

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.5066 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief/s:

‘...to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the constitution of the Selection Committee by the 1st respondent University for promotions to the post of Professor held in the month of January, 2017 as not in accordance with the Regulation 5.1.3 r/w 5.1.2 as framed by the UGC relating to Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 and to set aside the selections and to direct the 1st respondent to hold fresh selection by constituting a Selection Committee in accordance with the Regulations above mentioned and pass such other order or orders...’

2. I have heard the submissions of Sri Vedula Srinivas, learned senior counsel appearing for the petitioner, and of Sri M. Srinivasa Rao, learned counsel appearing for the respondents 1 & 2. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows: “The petitioner joined the service of the respondent University, as Reader, in the year 2009. Prior to that, that is, during the period from 1997 to 2007, he worked as Lecturer; and, from 2007 to 2009 as Reader, in the Department of Translation Studies in Kannada University, Hampi. At present, the petitioner is working as Associate Professor in the Department of Translation Studies in the respondent University. His next promotion is to the post of Professor. The promotional candidate has to complete three years

service in the post of Associate Professor with the Academic Grade Pay of Rs.9,000/-. The petitioner got the eligibility for promotion to the post of Professor in the year 2013. The respondent University, under the Career Advancement Scheme [hereinafter, 'CAS'] called for applications, in the year 2013, for the post of Professor in various Departments. The petitioner, who has fulfilled all the required criteria in terms of Academic Performance Indicators, also applied for the post of Professor. A candidate, for being considered for promotion, should have five publications and also 400 API points. The petitioner has 12 publications during the period 2010 to 2013 and more than 400 API points. The petitioner's application was scrutinized by the CAS Screening Committee; and, the said Committee recommended the petitioner for being called to interview. The University has to constitute a Selection Committee under the regulations framed in 2010 by the UGC for Appointment of Teachers & Other Academic Staff in Universities & Colleges and for Measures for Maintenance of Standards in Higher Education. As per Regulation 5.1.2, the composition of the Selection Committee for the post of Associate Professor shall be as under:

1. Vice Chancellor to be the Chair Person of the Selection Committee.
2. An Academician who is the Nominee of the Visitor/Chancellor, wherever applicable.
3. Three experts in the concerned subject/field nominated by the Vice Chancellor out of the Panel of names approved by the relevant Statutory Body of the University concerned.
4. Dean of the Faculty, wherever applicable.
5. Head/Chair Person of the Department/School.
6. An Academician representing SC / ST / OBC / Minority / Women / Differently Abled Categories, if any, of candidates representing these categories is the applicant to be nominated by the Vice Chancellor, if any of the above members of the Selection Committee do not belong to that category. At least four members, including two outside subject experts, shall constitute the Quorum.

The composition of the Selection Committee for the post of Professor in the University, which is prescribed in regulation 5.1.3, is similar to that of the post of Associate Professor set out in regulation 5.1.2. Though the Screening Committee recommended the petitioner for being called to interview, the petitioner did not receive any call letter for attending the interview. However, for some of the applicants, in pursuance of their applications of 2013, the interview took place in the year 2015. The petitioner came to know discreetly that his interview would take place after getting some clarification from his previous employer. Subsequently, in the year 2016, several posts have been notified by the University to be filled in by way of direct recruitment and also by way of promotion. Basing on the application made by the petitioner in the year 2013, he was issued a call letter, on 20.01.2017, by the 1st respondent for attending interview scheduled to be held on 27.01.2017 at 11:00 AM for the post of Professor. He was also required to submit four copies of five best publications submitted for evaluation to the CAS Screening Committee. Accordingly, the petitioner submitted the publications viz., (1) Translating Tragedy into Kannada; (2) Competing Imaginations: Language and Anti-colonial Nationalism in India; (3) Visualizing Kannada in the Context of Post-modernity & Post-coloniality; (4) Kaleidoscope English 1 & 2 for Visual Arts; and, (5) Kannada Classical Texts in Translation Series. At the time of interview, on 27.01.2017, there were eight members in the Selection Committee. The petitioner performed in a best manner. To the knowledge of the petitioner, the results are to be announced on 15.02.2017. However, on going through the constitution of the Selection Committee, the petitioner came to know that the same is not in accordance with regulation no.5.1.2 mentioned

