

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.2062 of 2012 in WPMP.Nos.2743 & 2744 of 2012

in

W.P.No.2203 of 2012

and

W.P.No.2203 of 2012

ORDER:

The petitioner passed M.Sc. (Chemistry) in Physical Chemistry Subject and also later obtained Ph.D. in Chemistry.

2. The 1st respondent-University is constituted and established under the Dravidian University Act, 1997.

3. A recruitment notification No.DU/Estt.(T)/E-2/841/2010 dt.30.06.2010 was issued by the 1st respondent-University inviting applications for the post of Assistant Professor in Organic Chemistry. The qualifications prescribed for the said post were that a candidate should possess Post Graduation with at least 55% of marks in Chemistry/Organic Chemistry and the candidate should possess good academic record with Ph.D. / NET / SLET in the relevant subject or similar test accredited by the UGC / CSIR.

4. The petitioner applied for the said post. She was examined by a selection committee on 26.09.2010 and was selected. The selection of the petitioner was also approved by the Executive Council of the 1st respondent - University and she was appointed to the said post on 01.10.2010.

5. On 08.04.2011, a show-cause notice was issued to the petitioner to show-cause why her appointment should not be cancelled since a Two-Men Committee constituted by the Government vide G.O.Rt.No.876 H.E.(UE-I)

Department dt.12.11.2010 opined that the petitioner was not eligible to be called for interview to the said post of Assistant Professor and that she should submit her explanation.

6. It was stated in the said show-cause notice that the extract of the report of the Two-Men Committee was enclosed to the said show-cause notice, but the petitioner denied receiving it.

7. The petitioner then filed WP.No.10665 of 2011 before this Court assailing the same and sought a direction to the respondents to forbear from canceling her appointment. This Court disposed of the Writ Petition on 19.04.2011 holding that petitioner's case should be considered independently by the Executive Council of the University as per applicable regulations uninfluenced by the fact-finding recommendations of the Two-Men Committee.

8. Thereafter, petitioner submitted her explanation to the Registrar of the 1st respondent-University on 27.04.2011 contending that as per the recruitment notification it is sufficient if she possessed Post Graduation in the subject of Chemistry and it was not necessary as per the said notification that she should have Post Graduation in Organic Chemistry subject since the notification said Chemistry / Organic Chemistry.

9. Thereupon, the Executive Council of the 1st respondent-University met on 07.01.2012 and passed the following order :

“ The Executive Council examined the Notification No.DU/Estt.(T)/E2/841/2010, dt.30.06.2010 and also the explanation submitted by the candidate. The Notification reads that “Applications in the prescribed form are invited for the temporary posts of one Professor (OC) in Management, one Associate Professor (OC) in Commerce and one Assistant

Professor (OC) in Organic Chemistry". The E.C. observed that the candidate has got the degree of Master of Science in Chemistry (Physical Chemistry) and got Ph.D. in Chemistry and not in Organic Chemistry, which is the basic requirement. Ab initio, her qualification for the post of Assistant Professor is not in tune with the Notification. It is therefore, resolved to duly cancel her appointment."

10. Thereupon, the Registrar of the 1st respondent-University communicated the decision of the Executive Council in his proceedings No.DU/Estt/E2/426/2010 dt.27.01.2012 and stated that in view of the said decision, the selection and consequent appointment of the petitioner is set aside.

11. Assailing the same, the present Writ Petition is filed.

12. The petitioner contended that the full Executive Council of the 1st respondent-University did not consider petitioner's explanation to the show-cause notice and that only four members of the Executive Council attended the said meeting and this vitiates the decision of the Executive Council. The petitioner further contended that the 1st respondent-University did not issue any show-cause notice after the order was passed by this Court; that its notice is vague; that it is in violation of principles of natural justice; that the initial appointment of the petitioner is by way of an administrative order and since she did not play any fraud or suppress any material, the 1st respondent-University cannot cancel it.

13. On 13.01.2012, this Court suspended the impugned order dt.27.01.2012 pending disposal of the Writ Petition and directing the respondents to continue the petitioner in service until further orders observing that as per qualifications indicated in the notification, petitioner possessed Post Graduate Degree in Chemistry and.

