THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.27928 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner challenging the selection and appointment of the 3rd respondent as Professor in the Department of Engineering Physics, Andhra University College of Engineering, Visakhapatnam, pursuant to the advertisement *vide* T.S.No.2/2008, dated 13.02.2008, issued by the 1st respondent/Andhra University. In the writ petition, the petitioner also sought a consequential direction to appoint him as Professor in the Department of Engineering Physics.

2. I have heard the submissions of *Sri P.Durga Prasad*, learned counsel appearing for the petitioner, and of *Sri K.Jyothi Prasad*, learned Standing Counsel appearing for the 1st respondent/University, and of *Sri P.B.Vijay Kumar*, learned counsel appearing for the 3rd respondent. I have perused the material record.

3. The facts that emerge for consideration from the pleadings and submissions, in brief, are as follows:

An advertisement, *vide* Notification in T.S.3/2006, dated 31.05.2006, was issued by the 1st respondent-Andhra University inviting applications for the posts of (i) Professor (Engineering); (ii) Associate Professor; and, (iii) Assistant Professor in Engineering Physics, University College of Engineering, Andhra University. In response to the said notification, applications were received from individuals aspiring for the said posts. One post of Associate Professor was filled in September 2006. The other posts were not filled as according to the University, there are no suitable candidates as per the requirement of the University. Subsequently, another advertisement, *vide* Notification in T.S.No.2/2008, dated 13.02.2008, was issued for filing up the remaining posts

in Engineering Physics along with some other posts in other subjects/branches. Call letters were issued calling upon the candidates who had applied to the post of Professor in Engineering Physics to attend the interview on 12.04.2008. Though eleven individuals applied, only nine of them appeared for interview. Finally, the Selection Committee selected the 3rd respondent who is already working in the Department of Physics as Associate Professor. On his selection and appointment, he joined as Professor in the Department of Engineering Physics on 25.04.2008. In the notification in T.S.No.2 of 2008, dated 13.02.2008, the qualification was prescribed verbatim as under:

> Ph.D. Degree with 1st Class degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology with ten years experience in teaching/industry/research out of which 5 years must be at the level of Assistant Professor (Associate Professor/Reader) or equivalent.
> Candidates from Industry/Profession with Master's Degree in Engineering/Technology and with professional work which is significant and can be recognised as equivalent at Ph.D. degree with 10 years experience of which at least five years should be at a senior level comparable to that of Assistant Professor (Associate Professor/Reader) would also be eligible.

However, as per the University Grants Commission (UGC) guidelines, the minimum qualification required for appointment to the post of Professor shall be Masters Degree in the relevant subject with at least 55%marks besides good academic record. Therefore, as per the UGC guidelines, there was no requirement of first class Masters Degree in the relevant subject. As per the appendix to G.O.Ms.No.208, dated 29.06.1999, the prescribed qualification is as under:

> "The minimum requirement of a good academic record, 55% of the marks at the Master's level and qualifying in the National Eligibility Test, or on accredited test, shall remain for the appointment of Lecturers. It would be optional for the University to exempt Ph.D. holders from NET or to require NET, in their case, either as a desirable or essential qualification for appointment as Lecturers in the University Departments and Colleges. The minimum requirement of 55% should not be insisted upon for Professors, Readers, Librarians, Deputy Librarians, Directors of Physical Education, Deputy Directors of Physical Education for the existing incumbents who are already in the University system. However, these marks should be insisted upon for those entering the system from outside and those at the entry point of Lecturers, Assistant Librarians, Assistant Director of Physical Education."

The said annexure dealing with the aspect of Direct Recruitment, insofar as it is relevant, reads as follows:

> 2. DIRECT RECRUITMENT:
>
> (1) Professor:
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> An Eminent scholar with published work of high quality, actively engaged in research, with 10 years of experience in postgraduate teaching, and/or experience in research at the University/National Level Institutions, including experience of guiding research at doctorate level.
>
> OR
>
> An outstanding scholar with established reputation who has made significant contribution to knowledge.
> In exceptional cases, the teachers with 15 years UG teaching/research experience could also be considered.