above. The Head/Chair Person of the Department of Translation Studies, Prof. H. Lakshmi, was not invited to participate in the Selection Committee though the presence of the said Professor as a member of the Committee is mandatory. The nomination of three experts by the Vice Chancellor from out of the panel of names approved by the Statutory Body of the University such as Board of Studies/Department Council, School Board and Academic Council, was also not done. To the knowledge of the petitioner, the Vice Chancellor has nominated the experts of her own choice, as there is no panel of names of experts approved by any Statutory Body of the University. The Selection Committee consisted of Prof. D.Venkata Rao, who does not fit into any of the categories mentioned in the regulation 5.1.2. Thus, the Selection Committee constituted for promotions to the post of Professor is not in accordance with regulation 5.1.3; and, hence, the selection process is vitiated. Unless a valid Selection Committee is constituted in the prescribed manner, the selections cannot be finalized. There is every chance of promotions being made in an arbitrary manner denying promotions to the most deserving candidates by the members of the improperly constituted Committee. Already, for no fault of the petitioner, the petitioner's promotion got delayed by four years due to the interview not being conducted in the year 2013 or atleast in the year 2015 along with the others. There is every likelihood of the deserving candidates not being selected in the present selections also as the Selection Committee itself is invalidly constituted and there is a chance of candidates being promoted on extraneous considerations. Hence, before the announcement of the results, the writ petition is filed questioning the improper constitution of the Selection Committee by the University."

4. This Court, on 15.02.2017, granted the following interim order:
'...Respondents are directed not to announce the results relating to the promotion for the post of Professor, Department of Translation Studies in the respondent University in furtherance to the selections held in January, 2017, until further orders.'

5. Seeking to vacate the afore-said interim order, the respondents filed WVMP.No.1667 of 2017. However, a joint request was made to dispose of the writ petition on its merit instead of the interlocutory application.

6. The case of the respondents, as stated in the counter affidavit filed by the 1st respondent, the submissions made on their behalf and the contentions of the writ petitioner in the reply affidavit shall be dealt with appropriately, in the discussion infra, while determining the issue raised for consideration.

7. I have given earnest consideration to the facts and the submissions made by learned senior counsel appearing for the petitioner and learned counsel appearing for the respondents.

8. The main grievance of the writ petitioner is about the constitution of the Selection Committee constituted for selection of the suitable candidate for promotion to the post of Professor. The petitioner, placing reliance on UGC regulations, contended that the Selection Committee is not constituted in accord with regulation nos.5.1.2 & 5.1.3 of the regulations laid down by the UGC. However, the respondent University is a University formed under an enactment of the Parliament and it owes its existence to the Statute – 'The English and Foreign Languages University Act, 2006', which received the assent of the President of India, on 10.01.2007. The University framed its own

rules & regulations and such rules & regulations framed, govern service matters. During the course of hearing, learned senior counsel appearing for the petitioner has not disputed the said position. However, it is sought to be contended that even as per the rules & regulations, which are being relied upon by the respondent University also, the constitution of Selection Committee is not proper and valid. According to the petitioner, he came to know about the improper and irregular constitution of the Selection Committee after he was interviewed, on 27.01.2017, by the Committee of eight members and on going through the constitution of the Selection Committee. He further contends that as the constitution of the Selection Committee is not in accordance with rules & regulations, its constitution is vitiated and that as the Selection Committee is invalidly constituted, there is a chance of deserving candidates not being selected and undeserving candidates being promoted for extraneous considerations.

9. On the contrary, the learned counsel for the respondents contended as follows: 'The Selection Committee is validly constituted. The contentions of the writ petitioner are motivated. The petitioner, having participated in the selection process and faced the interview, on 27.01.2017, had come to Court prematurely even without waiting for the declaration of the results. Therefore, he is estopped from raising any objection as an after thought.'

10. In this backdrop, the issue as regards the validity of the constituted Selection Committee falls for consideration.

11. The relevant provision of Section 18 of the Act, which deals with Selection Committees, reads as under:

18. **Selection Committees:** (1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the posts of Professor, Reader, Lecturer, Registrar, Finance officer, Librarian and Principals of Colleges and Institutions maintained by the University.
- (2) The Selection Committee for any appointment specified in column (1) of the Table hereto annexed shall consist of the Vice-Chancellor, the Pro-Vice-Chancellor, a nominee of the Visitor, and the persons specified in the corresponding entry in column (2) of the said Table:

1	2
Professor	(i) The Dean of the School (ii) The Head of the Department concerned, if he is a Professor. If the Head is a Reader, then the Professor, if any, in that Department. (iii) Three persons not connected with the University nominated by the Vice-Chancellor, out of the panel approved by the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.

