

CWP-10406-2015

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-10406-2015

Date of Decision: April 03, 2019

Ritu Baniwal

... Petitioner

vs.

**Guru Jambheshwar University of Science and Engineering and others
.. Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Saurabh Goel, Advocate
for the petitioner.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Arvind Seth, Advocate
for respondents No. 1 and 2.

Mr. Kshitij Sharma, Advocate
for respondent No.3.

ARUN MONGA, J

Selection process for the post of Assistant Professor in Computer Science and Engineering Department, pursuant to an advertisement published by respondent-Guru Jambheshwar University of Science and Technology, has been assailed by way of present writ petition. Further prayer has been made for issuance of a writ in the nature of *mandamus* directing the respondents to consider the case of the petitioner for appointment to the said post of Assistant Professor in the Scheduled Caste category.

2. Succinctly, the factual backdrop of the case, which is not in dispute, is that the petitioner is first division graduate in Bachelor of Engineering followed by first division in M. Tech. in Computer Science and Engineering. Pursuant to advertisement No. 1 of 2014 dated 17.01.2014 (Annexure P1), the petitioner applied for the post of Assistant

CWP-10406-2015

-2-

Professor in Computer Science and Engineering Department in Scheduled Caste category. Having been found eligible, the petitioner gave written test/screening test and was successfully shortlisted for interview.

3. As per the result (Annexure P3) of written test/shortlisting test, the petitioner was awarded 51 marks. The petitioner asserts that 10 candidates were called for interview on the basis of their performance in written test and the marks of the written test were not to be added to assess final merit list of the candidates.

4. Vide interview letter dated 07.07.2014 (Annexure P4), the petitioner appeared before the Interview Committee consisting of 07 Members, on 17.07.2014. A final merit list (Annexure P-8) was prepared after conducting the interview, wherein the petitioner has been awarded 32 marks out of total of 50 marks, for academic record and research performance. In assessment of domain knowledge in teaching experience, she has been awarded 09 marks out of 30 and in interview 06 marks out of 20 marks. Thus, the petitioner scored a total of 47 marks out of a maximum of 100 marks.

5. As against the petitioner, respondent No.3 who has been appointed on the post of Assistant Professor, scored only 06 marks out of 50 in academic record and research performance, 27 marks out of 30 in domain knowledge and teaching experience and 16 marks out of 20 in interview, thus, obtaining a total 49 marks out of 100 marks.

6. Per contra, the stand taken by the respondent(s) is that the appointment of respondent No.3-Krishan Kumar has been recommended by the Selection Committee on the basis of marks obtained by him as per merit list prepared according to the approved criteria by the Selection

Committee which consists of among others, three outside subject experts and an academic representative of the Chancellor alongwith Dean of Faculty and Chairperson of the Department concerned. However, it may be mentioned that the marks for domain knowledge and interview have been given by the Selection Committee on the basis of performance in the interview.

7. Before proceeding further, it would be instructive to reproduce the criteria of awarding marks adopted by the respondents for the selection to the post of Assistant Professor which is under challenge, is as below:

<i>Criteria for the posts of Assistant Professor</i>	
<i>Total Marks-100</i>	
	<i><u>Maximun</u></i>
A) Academic Record and Research Performance	50 marks
1. Academic Record	25 marks
a) Minimum academic qualifications for eligibility	00 Marks
b) 1 mark each for obtaining more than 55% but less than 60% marks at Matric/10+2, Bachelor's and Master's level	03 Marks
c) 4 marks each for 1 st Division in Matric/10+2, Bachelor Degree and Master's Degree	12 Marks
d) Additional marks for obtaining 75% or above marks at Master's level	05 Marks
e) M.Phil	08 Marks
OR	
Ph.D.(provided it is not considered for eligibility)	25 Marks
2. Research Performance/Publications (with respect to number and quality)	
a) in International Journals with ISSN No.	05 Marks per research paper
b) In National Journals with ISSN No.	04 Marks per research paper
c) i) in other Journals (excluding conference/seminar proceeding) with ISSN No.	03 Marks per research paper or book
ii) Books	
Note: The Research Papers/ Books may be authored/co-authored by the candidate.	

