

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.3965 of 2012 in WPMP.No.2748 of 2012

in

W.P.No.2207 of 2012

and

W.P.No.2207 of 2012

ORDER:

This Writ Petition is filed assailing proceedings DU/Estt/E2/426/2010 dt.27.01.2012 of the 2nd respondent-University setting aside petitioner's appointment as Associate Professor, Department of Computer Science made on 01.10.2010.

2. The petitioner passed B.Tech. in Computer Science and Engineering from S.V. University, M.Tech. in Computer Science from J.N.T.U. Hyderabad, GATE and was admitted in Ph.D. (Part-Time) Course as on 01.04.2010. She had experience in teaching for 3 years – 4 months as she worked as Assistant Professor in the Department of Computer Science and Engineering for one year between 01.06.2004 to 29.05.2005 in R.R.S. College of Engineering and Technology, affiliated to J.N.T.U., Hyderabad; and from 27.06.2005 to 10.03.2006 as Assistant Professor in the Department of Computer Science and Engineering and I.T. in Holy Mary Institute of Technology and Science, affiliated to J.N.T.U., Hyderabad; and she worked from 27.04.2009 for 1 year – 5 months till she was appointed in the 2nd respondent-University as Assistant Professor in the 2nd respondent-University. She also had experience in Industry of 4 years – 3 months as she worked as Software Engineer for 1 year - 3 months in VNS Infotech Pvt. Limited from 03.06.2001 to 05.09.2002 and as Senior Software Engineer for Satyam Computers, Bangalore for 3 years between 2006-2009.

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

4. A recruitment notification No.DU/Estt.(T)/E-2/841/2010 dt.30.06.2010 was issued by the 2nd respondent-University inviting applications for the post of Associate Professor, Department of Computer Science. For this post, the following qualifications were prescribed :

“i. Ph.D. Degree with 1st Class at Bachelor’s or Master’s Degree in Computer Science branch of Engineering and Technology or M.Sc. Computer Science and experience of 5 years in Teaching, Research and / or Industry at the level of Lecturer / Asst. Professor or equivalent grade, excluding period spent on obtaining the Research Degree.

ii. Only to candidates from Industry and the profession.

a. First Class Master’s Degree in Computer Science branch of Engineering and Technology;

b. Significant Professional work which can be recognized as equivalent to a Ph.D. Degree in Computer Science branch of Engineering & Technology, and Industrial / professional experience of 5 years in a position equivalent to the level of Lecturer.

*(*This recognition shall be valid only if the same is recommended unanimously by a 3 Member Committee of experts appointed by the Vice-Chancellor of the University)*

c. Teaching, research, industrial and / or professional experience in a reputed organization.

d. Published work, such as research papers, patents filed / obtained, books and / or technical reports.

e. Experience of guiding the project work / dissertation of P.G. / Research Students or supervising R & D projects in Industry.

f. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based

Appraisal System (PBAS) developed by UGC shall be a Mandatory requirement.

OR

- iii. a. *B.E./B.Tech & M.E/M.Tech in Computer Science with First Class or equivalent either in B.E. / B.Tech or M.E. / M.Tech.*
- b. *BE / B.Technical and MCA with First Class or equivalent in either B.E. / B.Tech or MCA.*

OR

- c. *MCA / M.Sc. Computer Science with First Class or equivalent with two years relevant experience and Ph.D. or equivalent in appropriate discipline. Post Ph.D. Publications and guiding Ph.D. students is highly desirable. (Equivalence for Ph.D. is based on publications of 5 International journal Papers, each journal having a cumulative impact index of not less than 20, with incumbent as the main author and all 5 publications being in the authors area of specialization)*

EXPERIENCE

Minimum 5 years of experience in teaching / research / industrial of which 2 years post Ph.D. experience is desirable.”

5. 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 2nd respondent - University and she was appointed to the said post on 01.10.2010.

6. It appears that a Two-Men Committee was constituted by the Government to enquire into certain appointments made in the 2nd respondent-University vide G.O.Rt.No.876, HE (UE-I) Department dt.12.11.2010.

