

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.12908 of 2017

ORDER:

This writ petition is filed seeking the following relief :-

“.... to issue a writ or order or direction more particularly one in the nature of writ of mandamus declaring the impugned proceedings in Memo No.37899/ RC/ 2013 dt.30.12.2013 passed by the 4th Respondent herein as illegal, arbitrary, discriminatory, unconstitutional, malafide and contrary to Articles 14, 21, 15(4) and Article 16 (4b) of the Constitution of India and also the Department of Personnel and Administrative Reforms O.M.No.27/ 10/ 71-Estt.(SCT) dt. 05.09.1975 and O.M.No.D-1458/ 81-Estt. (SCT), dt.21.05.1981, issued to all Ministries/ Departments etc. and to consequently set aside the same and to forthwith direct the 4th Respondent to pass orders appointing the Petitioner as Associate Professor in the Department of Statistics and Mathematics in the 3rd Respondent College of Professor Jayashankar Telangana State Agriculture University, Rajendranagar, Hyderabad, in response to the Petitioner's application dt.19.08.2013 in pursuance to the advertisement of the 4th Respondent herein vide No 7/ RC/ 2013, dated 01.08.2013”.

Heard Dr.I.Stella, party-in-person and Mr.E.Thimothi learned Standing Counsel for the 3rd respondent.

It has been contended by the petitioner that she is a member belonging to Scheduled Caste community and she is a disabled person. The petitioner further submits that she is fully eligible and qualified to be appointed as Associate Professor and she has responded to the Notification issued by the 4th respondent for appointment to the post of Associate Professor, but her case was not considered and the same was rejected. The petitioner was initially appointed as a Teaching Assistant in S.V.University, Tirupati and worked from 12.04.1996 to 30.06.1998. Thereafter, she was

appointed as Assistant Statistical Officer in the Directorate of Economics and Statistics, Hyderabad and worked from 03.08.1998 to 07.05.2013. The petitioner further submits that she is working as Assistant Professor in the 4th respondent University. While so, the 4th respondent University has issued Notification on 01.08.2013 for the post of Associate Professor in the Department of Statistics and Mathematics. As the petitioner is fully eligible, she has responded to the said Notification. But, the respondents have rejected the case of petitioner on the ground that the petitioner is not having required experience in accordance with the U.G.C. Regulations. Thereafter, the petitioner has approached the National Commission for Scheduled Castes contending that the 4th respondent has erroneously rejected her case for appointment to the post of Associate Professor. As per the Department of Personnel and Administrative Reforms O.M.No.27/10/71-Estt.(SCT), dated 05.09.1975, the petitioner is entitled for relaxation of qualification in respect of experience, but the same was not considered by the 4th respondent University. The National Commission for Scheduled Castes had considered the entire case and recommended the case of the petitioner for relaxing the qualification in respect of experience by duly taking into account that no eligible candidates were available for the post of Associate Professor. The National Commission for Scheduled Castes has recommended the case of petitioner on the following grounds:-

- > The post has been lying vacant for the last 3 consecutive recruitments.

> The petitioner is only the candidate. She fulfill educational qualification. Relaxation required in experience only.

> Commission, therefore, observed that University has not followed the relaxation clause of DOPT orders mentioned supra, which will deny her concessions provided to SCs under Article 15(4) and (5).

> Moreover action of Academic Council will violate constitutional provision under Article 16 (4B) of Constitution of India.

> Commission cannot be a mute spectator when constitutional provisions are violated.

The petitioner further contended that under O.M.No.27/10/71-Estt(SCT) dated 05.09.1975, 21.05.1981, DOPT, Government of India issued instructions to the UPSC and other recruiting competent authorities, which are as follows :-

(a) Where the post is filled by direct recruitment through the Union Public Service Commission, the provision to be inserted will be :

“The qualification regarding experience is relaxable at the discretion of the UPSC in the case of candidates belonging to the SC or ST, if at any stage of selection the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.”

(b) Where the post is filled by direct recruitment otherwise than through the UPSC, the provision to be inserted will be :

“The qualification regarding experience is relaxable at the direction of the competent authority in the case of candidates belonging to the Scheduled Caste or Scheduled Tribes, if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.”

The petitioner further contends that in view of clear instructions issued in DOPT guidelines dated 05.09.1975 and

21.05.1981, the case of the petitioner can be considered for appointment to the post of Associate Professor. The petitioner further contends that she has put in more than 16 years of service as Assistant Professor and, therefore, her case can be considered.

Learned counsel for petitioner contends that appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for appointment to the post of Associate Professor strictly in terms of DOPT guidelines dated 05.09.1975 and 21.05.1981 and also in terms of the recommendations made by the National Commission for Scheduled Castes dated 08.02.2016.

Learned Standing Counsel appearing for the 3rd respondent has contended that as per the Regulations framed by UGC for the post of Associate Professor one must have eight years of experience in the cadre of Assistant Professor. Since the petitioner is not possessing eight years of experience in the cadre of Assistant Professor, the case of the petitioner cannot be considered, but the Academic Council can relax the experience to a maximum of six months. But, in the instant case, even the Academic Council cannot relax the experience in respect of the petitioner as she has only three months of service in the cadre of Assistant Professor at the time of submission of her application. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that DOPT has issued guidelines for relaxing the qualification of scheduled castes candidates and the fact that no candidates were available for three consecutive recruitments and

since the petitioner is the only qualified candidate, the case of the petitioner can be considered in terms of DOPT guidelines dated 05.09.1975 and 21.05.1981 and also the recommendations made by the National Commission for Scheduled Castes dated 08.02.2016.

Therefore, the writ petition is disposed of directing the 3rd respondent to consider the case of the petitioner for appointment to the post of Associate Professor by duly taking into account the recommendations made by the National Commission for Scheduled Castes dated 08.02.2016 and also DOPT guidelines dated 05.09.1975 and 21.05.1981, within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 08-03-2019
Prv