Further, the Andhra University Code dealing with qualification of teachers duly prescribed the qualifications, which are ordinarily, be required of persons to be appointed for the post of Professor in the Faculty of Arts & Social Sciences including Commerce and Science as follows:

i) A 1st class or high 2nd class Masters Degree of an Indian University; or an equivalent qualification of a foreign University in the subject.
ii) A Ph.D. or equivalent degree of published work of doctorate level in the subject.
iii) Experience of teaching Honours or P.G. Classes for a period of 10 years and experience of guiding research at Ph.D level.

Considering the relative merit and various other aspects, the 3rd respondent was eventually selected by the Selection Committee and was recommended for appointment to the post of Professor. Thereafter, the 3rd respondent was accordingly appointed.

4. In this backdrop, the case of the writ petitioner is this: 'As on the date of the filing of the writ petition, the petitioner is working as Reader (Associate Professor) in Physics, St. Joseph's College for Women, Visakhapatnam. He worked as a Lecturer with effect from 01.08.1991 to 31.07.1996 prior to his present post as Reader on 01.08.2000. He has seventeen academic years of teaching experience and also five years Research Experience, besides academic qualification, namely, B.Sc., (Physics, Mathematics & Chemistry) with 66.83% marks obtained in the year 1982, M.Sc., (Postgraduate Degree) in Nuclear Physics, with first class with 61.31%, obtained in the year 1984. He completed

his Ph.D., (Nuclear Spectroscopy) in the year 1991 from Andhra University, Visakhapatnam. Being fully qualified, he applied for the post of Professor in Engineering Physics, pursuant to the subject notification. He was called along with eight others for an interview held on 12.04.2008. When the 3rd respondent was appointed to the said post, he made a representation, dated 06.05.2008, expressing his grievance and *inter alia* stating that the 3rd respondent does not possess the requisite qualifications as stated in the notification. The UGC/2nd respondent addressed a letter to the 1st respondent University to send comments on the selection of Professor in the Department of Engineering Physics. While replying to the 2nd respondent/UGC, the 1st respondent/University marked a copy of the letter, dated 17.10.2008, to the petitioner. This petitioner holds first class graduate and post graduate degrees, whereas, the 3rd respondent holds 2nd class degrees. The total teaching experience of the petitioner is 17 years whereas the total teaching experience of the 3rd respondent is 14 years. The petitioner is working as Reader/Associate Professor since 01.08.2000 whereas the 3rd respondent is working as Reader/Associate Professor since 15.03.2003. Out of 17 years of experience of the petitioner, 8 years of service is as Reader/Associate Professor. Whereas out of 14 years of service of the 3rd respondent, his service as a Reader/Associate Professor is less than five years as on the last date of submission of applications. Thus, the said aspects manifestly demonstrate that the 3rd respondent is not eligible and in any view of the matter, the petitioner is more eligible for selection and appointment. The application of the 3rd respondent ought not to have been entertained by the University. Giving a go-bye to the eligibility criteria, the University appointed the 3rd respondent. Therefore, his appointment is illegal, arbitrary, null and void. The comments offered by the University to the UGC/2nd respondent to the effect that the 3rd respondent is an internal candidate is not correct as he was working in the Department of Physics, College of Science and Technology, Andhra University,

but not in the Department of Engineering Physics of Andhra University. The 1st respondent relies upon terms of G.O.Ms.No.208, Higher Education (UE.II.I) Department, dated 29.06.1999, which is untenable as the 3rd respondent did not possess the minimum qualifications as per the said notification. Hence, the appointment of the 3rd respondent is to be set aside and the petitioner is to be appointed in the subject post.'

