

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.949 OF 2015

J U D G M E N T
(*Per* Justice Sanjay Kumar)

The University of Hyderabad (*hereinafter*, 'the University') issued Notification dated 07.01.2009 proposing to fill up the post of Executive Engineer in its service. Pursuant thereto, Pattagalla Isaiah, an in-service candidate, was appointed to the post and he joined service as an Executive Engineer on 30.06.2009. Challenging the same, S.Ayub Pasha, respondent No.1 herein, an unsuccessful external candidate, filed W.P.No.2694 of 2010 before this Court. By order dated 02.09.2015 passed therein, a learned Judge of this Court allowed the writ petition and set aside the selection and appointment of Pattagalla Isaiah. The University was directed to undertake a fresh selection process to fill up the post. Aggrieved thereby, Pattagalla Isaiah filed this appeal.

By order dated 04.11.2015, this Court granted interim suspension of the order under appeal. WAVMP No.713 of 2016 was filed by the first respondent-writ petitioner to vacate the said order. Arguments having been advanced on all issues by the learned counsel appearing for the parties, the matter is amenable to final disposal at this stage.

The impugned Notification dated 07.01.2009 was issued by the University inviting applications for three Non-Teaching Group 'A' Officers posts, *viz.*, Registrar, University Engineer and Executive Engineer. All the three posts were notified in the Open Category. The post of University Engineer was proposed to be filled up on deputation basis. In so far as the post of Executive Engineer was concerned, the qualification prescribed

was a Bachelor's Degree in Civil Engineering with ten years of experience in design and systems and construction of buildings, roads, sanitary and water supply systems, including maintenance of the same. A Post-Graduate Degree in Structures was stated to be desirable. The general terms appended to the Notification made it clear under Clause (1) that it would be open to the University to consider the names of suitable candidates who might not have applied. Under Clause (4), the University reserved to itself the right to relax any of the qualifications, experience etc. in deserving cases in respect of any post.

A Screening Committee was constituted to ascertain the eligibility of candidates to be called for the interview. This Committee consisted of six members and examined the thirteen applications received for the post of Executive Engineer on 09.03.2009. Nine candidates, including S.Ayub Basha, the first respondent-writ petitioner, were found to be eligible to be called for an interview. Four candidates were rejected on the ground that they did not have sufficient experience. This was by way of an additional criterion applied by the Screening Committee. As regards Pattagalla Isaiah, the appellant-third respondent, the Committee noted that his candidature was recommended by the University Engineer In-charge and except for the fact that he did not meet the B.Tech/B.E. criterion, he met other parameters. The Committee felt that he may be given an opportunity to present his credentials to the Selection Committee subject to the approval of the competent authority as per rules.

Thereupon, Office Note dated 31.03.2009 was raised by the Assistant Registrar (Personnel Section-I), Office of the Registrar of the University, recording that thirteen applications had been received in response to the Notification dated 07.01.2009 for the post of Executive

Engineer and upon replicating the recommendations of the Screening Committee as to the candidates to be called for interview or otherwise, the Assistant Registrar concluded as under:

'(A) As seen from the recommendations, the Committee recommended the following eight (8) applicants to be called for the interview.

S.No	Regn.No	Name of the candidate
01	EE-9103	Ankala Venkata Ramanababu
02	EE-9104	Mohd. Abdullah Samdani
03	EE-9105	S.Ayub Basha
04	EE-9107	Y.Nooruddin
05	EE-9109	Banda Ramesh
06	EE-9110	Thakur Balaji Singh
07	EE-9111	Venkata Lakshmi Narayana Murthy Tadi
08	EE-9112	Balijepalli S.V.Ramana Rao

(B) The Committee did not recommend the following 04 applicants for the reasons mentioned each.

S.No	Regn.No	Name of the candidate	Reasons for rejection
1	EE-9101	Hari Ram	As per additional criteria
2	EE-9106	Abdul Kareem	As per additional criteria
3	EE-9108	Rama Rao	As per additional criteria
4	EE-9113	Srinivasa Sastry	As per additional criteria

(C) The Committee gave the following recommendation in respect of the candidature of Sri Pattagalla Isaiah (EE-9102)

S.No	Regn.No	Name of the candidate	Reasons for rejection
1	EE-9102	Pattagalla Isaiah	The committee noted that his candidature has been recommended by the University Engineer In-charge. <i>Except the B.Tech/B.E. criteria</i> , he meets other parameters and committee felt that he may be given an opportunity to present his credentials to the selection committee subject to the approval of the competent authority as per rules

Since the committee made its recommendation subject to the approval of the competent authority as per rules, specific orders are requested in this regard.

