

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: August 03, 2017

Judgment delivered on: August 17, 2017

+ W.P.(C) 2571/2016

DR. M.N. RAJESH

..... Petitioner

Through: Mr. S.S. Ray, Adv. with Mrs. Rakhi Ray &
Mr. Vaibhav Gulia, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY & ANR

..... Respondents

Through: Ms.Ginny J. Routray, Adv. with Ms.
Bhawna Pal. Adv. for R-1
Mr. Rajeev Singh, Adv. for R-2

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“In the aforesaid facts and circumstances, the Petitioner most humbly prays that this Hon’ble Court be pleased to:

- a. Issue a writ and / or direction directing the Respondent No.1 to produce the documents pertaining to the eligibility and appointment of Respondent No.2 to the post of Associate Professor in Russian and Central Asian Studies (Unreserved);*
- b. Issue a writ in the nature of Mandamus quashing the appointment of Respondent No.2 to the post of Associate Professor in Russian and Central Asian Studies (Unreserved) with Respondent No.1;*
- c. Issue a writ in the nature of Mandamus directing the Respondent No.1 to consider appointment of the petitioner to the Post of Associate Professor in Russian and Central Asian Studies (unreserved);*

- d. Alternately issue a writ in the nature of Mandamus directing the Respondent no.1 to appoint the petitioner to the post of Associate Professor in Russian and Central Asian Studies (unreserved);*
- e. Any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. ”*

2. Some of the facts are, the respondent no.1 had issued an advertisement on 17th November, 2012 for certain positions including the position of Associate Professor in Russian and Central Asian studies. The petitioner and the respondent no.2 had applied for the same. The petitioner was called for the interview on 23rd May, 2013. It is contended by Mr. S.S. Ray, learned counsel appearing for the petitioner that the application of the respondent no.2 was initially rejected. But on reconsideration, he was called for the interview and pursuant to the recommendation made by the Committee, respondent no.2 was appointed. Mr. Ray would challenge the appointment of the respondent no.2 primarily on the grounds that (i) respondent no.2 did not achieve the API Score of 300 (ii) the respondent did not have the eligibility of 8 years for being considered for appointment as Associate Professor (iii) he does not have the relevant qualification for the post in question inasmuch as the petitioner has done his Ph.D in International Studies whereas the requirement was in Russian / CAS Studies. In so far as his submission at serial no. (i) above, that respondent no.2 does not have the API Score of 300 is concerned, he states that in the paper published in Category 'A' Journal, India Quarterly 'Towards a World Free of Nuclear Weapons' reporting an International Conference, respondent no.2 awarded himself 35 marks in place of 21 marks. In other words, he has been given the benefit of 14 marks. That apart, the 20 marks given for

Research Project, which was not undertaken by the respondent No.2 need to have been deducted from the total marks of 332.5. It is his submission that respondent no.2 has not submitted any proof in support of his presenting papers at National / International Conference for which 82.5 marks have been allotted. Mr. Ray, would state if 14/20/82.5 marks are subtracted from the total marks of 332.5, his API Score would be less than 300 and would not have qualified for being appointed as Associate Professor. In so far as the submission at serial no. (ii) above is concerned, Mr. Ray would draw my attention to page 97 of the paper book, which is part of the application submitted by respondent no.2 wherein he has shown his experience as under: -

Sl. No.	Name of Employer / Status of Institute / University (Govt. / Quasi Govt. / Autonomous etc.)	Post held/ Designation	Period of Employment		Basic Salary last drawn, pay scale and Grade Pay	Nature of duties
			From	To		
1.	MITHILA UNIV.	LECTURER	Nov, 96	Sept, 01	8,000 – 13,500	Teaching Grade
2.	MAGADH UNIV.	LECTURER	Sept, 01	Sept, 02	8,000 – 13,500	-Do-
3.	JNU (RCAS/SIS)	RES. ASSOCIATE	Sept, 02	Sept., 05	(On lien) 10,700	Fined
4.	ZAKIR HUSSAIN COLLEGE	LECTURER	Jan, 06	April, 06	15,600 – 37,000	Teaching Grade
5.	DYAL SINGH COLLEGE	ASST. PROF.	Aug, 06	to Conti.	15,600 – 37,000	Teaching and Research Guidance.

He states between 1992 – 1999, the respondent no.2 was pursuing his Ph.D. That part of his experience needs to be ignored from the total years of service put in by him as Lecturer in Mithila University. Similarly, he states his tenure as Research Associate in JNU between the years September, 2002 – September, 2005 could not have been considered for the purpose of eligibility. That apart, a break in service between two

spells of appointment as ad-hoc Assistant Professor between, 2006 to 2009 would mean entire period need to be ignored for the purpose of eligibility. In so far as his submission that the petitioner did not have the qualification of Ph.D. in Russian / CAS Studies, he states the petitioner's qualification are in International Studies which is surely different from Russian / CAS Studies.