WVMP.No.2062 of 2012 :

14. WVMP.No.2062 of 2012 is filed by the 1st respondent-University to vacate the said order. In the counter-affidavit / vacate stay petition, it is contended that a candidate to be appointed as Assistant Professor in Organic Chemistry should possess M.Sc. and Ph.D. in the subject of Organic Chemistry; that petitioner possessed M.Sc. Chemistry Degree in Physical Chemistry and a Ph.D. in Chemistry, but not in Organic Chemistry; and therefore she could not have been called for interview in 2010 for the said post. It is contended that obviously by inadvertence, she was selected and her selection was placed before the Executive Council inadvertently and it approved it resulting in her appointment. It was denied that the decision of the Executive Council was influenced by the Two-Men Committee and it is contended that there was no necessity to issue another show-cause notice since this Court did not set aside the show-cause notice dt.08.04.2011 in WP.No.10665 of 2011. It is admitted that only four members of the Executive Council participated in the meeting held on 07.01.2012 and decided to set aside the petitioner's appointment, but even then the said decision is valid. It is contended that the exercise of power by the 1st respondent is Executive in nature and was not statutory power and there was no bar to set aside the petitioner's appointment.

15. In the reply-affidavit, these contentions were refuted by the petitioner. It was contended that there was no challenge to the petitioner's appointment by any other candidate, that petitioner was discharging her duties without any complaint, that the syllabus of M.Sc. Chemistry covers Organic Chemistry also and as per the recruitment notification, the petitioner's

appointment is valid. It is also contended that Ph.D. Degree is not granted in the subject Organic Chemistry in any University, that the petitioner secured Ph.D. in Chemistry and the said subject includes Physical Chemistry, Inorganic Chemistry, Organic Chemistry and General Chemistry.

16. Heard Sri V. Venkata Ramana, Senior Counsel for the Writ Petitioner and Sri R.V. Mallikarjun Rao, counsel appearing for Sri B. Parameswar Rao, for respondents.

17. The counsel supported the stand of their respective clients.

18. It is admitted by the respondents' counsel that the full Executive Council of the 1st respondent-University consists of 12 members. Admittedly only four members of the said Executive Council participated in the decision taken on 07.01.2012 to set aside petitioner's appointment even though this Court in its order dt.19.04.2011 directed the Executive Council (obviously the full Council) to take a decision in the matter. Therefore, the decision taken on 07.01.2012 by the four-Member Executive Council of the 1st respondent-University to set aside petitioner's selection made on 01.10.2010 is invalid.

19. It is not in dispute that the post advertised by the 1st respondent-University was post of Assistant Professor in Organic Chemistry. However, the recruitment notification dt.30.06.2010 mentioned that a candidate should possess Post Graduation with at least 55% of marks in *Chemistry / Organic Chemistry* and good academic record in Ph.D. / NET / SLET in the relevant subject.

20. From the above recruitment notification, it is clear that a candidate can possess M.Sc. in Chemistry **or** Organic Chemistry since the symbol ‘/’ signifies a choice. It is also not the case of the respondents that any University grants Ph.D. in the subject of Organic Chemistry. Therefore, the stand taken by the respondents that petitioner did not possess M.Sc. in Organic Chemistry and so she was ineligible to be appointed as Assistant Professor in Organic Chemistry, cannot be accepted. It is not as if the respondents had issued *errata* to the recruitment notification modifying the qualification as M.Sc. **in** Organic Chemistry. Having appointed the petitioner on 01.10.2010, in January 2012, the petitioner’s appointment cannot therefore be set aside on the above ground. More so, since the petitioner has continued till date by virtue of the interim orders granted by this Court in this Writ Petition.

21. Accordingly, the Writ Petition is allowed and the impugned order dt.27.01.2012 passed by the 1st respondent is set aside, and the respondents are directed to continue the petitioner as Assistant Professor (Organic Chemistry) in terms of the order of appointment dt.01.10.2010. Consequently, WVMP.No.2062 of 2012 is dismissed. No costs.

22. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.07.2017

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