had got eight years of requisite teaching experience also which was one of the eligibility conditions for appointment on the post of Associate Professor in Economics.

5. It is further case of the petitioner-appellant that the respondent no.5 who had applied only for the post of Associate Professor in Economics had neither Ph.D. Degree on the date of



notification of the UGC Regulation 2009 nor her Ph.D. degree is in compliance of UGC Regulation 2009, she had not qualified in any of the eligibility test such as NET/SLET/BET for appointment as Lecturer. Further it is stated that the respondent no.5 had teaching experience of only two years and seven months against the requirement of eight years for the post of Associate Professor in Economics.

6. The writ petitioner-appellant alleged that the Selection Committee which was constituted for purpose of interviewing the candidates screened for appointment on the post of Associate Professor in Economics in its meeting held on 27.04.2013 rejected the candidature of all the screened candidates who had participated in the interview including the present petitioner-appellant. Referring to the minutes of the meeting dated 27.04.2013 the case of the petitioner-appellant is that the Selection Committee in a very cryptic and vague manner recorded that none of the candidates except respondent no.5 was found suitable for the post of Associate Professor in Economics. Further the petitioner-appellant submits that the same Selection Committee in the very next paragraph of the minutes dated 27.04.2013 took note of the fact that the respondent no.5 was not having requisite teaching experience as required for the post but went on to record that she possesses exceptionally good publications in



nationally and internationally reputed journals, sound knowledge of economic theory and quantitative techniques and consistently good academic records, therefore the Selection Committee recommended that she be appointed as Assistant Professor in Economics as against the post of Associate Professor for which interview had been conducted. Not only this, the Selection Committee further recommended giving her three advance increments along with the offer.

7. According to the petitioner-appellant, the Selection Committee constituted for interviewing the candidates for the post of Associate Professor in Economics was not even competent to recommend the name of the respondent no.5 for appointment on the post of Assistant Professor in Economics. It is an admitted fact that the respondent no.5 had not applied for appointment on the post of Assistant Professor in Economics. Further it is contented that it is a matter of record that a separate Selection Committee was constituted for interviewing the candidates who had applied for appointment on the post of Assistant Professor in Economics and the said Selection Committee had held its meeting on 25.04.2013 and 26.04.2013. The respondent no.5 had not appeared before the Selection Committee constituted for the purpose of appointment on the post of Assistant Professor in Economics.



8. It is the case of the petitioner-appellant that the Selection Committee for appointment of Associate Professor in Economics did not act in accordance with the norms of the UGC. No marks was awarded to the candidates for academic career and interview even though as per the UGC norms full marks for academic career and interview were fixed at 50 each. Break up of marks of each category in interview were also fixed, yet without following the same the Selection Committee on the one hand rejected the candidature of all other candidates who had appeared for the interview and at the same time recommended the name of the respondent no.5 for the post of Assistant Professor in Economics as stated above. The petitioner-appellant therefore submits that the Selection Committee did not prepare any merit list of the candidates and in a most arbitrary, vague and cryptic manner without maintaining transparency in the decision making process rejected the candidature of all other candidates.

9. The petitioner-appellant further submits that according to the UGC (Minimum Qualifications Required For The Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (3rd Amendment), Regulation 2009, it is only those candidates who are or have been awarded Ph.D. Degree in compliance of the Regulation 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and



appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions. The petitioner-appellant submits that even though the respondent no.5 claims her Ph.D. Degree from IIT, Bombay, a bare perusal of stand taken by the respondent no.5 in her counter affidavit and the Annexure enclosed as Annexure-R5/B to the said counter affidavit would show that she never claims her Ph.D. Degree to be in compliance of the UGC Regulation 2009, rather whole effort is to show that Ph.D. Degree awarded by IIT, Bombay is awarded after following stricter rules than those maintained under the UGC Regulation 2009. Therefore, she claims that her Ph.D. Degree is equal to the Ph.D. Degree awarded to a candidate following the standard and procedures laid down under the UGC Regulation of 2009.