(i) To call Sri Pattagalla Isaiah (EE 9102) for interview.

Or

(ii) To reject the candidature of Sri Pattagalla Isaiah (EE 9102)

(iii) Any other order

The recommendations of the Screening Committee as at (A), (B) & (C) above are submitted for consideration and orders please.'

Thereupon, the Registrar of the University endorsed as under on 08.04.2009.

'(A) & (B) may be approved.

(C) In view of the long field experience and the supervisory roles already carried out, the candidate may be called for the interview.'

In turn, the Vice-Chancellor endorsed as under on 13.04.2009.

'(A), (B), (C) Approved.'

In consequence, the Selection Committee, comprising the Vice-Chancellor, Pro-Vice-Chancellor, two Members of the Executive Council, the Head of the Department, two subject experts, a SC/STs Representative and a Member Secretary, met on 25.06.2009 and interviewed seven out of the nine candidates, including the appellant-third respondent and first respondent-writ petitioner. Two candidates failed to attend. The Selection Committee recommended that the appellant-third respondent be appointed to the post of Executive Engineer.

This led to the filing of the subject writ petition by the first respondent-writ petitioner. His case was that the appellant-third respondent ought not to have been considered as he did not possess the minimum qualification of a Degree in Engineering. He further pointed out that no relaxation of this stipulated minimum qualification had been granted by the competent authority in favour of the appellant-third

respondent and, even if so, it would not be legal as the University did not have the power to relax an essential qualification.

The learned Judge took note of the provisions of the University of Hyderabad Act, 1974 (*for brevity*, 'the Act of 1974'), whereunder the University was constituted, and found that the Executive Council was the competent authority in the matter of appointments to teaching and non-teaching posts in the service of the University. The learned Judge upheld the power of the University to relax qualifications but found that the procedure prescribed to effect such relaxation in favour of the appellant-third respondent had not been followed in the instant case. Though it was argued before the learned Judge that an Ordinance had been issued empowering the Vice-Chancellor of the University to exempt a candidate from the prescribed qualification, no such Ordinance was produced. The learned Judge thereupon referred to Section 12(3) of the Act of 1974 which empowered the Vice-Chancellor to take immediate action, if necessary, on any matter which is conferred on any authority of the University, but he is required to report to such authority the action taken by him on such matter. As it was not the case of the University that the relaxation extended to the appellant-third respondent, whereby he was permitted to appear for the interview before the Selection Committee, was ever placed before the Executive Council prior thereto, the learned Judge concluded that the subsequent ratification by the Executive Council of the appointment of the appellant-third respondent as an Executive Engineer was not sufficient. The learned Judge observed that the action of the Vice-Chancellor of the University in approving the recommendation of the Screening Committee, without even placing the matter before the Executive Council, and allowing the appellant-third respondent to appear

for the interview before the Selection Committee was in violation of the due procedure as he could have been permitted to appear for such selection interview only after the relaxation was approved by the Executive Council. It was on this ground that the learned Judge invalidated the appointment of the appellant-third respondent.

Sri Gandra Mohan Rao, learned counsel for the appellant-third respondent, would argue that the scheme and structure of the Act of 1974 was not understood by the learned Judge in the proper perspective. He would point out that the Executive Council of the University would not meet on a frequent basis and therefore, approval of the Executive Council prior to the interview of the appellant-third respondent was merely procedural and as the appointment of the appellant-third respondent was subsequently approved by the Executive Council, it would amount to sufficient compliance with Section 12(3) of the Act of 1974. Learned counsel would further point out that the Vice-Chancellor is the Chairman of the Executive Council apart from being the principal Executive and Academic Officer of the University and he is therefore entitled to grant relaxation of eligibility conditions to deserving candidates.

Per contra, Sri M.V.Krishna Mohan, learned counsel for the first respondent-writ petitioner, would submit that the learned Judge rightly understood the scope and content of the statutory provisions in the Act of 1974 and, more particularly, Section 12(3) thereof. He would assert that unless the Executive Council of the University relaxed the prescribed essential qualification, the appellant-third respondent could not have been included in the list of eligible candidates for interview by the Selection Committee. He would therefore submit that the order of the learned Judge does not warrant interference and pray for dismissal of the appeal.

