IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(S) No. 1488 of 2020

Nishant Kumar, w/o Nawal Kishore Singh, aged about 41 years, r/o A-103, Om Enclave, Heerabagh, Hazaribagh, PO Hazaribagh, PS Sadar, District Hazaribagh-825301, Jharkhand ….. Petitioner

-- Versus --

1.State of Jharkhand

2.Jharkhand Public Service Commission, through its Chairman, Circular Road, Deputy Para, Ahirtoli, PO GPO, PS Kotwali, Ranchi, Jharkhand-834001

3.Sri Vikas Kumar, s/o Jhulan Prasad Verma, r/o Bariyatu, Opposite Firing Range, Ranchi-834009, Jharkhand

4.Vinoba Bhave University, NH-33, Sindoor, Hazaribagh-825 301

…... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Srijit Choudhary, Advocate
For Resp.No.3 :- Mr. Anil Kumar Sinha, Sr. Advocate
Mr. Amit Kumar, Advocate
For Resp.JPSC :- Mr. Sanjoy Piprawal, Advocate
For Resp.University:- Mrs. Indrani Sen Choudhary, Advocate
For Resp. State :- Mr. Mohan Kumar Dubey, Advocate

9/02.12.2020 Heard Mr. Srijit Choudhary, the learned counsel for the petitioner, Mr. Anil Kumar Sinha, the learned Senior counsel assisted by Mr. Amit Kumar, the learned vice counsel on behalf of respondent no.3, Mr. Sanjoy Piprawal, the learned counsel for the respondent-JPSC, Mrs. Indrani Sen Choudhary, the learned counsel appearing on behalf of the respondent University and Mr. Mohan Kumar Dubey, the learned counsel for the respondent State.

This writ petition has been heard through Video

Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

The petitioner has preferred this writ petition for quashing the press-release dated 18.03.2020 regarding recruited person for non-teaching officers (Financial Officer) in the University of Jharkhand.

The Jharkhand Public Service Commission received requisition of the Universities of State of Jharkhand for appointment of Registrar, Financial Officer, Controller of Examination and Deputy Registrar in the Vinoba Bhave University, Nilamber Pitamber University and pursuant thereto, Advertisement No.9 of 2019 was issued by the Jharkhand Public Service Commission. The controversy in the writ petition is with regard to appointment of respondent no.3 on the post of Finance Officer of Vinoba Bhave University. In clause-3 of the said advertisement, the qualification for Finance Office are as follows :

1. *A Master's degree/MBA degree with at least 55 % marks or its equivalent grade of B in the UGC seven point scale or Chartered Accountant or ICWA*
2. *At least 15 years of experience as Assistant Professor/Lecturer or six years experience as Associate Professor or Reader or as Professor along with experience in financial administration in any University or College or Comparable experience in financial administration in Govt. or semi govt. Institution or in organization of repute or in any other institutions of higher education or At least 15 years of administrative and teaching or administration experience of which 8 years as Deputy Registrar or an equivalent post.*

On this background, the petitioner as well as the respondent no.3 applied for appointment for the said post and pursuant thereto the respondent no.3 was recommended for appointment on the

said post by the respondent JPSC. Aggrieved with this recommendation of the respondent no.3, the petitioner has come before this Court by way of challenging the said press-release.

Mr. Srijit Choudhary, the learned counsel for the petitioner submits that the petitioner is having the required criteria for appointment on such post and inspite of that the recommendation has not been made. He submits that the petitioner is more qualified than the respondent no.3 and he is having 15 years of experience in terms of advertisement whereas the respondent no.3 is lacking this experience and he is having only 11 years and odd experience for appointment on such post. He submits that in view of that the recommendation is not in accordance with the advertisement. Mr. Choudhary, the learned counsel further argues that earlier the examination of the JPSC are under scrutiny by the CBI and in that view of the matter also the recommendation is not correct.

