

**HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)**

**TUESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY**

PRESENT

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 13085 OF 2019

Between:

Dr. I. Stella, D/o. Yesu Dass, age about 46 years, Occ: Assist Professor,
Prof Jayashankar Telangana State Agriculture University, Rajendranagar,
Hyderabad-500030

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary to Government
Department of Agriculture and Co-operation, Secretariat, Hyderabad.
2. The Registrar, Professor Jayashankar Telangana State Agriculture University,
Rajendranagar, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ, order or direction particularly one in the nature of MANDAMUS declaring the impugned proceedings in Memo No. 3182/Ser.T/A2/2015 dated 08/05/2019 passed by the 2nd respondent herein as illegal arbitrary, discriminatory, unconstitutional, mala fide and contrary to Articles 14, 21, 15(4) and Article 16(4b) of the Constitution of India and also Department of Personnel and Administrative Reforms O.M. No. 27/10/71-Estt. (SCT), dt: 05/09/1975 and O.M No. D-1454/81-Estt. (SCT), dt 21/05/1981, issued to all Ministries / Departments etc., and the guidelines of the National Commission for Schedule Caste dt: 8/2/2016, and also contrary to the orders passed by this Hon'ble High Court in W.P.No.12908 of 2017, dt: 08/03/2019, and consequently set aside the same and to direct the 2nd Respondent to forthwith pass orders, appointing the Petitioner as Associate Professor in the Department of Statistics and Mathematics in the 2nd respondent college i.e. Professor Jayashankar Telangana State Agriculture University, Rajendranagar, Hyderabad.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent No. 2 to forthwith appoint the petitioner as Associate Professor in the Department of Statistics and Mathematics in the 2nd respondent college i.e. Professor Jayashankar Telangana State Agriculture University, Rajendranagar, Hyderabad, pending disposal of the writ petition.

IA NO: 2 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the impugned proceedings issued by the 2nd respondent, vide Memo No.3182/Ser.T/A3/2015, dated: 08-05-2019, pending disposal of the writ petition.

Contd....

IA NO: 3 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the Additional Material papers on record as part of material papers in WP. No. 13085 of 2019 in the interest of justice.

Counsel for the Petitioner: SRI G.R. MERCY VIJAYA

Counsel for the Respondent No.1: GP FOR AGRICULTURE

Counsel for the Respondent No.2: SRI B. THIMOTHI

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.13085 OF 2019

ORDER:

Heard learned counsel for petitioner and learned standing counsel for respondent- University.

2. Acharya N.G.Ranga Agricultural University issued Advertisement No.7/RC/2013 dated 01.08.2013 calling for applications to make recruitment to vacancies in the cadres of Associate Professor and Assistant Professor in three different faculties. These are all backlog vacancies earmarked for SC/ST category. One of the vacancies notified was to the post of Associate Professor in the Department of Statistics and Mathematics, faculty of Agriculture earmarked for SC (Women) category. Notification listed out the qualifications and experience required to be possessed by the candidates. The essential qualifications prescribed, to the extent relevant herein, are Ph.D Degree or any other equivalent Doctorate degree in the subject concerned and experience of not less than 8 years in the cadre of Assistant Professor or equivalent cadre, as on the date of advertisement. Petitioner applied to the said post. She was the only applicant for this post. Her application was not considered on the ground that she did not have the requisite experience as on the date of recruitment notification. Hence, this Writ Petition.

3. Petitioner claims that she possesses the qualifications of M.Sc., M.Phil and Ph.D. In pursuit of building a career, she joined as Teaching Assistant in Sri Venkateshwara University at Tirupati, State of Andhra Pradesh on 12.4.1996 and worked till 30.6.1998.

She was selected and appointed as Assistant Statistical Officer in the Directorate of Economics and Statistics in the combined State of Andhra Pradesh on 03.08.1998 and worked as such till her selection and appointment as Assistant Professor in Acharya N.G.Ranga Agricultural University. She is working in the said post from 08.05.2013. She is aspiring to be selected and appointed as Associate Professor.

4. After the division of combined State of Andhra Pradesh and formation of State of Telangana, the area of operation of the Acharya N.G.Ranga Agricultural University is confined to residuary State of Andhra Pradesh and in the State of Telangana, the Professor Jayashankaer Telangana State Agricultural University was established. The division of assets, liabilities and employees of erstwhile combined University was effected between the two Universities. In the said process, the petitioner opted to the respondent-University. The recruitment notification in issue was issued before the bifurcation of the State and the University. However, it appears the post notified is part of the cadre strength of the respondent-University.