3. On the other hand, Ms. Ginny J. Routray, learned counsel appearing for the respondent no. 1 / University would counter the submissions of Mr. Ray by drawing my attention to Page 140 of the paper book to contend that University had considered the issue whether the respondent no.2 had the API Score of 300 or not and on a consideration, it is clear that he did achieve the API Score of 300. In so far as the papers published in Category 'A' Journal, India Quarterly is concerned, she would draw my attention to Page 33 (running Page 194) of the petition to contend that if there are multiple co-authors then the first and corresponding author will get full marks for the publication and others would get 50% marks. As the respondent no.2 had published two papers, he was provided 70 marks. She has also drawn my attention to papers presented by respondent no.2 at the National Level and International Level by drawing my attention to Page 141 of the paper book for which the respondent no.2 had produced proof to the satisfaction of the University. She has also stated, respondent No.2 has undertaken the project by drawing my attention to page 214.

4. The learned counsel for the respondent No.2 has also countered the submissions made by Mr. Ray by contending that the respondent No.2 was eligible for the post in question. According to him, the respondent No.2 has more than nine years of

uninterrupted service from November 1996 to December 2005 and the period from September 2002 to September 2005 was on lien from Magadh University service, hence need to be treated as a continuous service. Besides that, he was serving from January 2006 to April 2006 as ad-hoc Lecturer in Zakir Hussain College and from August 2006 to July 14, 2009 as ad-hoc Lecturer at Dayal Singh College and in permanent capacity in Dayal Singh College from July 15, 2009 till the last date of filing application on September 14, 2012 and even after that till he joined the post in JNU on April 20, 2015. He also counters the other submissions of Mr. Ray by stating that his API score is above 300 and the University has considered all the aspects of the respondent No.2 meeting the eligibility for the post in question. He seeks the dismissal of the writ petition.

5. Having heard the learned counsel for the parties, as Mr. Ray has made limited submissions, I intend to consider the same and give finding as under.

6. Insofar as the submission of Mr. Ray that the respondent No.2 did not achieve the API score is concerned, assuming that the respondent No.2 is not entitled to the benefit of 14 marks, even the same are subtracted, still the respondent No.2 has the API score of more than 300.

7. Insofar as his plea that the respondent No.2 could not have been given 20 marks for research project is concerned, the same has been appropriately answered by Ms. Routray by drawing my attention to page 214, which is a statement of accounts furnished to ICSSR, the Funding Authority, which was signed by the respondent No.2 as a Supervisor and it clearly demonstrates that the respondent No.2 was associated with the project awarded by ICSSR.

8. Insofar as his submission that the respondent No.2 has not submitted any proof in support of presenting papers at National/International Conference for which 82.5 marks have been allotted is concerned, on consideration of page 141 of the paper book, as relied upon by Ms. Routray, it is clear that enough evidence has been submitted by the respondent No.2 of his having presented papers at National/International Conference, which would aggregate to 82.5 marks and grant of marks is justified.

9. Insofar as the plea of Mr. Ray that the respondent No.2 did not have the eligibility of eight years, to be considered for appointment as Associate Professor is concerned, it is a conceded case of the petitioner in his rejoinder that the respondent No.2 has only six years and seven months of service (from July 1999 to September 2002 and July 2009 to December 2012). The petitioner has overlooked the period of service put in by the respondent No.2 for four months in Zakir Hussain College between January 2006 and April 2006 and his service from August 2006 to July 2009 as Assistant Professor at Dayal Singh College. His plea that against each appointment, a break was given by the College and as such period between August 2006 to June 2009 need to be excluded is untenable. It is a settled position of law, an artificial break of one day given between each appointment is held to be illegal and arbitrary and the appointment from day one till the last date need to be treated as continuous service.

10. Insofar as the third submission of Mr. Ray that the respondent No.2 has done his Ph.D in International Studies whereas the requirement was in Russian/CAS studies is concerned, the same is also untenable, more particularly the same cannot be agitated by the petitioner, who himself has done his Ph.D in Tibetan Studies. In any case, it is not

disputed that both the petitioner and the respondent No.2 were considered by the JNU for appointment as Associate Professor in Russian/CAS Studies and it is not their case that both of them did not meet the eligibility criteria.

11. In view of my above discussion, I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

AUGUST 17, 2017

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