12. Out of the eight members of the Selection Committee, which was constituted for interviewing the petitioner and other eligible candidates, there is no dispute with regard to four out of the said eight members of the Selection Committee.
13. The first objection of the petitioner is with regard to absence of the Head of the Department, who is a Professor, on the Selection Committee and the nomination & inclusion of Professor D. Venkat Rao as a member of the Selection Committee. The petitioner also contends that Prof. D. Venkat Rao is not competent to be a member of the Selection Committee as he does not fit into any of the categories mentioned in the relevant regulation. As per the contentions of the respondents, Professor H. Lakshmi is admittedly the Head

of Department of Translation Studies; therefore, she was originally proposed to be in the Selection Committee along with others as a member of the Selection Committee; she was sent the necessary communication in that regard *vide* letter, dated 20.01.2017; however, by confidential letter, dated 24.01.2017, she informed the Vice Chancellor that she regrets to express her inability to be present at the Selection Committee meeting on account of medical emergency of her mother; in view of her last minute withdrawal and in the absence of any other Professor in the Department and to avoid delay in the matter of promotions, the Vice Chancellor approved and nominated Prof.D.Venkat Rao, a Senior Professor from Literary School, as a member of the Selection Committee in the place of Prof. H. Lakshmi, the Head of the Department. The respondents produced copies of the above said two letters in support of their submissions. Further, according to the submissions of the respondents, Prof. D. Venkat Rao was nominated as a member of the Selection Committee as a substitute for the Head of the Department, who is a Professor, for the reason that the said Professor expressed her inability to attend the Selection Committee meeting and also for the reason of non availability of another Professor in the Department. The respondents further submit that such nomination by way of substitution was done as per University Statute and practice and that the same was done in good faith and for objectivity and that, therefore, such action is not amenable to challenge. In this regard, it is pertinent to note Section 42 of the Act on which reliance was placed and which reads as under:

‘Protection of Action taken in good faith: No suit or other legal proceeding shall lie against any officer or other employee of the University for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act, the Statutes or the Ordinances.’

Reliance was also placed upon regulation 12 (12 & 13) by supplying a copy of the said regulation, which reads as under:

Regulation 12: Guidelines for drawing up Panel of Experts for the Selection Committees:

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11.xx

12. The Panel of Experts shall be reported to the Academic Council confidentially.

13. The Vice-Chancellor has the authority to add or delete the names of experts before the panel is approved by the Academic Council in the form of a confidential proposal.

As per the above provision, the Vice Chancellor has the authority to add or delete the names of experts before the panel is approved by the Academic Council. In that view of the matter, this Court is of the considered view that the absence of the Head of the Department, who is a Professor, on the Selection Committee and the presence of Prof. D. Venkat Rao on the Selection Committee need not be viewed as a factor which invalidates the constitution of the Selection Committee.

14. Dealing next with the objection it is to be noted that this objection is with regard to the three persons on the panel of the Selection Committee, that is, 'three persons not connected with the University nominated by the Vice-Chancellor, from out of the panel approved by the Academic Council for their special knowledge of, or interest in, the subject'. In support of this objection,

the submission made on behalf of the petitioner is that the nomination of the said three experts is not validly done for the reason that the Academic Council has not first approved the nominated three persons, who are nominated by the Vice Chancellor, and that the Vice Chancellor first approved the nominations of the experts and that later the Academic Council approved their nominations. However, the respondents in the counter contended as follows: - 'The nomination of three experts was done as per Rule 12 (Rule 12 & 13); the panel members list was submitted by the respective heads to the Co-ordinator, CAS, and in turn, the Co-ordinator submitted the same to the Vice Chancellor for finalization of the consolidated list to be reported confidentially to the Academic Council; the minutes of the Academic Council were approved by the Executive Council before the commencement of the CAS interviews and that there was two tier screening cum selection process for CAS to the post of Associate Professor and Professor.' It is further submitted that in the instant case Vice Chancellor added a few names to the panel of experts submitted by the Departments and that the final panel of experts was duly approved by the Academic Council and Executive Council of the University before the interviews were held; the subject experts were appointed from the list of names approved by the panel and that there is no procedural violation as alleged by the petitioner.'

15. A careful examination of the process in this regard would show that eventually the final list was approved by the Academic Council as well as the Executive Council of the University after the Vice Chancellor added a few names to the panel of subject experts submitted by the Departments to be approved by the Academic Council. As already noted, there is a provision in

the regulation which enjoins the Vice Chancellor with the authority to add or delete names of the experts before the panel is approved by the Academic Council in the form of a confidential proposal. Therefore, the contention of the petitioner in this regard, being devoid of merit, needs no countenance.

16. On the above analysis and having regard to the provisions of rules & regulations and the enactment, this Court finds that the contentions of the writ petitioner do not merit consideration and that the writ petition is liable for dismissal.

17. Before parting, it is to be noted that the petitioner having faced the interview on 27.01.2017, kept quiet for considerable time and obviously having apprehended that he may not be selected rushed to the Court, on 13.02.2017, even before the results are declared and stalled the declaration of results scheduled on 15.02.2017. For that reason also, this Court finds that the petitioner lacks *bona fides*. Be that as it may. As this Court held above that the constitution of the Selection Committee is valid, it follows that the writ petition is liable to be dismissed.

18. Accordingly, the Writ Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

09.08.2018
Vjl