GAHC010123602015

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 6956/2015

1:CHARAN KUMAR BRAHMA
S/O LT. EJENDRA NATH BRAHMA R/O VILL- BAMAN KURA P.O. BINYA KHATA, PIN - 783336, DIST. KOKRAJHAR, BTAD, ASSAM.

VERSUS

1:THE BODOLAND UNIVERSITY and 3 ORS.
REP. THROUGH THE REGISTRAR, BODOLAND UNIVERSITY, KOKRAJHAR, ASSAM.

2:THE VICE-CHANCELLOR
BODOLAND UNIVERSITY
KOKRAJHAR
ASSAM.

3:THE REGISTRAR
BODOLAND UNIVERSITY
KOKRAJHAR
ASSAM.

4:THE EXECUTIVE COUNCIL OF BODOLAND UNIVERSITY
THROUGH ITS MEMBER SECRETARY THE REGISTRAR OF THE BODOLAND UNIVERISTY
KOKRAJHAR
ASSAM

Advocate for the Petitioner : MR.P UPADHYAY

Advocate for the Respondent : MR.K K DEY

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH

ORDER

Date : 12-03-2020

Heard Mr. A. Upadhyay, learned counsel for the petitioner. Also heard Mr. K. K. Dey, learned Standing Counsel, Bodoland University assisted by Mr. V. K. Barooah, learned counsel for the respondents.

2. In this petition, the petitioner has challenged the decision of the Executive Council of the Bodoland University in rejecting the recommendation made by the Selection Committee for appointment to the post of Assistant Professor in the Department of Business Studies.

3. An advertisement was issued by the Bodoland University on 14.10.2014 for appointment to a number of posts including the post of Assistant Professor in the Department of Business Administration, which was an unreserved category.

4. In the said advertisement Specialization has been mentioned as "MBA/MSc (Statistics)".

It has been mentioned in the said advertisement that qualification and experience will be as per the latest UGC/AICTE norms. Other terms and conditions also have been mentioned therein.

5. Petitioner applied for the said post of Assistant Professor in the Department of Business Administration. The petitioner and others were duly assessed by the Selection Committee. The selection process was primarily based on interview.

The Interview for selection of Assistant Professor in Department of Business Studies was held on 27.06.2015 consisting of following members.

"The meeting of the Interview Board for the selection of Assistant Professor (Department of Business Studies) was held in the present of the following members.

1. Prof. Hemanta Kumar Baruah, Vice Chancellor, BU
2. Sri Kunja Behari Brahma, Governor's nominess, Guwahati.
3. Prof. M. K. Sarmah, Tezpur University, Subject Expert.
4. Dr. Ratneswar Debnath, Principal, Commerce College, Kokrajhar, Subject Expert.

5. Dr. Binay Kumar Brahma, EC Nominee.
6. Dr. Sekhar Brahma, Registrar, BU.
7. Sri Deepak Hazowary, HoD."

6. The Interview Board after assessing the candidates recommended the petitioner for appointment as Assistant Professor in the Department of Business Studies (MBA) Bodoland University. Unfortunately, when the matter was put up before the Executive Council of the University, the Executive Council in its meeting held on 29.07.2015 took a decision to cancel all recommendations of Selection Committee for both Teaching and Non-Teaching posts including the post of Assistant Professor in the Department of Business Studies and to hold interview afresh.

7. It is against the aforesaid decision taken by the Executive Council, the petitioner has approached this Court challenging the said decision on the ground that the said decision of the Executive Council is illegal and in fact the Executive Council ought to have acted upon the recommendation of the Interview Board which consisted of Experts and other members.

8. The stand of the Bodoland University is that the petitioner does not fulfill the necessary qualification as required under the University Grants Commission (UGC) Regulations.

9. It has been contended that the petitioner is merely a Master Degree Holder in Statistics and he is not suited to hold the said post, as clearly mentioned in the affidavit in opposition filed on 11.03.2019.