Per contra, Mr. Anil Kumar Sinha, the learned Senior counsel appearing for the respondent no.3 submits that the respondent no.3 is having all the criteria as disclosed in the advertisement and without any cogent reason such allegation is being made against the respondent no.3. He refers to the counter affidavit filed by the respondent no.3 wherein the qualification of the respondent no.3 are disclosed. He submits that how the experience the respondent no.3 has obtained it has been explained therein by way of specific dates as to in which institution for how many days the respondent no.3 has worked which comes to more than about 16 years and 1 month. He submits that there are committee by committee being appointed by the Vice Chancellor which is not warranted in the case in hand in view of the fact that there is no allegation of any fraud on behalf of the petitioner. He submits that the

first committee has opined that the petitioner is having the qualification. He submit that there was no occasion to further appoint the committee and inspite of that the University has appointed another committee. The second committee has also opined that the respondent no.3 is having the qualification. Without going into the reason, the third committee has been appointed by the University and the Chairman of the committee was made by the person subordinate to the persons who were the Chairman of the earlier two committees. He submits that third syndicate meeting minutes have been annexed with the counter affidavit of the University wherein it has been stated that the respondent no.3 is having 11 years and 5 months of experience. That report has not been brought on record and the syndicate has again recommended to the JPSC and the Secretariat of Her Excellency the Governor of Jharkhand. He submits that there is no relevancy of the CBI enquiry of the earlier matter as the respondent no.3 is not charge-sheeted or made accused.

He further submits that the CBI enquiry was with regard to appointment made by the JET (Jharkhand Eligibility Test), he submits that JET examination is being done for appointment of the persons who are not having the Ph.D degree whereas the respondent no.3 is having the Ph.D degree and the respondent no.3 is not involved in the criminal case and no case is pending against the respondent no.3.

Mr. Piprawal, the learned counsel appearing for the respondent-JPSC submits that pursuant to the requisition received by the University, the JPSC advertised the post and applications were invited and pursuant thereto the persons' applications were scrutinized by the respondent JPSC and the persons who were found eligible and not eligible is apparent from Annexure-B to the counter affidavit of the respondent JPSC. He submits that the petitioner as well as respondent

no.3 were eligible and that is why they have been called for appearing in the examination. The petitioner and the respondent no.3 were also eligible for interview and accordingly they were called for verification of testimonials on 08.02.2020. He further submits that the petitioner and the respondent no.3 were found in order as such they were allowed to appear for interview on 10.02.2020. He further submits that on 10.02.2020, the petitioner and the respondent no.3 appeared before the interview board. He further submits that the interview board on the basis of assessment made found it in terms of the criteria made in the advertisement and the Commission made recommendation for appointment on the post of Finance Officer, Vinoba Bhave University was made on 20.03.2020. He submits that two experts were appointed for selection of Finance Officer, who were the educationists of the University. He further submits that the experts were appointed for scrutinizing the criteria of appointment as to whether they are fulfilling the terms or not. He submits that the recommendation was made by the JPSC by way of Annexure-D to the counter affidavit of the respondent JPSC. He submits that for interview other set of experts were appointed by the respondent JPSC.

Mrs. Indrani Sen Choudhary, the learned counsel appearing for the respondent- Vinoba Bhave University submits that pursunt to the recommendation received by the JPSC on 20.03.2020, the Vice Chancellor has constituted three-man committee for scrutinizing the documents of the respondent no.3. She submits that three-man committee submitted the report and thereafter another committee was constituted by the Vice Chancellor. She further submits that the 1st committee report was not found satisfactory and thereafter it was placed before the syndicate and thereafter the 2nd committee was

constituted. The proposal for appointment of Finance Officer has been placed before the syndicate at its meeting on 08.09.2020 and the syndicate in Mad Sankhya 1093/164/190 taken a decision that three-man committee will be constituted and will enquire into the past service of Dr. Vikas Kumar and thereafter the appointment of the Finance Officer will be decided. By notification dated 06.10.2020 another committee was appointed. The said committee has enquired into and after going through the same thereafter the report has been submitted which has been considered by the syndicate wherein it has been recorded that the respondent no.3 is having only 11 years and 5 months of experience and it was recommended that this aspect of the matter be reported to the Secretariat of Her Excellency the Governor of Jharkhand and the JPSC. She submits that the matter has already been referred in view of that to the JPSC.

Mr. Mohan Kumar Dubey, the learned counsel appearing for the respondent State submits that the State has got no role.

