

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.19970 of 2011 and
M.P.No.1 of 2011 and
WMP.No.3992 of 2017

Dr.B.Sumathi

.. Petitioner

Vs.

1.The Pondicherry University,
Represented by its Executive Council,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

2.The Vice Chancellor,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

3.The Registrar,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

4.Dr.A.Shankaran,
Lecturer in Economics,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

5.Dr.R.Lousome,
Lecturer in Economics,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

6.Dr.S.Raja Sethu Durai,
Lecturer in Economics,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

7.Dr.Yasmeen Sultana,
Lecturer in Economics,
Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Declaration, declaring the selection and appointment of the respondents 4 to 7 herein as Lecturer/ Assistant Professor of Economics, pursuant to the notification of the third respondent dated 01.04.2010 bearing ref: Advt No.Rc/2010/008, and as evident from the minutes of the first respondent dated 23.06.2010 as illegal and consequently direct the respondents 1 to 3 to appoint the petitioner in the post of Lecturer/Assistant Professor of Economics with effect from 23.06.2010 with all services, seniority, monetary benefits and backwages.

For Petitioner : Mr.B.K.Girish Neelakandan

For Respondents: M/s.A.V.Bharathi for (R1 to R3)
Mr.S.Sivakumar (for R4 to R7)

O R D E R

The petitioner has filed this writ petition, writ of declaration, declaring the selection and appointment of the respondents 4 to 7 herein as Lecturer/ Assistant Professor of Economics, pursuant to the notification of the third respondent dated 01.04.2010 bearing ref: Advt No.Rc/2010/008, and as evident from the minutes of the first respondent dated 23.06.2010 as illegal and consequently direct the respondents 1 to 3 to appoint the petitioner in the post of Lecturer/Assistant Professor of Economics with effect from 23.06.2010 with all services, seniority, monetary benefits and backwages.

2.The case of the petitioner is that she is a gold medalist in M.Phil. in Economics with area of specialization in Economics of Education from Central University of Puducherry. Further the petitioner also acquired Ph.D. degree in the month of December 2007, from the very same university with Health Economic as area of specialization. She is also having the working experience as Faculty Associate /Consulting Editor in the Institute Charter Financial Analyst of India in the Business School Research Centre, Chennai from 08.08.2007 to 31.09.2009. Further the petitioner has published several articles and eight books. The petitioner belongs to an OBC community. At present the petitioner is working as Lecture in Economics in PVS Collage, Karaikkal.

3.The further the case of the petitioner is that while so, the 1st respondent university has notified four post of Assistant Professors in the Department of Economics vide advertisement dated 01.04.2010. Out of the said four posts, one reserved for S.T. and two for S.C. and one for OBC. In the said notification the essential areas of specialization have been notified as 1.Econometrics, 2.Mathamediacal Economics/Statics, 3.Economics of Education/Health Economics and 4.International Economics. The petitioner having specialization in Health Economics in Ph.D. and Economics of Education in M.Phil., she applied for post of Assistant Professor under OBC category. The petitioner was called for certificate verification held on 18.06.2010 and she appeared the same. Further the petitioner was interviewed for selection by the local members of the Executive Council of the 1st respondent university with the 2nd respondent as the Chairman and six other members including the 3rd respondent herein.

4. After interview, the results were not published hence the petitioner was not in a position to gather any information from the 1st respondent university regarding selection to the post of Assistant Professor. Thereafter the petitioner was able to get information under RTI Act. From the said information she came to know that the selection committee has recommended the respondents 4 to 7 to be appointed to the post of Assistant Professor (Lecturer). The respondents 4 to 7 have not possessed any of the areas of specialization notified in the advertisement dated 01.04.2010 which the petitioner came to know from the annual calendar published by the university in the month of July 2011. Whereas, the petitioner has specialization both in Economics of Education and Health Economics, but she was not selected is against the notification published by the 1st respondent university. According to the petitioner she is the only candidate having the essential area of specialization mentioned in the notification dated 01.04.2010. Therefore the 1st respondent university ought to have selected the petitioner to the post of Assistant Professor. But she was put in wait list is arbitrary and unsustainable in law. Hence the petitioner filed this writ petition challenging the selection and the appointment of respondents 4 to 7 herein as illegal and sought for consequential direction, by directing respondents 1 to 3 to appoint the petitioner in the post of Lecturer /Assistant Professor of Economics with effect from 23.06.2010 with all attendant, monetary benefits.

5. Per Contra, the respondents 1 to 3 filed counter contending that originally there was totally 4 posts called for the post of Lecturer / Asst Professor, the requisite specialization for the said post is notified as:

1. Econometrics
2. Mathematical Economics / Statistics,
3. Economics of Education / Health Economics
4. International Economics.