Para No. 3 and 6 of the aforesaid affidavit-in-opposition filed on 11.03.2019 are reproduced hereinbelow.

"3. That there are eight sanctioned posts in the Department of Business Administration including one Professor, two Associate Professors and five Assistant Professors. Presently there are four Assistant Professors of permanent appointment and one Guest faculty, that is, a total of five faculties working in the Department of Business Administration. The Business Administration Department has four subjects of specialization which are (a) Marketing Management (b) Human Resource Management (c) Management and (d) Operational Management. The permanent faculties appointed for specialization papers are (i) Sri Dipak Hazorary in Operational Management, (ii) Sri Nayan Jyoti Bhattacharjee in Financial

Management, (iii) Mrs Arpita Mandal in Marketing Management and (iv) Ms Dalimi Wary in Human Resource Management. Ms Neetu Basumatary is a Guest Faculty and teaches Marketing Management. The papers involving portions of Statistics include Quantitative Techniques for Business Research Management. These papers are taught in the first semester only and the units of the papers are shared by Sri Dipak Hazoary and Ms Neetu Basumatary.

The excerpt of subject data and faculty position in Business Administration Department are marked herewith as **Annexure D** and **Annexure E** respectively."

"6. That the respondent begs to submit that the UGC Regulations prescribed that the minimum essential eligibility of Assistant Professor of MBA Department must be a degree in Business Management/Administration. The respondent submits that the application of the science of Statistics in the subject of Business Administration is not of a proportion that an Assistant Professor with Masters Degree in Business Management/Administration cannot conveniently teach. The involvement of Statistics in Business Administration Department being of a relatively small proportion, it is submitted that requirement of the department is an Assistant Professor with a minimum degree of Masters in Management/Administration as is prescribed by the UGC Regulations, and not a teacher with a degree in Statistics. The respondent submits that appointment of a teacher having Management Degree will be of greater utility and benefit to the Department of Business Administration than appointment of a teacher having a simple Masters degree in Statistics. The writ petition filed by the writ petitioner is devoid of any merit and liable to be dismissed."

10. Thus, the stand of the Bodoland University is that the application of the science of Statistics in the subject of Business Administration is not in proportion to which an Assistant Professor with Masters Degree in Business Management/Administration has knowledge relating to subject and hence cannot conveniently teach, as the element of statistics is relatively small in the syllabus and as such, the utility and benefit in employing an Assistant Professor with Master Degree in Statistics will be less in the Department.

11. From the above, it appears that the important issue revolves round as to whether the petitioner fulfills the eligibility criteria or not. As also mentioned in the advertisement, a person to be appointed as an Assistant Professor in the Department of Business Administration must fulfill the qualification as prescribed by the University Grants Commission (UGC).

12. As far as UGC Regulations are concerned, the minimum qualification has been prescribed under Regulation No. 4.4.5(1) of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 as notified on 28.06.2010, a copy of which have been made available by the learned Standing Counsel, Bodoland University.

The minimum qualifications are as follows:

"**4.4.5. MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHING FACULTY IN UNIVERSITIES AND COLLEGES - MANAGEMENT/BUSINESS ADMINISTRATION:**

1. ASSISTANT PROFESSOR

i. Essential:

1. First Class Masters Degree in Business Management / Administration / in a relevant management related discipline or first class in two year full time PGDM declared equivalent by AIU / accredited by the AICTE / UGC;

OR

2. First Class graduate and professionally qualified Charted Accountant / Cost and Works Accountant / Company Secretary of the concerned statutory bodies.

ii. Desirable:

1. Teaching, research, industrial and / or professional experience in a reputed organization;
2. Paper presented at Conferences and / or published in refereed journal."

13. It is in this context, it has to be seen whether the qualification possessed by the petitioner conforms to the qualifications prescribed by the UGC.

14. As per the UGC Regulations, a candidate to be eligible for appointment as an Assistant Professor in Management/Business Administration must have one of the following educational qualifications,

"First Class Masters Degree in Business Management/Administration/in a relevant management related discipline."