10. The petitioner-appellant further submits that a bare perusal of the advertisement (Annexure-3 to the writ application) would show that the Selection Committee, in the present case, had no authority/power to recommend the name of the respondent no.5 for appointment on the post of Assistant Professor in Economics. The advertisement only provides that the Board of Control (in short 'BOC') can on its own initiative consider the name of the potential candidates for senior faculty positions. The submission of the petitioner-appellant is that, in the present case, neither the post of



Assistant Professor in Economics is a senior faculty position nor the BOC has taken any initiative on its own to consider the name of the respondent no.5, therefore the Selection procedure adopted by the Selection Committee as recorded in the minutes dated 27.04.2013 was not fit to be relied upon by the BOC. It is thus submitted that the consequential office order dated 10.05.2013 (Annexure-11 to the writ application) showing the approval of appointments including that of respondent no.5 is bad in law and the same is liable to be set aside in so far as it relates to the appointment of respondent no.5. Several specific allegations of illegal appointments made in the Institute during past selections have been given in the writ application. The prayer of the petitioner-appellant before the learned Single Judge as well as in appeal before us are two fold; firstly, that the appointment of respondent no.5 be set aside by quashing the office order dated 10.05.2013 in her respect and then a direction be given to the institute to appoint the petitioner-appellant.

Stand of the State-Respondent No.1.

11. The State of Bihar though has filed a counter affidavit, but is totally silent on the merit of the allegations against the selection process. It is an admitted position that the State is providing funds to the institute to meet its establishment expenses and there are government representatives also who participated in the selection



process as a member of the Selection Committee. Despite this, a perusal of the counter affidavit would only show that the State has refrained from making any comment or taking any stand with regard to the merit of the allegations.

Case of the Respondent Nos.2, 3 and 4.

12. In the writ application, the BOC of the institute was made respondent no.2, but no counter affidavit came to be filed on behalf of the said respondent no.2. The respondent nos.3 and 4, who are Director and Registrar of the institute, have jointly filed a counter affidavit. The stand taken in their counter affidavit has been reiterated before us. These two respondents have denied that there is any irregularity or illegality in the appointment of respondent no.5. According to these respondents, the appointment of respondent no.5 has been done by a Selection Committee which consisted of experts in the field of Social Sciences. The said Selection Committee, according to these respondents, found that the respondent no.5 had obtained Ph.D. Degree from IIT, Bombay and her research papers had been published in various international journals as well as in Economic and Political Weekly but she did not have requisite teaching experience for appointment on the post of Associate Professor and therefore the said Committee recommended for appointment of respondent no.5 on the post of Assistant Professor in Economics with three advance



increments. It is further stated that the recommendation of the Selection Committee was approved by the BOC and accordingly by the impugned office order dated 10.05.2013 (Annexure-11 to the writ application) the respondent no.5 was appointed.

Stand of Respondent No.5

13. The respondent no.5 has filed a counter affidavit and submitted that the writ petition is not maintainable. According to her, the pleas of mala fide and biasness against the Selection Committee are not supported by any cogent materials. The respondent no.5 has placed reliance upon Clause 'C' of the advertisement falling under the head 'Qualification' which provides that the BOC at its own initiative can consider the name of those potential candidates for senior faculty position who do not apply for senior faculty positions and such consideration may be given even in absentia. She would further submit that in her case there was no need to pass NET/SLET which was qualifying test for recruitment and appointment on the post of Assistant Professor because she would fall in the exempted category having Ph.D. Degree though after notification of UGC Regulation on 11.07.2009 but through a process of admission, registration, course work and external evaluation as laid down in the UGC Regulation 2009 and so adopted by the University. Further submission is that the Selection Committee can entertain the application and recommend



suitable candidates on its own initiatives. Lastly, the respondent no.5 submits that this Court may not impose its own opinion over and above the opinion of the experts who were members of the Selection Committee and in their wisdom they decided to recommend the name of respondent no.5 for the post of Assistant Professor in Economics. A chart by way of Annexure-R5/B has been enclosed with the counter affidavit to show the comparative merit between the writ petitioner-appellant and the respondent no.5.

14. We have heard learned counsel representing the petitioner-appellant, the State and the respondent no.5 as well as the learned senior counsel representing the respondent nos.3 and 4 who have reiterated the submission in terms of pleading before the learned Single Judge. We have taken note of the pleadings and submissions hereinabove.

CONSIDERATION

15. What transpires from the submissions at the Bar and upon perusal of the records before us are summarized as follows:-

(i) There was an advertisement inviting applications for appointment on the post of Associate Professors in Economics and Assistant Professors in Economics with which we are the concerned in the present case. The petitioner applied for both the posts of Associate Professor and Assistant Professor in Economics whereas



the respondent no.5 applied only for the post of Associate Professor in Economics.

