

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2017

Delivered on : 07.06.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.1371 of 2010

S.Mahesh Kannan

.. Petitioner

Vs.

1.The Registrar,
Tamilnadu Agricultural University,
Coimbatore - 641 003.

2.Dr.R.Thiyagarajan,
Asst. Professor (Farm Machinery)
Agricultural Engineering College
& Research Institute,
Tamilnadu Agricultural University,
Kumulur - 621 712.

3.Dr.B.Suthakar,
Asst. Professor (Farm Machinery)
Agricultural Engineering College
& Research Institute,
Tamilnadu Agricultural University,
Kumulur - 621 712.

.. Respondents

PRAYER : Petition under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records connected with the orders bearing No.R3/1011/2008 dated 26.12.2009 of the first respondent appointing respondents 2 and 3 as Assistant Professors in the 1st respondent University and quashing the same, and directing the first respondent University to consider the petitioner for appointment to the post of Assistant Professor afresh within a reasonable time as may be determined by this Court.

For Petitioner : Mr.M.Radhakrishnan
for M/s.S.Sathia Chandran

For Respondents : Mr.Abdul Saleem for R1
Mr.R.Priyakumar for R2 & R3

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the first respondent dated 26.12.2009 appointing respondents 2 and 3 as Assistant Professors in the first respondent University and quash the same. The petitioner has also sought orders on the first respondent to consider his appointment to the post of Assistant Professor afresh within a reasonable time.

2. The facts in a nutshell are as follows: The petitioner possessed degree of Master of Engineering (Agriculture) in Farm Power and Machinery and also qualified National Eligibility Test (hereinafter referred to as NET) in 2006 in the professional subject Farm Machinery and Power. Thus, the petitioner is eligible for Lectureship/Assistant Professorship. He also possessed a certificate issued by the Agricultural Scientists Recruitment Board, New Delhi.

3. It is alleged that pursuant to the advertisement dated 10.09.2008 issued by the first respondent University, the petitioner applied for the post of Assistant Professor and also attended an interview before the Selection Committee of the first respondent on 20.10.2009. In the advertisement, it has been stated that only those candidates, who possess the certificate of having passed NET/SLET will be admitted for interview. Clause D of the advertisement stipulates that the candidates acquired Ph.D./PDF qualifications from top, well recognised foreign Universities and not passed NET shall also apply subject to the condition that in the event of their selection, they have to pass NET within the two NET examinations immediately after their appointment. The subject Farm Machinery and Power was not found in the subjects exempted under Clause E of the advertisement. According to the petitioner, the respondents 2 and 3, who do not possess the mandatory qualification, viz., NET certificate, have been selected and appointed as Assistant Professors (Farm Machinery), which is in violative of Articles 14 and 16 of the Constitution of India. Hence, the petitioner prayed for quashing of the appointment order issued to the respondents and consequently, appoint the petitioner as Assistant Professor.

4. Resisting the writ petition, the first respondent filed the counter stating that the NET examination conducted by the Agricultural Scientists Recruitment Board (ASRB) contains syllabus for both Bio-Energy and Farm Machinery from the year 2007. It is stated that the first respondent University is running a PG programme with the exclusive syllabus in Farm Machinery and therefore, the students of the first respondent are not in a position to pass NET/ASRB examination which

contains 50% of Bio-Energy subject also. It is stated that the Board of Management in its 148th meeting held on 24.07.2008 has given exemption from passing NET examination to the PG students of the first respondent in the discipline of Bio-Energy. It is also stated that the Board of Management in its meeting held on 26.10.2009 considered and approved the proposal for giving exemption from NET examination to the Post Graduates of the first respondent University in the discipline Farm Machinery and Power for the purpose of calling for interview to the posts of Assistant Professor (Farm Machinery and Power) as one time measure and the Board of Management has approved and ratified the action taken in having called such candidates for the interview. Since the petitioner did not come under the zone of selection on merit basis when compared to the respondents 2 and 3, who are Ph.D holders, he was not selected by the Selection Committee. Further, Ph.D degree holders get 20 marks higher than the mere Post Graduates. Hence, prayed for dismissal of the writ petition.

5. I heard Mr.M.Radhakrishnan, learned counsel appearing for the petitioner and Mr.Abdul Saleem, learned counsel appearing for the first respondent University and also Mr.R.Priyakumar, learned counsel appearing for the respondents 2 and 3. Perused the materials available on record.

6. The learned counsel for the petitioner submitted that the advertisement dated 10.09.2008 is clear to the effect that NET certificate is must for considering a candidate for the post of Assistant Professor. When respondents 2 and 3 do not possess NET certificate, they could not have been called for interview by the first respondent University. He submitted that the appointment of respondents 2 and 3 as Assistant Professors is liable to be quashed on the sole ground that they do not possess required qualification.

7. The learned counsel argued that the power of relaxation in respect of NET certificate ought not to have been exercised by the Selection Committee of the first respondent University, since there were sufficient number of candidates including the petitioner possessing NET certificate available for being considered for the post of Assistant Professor.

8. The learned counsel for the petitioner further submitted that the Indian Council of Agricultural Research directed all the State Agricultural Universities not to give any exemption from the requirement of NET to Ph.D holders and M.Phil degree holders. By a letter dated 13.03.2009, the Government India reiterated that NET shall continue to remain an essential pre-requisite in disciplines in which it is conducted for appointment as Assistant Professor.