It would be apposite at this stage to note and understand the scheme of the Act of 1974. Section 10 thereof states that the following shall be the Officers of the University.

- '(1) The Chancellor;
- (2) The Vice-Chancellor;
- (3) The Pro-Vice-Chancellor or, if more than one are appointed, the Pro-Vice-Chancellors;
- (4) The Deans of Schools.
- (5) The Registrar.
- (6) The Finance Officer; and
- (7) Such other officers as may be declared by the Statutes to be officers of the University.'

Section 12 deals with the Vice Chancellor. Section 12(2) states that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all authorities of the University.

Section 12(3) is of relevance and is extracted hereunder:

'(3) The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter;

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.'

Section 18 of the Act of 1974 details the 'Authorities of the University'. They are-

- 1) The Court;
- 2) The Executive Council;
- 3) The Academic Council;
- 4) The Boards of Schools; and
- 5) Such other authorities as may be declared by the Statutes to be authorities of the University.

Section 20 provides that the Executive Council shall be the principal Executive Body of the University. Sections 24 and 25 deal with the Statutes of the University and how they should be made. Section 26 speaks of Ordinances being issued to provide for all or any of the matters stipulated therein. Section 25(1) of the Act of 1974 states that the first Statutes of the University are those set out in the Schedule. Statute (1A) in the Schedule deals with the Vice-Chancellor and Statute (2) sets out his powers and duties. Under Statute (2)(1), the Vice-Chancellor is stated to be the ex-officio Chairman of the Court, the Executive Council, the Academic Council and the Finance Committee and in the absence of the Chancellor, he is to preside at the Convocations of the University held for conferring degrees. Under Statute 2(3), the Vice-Chancellor is empowered to convene or cause to be convened meetings of the Court, the Executive Council, the Academic Council and the Finance Committee. Statute 12(1) deals with the membership of the Executive Council and Statute 12(3) provides that the quorum for a meeting of the Executive Council shall be seven members. Statute 13(2)(iii) empowers the Executive Council to create administrative, ministerial and other necessary posts, subject to the approval of the University Grants Commission and to make appointments thereto in the manner prescribed by the Ordinances (Approved by the Executive Council at its meeting held on 14.07.1998). Chapter 20 deals with the Ordinance relating to 'Creation of Posts, Appointment and Emoluments of Non-Teaching Employees of the University'. As per Clause (4) of the said Ordinance, the age, educational and other qualifications, procedure to be followed with regard to advertisements, recommendations by Selection Committees, screening of applications and

related matters for appointment by direct recruitment, shall be as prescribed by the Executive Council.

Significantly, Chapter 21, being the Ordinance on the 'Procedure to be followed by Selection Committees in making recommendations for appointment of teachers' contains Clause (9), which states that if any candidate is recommended by the Selection Committee in relaxation of any of the prescribed qualifications, it shall be so stated and recorded.

Significantly, no such provision finds mention in Chapter 20 relating to Non-Teaching employees. Sri M.V.Krishna Mohan, learned counsel, would rely on this disparity in the Ordinances and assert that even the Executive Council of the University had no power to grant relaxation of the qualification in relation to the Non-Teaching post of Executive Engineer. He would rely on the following case law:

In AHMEDABAD MUNICIPAL CORPORATION V/ s. VIRENDRA KUMAR JAYANTIBHAI PATEL¹, the Supreme Court observed that if consideration of equity in the face of statutory rules is accepted, then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment and held that it would not be safe to bend the arms of law only for adjusting equities.

In PRAKASH CHAND MEENA v/ s. STATE OF RAJASTHAN², the Supreme Court observed that candidates who were aware of the notification/advertisement but did not possess the requisite qualification have two options, either to apply if they had the necessary qualification or to challenge the notification/advertisement to the extent it mentioned higher qualifications. The Supreme Court further observed that in the matter of eligibility qualification, the equivalent qualification must be

¹ (1997) 6 SCC 650

² (2015) 8 SCC 484

recognized as such in the recruitment rules existing on or before initiation of the recruitment process.