5.1. Learned counsel for the petitioner contended that petitioner worked as Assistant Statistical Officer in the State Government service for 14 years before joining the University and has the experience of working in an equivalent post for more than eight years and therefore action of the respondent-University in not computing the experience gained by her as Assistant Statistical Officer is illegal, amounts to arbitrary exercise of power. According to learned counsel the duties and responsibilities attached to the

post of Assistant Statistical Officer in the State Government service are more onerous as compared to Assistant Professor in the University.

5.2. According to learned counsel for petitioner, having regard to the peculiar facts of this case, power of relaxation ought to have been exercised to relax qualifying service. She would submit that the normal standard of recruitment cannot be applied when it comes to filling up the vacancies reserved for SC and ST communities, more so, when they are backlog vacancies. This slot is vacant for long time and in three successive recruitment notifications, there was no response. Petitioner was only person who had applied for selection this time. Petitioner belongs to SC community and is a disabled person and has outstanding meritorious service, and research experience. These parameters ought to have been considered to exercise the power of relaxation. The rejection is mechanical, without application of mind. A meritorious candidate is deprived elevation to higher position illegally.

5.3. She would further submit that having regard to the fact that in the three successive recruitment notifications, there was no response from the SC (Woman) candidates possessing the experience prescribed in the recruitment notification, as required by the OM No.27/10/71-Estt/(SCT), dated 5.9.1975 of the Department of Personnel and Administrative Reforms, Government of India, relaxation ought to have been granted to fill up the backlog vacancies reserved to be filled up by the SC (Woman) candidates and therefore not granting the relaxation of experience amounts to arbitrary exercise of power and authority.

5.4. In support of her contentions, learned counsel for petitioner also placed reliance on the directions issued by the National Commission for SC and ST and would submit that those directions are binding on the University. Having found the claim of the petitioner as genuine, National Commission directed consideration by extending relaxation.

6.1. *Per contra*, according to learned standing counsel for the respondent- University, petitioner joined service as Assistant Professor only on 08.05.2013 i.e., three months before Recruitment Notification was issued and she was only a Probationer, therefore, question of considering her for appointment as Associate Professor did not arise.

6.2. He would further submit that the post of Assistant Statistical Officer in the State Government service cannot be treated as equivalent to post of Assistant Professor. According to learned standing counsel, the pay and nature of duties of Assistant Professor in the University are different and distinct from the post of Assistant Statistical Officer in the State Government service. Therefore, the service rendered as Assistant Statistical Officer cannot be computed towards eligibility service of eight years. It is further case of the respondent- University that petitioner has to get minimum score of 300 as stipulated in the Academic Performance Indicator (API), Performance Based Appraisal System (PBAS) from category 3 of API's Regulations 2006 on Teaching, Research and Extension Activities, whereas, she could not get minimum PBAS score.

6.3. He would further submit that if the claim of the petitioner to relax qualifying service is accepted, it would be resulting in granting more than 7 years of experience. Granting such relaxation is not just and equitable. Further, as no provision was made in the recruitment notification to grant relaxation, no relaxation can be exercised *post facto*, that too only to an individual who has applied even though not eligible.

7. Two issues arise for consideration:

- (i) Whether petitioner fulfilled eight years of experience as Assistant Professor or in an equivalent post on the date of recruitment notification ?; and
- (ii) Whether petitioner is entitled to seek relaxation of experience criteria ?

ISSUE NO.I: Whether petitioner fulfilled eight years of experience as Assistant Professor or in an equivalent post on the date of recruitment notification ?; and

8. To appreciate respective contentions, it is necessary to note the clause in the recruitment notification on experience criteria. The relevant portion of recruitment notification dated 01.08.2013 reads as under:

“(11). Statistics & Mathematics:

i) Ph.D degree or any other equivalent doctorate degree in the subject (discipline) concerned.

ii) Experience not less than eight years in the cadre of Assistant Professor or equivalent cadre as on the date of advertisement.

iii) The Assistant Professor (Selection Grade Scale) and Associate Professor who are in the Pay Band of ₹ 15600-39100 (in the revised UGC pay scales of 2006) can also apply.

iv) Should have good published research papers in Scientific Journals.

v) Contribution to educational innovation, design of new curricula and courses and technology mediated

teaching learning process with evidence of having guided doctoral candidates and research students.

vi) **A minimum score (300) has stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) from category III of API's of UGC Regulations 2006."**

9. It is thus seen from clause-11 (ii) that to acquire eligibility a person must have eight years of experience as Assistant Professor or in an equivalent post. This requirement is in tune with the UGC Regulations, 2010. It is not in dispute that the petitioner rendered just three months of service as Assistant Professor as on the date of recruitment notification. Thus, unless experience gained by her while working as Assistant Statistical Officer, before joining the University as Assistant Professor, is counted, she was not qualified as on the date of recruitment notification.