7. The said Committee submitted a report to the State Government and the latter called for remarks from the 2nd respondent-University on 14.12.2010. In the said report, the Two-Men Committee opined that at the time of scrutiny of petitioner's application, initially the scrutiny committee held that she was not eligible and later the word 'not' was struck off and she was called for interview and was selected; that her service before appointment as Associate Professor was only 1 year – 2 months as Assistant Professor and she did not fulfill the condition laid down in the notification of possessing a Ph.D. Degree. It was stated that she did not possess 5 years teaching experience equivalent to Assistant Professor and she did not have significant professional work recognized as equivalent to Ph.D. and her professional work was not certified by a Three-Member expert committee as required by notification.

8. The 2nd respondent-University submitted its remarks on 12.01.2011 to the Government specifically stating that the petitioner did possess all the prescribed qualifications for the said post. It was stated that the petitioner possessed the required qualification of M.Tech and 7 years – 2 months experience as experience; out of 5 years teaching or industry experience, 2 years post-Ph.D. experience is not essential as it is only a desirable qualification. Further, it was stated that the post was reserved for Scheduled Caste category and she was the only candidate who applied and attended for the interview and she was eligible in all respects for the interview.

9. However, the Executive Council of the 2nd respondent met on 30.03.2011 and strangely resolved to agree with the report of the Two-Men Committee and directed the 2nd respondent to take action.

10. On 08.04.2011, a show-cause notice was issued to the petitioner to show-cause why her appointment should not be cancelled since the 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 Associate Professor, Department of Computer Science and that she should submit her explanation.

11. The petitioner then filed WP.No.13341 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 29.04.2011 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.

12. Thereafter, petitioner submitted her explanation to the Registrar of the 1st respondent-University on 16.05.2011 contending that she is eligible to be appointed for the post of Associate Professor, Department of Computer Science and as she fulfilled all the criteria prescribed as per the recruitment notification, her appointment cannot be set aside.

13. Thereupon, the Executive Council of the 2nd respondent-University met on 07.01.2012 and passed the following order :

“The Executive Council diligently perused the Notification issued by the University, dated 28.04.2010 and the petition submitted by her for consideration. Smt. K. Ammulu has only one year and five months experience as Assistant Professor in the Dravidian University. The certificate produced by her does not show the scale of her pay in her previous Institution. It is not

also clear whether she handled graduate classes or PG classes and that she is not having any experience. It is also found that she is not having any Ph.D. or experience in publications. The Executive Council therefore considered to cancel the appointment of the individual forthwith."

14. Thereupon, the Registrar of the 2nd 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.

15. Assailing the same, this Writ Petition is filed.

16. The petitioner contended that the full Executive Council of the 2nd 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.

17. The petitioner further contended that the once the 2nd respondent-University itself informed the State Government in its remarks on 12.01.2011 that the petitioner is fully qualified and satisfies all the essential qualifications prescribed for the post of Associate Professor, Department of Computer Science, the impugned order taking a diametrically opposite stand, cannot be sustained and that it shows non-application of mind by the 2nd respondent-University.

18. On 30.01.2012, this Court suspended the impugned order dt.27.01.2012 pending disposal of the Writ Petition and directed the respondents to continue the petitioner in service until further orders.

WVMP.No.3965 of 2012 :

19. WVMP.No.3965 of 2012 is filed by the 2nd respondent-University to vacate the said order. In the counter-affidavit / vacate stay petition, the respondents reiterate that the petitioner is not eligible for the post of Associate Professor, Department of Computer Science. Nowhere in the counter-affidavit, the respondents have denied that they themselves informed the Government on 12.01.2011 that the petitioner is fully qualified to hold the post of Associate Professor, Department of Computer Science. It is further contended that notwithstanding the fact that only four members of the Executive Council participated in the decision-making process, there is adequate quorum and therefore the decision of the Executive Council is unassailable.

20. In the reply-affidavit, these contentions were refuted by the petitioner. Petitioner contends that qualifications stipulated in XI-A(iii)(a) of the Recruitment Notification alone applies i.e. M.Tech and the respondents erred in applying XI-A(i) or XI-A(ii)(b) and the finding of the 2 Men Committee that petitioner did not possess Ph.D degree, significant professional work, industrial professional experience of 5 years in a position equivalent to Lecturer, is not correct since the said conditions do not apply. She further contended that she possesses 5 years of experience cumulatively in teaching/research/industry as prescribed in XI-A(iii) and therefore the respondents are not correct in contending that she does not possess requisite experience. In any event, it is contended by the counsel for the petitioner that even if there is lack of experience at the time of recruitment, her appointment ought not to be interfered with since by now she has gained the

said experience. Reliance is placed on the decision of the Supreme Court in **Buddhi Nath Chaudhary and others Vs. Abhi Kumar and others**¹.