<i>Criteria for the posts of Assistant Professor</i>	
<i>Total Marks-100</i>	
<i><u>Maximun</u></i>	
B) Domain knowledge and teaching skills	30 Marks
1. Domain Knowledge with respect to:	25 Marks
i) Conceptual clarity	
ii) Overall subject knowledge	
iii) Latest developments in the subject	
2. Teaching Experience/Skills	05 Marks
(01 mark for each year of teaching experience, subject to maximum of 5 years experience)	
C) Interview	20 Marks
With respect to-	
i) Communication skills	
ii) Confidence level	
iii) Quality of response	
iv) Overall personality	

8. I have gone through the respective pleadings and heard the learned counsel for the petitioner, learned senior counsel appearing for respondents No.1 and 2 and counsel for respondent No.3.

9. A perusal of the merit list, prepared by the Selection Committee, of all the 10 candidates invited for interview, which is not under dispute, for the reasons stated hereinafter makes an interesting reading and the same is reproduced herein below:-

<i>Merit List prepared by the Selection Committee for Selection to the post of Assistant Professor for Scheduled Caste Category in the Deptt. Of Computer Science & Engineering as per the Criteria approved by the Executive Council vide Resolution No. 13 of its meeting held on 13.09.2012 in the light of the criteria proposed by the UGC for selection to the post of Assistant Professor</i>										
Sr No	Diary No	Roll No.	Name of Candidate	Father's Name	Category	Total weightages =100 Marks				Total Score of the Candidate
						a) Academic Record and research performance/publication=50 marks	b) Assessment of domain		c) Interview performance =20 Marks	
							Domain knowledge= 25 Marks	Teaching experience/skill = 5 Marks		
1	204	1401190	Sh. Hawa Singh	S/o Sh. Basti Ram	SC	12	7	5	8	32

CWP-10406-2015

-5-

2	205	1401 191	Sh. Kuldeep Singh	S/o Sh. Dalbir Singh	SC	13	7	2	7	29
3	174	1401 164	Ms. Ritu Baniwal	D/o Sh. Des Raj Baniwai	SC	32	7	2	6	47
4	21	1401 018	Sh. Manjeet Singh	S/o Jagbir Singh	SC	27	9	0	8	44
5	79	1401 073	Ms. Shailja Kumari	W/o Sh. Satpal Singh	SC-B	17	9	0	8	34
6	126	1401 119	Sh. Ashok Kumar	S/o Sh. Suresh Kumar	SC	17	9	0	8	34
7	241	1401 225	Sh. Rajiv Kumar	S/o Sh. Harkish an Lal	SC	30	6	5	6	47
8	219	1401 205	Ms. Pooja	D/o Sh. Dharam vir Bhoria	SC	22	8	0	7	37
9	212	1401 198	Ms. Meenaksh i Kangra	D/o Sh. Billu Ram Kangra	SC	17	6	1	6	30
10	193	1401 182	Sh. Krishan Kumar	S/o Sh. Prabhu Dayal	SC	6	22	5	16	49

10. Learned counsel for the petitioner submits that the combined reading of the merit list of the 10 candidates, as prepared by the Selection Committee, reflects that whoever had secured high marks in academic record has been consciously awarded low marks in domain knowledge and interview. He further points out that the petitioner, who is highly meritorious in her academic record, shown at serial No.3 in the above merit list, was awarded 32 marks out of 50 in academic, 07 marks out of 25 in domain knowledge, 02 marks out of 05 in teaching experience and 06 marks out of 20 in interview (total 47 marks out of 100 marks). Similarly, another candidate, who was highly meritorious in academics, shown at serial No.7, has been awarded 30 marks out of 50 in academics, 06 marks out of 25 in domain knowledge, 05 marks out of 05 in teaching experience and 06 marks out of 20 in interview performance (total 47 marks out of 100 marks). Likewise, all other candidates except respondent No.3 have been given single digit marks in domain knowledge as well as

CWP-10406-2015

-6-

in the interview. Whereas, respondent No.3, who has the poorest academic record and research performance, was awarded 06 marks out of 50 in academic record, 22 marks out of 25 in domain knowledge, 05 marks out of 05 in teaching and 16 marks out of 20 in interview (total 49 marks out of 100 marks). Furthermore, the petitioner has alleged favoritism on the ground that respondent No.3 is the relative of the then Vice-Chancellor of respondent No.1-University.

11. Learned counsel for the petitioner further argues that the academic record and research performance of the petitioner leaves no manner of doubt that the petitioner was the most meritorious candidate and has been wrongly deprived of fair and equal consideration for appointment to the post of Assistant Professor. The appointment of respondent No.3 is, thus, liable to be set aside, contends learned counsel for the petitioner.