(ii) The name of petitioner-appellant as well as the respondent no.5 were screened for the purpose of interview for the post of Associate Professor in Economics and both of them participated in the interview held by the Selection Committee constituted for this purpose on 27.04.2013. The record clearly shows that the petitioner-appellant has a Ph.D. Degree from Veer Kunwar Singh University, Ara issued prior to the notification dated 11.07.2009 of UGC Regulation. He does not seek exemption from eligibility test for lecturer. He has qualified the Bihar Eligibility Test (BET) an examination required to qualify in accordance with the UGC norms for consideration of his case for appointment as a Lecturer. He had 8 years of requisite teaching experience. On the other hand, the respondent no.5 has obtained her Ph.D. Degree from IIT, Bombay on 3.11.2009 i.e. after notification dated 11.07.2009 of UGC Regulation 2009. The Ph.D. Degree issued to the respondent no.5 has no certification in terms of Regulation 20 of the UGC Regulation 2009. The Regulation 20 of the said notification reads as under:-

“Along with the Degree, the degree awarding University, Institution Deemed to be University, College/Institution of National Importance, as the



case may be, shall issue a Provisional Certificate certifying to the effect that the Degree has been awarded in accordance with the provisions to these Regulations of the UGC.”

The Respondent no.5 admits that she has not passed the eligibility test such as NET/SLET/BET. She rather claims to be in exempted category but unless her Ph.D. degree comes in compliance with UGC Regulation 2009 she cannot get exemption from eligibility test.

16. On consideration of the Ph.D. Degrees of both the candidates in the light of the provisions of the UGC Regulation 2009 and UGC (Minimum Qualifications Required For The Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (3rd Amendment), Regulation 2009, we come to a conclusion that the respondent no.5 is not having Ph.D. Degree as required under UGC Regulation 2009, there is no certification of her degree in terms of Regulation 2009 of the UGC Regulations. Even her pleading nowhere claims so with any cogent material to demonstrate that either the degree is in compliance of UGC Regulation 2009 or that the IIT, Bombay had adopted the UGC Regulation 2009. The counter affidavit of respondent nos. 3 and 4 is silent on the issue as to whether Ph.D. Degree from IIT, Bombay would be a degree in



compliance of UGC Regulation 2009. There is absolutely no material to hold so, therefore she must have/had qualified the eligibility test such as NET/SLET/BET for appointment as Lecturer. The respondent no.5 cannot come in the exempted category.

17. On the other hand, the petitioner-appellant had obtained Ph.D. Degree prior to notification of UGC Regulation 2009 and had qualified in the eligibility test which was at the relevant time held by the Bihar College Service Commission. We, therefore, hold that the petitioner-appellant was having requisite qualification in terms of the advertisement for appointment either as Associate Professor in Economics or as Assistant Professor in Economics in the institute.

18. It is apparent from the record that the Selection Committee constituted for the purpose of interviewing the candidates for the post of Assistant Professor in Economics was a different committee. The respondent no.5 had not applied for the post of Assistant Professor in Economics and, therefore, her claim was not screened for the said post, she had no occasion to appear before the Selection Committee for the said post on 25th and 26th of April, 2013. The Selection Committee which was constituted for interviewing the candidates for the post of Associate Professor in Economics met on 27.04.2013, the said Selection Committee had no power to



recommend the name of the respondent no.5 for appointment on the post of Assistant Professor in Economics with an offer of three advance increments. We also find that the provisions as contained in Clause 'C' under the head 'Qualification' as appearing in the advertisement may be invoked only by the 'BOC' for senior faculty positions. In the present case, post of Assistant Professor in Economics was neither senior faculty positions nor the BOC had on its own initiative recommended the name of the respondent no.5. The submission on behalf of the respondent nos.3, 4 and 5 that the Selection Committee had power to recommend the name of respondent no.5 for the post of Assistant Professor in Economics is misconceived and the same is liable to be rejected.