5. Per contra, the case of the 3rd respondent as well as that of the University is that the 3rd respondent is working internally in the Department of Engineering Physics as Associate Professor and that he joined as Professor in the Department of Engineering Physics on 25.04.2008 and that the Department of Engineering Physics is mainly a supporting department to the main branches of Engineering and that the department was mainly intended for teaching Physics and Material Science for B.E., and B.Tech., courses from the inception and that the 3rd respondent was originally appointed as Lecturer in Physics with 58.1% marks and that he holds Ph.D., degree in Physics and that he joined duty, on 15.03.1994, and that later, he was promoted as Associate Professor under Career Advancement Scheme (CAS) with effect from 15.03.2003 and that as per G.O.Ms.No.208, dated 29.06.1999, the minimum requirement of 55% should not be insisted upon for Professors, Readers, Librarians, Deputy Librarians, Director of Physical Education, Deputy Directors of Physical Education for the existing incumbents, who are already in the University system and that as per the Andhra University Code requirements, the 3rd respondent is having all the requirements and that he is working as Assistant Professor since 15.03.1994 and as Associate Professor since 15.03.2003, i.e., for more than five years and that he has got teaching experience at PG level for 14 years. However, the petitioner is only having UG level experience. Further, the 3rd respondent is also holding a Ph.D., in Physics. Therefore, his candidature is relatively more suitable. Further, the 3rd respondent was having more than ten years of experience of which five years is as an Associate

Professor as on the date of interview and a selection committee consisting of Vice Chancellor as Chairman, three subject experts from outside Universities, Chairman, Board of Studies, Head of the Department and nominee of Chancellor as Members, selected the 3rd respondent considering also the fact that he has ten international research publications and six national research publications and that under his guidance, three Ph.Ds., and three M.Phils., were awarded. Therefore, the writ petition is devoid of merit and is liable to be dismissed.

6. I have perused the material record including additional material papers, particularly, the copies of the minutes of the Selection Committee and the remarks on the representation of the petitioner. None of the parties challenged the notification, though it is not as per UGC guidelines/ regulations. As per the UGC guidelines, the minimum qualification required for appointment to the post of Associate Professor shall be a Master's Degree in the relevant subject with at least 55% marks and there is no compulsion of procuring first class Master's level degree. It is not in dispute and it is fairly conceded that G.O.Ms.No.208, dated 29.6.1999, prescribed the qualification as follows:

> "The minimum requirement of a good academic record, 55% of the marks at the Master's level and qualifying in the National Eligibility Test, or on accredited test, shall remain for the appointment of Lecturers. It would be optional for the University to exempt Ph.D. holders from NET or to require NET, in their case, either as a desirable or essential qualification for appointment as Lecturers in the University Department and Colleges. The minimum requirement of 55% should not be insisted upon for Professors, Readers, Librarians, Deputy Librarians, Directors of Physical Education, Deputy Directors of Physical Education for the existing incumbents who are already in the University system. However, these marks should be insisted upon for those entering the system from outside and those at the entry point of Lecturers, Assistant Librarians, Assistant Director of Physical Education."

It is not in dispute and it is fairly conceded that the Andhra University Code also prescribes the minimum qualification which is ordinarily required as follows:

> Further, as per the Andhra University Code (Vol.I, Chapter-XXVIII A – Qualifications of Teachers) under Ordinances, the minimum

qualifications should ordinarily be required of persons to be appointed for the post of Professor in the Faculty of Arts & Social Sciences including Commerce and Sciences are as follows:

i) A 1st class or high 2nd class Masters degree of an Indian University or an equivalent qualification of a foreign University in the subject.
ii) A Ph.D or equivalent degree of published work of doctorate level in the subject.
iii) Experience of teaching Honours or P.G. Classes for a period of 10 years and experience of guiding research at Ph.D level."