12. On the other hand, learned senior counsel, appearing for respondents No. 1 and 2, has strenuously argued that the selections are recommended by the duly constituted Selection Committee, as per University Act, and the recommendations kept in sealed envelopes are approved and opened by the Executive Council. For the appointment to the post of Assistant Professor meant for Scheduled Caste category in the Department of Computer Science and Engineering, the Selection Committee has recommended the name of Sh. Krishan Kumar and the recommendations were got approved/opened by the Executive Council in its meeting held on 22.07.2014 and the selected candidate has been issued impugned appointment letter (Annexure P5). Besides, the appointments for several other departments were approved in the said meeting of the

CWP-10406-2015

-7-

Executive Council. He further contends that the then Vice Chancellor of the respondent-University, has not associated himself in the Selection Committee, while making selection to the post of Assistant Professor meant for SC category in the Department of CSE, as his relative was appearing in the said interview and the committee was headed by the Dean, Faculty of Engineering and Technology, GJU S&T, Hisar. Therefore, it is wrong to state that the committee has acted under the influence of Dr. M.L.Ranga. He contends that appointment of Sh. Krishan Kumar has been recommended, as per criteria followed by the respondent University, for the post of Assistant Professor, which was common for all departments including the Department of Computer Science and Engineering.

13. Learned senior counsel, therefore, seeks dismissal of the present writ petition, keeping in view the arguments advanced by him, as noted above.

14. As regards the arguments of learned counsel for respondent No.3 is concerned, he submits that no wrong has been committed by either the Selection Committee or the University and, therefore, the writ petition is liable to be dismissed. Learned counsel further relies on a judgment rendered by Hon'ble Supreme Court of India in case titles **D. Sarojakumari vs. R.Helen Thilakom and others**, reported as **2017 AIR (SC) 4582** and submits that once the petitioner has participated in the selection process, she cannot be permitted to challenge the same after she has been found unsuccessful in getting selected. In particular, learned counsel has laid emphasis on the following paragraphs of **D. Sarojakumari's case**, *ibid:-*

“The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

In Dr. G. Sarna vs. University of Lucknow & Ors., the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :-

“15.We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.....”

In Madan Lal & Ors. vs. State of J&K & Ors. 2, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was

not properly constituted.....”.

15. Having carefully perused the record and the merit list, I am of the view that reasonable inference can be drawn that Selection Committee has resorted to favoritism and the marks have been awarded by misusing the discretion vested with the Selecting Authority. The malice in the present case is writ large as reflected from the merit list. It is unfathomable that every candidate, who was found highly meritorious in academic record, was found to be least meritorious in domain knowledge and interview.

16. As regards the arguments of learned counsel for the respondent(s) that once the petitioner has participated in the selection process, she cannot be permitted to challenge the process. I am in agreement with the following observations made by learned Single Judge of this Court in a similar matter, titled as **Deepak Kumar vs. State of Haryana and others**, reported as 2017 (4) SCT 650, the relevant whereof is extracted here-in-below:

“The argument raised by the respondents is that the petitioner challenges the selection procedure and cannot be permitted to do so. The petitioner is not challenging the criteria as such but only the arbitrariness of the Interview Committee, while awarding the marks which has been substantiated by examining the record. It is also pertinent to notice that thereafter also, vide advertisement dated 28.02.2016, 2426 posts of Shift Attendants have been re-advertised vide advertisement No.23 of 2016 on behalf of the same appointing agencies who had been arrayed as official respondents and therefore, the vacancies are available, as such. The argument raised that the petitioner had participated in the selection process and now is not

CWP-10406-2015

-10-

*allowed to challenge the said process, is without any basis and therefore, reliance placed upon **Ashok Kumar & another Vs. State of Bihar & others 2017 (4) SCC 357** would be of not much avail to the State. In the said case, the candidates were well aware that the interview was carrying 10 marks and they proceeded taking part in the said process and therefore, it was held that it was not open for them to challenge the said criteria. The petitioner herein is not challenging the criteria, as such, but the manner of awarding of marks, as noticed above and has been successful in demonstrating the prejudice which has been caused to him.”.*

18. In view of my discussion above and the reasoning contained therein, the present writ petition is allowed. The selection process initiated vide advertisement dated 17.01.2014 (Annexure P-1), the consequent merit list dated 17.07.2014 (Annexure P-8) and the appointment letter of respondent No.3 (Annexure P-5) stand quashed being marred with arbitrariness and favoritism. A direction is issued to the respondents to conduct fresh selection. The age limit, as mentioned in the criteria for eligibility, will not come in the way of candidates, who had applied at the relevant time and not qualified for further selection process.

April 03, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No