19. A perusal of the minutes of the meeting dated 27.04.2013 in which the Selection Committee considered the name of the candidates for appointment on the post of Associate Professor in Economics clearly demonstrates that only in one line the Committee rejected the candidature of all the candidates who were present for the interview. No marks was awarded either for academic career or in the interview, no merit list was prepared and in fact a perusal of the minutes of the meeting would show that the same has been recorded in most arbitrary, vague and cryptic manner. The relevance and reasons which are twin principles of our Constitution as held by the



Hon'ble Supreme Court in the case of Suman Gupta & Ors. Vs. State of J&K & Ors. reported in 1983 SCR (3)985: AIR 1983 SC 1235 has been given complete go-bye. An extract from the said judgment would be useful to quote hereunder:-

“After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government. We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason-relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests.”

20. The decision taken by the ‘BOC’ based on the recommendation of the Selection Committee which held its meeting on 27.04.2013 in so far as it relates to the approval of the appointment of respondent no.5 is without application of mind, the same seems to have been done in a routine manner without looking into the correctness of the procedure adopted by the Selection Committee in the matter of recommendation and/or rejection of a candidate.



21. In the facts of the present case, we are of the considered opinion that the recommendation of the Selection Committee as regards non-selection of any of the candidate who were interviewed for the post of Associate Professor in Economics and appointment of respondent no.5 as Assistant Professor in Economics with three advance increments does not inspire confidence. A malice-in-law if not malice-in-fact has been well established in the present case.

22. Having noticed the aforementioned facts and upon taking a view of the entire selection process in the present case, we are of the considered opinion that the learned Single Judge could not notice the facts and issues which were pointed out by the writ petitioner-appellant in the writ application. The learned Single Judge took a view that because the petitioner-appellant is not seeking a mandamus for his appointment on the post of Assistant Professor in Economics, therefore the selection procedure adopted by the Selection Committee as regards the appointment of respondent no.5 cannot be looked into. With respect, we do not agree with the view taken by the learned Single Judge because we are of the opinion that the reliefs prayed for by the petitioner-appellant before the learned Single Judge were two fold, both the prayers were interwoven and were intrinsic to each other and the same was required to be considered in right



perspective. Here was the case where the appellant was aggrieved by rejection of his candidature for the post of Associate Professor in Economics by the Selection Committee constituted for the purpose of recommendation of name for Associate Professor, but the said Selection Committee on one hand in a very vague and cryptic manner without maintaining transparency and fair play in action rejected the candidature of all the candidates and at the same time held the respondent no.5 suitable for the said post and then taking note of her lesser teaching experience recommended her name for appointment as Assistant Professor in Economics with an offer of three advance increments.

23. We are of the view that the appellant had made out a case for consideration before the learned Single Judge as he was aggrieved by the rejection of his candidature for the post of Associate Professor in Economics and at the same time recommendation for appointment of respondent no.5 on the post of Assistant Professor in Economics. We also come to a conclusion that the contention of the respondent no.5 that the petitioner-appellant cannot challenge the suitability of the respondent no.5 is wholly misconceived submission and the same is liable to be rejected in the facts of the present case.

24. For the reasons mentioned herein, we set aside the impugned order dated 27.11.2014 passed by the learned Single Judge



in CWJC No.3296 of 2014, hold and declare that the selection procedure adopted by the Selection Committee in its meeting held on 27.04.2013 for appointment of Associate Professor in Economics was not in conformity with the norms of UGC, no merit list was prepared the conclusion reached by the committee that none was found suitable except respondent no.5 has no basis and is not sustainable if tested on the anvil of Article 14 and 16 of the Constitution of India.

25. We, therefore, set aside the consequential office order dated 10.05.2013, as contained in Annexure-11 to the writ application, in so far as it relates to respondent no.5. Petitioner has prayed for a mandamus to appoint him on the post of Associate Professor in Economics we are of the view that in the facts of the present case no positive direction for appointment may be given in favour of the petitioner. He has not acquired any legal right for appointment at this stage. This Court, however having held that the selection procedure adopted in the meeting held on 27.04.2013 was not fair, would direct respondent nos.2 to 4 to constitute a selection committee afresh for consideration of the candidates screened for the post of Associate Professor in Economics in 2013 selection process and the said duly constituted committee shall consider the suitability of the candidates strictly in accordance with the norms of UGC, the relevant Act, Rules and Regulations framed by UGC as well as the Institute. The fresh



process must be completed within a period of six months from the date of this order.

26. The appeal stands allowed to the extent indicated above. There will be no order as to cost.

(Rajeev Ranjan Prasad, J)

Arvind/- **Ajay Kumar Tripathi, J.-I Agree.**

(Ajay Kumar Tripathi, J)

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