7. Before proceeding further it is necessary to extract hereunder the table showing the qualifications & teaching experience of the 3rd respondent and the petitioner and also other decisive factors:

Sl. No.	Dr.K.Chandra Mouli (3rd respondent)	Dr.K.Radha Krishna (Petitioner)
1	As Associate Professor: 15.03.2003 (above 5 years, as on the date of interview, i.e., on 12.04.2008)	As Associate Professor: 01.08.2000 (8 years approximately as on the date of interview, i.e., on 12.04.2008)
2	B.Sc. (MPC- Physics as Main): II Class (52.8%) M.Sc. (Physics): II Class (58.1%)	B.Sc.: I Class (66.83%) M.Sc.(Physics): I Class (61.31%)
3	M.Phil. (1986) & Ph.D. in Physics (1992)	Ph.D in Nuclear Physics (1991)
4	Teaching Experience: At P.G Level – 14 years	Teaching Experience: At U.G Level – 17 years
5	Research Publications: International -10, National – 6 Books/ Monographs – 6 Conferences/ Seminars - 15	Research Publications: International -5, National – 5 Books/ Monographs – 0 Conferences/ Seminars – 6
6	Research Guidance: Ph.Ds. Awarded – 3 M.Phils. Awarded - 3	Research Guidance: Ph.Ds Awarded – 0 M.Phils Awarded -0
7	Research Awards/ Distinctions: Best Ph.D.Thesis Award: 1993	Research Awards/ Distinctions: ...

It is also pertinent to note that G.O.Ms.No.208 also lays down that an eminent scholar, with published work of high quality, actively engaged in research, with ten years of experience in post-graduate teaching, and/or experience in research at the University/National level institutions, including experience of guiding research at doctorate level or an outstanding scholar with established reputation who has made significant contribution to knowledge and that in exceptional cases, the teachers with 15 years UG teaching/research experience would also be considered. Therefore, taking the higher eligibility criteria and the suitability of the 3rd respondent, the Selection Committee recommended

him for appointment to the post of Professor though he holds 2nd class Bachelor's and Master's Degrees.

8. In the case on hand, no *mala fides* are attributed to the Selection Committee. It is borne out by the record that the Selection Committee consisting of highly qualified individuals as its Chairman and Members effectively scrutinised the qualifications and other allied factors including the teaching experience at Post Graduate level of all the candidates, who appeared for interview, and made its unanimous recommendation for appointment of the 3rd respondent. The competence and merit of the candidates are adjudged not only on the basis of academic qualifications possessed by each candidate but also after taking into consideration the other relevant factors like teaching experience at Post Graduate level in addition to experience in the field, Research publications, Research guidance given to Ph.D and M.Phil students, Research awards & distinctions. The expert body thus evaluated all the above and other relevant factors while assessing the suitability of the candidate for the post. The recommendations of the Selection Committee were duly accepted and orders of appointment were given to the 3rd respondent. On comprehending the qualifications for appointment, and on consideration of the merits and demerits of each candidate, which were considered by the Selection Committee consisting of distinguished experts in the field, this Court deems it appropriate to accept the decision of the experts, who are more familiar with the issue. The law is fairly well settled that a person who consciously takes part in selection process cannot thereafter turn around and challenge method of selection and its outcome. [See: Ashok Kumar v. State of Bihar:(2017) 4 SCC 357]. The 3rd respondent has been working in the selected post since 25.04.2008 as Professor in the Department of Engineering Physics. He worked as Dean from 2009 to 2012 and as Head of the Department of Engineering Physics from 2008 to 2012 and is working as such from 2014 till date. He is aged 60 years as of now and has got two more years of service and his record of

teaching has been good and unblemished. This writ petition came up for hearing and decision about eight long years after his selection and appointment as Professor. When a Selection Committee consisting of the experts in the field has taken into consideration all relevant aspects and selected the 3rd respondent for appointment to the subject post, this Court does not find, at this distance of time, any valid and sufficient grounds calling for interference with the said recommendation of the Selection Committee and the eventual appointment of the 3rd respondent, more particularly, in view of the ratio in the decision of the Supreme Court in Rekha Chaturvedi v. University of Rajasthan[1].

9. On the above analysis, this Court finds that there is no merit in the writ petition and that the writ petition is liable to be dismissed.

10. In the result, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
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[1] 1993 Supp (3) Supreme Court Cases 168