In *STATE OF GUJARAT V/ s. ARVINDKUMAR T.TIWARI*³, the Supreme Court observed that the appointing authority is competent to fix a higher score for selection than the one required to be attained for mere eligibility but, by way of its natural corollary, it cannot be taken to mean that eligibility norms fixed by the statute or rules can be relaxed for this purpose to the extent the same may be lower than the ones fixed by the statute. It was further observed that the power of relaxation should be exercised for justifiable reasons and not arbitrarily only to favour an individual. It was pointed out that the power to relax the recruitment rules is conferred upon the authority to meet any emergency situation where injustice might have been caused or is likely to be caused to any person or class of persons or where the working of the said rules might have become impossible. In Para 14 of the judgment, the Supreme Court observed that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules and would be therefore void in law as lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to a serious illegality and not a mere irregularity.

Per contra, Sri Gandra Mohan Rao, learned counsel, would press into service the judgment of the Supreme Court in *OSMANIA UNIVERSITY V/ s. ABDUL RAYEES KHAN*⁴, wherein it was held that there could be no justifiable conclusion that there was no objective evaluation of candidates merely because the Selection Committee did not

³ (2012) 9 SCC 545

⁴ (1997) 3 SCC 124

adopt the procedure of awarding marks. The Supreme Court pointed out that when a Lecturer is selected on promotion as a Reader, respective academic preferences and performance, teaching experience and capacity to teach, and other teaching material relevant to that subject would be considered by the Committee and it is not necessary, like in selection of Class II and Class III officers, to award marks to each candidate, as what is required to be done is dispassionate and objective selection but not an arbitrary or colourable selection.

In *B.C.MYLARAPPA V/ s. DR. R. VENKATASUBBAIAH*⁵, the Supreme Court was considering the selection and appointment made to the post of Research Assistant in the Sociology Department of Bangalore University. Again, neither marks were awarded nor reasons were recorded by the Selection Committee. Taking note of the fact that there was no rule or regulation requiring the Board of Appointment of the University to record reasons, the Supreme Court observed that the High Court was not justified in making the observation that as no such reasons were recorded by the Board in its Resolution selecting the appellant for appointment, it would vitiate the selection. The Supreme Court held that in the absence of any rule or regulation requiring the Board to record reasons and in the absence of *malafides* attributable against members of the Board, the selection made without recording reasons could not be found fault with.

However, we find that the learned Judge has already held that the Executive Council was vested with power to relax qualifications. No independent appeal has been preferred by the first respondent-writ petitioner against such a finding. We are therefore not inclined to go into this issue or render a finding thereon.

⁵ (2008) 14 SCC 306

Accepting, without prejudice, that the University did have such power to grant relaxation in relation to the stipulated minimum qualification, the issue is whether the procedure prescribed therefor has been satisfactorily adhered to.

The original record of the University was called for in relation to the subject selection. Perusal thereof manifests that the Screening Committee, in its meeting held on 09.03.2009, specifically noted that the candidature of the appellant-third respondent had been recommended by the University Engineer In-charge and as he met all other parameters except the B.Tech/B.E. criteria, he may be given an opportunity to present his credentials to the Selection Committee, subject to the approval of the competent authority as per rules. Therefore, the said recommendation was specifically made 'subject to approval by the competent authority in accordance with the rules'.

Statute 13 in the Schedule to the Act of 1974 deals with the powers and functions of the Executive Council. As already noted *supra*, in terms of Statute 13(2)(iii) read with the Ordinance in Chapter 20, it is the Executive Council which is the competent authority in so far as Non-Teaching posts are concerned. Therefore, relaxation of the eligibility condition of possessing B.Tech/B.E. Degree could only be by the Executive Council. No doubt, Section 12(3) of the Act of 1974 empowers the Vice-Chancellor to step up in case immediate action is necessary in any matter and exercise power conferred on any authority of the University, subject to the condition that he reports to such authority the action taken by him on such matter. The pre-requisite to validate the action taken by the Vice-Chancellor in such emergencies is his prompt reporting of the matter to the authority concerned for *post-facto* ratification.

In the case on hand, the only defence offered by the University was that the selection and appointment of the appellant-third respondent was approved by the Executive Council of the University and therefore, it must be construed that the same amounts to sufficient ratification in compliance with Section 12(3) of the Act of 1974. The crucial issue that requires to be considered is whether relaxation of the minimum qualification by the Vice-Chancellor, whereby the appellant-third respondent found place in the list of candidates to be interviewed by the Selection Committee, was lawful and valid?