15. In the present case, though the petitioner is not a first class Masters Degree holder, he being Schedule Tribe (ST) is entitled to relaxation of the aforesaid Regulation, which position has not been controverted by the University authorities.

16. Accordingly, since the petitioner is not a Master Degree holder in Business Management or Administration, it has to be examined as to whether the Master Degree (M.Sc.) in Statistics possessed by the petitioner amounts to a Master Degree "in a relevant management related discipline". If it is held to be so, the petitioner can be said to have fulfilled the eligibility criteria.

17. The stand of the Bodoland University is very clear that the petitioner is merely a Master Degree holder in Statistics and Statistics forms only a portion of the management studies and as such, he cannot be said to have possessed the minimum requirement in teaching Business Management/Administration.

18. On the other hand, it is the stand of the petitioner that Statistics is an important and integral part of the Management and accordingly, the Master Degree (M.Sc.) in Statistics can be said to be relevant to Management.

In other words, it is a management related discipline, in which event, the qualification of Masters Degree (M.Sc.) in Statistics is covered by the aforesaid expression "*in a relevant management related discipline*".

19. In support of his claim, learned counsel for the petitioner also has stated that there are many Universities which had appointed candidates having Master Degree in Statistics, Mathematics and Psychology in the Department of Business Management faculty, as mentioned in para No. 5 of the additional affidavit-in-reply filed by the writ petitioner on 05.09.2016.

In the aforesaid para No. 5 of the additional affidavit-in-reply, it has been mentioned that 8 (eight) persons who had M.Sc. (Statistics) or M.A. (Statistics) or M.A. Psychology or M.A. (Mathematics) had been appointed in the Department of Business Management in other colleges/universities.

20. It has been accordingly submitted that merely because Statistics may not form the entire or major part of the study of Management, appointment of the petitioner cannot be denied since the qualification possessed by the petitioner is covered under the 3rd category

i.e. Master Degree "in relevant management related discipline".

21. In this regard, this Court has also gone through the Resolution of the Executive Council of the University by which the recommendation made by the selection Board was rejected.

22. In that regard, it may be appropriate to refer to the said decision of the Executive Council meeting held on 29th July, 2015.

The said Resolution No. 3 of the Executive Council Meeting held on 29th July, 2015 reads as follows.

"**Resolution No. 3**

The house seriously discussed the recommendation of Selection Committee for appointment of Assistant Professors in the Department of Biotechnology, Computer Science and Management Studies; Associate Professor in the Department of Management Studies and Deputy Registrar, and was convinced of some laxity in the entire process. The advertisement for the posts of MBA deviated from the actual requirements as proposed by the Management Department. The house also felt that the working guest teachers, in spite of their long service experiences and requisite qualifications with UGC norms in the departments in Biotechnology and Computer Science were deprived of getting regular appointment. There was a single candidate appeared in the interview for Deputy Registrar and other applicants did not turn up. The house was of the opinion that there were some lapses in the entire process of the selection committee. Thus, the house collectively decided to cancel all the recommendations of selection committee both for Teaching and Non-Teaching posts and to hold fresh interview by advertising the said posts of one Deputy Registrar and one Associate Professor and three Assistant Professors at the earliest. Further, the house also resolved that the Guest Teachers working for a long period in the departments, who have requisite UGC norms, be regularized in the vacant post by performing proper procedure and rules for appointment.

23. The ground taken by the Executive Council in not accepting the recommendation of the Interview Board was that the advertisement for the post of MBA deviated from the actual requirements as proposed by the Management Department.

The Executive Committee also observed that the house was of the opinion that there were some lapses on the entire process of Selection Committee though it has not been mentioned as to which were the lapses which amount deviation from the selection process and thus vitiate the same.

The Executive Council then proceeded to resolve to cancel the recommendation of the Selection Committee for both Teaching and Non-Teaching posts and to hold fresh interviews by advertising the said posts.