With the above submissions of the learned counsel appearing on behalf of the parties, the jurisdiction under Article 226 of the Constitution of India to enquire into the selection made by the respondent JPSC which is an independent constitution body are required to be examined by this Court, on the ground as to whether any *malafide* is there or not on behalf of the respondent JPSC. The Court has gone through the materials on record. The respondent no.3 has disclosed the experience and his qualification in the counter affidavit which clearly suggests that the respondent no.3 is having the experience. This fact has not been denied by either of the parties. What is the basis of saying that the respondent no.3 is having only 11 years 5 months experience is not disclosed before the Court by way of filing any affidavit by either of the

parties. The experts appointed by the respondent JPSC scrutinized the qualification and the testimonials submitted before the JPSC. The JPSC has brought on record the advertisement. The expert remarks is at Annexure-B and the press-release dated 18.03.2020 is about the result. Thereafter the JPSC on 20.03.2020 recommended the name of the respondent no.3 to Vinoba Bhave University and observed that after verifying the testimonials, the respondent no.3 be appointed by the Vinoba Bhave University. Thereafter one committee, second committee and now the third committee have been appointed by Vinoba Bhave University. The Court failed to understand what was the occasion of appointing one by another committee when there is no allegation of fraud or testimonials etc. that too without giving any finding in the first committee report is not being accepted, the another committee has been appointed which does not sound good. So far as the criminal case is concerned, i.e., of the year 2008 with regard to second combined civil services examination and of JET, the respondent no.3 is not an accused in those criminal cases. The foundational fact of criminal case has not been disclosed in the writ petition and the criminal case has been disclosed by way of filing the composite rejoinder by the petitioner. The petitioner has also appeared pursuant to the said notification and having not been recommended for the said post, the petitioner has challenged the press-release of the JPSC. There is no allegation of any *malafide* against the JPSC in the writ petition. The technical experts made evaluation for the selection of respondent no.3, who are the experts in their field which are being examined by the Court slowly under Article 226 of the Constitution of India. The selection is being made by the Commission as advised by the experts. The materials on the record suggest that the respondent no.3 was having qualification as disclosed in

the advertisement, reference in this regard may be made to the case of "*M.C. Gupta (Dr) v. Arun Kumar Gupta (Dr)"* reported in (*1979) 2 SCC 339.* Paragraph nos.7 and 8 of the said judgment are quoted hereinbelow:

> *"**7.** Before the rival comments are probed and analysed, it would be necessary to keep in view the twilight zone of Court's interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided by experts in the field, within the framework of Regulations framed by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956, and approved by the Government of India on June 5, 1971. When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. Even then the Court, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts, keeping in view the relevant rules and regulations, manifest due consideration of all the relevant factors, the Court should be very slow to interfere*

with such recommendations (see, University of Mysore v. C.D. Govinda Rao[1]). In a more comparable situation in State of Bihar v. Dr Asis Kumar Mukherjee this Court observed as under: (SCC p. 611, para 21)

> *"Shri Jagdish Swaroop rightly stressed that once the right to appoint belonged to Government the Court could not usurp it merely because it would have chosen a different person as better qualified or given a finer gloss or different construction to the regulation on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extraordinary jurisdiction under Article 226. True, no speaking order need be made while appointing a government servant. Speaking in plaintitudinous terms these propositions may deserve serious reflection. The Administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative worth of the candidates. Is there violation of a fundamental right, illegality or akin error of law which vitiates the appointment?"*
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> ***8.*** *With these blurred contours of periphery of jurisdiction under Article 226 to interfere with selections made by an independent body like Public Service Commission not attributed any mala fides, assisted by four experts in the field who presumably knew what constituted teaching/ research experience, what institutions are treated prestigious enough, in which teaching/research experience would be treated valuable, we may examine the rival contentions."*

There is no proof in support of the submission of the learned counsel for the petitioner and the University that the respondent

no.3 is not having the qualification as disclosed in the advertisement. The minutes of the meeting held on 11.11.2020 under the chairmanship of Vice Chancellor has been brought on record by way of filing supplementary counter affidavit by the respondent Vinoba Bhave University whereby the committee has decided to inform the Secretariat of Her Excellency the Governor of Jharkhand and the JPSC about the third report wherein it has been said that the respondent no.3 is having only 11 years and 5 months of experience.

As a cumulative effect of the above discussion, the Court comes to the conclusion that no case of interference is made out in view of the fact that there is no document to suggest that the respondent no.3 is not having the qualification has been brought on the record. The expert body, like JPSC and the experts scrutinized the application and thereafter recommendation has been made, why the three-man committee has been constituted for examining the testimonials of the respondent no.3 is also under the cloud and in that view of the matter, the writ petition is dismissed.

Accordingly, the interlocutory application is also dismissed.

(Sanjay Kumar Dwivedi, J)

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