6. The petitioner was one of the applicant under OBC category possessing the following qualification namely M.A. Economics, M.Phil., Economics and Ph.D. Economics, Specialization such that Ph.D. in Health Economics and M.Phil. in Economics of Education. The petitioner was one amongst the applicant possessed the required qualification. She was interviewed and based on her performance she was placed under waiting list in serial No.3, next to one Mr.GopiKrishna in OBC category, whereas the serial

Nos.2 and 4, the roaster position under the category ST and PH remained unfilled for want of candidates belonging to ST and PH category. Thus only two persons were found placed in waiting list.

7.The 6th respondent came to be appointed on merits in the selection process and the petitioner being an unsuccessful candidate, have no right to challenge the appointment made by the 1st respondent. It was further contended that the 6th respondent was selected on the basis of the recommendation of Selection Committee and the appointment was made in adherence to law. Hence the respondents prayed to dismiss the writ petition.

8.No counter affidavit is filed by the respondents 4 to 7. However, they are represented by counsel.

9.I heard Mr.B.K.Girish Neelakandan, learned counsel appearing for the petitioner and M/s.A.V.Bharathi, learned counsel appearing for the respondents 1 to 3 and Mr.S.Sivakumar, learned counsel appearing for the respondents 4 to 7 and perused the entire original records produced by the learned counsel for the respondents 1 to 3.

10.On perusal of records and the counter as well, it disclose that the respondents 1 to 3 have filed their counter without touching upon the Educational qualification of the respondents 4 to 7 herein. The prime and sole contention of the respondents 1 to 3 is that the appointment was made in furtherance of the recommendation of the selection committee.

11.The relevant portions in paragraphs 14, 16 and 20 is extracted hereunder:

"14...the selection committee has every right to recommend candidates as they find suitable based on their performance. The petitioner aggrieved over the selection is accusing the university on the ground of area of specialization which is not correct. Further, the reason for not selecting the petitioner is that the selection committee did not find the petitioner suitable for the post in spite of her possessing the area of specialization. Merely by possessing the eligibility criteria and area of specialization, it is not open for the petitioner to contend that she would have been selected for the post, when the selection

committee itself has not recommended the petitioner for the post.

16. The selection committee has recommended the 6th respondent to the post of lecturer under OBC category and the executive council also in its meeting held on 23.06.2010 has accepted the recommendation and therefore that is the reason for appointing the 6th respondent to the post of lecturer under OBC category this is as per section 19 (1) of the university.

20. Mere fulfillment of the eligibility criteria alone is not the basis for selection/committee to any post. The selection is not merely on attending the interview but it is based on how the candidate performs in the interview and credential at credit."

12. In the said counter absolutely there is no say about the qualifications of the respondents 4 to 7.

13. On the other hand when minutes of the meeting of the committee consulted to screen and shortlist all the applications received with reference to advertisement released by the university on 11.09.2009 and 01.04.2010 for the post of Lecturer in Economics-4 (SC-1, ST-1, OBC-1, PH-1). It is further revealed that in 131 applications received by the university for the post of Lecturer in Economics and the committee, it has adopted the following criteria for short listing Master degree in relevant filed with NET qualification and five years of Teaching / Research/ or Ph.D with two years of Teaching /PDF in the case of SC and OBC candidates. In case of ST/PH candidates those who fulfilled the minimum eligibility criteria, as prescribed by the UGC, were shortlisted.

14. Now on appraisal of the petitioner's qualification it is noticed by this Court that the petitioner is found fulfilling the above criteria fixed by the University, such that she is a Gold Medalist in M.Phil. specialized in Economics of Education, a Ph.D. holder in Health Economics having two years of teaching experience as Faculty Associate /Consulting Editor in the Institute of Chartered Financial Analysts of India University.

15. Whereas on taking account of 6th respondent's qualification, admittedly he does not possess the required specialization in the area of

1. Econometrics

- 2.Mathematical Economics / Statistics ,
- 3.Economics of Education / Health Economics
- 4.International Economics.

16.In the above said circumstance, it is needless to say that the petitioner has a better footing than that of 6th respondent, besides that the petitioner fulfils the requisite qualifications as prescribed in the Notification dated 01.04.2010 issued by the 3rd respondent, calling for applications to the post of Assistant Professor / Lecturer.

17.Now the only question arise before this Court is as to whether the Selection Committee sitting upon a selection process can relax / or opt for a qualification which is not prescribed in the notification calling for applications to the post of Assistant Professor / Lecturer.

