

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.2219/2017 and C.M. No.9690/2017 (stay)**

% **10th March, 2017**

KANIKA SANWAL Petitioner

Through: Mr. Anuj Bhandari, Advocate
with Mr. Naveen Kumar
Gautam, Advocate.

versus

UNIVERSITY OF DELHI Respondent

Through: Mr. Abhinav Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges the selection process for appointment to the post of Assistant Professor in the Faculty of Law in the University of Delhi on the ground that criteria for selection which is laid down wrongly excludes Advocates having experience of practice, and instead only giving weightage to teaching experience of a candidate, and it is argued that resultantly there is arbitrariness, discrimination of excluding Advocates' experience and violation of Article 14 of the Constitution of India. Putting it in other words, it is argued that whereas experience of teaching is given weightage, the

experience as an Advocate is not being given weightage, and therefore, because of the latter aspect the selection process is arbitrary and hit by Article 14 of the Constitution of India.

2. The qualifications required for appointment to the post of Assistant Professor in the Faculty of Law read as under:-

“ASSISTANT PROFESSOR:

For Faculties of Applied Social Sciences & Humanities; Arts, Commerce and Business; Inter-disciplinary and Applied Sciences (except Physical Education); Law; Mathematical Sciences; Sciences (except Home Science, Nursing, Physiotherapy, Occupational Therapy, and Pharmacy); and Social Sciences.

1. Good academic record as defined by the university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master’s Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

2. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR.”
(underlining added)

3. In addition to the aforesaid requirements weightage is given by ascribing marks with respect to educational qualifications as also post Ph.D research or teaching experience in terms of the following guidelines:-

“For the post of Assistant Professor, the criteria for evaluation of the candidates for determining their eligibility for shortlisting shall be based on a 100 point scale. The distribution of points will be as follows:

(I) Academic Qualifications for University Departments-Maximum 47 points

S. No.	Examination	Category I($\geq 60\%$)	Category II($\geq 50\%$ but $< 60\%$)
1.	Under-Graduate	10	7
2.	LL.B.	15	11

3.	LL.M.	5* (55% eligibility)
4.	Ph.D.	17*
5.	NET/NET-JRF	3/5

* A maximum of 17 points shall be awarded for qualification at S. Nos.3 & 4 taken together.

(For the purpose of minimum qualifications for consideration for the post of Assistant Professor in the Faculty of Law, the term “Master’s Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited foreign university” will imply the degree of “LL. M.”

In case of Integrated course/programme, the points shall be awarded for both the degrees covered under the course/programme as per the entitlement above.

XXXXX

Post-Ph.D. Research experience/Teaching experience to be claimed for appointment (the period required to acquire LL.M and/or the residency period to acquire Ph.D. degree shall not be considered as teaching experience)			
Maximum 20 Points for University Departments			
1.	Post-Ph.D. research experience as post-doctoral fellow/Research Associate/Research Scientist etc. in recognized University/Institution in India or abroad	1 point for every 4 months OR 4 points for every 1 year	Maximum 20 points
2.	Teaching experience (as full-time ad hoc, temporary or permanent) in recognized University/College/institution	1 point for every 4 months OR 4 points for every 1 year.	
Total points: Academic qualifications + Publications+ Teaching/Post Ph.D. research experience			Maximum 100 points

4. At the outset, it requires to be noted that this Court will not substitute its decision to that of the recruiting authority as to what should be the eligibility criteria and the preferable additional qualifications giving weightage for appointment of a person to a post, being the post of Assistant Professor in the present case. Surely, the

authority and employer who seeks to appoint persons would ordinarily be the best judges of the eligibility criteria as also additional qualifications for a person to be appointed to a post and this Court will not ordinarily interfere with such criteria fixed and weightage fixed unless there is an *ex facie* arbitrariness.

5. The relevant criteria for appointment has already been reproduced above and it is seen that there is a misconception of the petitioner whereby it is pleaded in the writ petition that petitioner satisfies the requisite eligibility criteria of having 55% marks in the Masters Degree of LL.M and having National Eligibility Test (NET) qualification, inasmuch as, the very first few words of para 1 of the qualifications require for the post of Assistant Professor begins with the expression “good academic record as defined by the University with at least.....” i.e it is not as if that by having 55% marks in the post graduate qualification with having passed NET the eligibility criteria is satisfied because what is required is a good academic record as defined by the University and ‘with at least’ having 55% marks in post graduation with NET qualification. Therefore the University/employer is entitled to decide what is the good academic record for being appointed to the post of Assistant Professor with the requirements of 55% marks at the post graduate level and NET qualification being only

the minimum eligibility criteria. Once the University/employer is entitled to fix and decide what is the good academic record which a candidate must have for appointment, there is hence no illegality in the University/employer fixing the criteria for selection and giving weightage of 20 points to post Ph.D research or in the alternative teaching experience.

6. No doubt, an Advocate who has experience would have considerable weight, but that weightage will be in the field of practice of law and it cannot be argued that merely being a successful Advocate and having a good practice as an Advocate will mean that such a person should be equated to a person who has teaching experience or a post Ph.D research experience. In any case, in my opinion, there are two views of the matter as to whether an experienced and successful Advocate can or cannot be equated to a person who has teaching experience or post Ph.D research experience, and once two views are possible, this Court will not substitute its view for that of the University/employer fixing the criteria and the weightage for selection and appointment to the post of Assistant Professor.

7. Dismissed.

MARCH 10, 2017/Ne

VALMIKI J. MEHTA, J