10. Therefore, it is necessary to consider whether the post of Assistant Statistical Officer in Government service is treated as equivalent to the post of Assistant Professor in the University. Alternatively, whether the material on record is sufficient for this Court to hold that these two posts are equivalent in all respects, without undertaking process of assessment of equivalence. Before going into this aspect, it is expedient to note scope of judicial review on equating two posts under two different employees.

11. Ordinarily, equivalence of the post depends on, (i) nature of duties of a post; (ii) responsibilities and powers discharged; (iii) minimum qualifications prescribed; (iv) the salary of the post. If first three criteria is satisfied, in a given case difference in pay may not be fatal to decide equivalence. [*Union of India Vs. P.K.Roy - AIR 1968 SC 850*; *Sub-Inspector Rooplal and Another Vs. Lt. Governor, through the Chief Secretary, Delhi and others-(2000) 1 SCC 944*; *L.N. Mithila University Vs.*

Dayanand Jhu (1986) 3 SCC 7; *Punjab State Power Corpn. Ltd. v. Rajesh Kumar Jindal*, (2019) 3 SCC 547]. There has to be assessment of equivalence by applying this criteria. These parameters are indicative and not conclusive. The Court does not have expertise in such matters. Perforce determination of equivalence is within the realm of the employer. Hence, Court should exercise judicial restraint and not to interfere in such matters [*Basic Education Board, UP V. Upender Rai and others* (2008) 3 SCC 432].

12. While petitioner claims the post of Assistant Statistics Officer in the State Government service as equivalent to the post of Assistant Professor, the University stoutly denies equivalence.

13. The learned counsel for petitioner made elaborate submissions and in the written submissions, she has listed out academic credentials of the petitioner and the extensive research work undertaken by her as Assistant Statistical Officer and also emphasized on role of the Department of Statistics in the State of Telangana. According to petitioner, the Directorate of Economics and Statistics deal with Agriculture Statistics, Industrial Statistics, Price Statistics, State Economy, Social Statistics, Socio-economic Surveys and statistics for local area planning. Thus, by working as Assistant Statistical Officer in the Department of Statistics, petitioner gained experience in all these aspects.

14. It is the assertion of the respondent University that the pay band of the post of Assistant Statistical Officer and nature of duties and responsibilities attached to the post in the State Government service are not same as that of Assistant Professor in the University service. In paragraph-8 of the counter affidavit, it is

asserted that an Assistant Professor has to work in three fields, such as, teaching, research and extension, whereas an Assistant Statistical Officer does not involve in all these aspects. The pay scale of Assistant Professor is not same as that of Assistant Statistical Officer in State Government service. Further, a candidate must secure minimum score (300) stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) from category-III of API Regulations, 2006 and she just joined as Assistant Professor, when recruitment notification was issued, she was on probation, she could not get minimum PBAS score.

15. There is no independent material placed on record to show that this issue was considered by an expert body and on due assessment, it was declared that the post of Assistant Statistical Officer in the State Government service is equivalent to the post of Assistant Professor in the respondent University. In other words, petitioner is calling upon the Court to determine the equivalence. The material on record does not lead the Court to hold that the two posts are equivalent. At this stage, this Court is reminded of the caution administered by the Hon'ble Supreme Court in **Basic Education Board, UP**, i.e., *'the Court should exercise judicial restraint and not to interfere in such matters'*. The Court cannot venture to make comparative assessment of the work assigned to the post of Assistant Statistical Officer in the State Government service and the post of Assistant Professor in University, which are technical in nature, and to hold that the post of Assistant Statistical Officer in the State Government as equivalent to the post of Assistant Professor in the University. Unless the post is

treated as equivalent, the service rendered in the said post cannot be treated as qualifying service, satisfying the requirement of recruitment notification. Further, matter does not rest here. From paragraph-11(vi) of the recruitment notification and as asserted in the counter affidavit, it is seen that issue is not only on equation of posts. A candidate must get score of 300 in the Academic Performance Indicator (API) to be eligible and petitioner is not qualified on this parameter.

16. Thus, as the post of Assistant Statistical Officer in the State Government service is not recognized as equivalent to the post of Assistant Professor in the University service, the experience gained while working as Assistant Statistical Officer cannot be treated as qualifying service for eligibility to compete to the post of Assistant Professor.

ISSUE NO.2: Whether petitioner is entitled to seek relaxation of experience criteria ?

17. Perforce power to relax a condition in the recruitment notification is a discretion vested in the competent authority. Such power cannot be exercised as a matter of course, but sparingly, where not granting relaxation of rigor of a provision, in this case a condition in the recruitment notification, would cause greater injustice to a person or class of persons. However, there must be undue hardship caused, by applying the rigor of a condition in the recruitment notification; the relaxation must promote the dealing with the case "in a just and equitable manner"; and nobody should be adversely affected by granting such relaxation to an individual [Paragraph 10, *Amrik Singh V. Union of India*; (1980)3 SCC 393]. The

power to relax must be exercised in the public interest; with a view to secure efficiency in the service; when and only when undue hardship is caused by the application of a provision; and must be exercised in a just and equitable manner; and only to the extent necessary [paragraph 4, *R.R.Verma V. Union of India: (1980) 3 SCC 402*].