The Minutes of the Meetings of the Executive Council of the University were produced before this Court and perusal thereof reflects that in the 145th Meeting of the Executive Council held on 17.08.2009, an agenda item was to consider the report on the action taken by the Vice-Chancellor in relation to various appointments, and one such item in the report was the appointment of the appellant-third respondent as an Executive Engineer in the University on the recommendation of the Selection Committee at its meeting held on 25.06.2009. The Minutes of the 145th Meeting of the Executive Council held on 17.08.2009 record that the Executive Council approved the action taken by the Vice-Chancellor, as detailed in the agenda. Significantly, there was no mention in the agenda item as to any relaxation of the stipulated minimum qualification by the vice-Chancellor in relation to the appellant-third respondent. The agenda item merely spoke of the appointment of the appellant-third respondent as an Executive Engineer in the University on the recommendation of the Selection Committee.

In effect, the Executive Council was not even informed of the fact that the Vice-Chancellor had extended such a relaxation. Though the

action taken by the Vice-Chancellor was in purported exercise of power under Section 12(3) of the Act of 1974, he did not even bring it to the notice of the authority concerned, the Executive Council, that he had exercised the power of relaxation of an essential qualification. The question of *post-facto* ratification being given by the said authority therefore does not arise when it was not even fully informed of the facts. In consequence, approval by the Executive Council of the appointment of the appellant-third respondent as an Executive Engineer does not amount to sufficient compliance with the provisions of Section 12(3) of the Act of 1974.

Had the Executive Council been informed of the relaxation granted by the Vice-Chancellor and thereafter, with full knowledge and consideration, the said action was ratified, the situation may have been different. However, the procedure followed, as is evident from the original record, was not in conformity with the prescription of Section 12(3) of the Act of 1974, as the Vice-Chancellor never even brought it to the notice of the Executive Council, the action taken by him in relation to relaxation of an essential minimum qualification while selecting and appointing the appellant-third respondent as an Executive Engineer in the University.

We are informed by Sri Gandra Mohan Rao, learned counsel, that in the same selection held pursuant to the Notification dated 07.01.2009, the first respondent-writ petitioner was also empanelled for the post of University Engineer, along with one Siddartha Reddy Thokala, who found place at Sl.No.1. However, upon the said Siddartha Reddy Thokala relinquishing the appointment offered to him on 09.07.2009, the University addressed Offer of Appointment dated 10.08.2016 to the first respondent-writ petitioner appointing him as the University Engineer on

deputation. Learned counsel would state that the appellant-third respondent has been continuing as the Executive Engineer in the University pursuant to the interim orders granted in this appeal while the first respondent-writ petitioner found employment as the University Engineer, a higher post. He would therefore submit that there is no cause for interference in this appeal at present. He would place reliance on the unreported judgment of this Court in V.BALAJI V/ s. THE REGISTRAR, UNIVERSITY OF HYDERABAD⁶ in this regard. However, perusal of the aforesaid judgment, which was passed by a Division Bench of this Court in which one of us, SK,J, was a member, reflects that it essentially turned upon the agreement arrived at by and between the parties therein without adverse impact on any other employee or candidate. While so, in the case on hand, Sri M.V.Krishna Mohan, learned counsel, is not willing to accept the broad premise as indicated *supra*. He would point out that his client was appointed only on deputation basis and the same is to come to an end in the near future without hope of further extension.

Sri Gandra Mohan Rao, learned counsel, would also contend that in terms of the order under appeal, the University would have to initiate the selection process afresh and if such a measure is adopted, the first respondent-writ petitioner would not even be eligible to aspire for the post as he is now over-aged. He would therefore submit that at the behest of the first respondent-writ petitioner, who does not even stand to benefit any longer, the appointment of his client should not be invalidated.

We are however not persuaded to agree. The admitted fact is that the manner in which the University went about selecting and appointing the appellant-third respondent as an Executive Engineer in its service

⁶ W.A.No.1134 of 2015 decided on 20.06.2016

clearly violated the norms. Power of relaxation of the stipulated minimum educational qualification should be an exception and not the rule and any exercise of the power of relaxation should be scrupulously in accordance with the procedure prescribed. As already stated *supra*, that was not so in the case of the appellant-third respondent. Merely because the first respondent-writ petitioner, who challenged the illegal appointment of the appellant-third respondent would not be personally benefited at this stage, it does not have the effect of dignifying or validating the said illegal selection and appointment. We therefore find no grounds to interfere with the order under appeal.

The writ appeal is accordingly dismissed.

Interim order dated 04.11.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

M.GANGA RAO, J

8th JUNE, 2018

PGS