24. As regards the aforesaid observation of the Executive Council that the advertisement for the post of MBA deviated from the actual requirement as proposed by the Management Department, this Court proceeds to examine as to what was actually proposed by the of Management Department.

The proposal of the Management Department is to be found in the letter dated 01.07.2014 written by the HOD, Department of Business Administration, Bodoland University to the Registrar of the University, a copy of which has been annexed as Annexure B to the affidavit-in-opposition filed by the respondent Bodoland University.

As regards Assistant Professor, the proposal was as follows:

"1. Assistant Professor

Management Graduate (Open Specialization)."

25. This Court is of the view that the said proposal made by the Department of Business Administration is not in accordance with the UGC Regulations. In fact, it falls short of the requirement of the UGC Regulations. The Department had proposed, "Management Graduate (Open Specialization), whereas, the requirement as per the UGC Regulations is First Class Masters Degree in Business Management/Administration/in the relevant management related discipline and etc.

26. Therefore, this Court would hold that the said proposal of the Department of Business Administration of Bodoland University being not in conformity with the UGC Regulations cannot be a ground for not accepting the recommendation of the Interview Board.

That apart, there is no other reason given by the Executive Council apart from making a sweeping observation that there were some lapses in the entire process of selection Committee without elaborating or specifying the nature of lapses in the selection process because of which the Executive council cancelled the recommendation of the Selection Board. To that extent, this Court is of the view that the said decision of the Executive Council can be said to be arbitrary and hence, cannot be said to be valid.

Yet, this Court has still to examine as to whether the petitioner's qualification of M.Sc. in Statistics falls within the requirement as prescribed by the UGC Regulations.

27. In this connection, learned counsel for the petitioner has pointed out that the subject of Statistics forms an important part of the syllabus. It has been submitted that as per the syllabus prepared by the Bodoland University, in the 1st Semester, 2 papers, namely, Quantitative Techniques for Business as well as Managerial Economics are subjects of Statistics. Similarly, in 2nd Semester, out of 8 papers, 2 papers are directly related to Statistics, namely, Production and Operation Management and Operations Research.

28. This is an aspect, this Court is of the view that, which ought to be best left to be decided by the Experts in the field.

This Court, however, has also noted that the Interview Board which recommended the petitioner consisted of Experts, namely, Professor M. K. Sarmah, Tezpur University, a Subject expert and another member, namely, Dr. Ratneswar Debnath, Principal, Commerce College, Kokrajhar was also a Subject Expert. Sri Deepak Huzuri, Head of the Department, was also a member of the said Interview Board and as such, there ought not to be any doubt about the eligibility of the petitioner for being appointed as Assistant Professor.

29. However, in order to obviate any controversy in the matter, as also agreed by the learned counsel for the petitioner, this Court proposes to refer the matter to another body of Experts to ascertain as to whether the qualification of M.Sc. in Statistics possessed by the petitioner is covered by the expression "in a relevant Management related discipline" as provided under the UGC Regulations so that Bodoland University authorities can decide on the issue of appointment of the petitioner on the basis of the recommendation made by the Interview Board by taking into consideration the view of the Experts as to be nominated by this Court hereinafter. For this purpose the matter is referred to the Head of the Department, Department of Business Administration, Gauhati University, who in consultation with 2 (two) other Professors of the Department may give their views as to whether the qualification of M.Sc. in Statistics possessed by the petitioner is covered within the meaning and scope of the expression "in a relevant Management related discipline" as provided in Regulation No. 4.4.5(1) of the UGC Regulation as mentioned above.

30. Accordingly, depending on view of the Subject Experts of the Gauhati University as mentioned above and if found to be favourable to the petitioner, necessary order for appointment to the post of Assistant Professor in the Department of Business Administration

may be issued to the petitioner.

31. The aforesaid exercise shall be undertaken by the University authorities within a period of 2 (two) months from the date of receipt of a certified copy of this order.

32. With the above observation and direction, the present petition stands disposed of.

JUDGE

Comparing Assistant