18.In this context it would be relevant to look into the following decisions:

i) in the matter of Dr.Bhanu Prasad Panda v. The Chancellor, Sambalpur made by the Hon'ble Apex Court, reported in 2001 (8) SCC 532, wherein it was held as follows:

" 5. We have carefully considered the submissions of the learned counsel appearing on either side. The stipulation regarding the minimum academic qualification reads, "good academic record with at least 55 per cent marks or an equivalent grade of Masters degree level in the relevant subject from an Indian University or an equivalent degree from a foreign university". Though the Department concerned for which the appointment is to be made is that of 'Political Science and Public Administration', the appointment, with which we are concerned, is of the Lecturer in Political Science and not Public Administration and subject matter-wise they are different and not one and the same. It is not in controversy that the posts of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration be it in the Department of Political Science and Public Administration since the advertisement was specifically to fill up the vacancy in the post of Lecturer in Political

Science. Merely because the Department is of Political Science and Public Administration - the essential requirement of academic qualification of a particular standard and grade, viz., 55%, in the "relevant subject" for which the post is advertised, cannot be rendered redundant or violated by ignoring the relevant subject and carried away by the name of the Department only which, in substance, encompass two different disciplines. That merely depending upon the context he was being referred to or the post is referred to as being available in the Department of political science and Public Administration, is no justification to do away or dispense with the essential academic qualification in the relevant subject for which the post has been advertised. Consequently, the Resolution No. 6.2 dated 18.2.92 or extracts provided from the proceedings of the Board of Studies dated 2.3.96 cannot be of any assistance to support the claim of the appellant. The rejection by the U.G.C. of the request of the Department in this case to relax the condition relating to 55% marks at Post-Graduation level for Research Assistant having M. Phil. upto March 1991 or Ph.D. upto December 1992, is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard. In view of the above, no exception could be taken to the decision of the Chancellor and no challenge could be countenanced in this appeal against the well-merited decision of the High Court.

6. Consequently, the appeal fails and shall stand dismissed."

ii) in the matter of Ganapath Singh Gangaram Singh v. Gulbarga Univ.Tr.Regr. & Ors. made by the Hon'ble Apex Court, reported in 2014 (1) SCC 669, wherein it was held as follows:

"21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the 'relevant subject'. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean post-graduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters' degree in the Mathematics is not the relevant subject. The advertisement requires Masters' degree in 'relevant

subject' and not 'appropriate subject'. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment.

22. It shall not make any difference even if Mathematics is taught in the Masters' of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that 'relevant subject' would mean 'such of those subjects as are offered in the MCA course'. If Mathematics is taught in a post-graduate course in Commerce, a Masters' degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters' degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having post-graduate degree in any of the subjects taught in MCA would make the holders of a Masters' degree in those subjects as holder of Masters' degree in Computer Application and, therefore, eligible for appointment.

23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters' degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters' degree in MCA is available, the Board of appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. Natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters' of Computer Application.

iii) in the matter of Mohd. Sohrab Khan vs Aligarh Muslim University & Ors. made by the Hon'ble Apex Court, reported in 2009 (4) SCC 555, wherein it was held as follows:

"24. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer Chemistry, for pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Masters Degree holder in the said subject would also be suitable for being considered.

There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post.

27.The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Masters Degree Holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to pure Chemistry stream."

19.The above said decisions would demonstrate that it is impermissible for a Selection Committee sitting upon a selection process to relax or opt for a qualification other than what is prescribed in the notification calling for applications for Vacancies.

20.Therefore, this Court is of the firm view that the act of the respondents 1 to 3 in appointing the 6th respondent in OBC category, who does not have the required qualifications, is null and void. In result holding that the facts involved in the case on hand is identical with that of the above decisions rendered by the Hon'ble Apex Court, I am inclined at the Legal and Factual contentions put forth by petitioner.

21.In the result, this writ petition is allowed and the impugned selection and appointment of the 6th respondent is set aside with a direction to the respondents 1 to 3 to appoint the petitioner in the post of Lecturer /Assistant Professor of Economics with effect from 23.06.2010 with all attendant, monetary benefits within a period of four weeks from the date of receipt of a copy of this order.

22.It is made clear that this Court has confined itself in so far as the case of the 6th respondent and the petitioner alone is concerned, since the petitioner as well as the 6th respondent fall under OBC category being the actual competitors and in the light of the fact that the petitioner by questioning the appointment made in other category to which she does not fall cannot find a place for her.

23.With the above observation, this writ petition is allowed. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Executive Council

Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

2.The Vice Chancellor,

Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

3.The Registrar,

Pondicherry University,
R.Venkatraman Nagar, Kalapet,
Pondicherry - 605 014.

+1cc to M/s.B.K.Girish Neelakandan, Advocate sr.74320

+1cc to M/s.A.V.Bharathi, Advocate sr.74153

+1cc to Mr.S.Sivakumar, Advocate sr.74255

order made in
W.P.No.19970 of 2011 and
M.P.No.1 of 2011 and
WMP.No.3992 of 2017

ppa (co)
ss (27/10/2017)