18. The eligibility criteria can be broadly classified as essential and required. The essential eligibility criteria have to be strictly followed and ordinarily cannot be relaxed. Further, once eligibility criteria is notified, *post facto* relaxation cannot be extended to an individual alone. In the case on hand, the recruitment notification requires that a candidate must have eight years of experience in the post of Assistant Professor or in an equivalent post to be eligible to compete to the post of Associate Professor. It means that the University expects a person to gain sufficient experience in the immediate lower level of assignment before testing his/her suitability. This is one of the essential criteria for eligibility. In exercise of power of judicial review Court cannot hold that gaining requisite experience as Assistant Professor or in equivalent position is not required and direct the University to relax that requirement.

19. Perforce power of relaxation is a discretionary power vested in the competent authority. Even if power of relaxation is conceded to the employer to relax the essential qualifications and eligibility, possibility of exercising such power has to be notified in advance. Whether it is an essential condition or otherwise, if any or all of the conditions of eligibility is to be relaxed, it has to be

uniformly applied to all. It is possible that many others who have some or the other deficiency compared to the qualifications prescribed in the recruitment notification could not have applied knowing that they were not qualified and that there was no scope to relax that requirement. Therefore, relaxing one of the eligibility criteria to petitioner alone is not valid.

20. Admittedly, petitioner had only put in three months service as Assistant Professor when the notification was issued, whereas the recruitment notification requires minimum experience of eight years in the cadre of Assistant Professor or its equivalent post. In other words, petitioner is asking relaxation of more than seven years. As rightly contended by the learned counsel for respondent University, the power of relaxation can be exercised if the candidate is falling short of very short period of experience but not in a case of this nature.

21. Various orders of Government of India and the directions of the National Commission for SC and STs, extensively relied by learned counsel for the petitioner, may have relevance when common standard of assessment is made applicable in a regular recruitment where open competition candidates also compete along with candidates belonging to SC & ST categories. In the case on hand, recruitment is confined to SCs only. Further, the relaxation contemplated in various Government of India orders are with reference to applying the relaxation standard for consideration of eligibility of SC and ST candidates, vis-à-vis open competition candidates, but in this case, it is not on comparative assessment of fitness of the candidates but it is on fulfilling the eligibility criteria

to compete against a backlog SC vacancy. Therefore, those Government of India orders and orders of the National Commission for SCs and STs do not come to the aid of the petitioner. Even otherwise, the post is governed by the UGS Regulations and Service Regulations of the University. Unless these Regulations are amended, required service in the lower post cannot be waived. Merely because, there was no response to three earlier recruitment notifications and this time only petitioner had applied is no ground to waive such requirement, that too, only to the petitioner.

22. The post of Associate Professor in the Department of Statistics and Mathematics, Faculty of Agriculture was earmarked for S.C.(Woman). In three successive recruitments it is not filled up. The last recruitment notification, subject matter of this writ petition, was issued on 01.08.2013 as S.C. backlog vacancy. According to learned Standing counsel after formation of the Professor Jayashankar Agriculture University in the State of Telangana, the University is contemplating to draw new roster. Thus, as of now, old roster system is in operation. Having regard to the fact that for so many years the vacancy is not filled, the post can not be kept vacant waiting for finalizing the roster points. It will be defeating the very object to reserve posts for SCs and carry forward them and not to fill up for years together. Therefore, respondent- University is directed to take steps to re-notify the post as reserved for S.C (Woman) within six weeks of receiving the order in this writ petition and set in motion to fill S.C.(Woman) backlog vacancy in the post of Associate Professor in the Department of Statistics and Mathematics, in the Faculty of Agriculture and complete the selection process expeditiously. If

before finalizing the selections new roster is determined, this post may be set off against roster point reserved for S.C.(Woman) in the new roster.

23. The Writ Petition is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed.

**SD/- K. ONESIM
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary to Government Department of Agriculture and Co-operation, State of Telangana, Secretariat, Hyderabad.
2. The Registrar, Professor Jayashankar Telangana State Agriculture University, Rajendranagar, Hyderabad
3. One CC to Sri. G.R. Mercy Vijaya, Advocate [OPUC]
4. One C.C. to Sri. B. Thimothi, Advocate [OPUC]
5. Two CCs to GP for Agriculture, High Court for the State of Telangana. [OUT]
6. Two CD Copies

Prk



HIGH COURT

DATED:06/10/2020

ORDER

W.P.No.13085 of 2019



Disposing of the WP.

S
MA
09/10/2020