21. Heard Sri S. Sri Ram Reddy, Advocate for Sri C. Sumon, counsel for the Writ Petitioner and Sri R.V. Mallikarjun Rao, counsel for Sri B. Parameswara Rao, counsel for respondents.

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

23. 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.29.04.2011 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.

24. As regards the question whether the petitioner fulfills all the prescribed criteria in the recruitment notification, since the 2nd respondent – University itself informed on 12.01.2011 to the Government that the petitioner fulfills the same, the Executive Council of the 2nd respondent is estopped from now contending to the contra.

25. The Recruitment Notification mentions that the candidate must possess 5 years minimum experience in teaching/research/industry. Therefore in my opinion, petitioner's experience in one or other category

¹ (2001) 3 SCC 328

alone has to be taken into account and not cumulatively in teaching and in industry. Therefore technically the petitioner did not fulfill the criteria for experience prescribed in the Recruitment Notification. But this does not mean that her appointment is to be set aside.

26. In **Buddhi Nath Chaudhary** (1 supra), the Supreme Court was considering appointment of Motor Vehicle Inspectors pursuant to an advertisement issued by the Bihar Public Service Commission in 1989. The recruitment advertisement prescribed that candidates must possess certain years of practical experience in an appropriate automobile institution under the Factories Act, 1948 depending on the qualification possessed by them. When the process of selection was pending, a new Rule was introduced in the recruitment rules requiring the person to be selected as Motor Vehicle Inspector to possess a driving licence. The appellants were appointed to the said post in 1991. Their selection was challenged in the High Court on the ground that they did not possess the qualification or experience in appointment in an appropriate automobile institution under the Factories Act, 1948 or they did not possess driving licence. A single Judge of the High Court directed the Transport Commissioner to verify the necessary details of each selected candidate. The Transport Commissioner submitted a report on the basis of the directions of the single Judge. The Division Bench set aside the report and directed fresh consideration of the matter by the Transport Commissioner. The Supreme Court held that the Transport Commissioner cannot decide the issue when the Commissioner was entrusted with the job of appointment and selection. It held that all selected candidates except one possessed necessary qualification and in regard to the

one excepted candidate, he possessed the equivalent qualification. It took note of the fact that the selected candidates had been employed as Motor Vehicle Inspectors for over a decade and concluded that therefore they would necessarily have acquired the requisite experience. It held that the lack of experience at the time of recruitment is now made good and therefore their appointments made long back are not liable to be disturbed. It followed its decisions in **Ram Sarup Vs. State of Haryana²**, **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society Vs. M.Tripura Sundari Devi³** and **H.C. Puttaswamy Vs. Hon'ble Chief Justice of Karnataka High Court, Bangalore⁴**.

27. The petitioner having been appointed on 01.10.2010 has now been in service for almost 7 years. Admittedly, her teaching experience was 3 years and 4 months as against the 5 years experience prescribed in the Recruitment Notification. She admittedly belongs to the Scheduled Caste community and it is not in dispute that she was the only candidate who applied for the said post at the time when the Recruitment Notification was issued. Even assuming for the sake of argument that at the time of recruitment, she did not possess the requisite experience, by now she has acquired the same. Therefore I am of the opinion that the decision in **Buddhi Nath Chaudhary** (1 supra) can be applied to the petitioner also and her appointment can be saved.

28. Therefore, for all the aforesaid reasons, the Writ Petition is allowed; the impugned order dt.27.01.2012 of the 2nd respondent is set aside; and the

² (1979) 1 SCC 168

³ (1990) 3 SCC 655

⁴ 1991 Supp. (2) SCC 421

2nd respondent is directed to continue the petitioner as Associate Professor in the Department of Computer Science with all consequential attendant benefits. No costs.

29. Consequently, W.V.M.P.No.3965 of 2012 is dismissed.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.07.2017

Ndr/Vsv

