

S.L.01
25.11.2020.
m.b/.d.p.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**W.P.A. 13970 of 2019
(CAN 1 of 2020)**

(Through Video Conference)

**Mohammad Faique
-versus
Union of India & Ors.**

Mr. Mukundalal Sarkar,
Mr. Md. Sarwar Jahan.
...For the Petitioner.

Mr. Soumya Majumder,
Mr. Victor Chatterjee.
...For the Viswa Bharati.

Mr. Anil Kumar Gupta,
Mr. Rahul Arya.
...For the UGC.

The grievance of the petitioner is that the petitioner applied for a Career Advancement Scheme as published in the Gazette of India dated September 18, 2010 for promotion from the post of Associate Professor (Stage-4) to Professor (Stage-5) in the Viswa Bharati University at Santiniketan.

Learned counsel appearing for the petitioner argues that, as apparent from page 8 of the affidavit-in-opposition used by the respondent nos. 3 and 4, the petitioner was allotted 25 out of the 50% marks assigned for Contribution to Research and merely 10

out of the marks 30% allocated under the head of assessment of domain knowledge and teaching practices, whereas only 8 was allotted out of the 20% in interview performance, bringing the total marks obtained by the petitioner to 43 out of 100, which was below the score of 50%, which is the minimum eligibility mark for consideration in such scheme.

It is argued that, although the interview performance had an ingredient of subjectivity in its assessment, the heads of 'Contribution to Research' and 'Assessment Domain knowledge and teaching practices' could not have flexibility insofar as the scores to be allocated under those heads were indicated in the application form given to the petitioner itself.

By placing reliance on Clause B (i) at page 39 of the writ petition, learned counsel for the petitioner submits that, the respective scores under all the subject-heads for contribution were specifically stipulated. Learned counsel also submits that, although the petitioner self-assessed his scores, those were ascertained entirely on the basis stipulated in the published form itself. As such, it is argued that there was no scope for allotting the petitioner merely a score of 10 out of the 30% under the assessment head 'Domain Knowledge and teaching practices', whereas it is seen from the self-assessed form, filled up in conformity with the guidelines of the authority, that the

petitioner's score under such head comes to 25.5, which would take the total tally of the petitioner much beyond 50, which is the cut-off score for eligibility.

Learned counsel appearing for the respondent nos. 3 and 4 argues that, as evident from the notification of the Viswa Bharati University, annexed at page 24 of the writ petition, the percentages allocated under the respective heads and sub-heads were only for the purpose of "capping", leaving much scope for subjective assessment on the basis of such scores.

It is thus argued that the scores allotted to the petitioner were all post-screening by appropriate competent authorities on the subject and, as such, cannot be interfered with under the writ jurisdiction.

Learned counsel for the respondent nos. 3 and 4 further submits that the petitioner has failed to establish his case of *mala fides*, as pleaded in the writ petition.

Learned counsel appearing for the University Grants Commission places reliance upon certain guidelines stipulated in the UGC Regulations, 2010. Clause 3.5 of the said regulations, it is argued, indicates the mode in which the assessment and selection shall be made. Learned counsel for the UGC, however, submits that his client has a neutral stand on the assessment of marks, except that those have to be measured on the touchstone of the UGC Regulations.

Upon hearing learned counsel for all contesting parties, it is evident that the scores obtained by the petitioner only under the head of “Assessment of Domain knowledge and teaching practices”, for which 30% was stipulated, comes within the zone of consideration, since the score allotted under the category “Contribution to Research” tallies with the self-assessment of the petitioner (25) and the assessment on the “Interview Performance” (8) was by definition subjective.

To ascertain the nature of the API score system, as stipulated by the Viswa Bharati University, one has to look into its notification dated April 10, 2014, which has been annexed at page 24 (annexure P-1) of the writ petition. A glance at the same reveals that the percentages allocated therein for several sub-heads relate to “capping” and are not final in its true sense. It provided in the said notification that the calculation of the percentage capping will be made “on the basis” of the total API score claimed by the candidate and verified by the authorities. It is further stipulated that three sets of three publications (made during the service as Assistant Professor) shall be required to be submitted “for consideration” of promotion from Assistant Professor to Associate Professor.

The proviso in the said notification mentions that such publications shall be provided to the subject

experts for assessment before the interview and the evaluation of the publications by the experts shall be factored into weightage scores while finalizing the outcome of selection.

The term “publication”, although specifically used in the notification dated April 10, 2014 in respect of the promotion to Associate Professorship, also finds place in the general sub-heads, particularly in Clause (b) thereof which pertains to research publications (books, etc.) and Clause (a), pertaining to research paper (journals, etc.), both of which come within the broad category of publication. As such, the expression “such publication” in the proviso has to be applied in all the cases, including promotion to the post of Professor from Associate Professor. Since the proviso specifically stipulates that the publication shall be provided to the subject experts for assessment before the interview and evaluation of the publication by the experts shall be factored into the weightage scores while finalizing the outcome of selection, there is no scope of doubt that the self-assessment, based on the indicative scores provided for the purpose of capping by the university, could not be final in the matter of selection.

Moreover, in the event there was no scope of subjective assessment subsequent to the submission of forms, there would be no question of allotting marks to the respective candidates upon the assessment and

evaluation by experts, which have to be factored in the weightage scores, over and above the self-assessed scores as indicated.

In any event, it defies logic as to how the scores obtained, on the basis of the indications given in the application form for publications in general, can *ipso facto* be the sole indicator of the quality and worth of the candidates with respect to each other. Publications in more respectable journals and those having better merit, which would always be subject to screening by experts and evaluation subsequent to the submission of application, would have to be assessed on a higher footing than other publications, for the purpose of final selection of the candidates. Such being the case, the argument of the petitioner, attributing finality to the self-assessed scores on the basis of the capping indications of the university, cannot be accepted under any circumstance.

Hence, the writ petition does not deserve success.

That apart, even the UGC regulations, 2010, particularly in Clause 3.5 thereof, leaves scope both for certain objective criteria and assessment by a duly constituted selection committee, as suggested therein, for the direct recruitment of Professor.

In such view of the matter, there is no scope of holding that the respondents acted *de hors* their authority in assessing the marks of the petitioner, as

reflected in the annexure at page 8 of the affidavit-in-opposition.

Moreover, the petitioner has failed to prove any *mala fides* on the part of the respondents in awarding such scores to the petitioner.

Accordingly, W.P.A. 139 of 2019 is dismissed on contest without any order as to costs.

C.A.N. 1 of 2020 is also disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)