9. The learned counsel appearing for the first respondent submitted that the Board of Management in its 152nd meeting held on 26.10.2009 considered and approved the proposal for giving exemption from NET examination to the Post Graduates of Tamil Nadu Agricultural University in the discipline "Farm Machinery and Power" for the purpose of calling for an interview to the post of Assistant Professor (Farm Machinery and Power) as one time measure and the Board of Management has approved and ratified the action taken. He submitted that the respondents 2 and 3 are having higher qualification than the petitioner. Moreover, they are Ph.D. degree holders. Therefore, the Selection Committee was right in selecting respondents 2 and 3.

10. The learned counsel for respondents 2 and 3 submitted that upon considering the qualification acquired by respondents 2 and 3 and also after extending the exemption which respondents 2 and 3 are eligible, the Selection Committee of the first respondent University selected and appointed respondents 2 and 3 as Assistant Professors. Therefore, there is no error in the order of the appointment made by the Selection Committee of the first respondent University.

11. The petitioner attacked the impugned order of appointment on the ground that he was qualified in NET examination in the professional subject "Farm Machinery and Power" and was eligible for the post of Assistant Professor. According to the petitioner, respondents 2 and 3, who do not possess the mandatory qualification viz., NET certificate, have been selected and appointed as Assistant Professors (Farm Machinery) by the first respondent University, which is in violation of the selection process.

12. The first respondent issued an advertisement dated 10.09.2009 calling for applications to fill up 334 posts of Assistant Professors. In the advertisement, the required qualification has been stated as under:

"2. Qualification:

A. Agricultural and allied subjects: A Master's degree in the relevant subject with a minimum OGPA of 3.20/4.00 (under 4 point adding system) or 7.00 / 10.00 (under 10 point grading system) or its equivalent grade in the State Agricultural Universities (SAUs) / ICAR Institutes irrespective of community is essential with good academic records. The candidate should possess the basic degree in the concerned Faculty from any State Agricultural University (SAUs)/ICAR Institute.

The candidate should have passed the National Eligibility Test (NET) conducted by the Agricultural

Scientists Recruitment Board (ASRB), New Delhi / UGC / Council of Scientific and Industrial Research (CSIR), which is mandatory."

13. The advertisement also contains exemption from passing NET as under:

"E. Exemption from NET : The candidates applying for the following subjects are exemption from passing the NET examination for this recruitment only as a special case since Eligibility Tests are not being conducted by ASRB for the said subjects at present:

- 1.Nano Science and Technology
- 2.Bio-Informatics
- 3.Fashion Technology
- 4.Textile Technology
- 5.Food Process Engineering
- 6.Bio-energy
- 7.MBA (Agri.Business Management)"

14. According to the first respondent, the NET examination conducted by the Agricultural Scientists Recruitment Board contains syllabus for both Bio-Energy and Farm Machinery from the year 2007. In as much the Tamil Nadu Agricultural University is concerned, it is running a Post Graduate programme with the exclusive syllabus in Farm Machinery subject only. Therefore, the students of Tamil Nadu Agricultural University are not in a position to pass NET/ASRB examination, which contains 50% of Bio-Energy subject. In such circumstances only, the Board has given exemption from passing NET examination to the Post Graduate students of Tamil Nadu Agricultural University in the discipline of Bio-Energy. Further, in its 152nd Meeting held on 26.10.2009, the Board of Management considered and approved the proposal for giving exemption from NET examination to the Post Graduates of Tamil Nadu Agricultural University in the discipline "Farm Machinery and Power" for the purpose of calling for an interview to the post of Assistant Professors (Farm Machinery and Power) as one time measure and the Board of Management has also approved and ratified the action taken in calling for such candidates for interview.

15. The submission of the learned counsel for the petitioner that the power of relaxation in respect of NET certificate ought not to have been exercised by the Selection Committee of the first respondent University, as there were sufficient number of candidates including the petitioner possessing NET certificate for being considered for the post of Assistant Professor is not acceptable, as it is not as if the Board of Management does not have the power to relax the conditions.

16. Though the petitioner has taken a plea of fraud in the

appointment of respondents 2 and 3, he has not proved the fraud by way of material evidence. In the absence of any proof, it cannot be said that fraud has been played in the selection process and therefore, appointment of respondents 2 and 3 is liable to be cancelled. It is to be noted that appointment order was issued to respondents 2 and 3 only with the approval of the Vice-Chancellor of the first respondent University.

17. Admittedly, the petitioner has not challenged the proposal of the Board of Management for giving exemption from NET examination to the Post Graduates of Tamil Nadu Agricultural University in the discipline "Farm Machinery and Power" and/or decision taken by the Board to give one time measure in the selection in question.

18. It is to be noted that though the petitioner had passed the NET in "Farm Machinery and Power" during 2006, respondents 2 and 3 are having higher qualification (Ph.D holders) than the petitioner. Moreover, the Board has already given exemption from passing NET examination in "Farm Machinery and Power" as one time measure to them. Since the petitioner did not come under the zone of selection on merit basis when compared to respondents 2 and 3, who are Ph.D holders, the petitioner was not selected by the Selection. Therefore, the petitioner cannot question the selection/appointment of respondents 2 and 3 made by the Selection Committee.

19. For the foregoing discussions, this Court is of the view that there is no illegality in the order of the appointment issued to respondents 2 and 3 and the writ petition is liable to be dismissed and accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs
To

The Registrar,
Tamilnadu Agricultural University,
Coimbatore - 641 003.

+1cc to Mr.R.Priyakumar , Advocate, S.R.No.35793

W.P.No.1371 of 2010

cs/13/06/18