



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON : 20.02.2020
ORDER PRONOUNCED ON : 09.02.2021
CORAM

THE HONOURABLE MRS. JUSTICE J. NISHABANU

W.P(MD) No. 20770 of 2013

and

M.P(MD) .No. 2 of 2013

Dr.K.K.Rajendran

... Petitioner

Vs.

1.The Registrar,
Bharathidasan University,
Tiruchirapalli-620 024.

2.The Secretary,
Higher Education Department,
Secretariat,
Fort.St.George, Chennai.

3.Dr.A.Edward William Benjamin,
Associate Professor,
Department of Education,
Centre for Distance Education,
Bharathidasan University,
Tiruchirapalli-620 024.

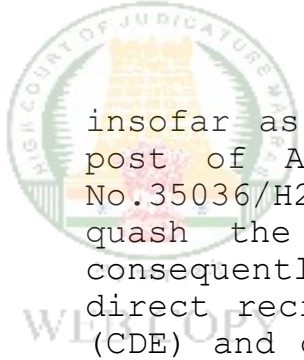
... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in Notification No.35036/H2/2012 dated 22.12.2012 insofar as Clause 3(III) of the instructions to candidates to the post of Associate Professor in Education (CDE) and proceedings No.35036/H2/2012 dated 22.12.2012 passed by the first respondent and quash the same as illegal, arbitrary, non-est in law and consequently direct the respondent to issue fresh notification for direct recruitment to the post of Associate Professor in Education (CDE) and conduct selection process strictly in accordance with the University Grants Commission Regulations 2010.

For Petitioner	: Mr.Veerakathiravan Senior Advocate for M/s.Veera Associates
For R.1	: Mr.VR.Shanmuganathan Spl.Govt.Pleader
For R.2	: Mr.S.Dhayalan Govt.Advocate
For R.3	: No appearance

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in Notification No.35036/H2/2012 dated 22.12.2012



insofar as Clause 3(III) of the instructions to candidates to the post of Associate Professor in Education (CDE) and proceedings No.35036/H2/2012 dated 22.12.2012 passed by the first respondent and quash the same as illegal, arbitrary and non-est in law and consequently direct the respondent to issue fresh notification for direct recruitment to the post of Associate Professor in Education (CDE) and conduct selection process strictly in accordance with the University Grants Commission Regulations 2010.

2. Gist of the case is as follows:-

2.1. The petitioner, after fulfilling necessary eligibility criteria, was duly selected by the first respondent as Lecturer in Biological Science in the first respondent University. He has also completed Doctorate in the year 2003 and submitted a theory paper titled "Information and Communication Technology in Education" and "Teaching and Learning skills". That apart, he has also published and presented various other research papers and Articles in National and International Conferences and related journals on Information and communication technologies in Education. According to the petitioner, he has got teaching experience of more than 10 years in the field of Biological Sciences and Multimedia Modular Development.

2.2. While the matter stood thus, the first respondent has issued a Notification No.35036/H2/2012 dated 22.08.2012 for direct recruitment to the post of Assistant Professor, Associate Professor and Professors in Bharathidasan University. The University had called for one post of Associate Professor in Department of Education (Centre for Distance Education). Pursuant to the notification issued by the University along with necessary qualification for the post in question, the petitioner applied for the post of Associate Professor in Department of Education in Centre for Distance Education. In the said notification, Clause 3 of notification is extracted hereunder:-

"Associate Professor in Education (CDE):

Essential qualification:

I. Master's Degree in Arts/Humanities/Sciences/ Commence and M.Ed each with a minimum of 55% marks or its equivalent grade

(or)

M.A.(Education) and B.Ed each with a minimum of 55% marks

II. Ph.D Education and

III. A minimum of 8 years of teaching and/or research experience in an academic/research position equivalent to that of Associate Professor with evidence of published work and minimum of five publication as books and/ or research/ policy papers.

IV. A minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS), set out in UGC Regulation in

**Desirable qualification:**

The faculty with the experience in course designing, material development, assessment of assignments, orientation of academic staff of the study centres, monitoring supervision of the study centres, maintenance/renewal of the course and other activities in distance education.

Specialisation

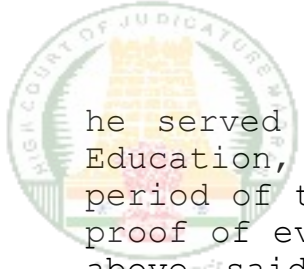
In ICT, experience in developing multimedia modular."

Since the petitioner fulfilled all the eligibility criteria, he applied for the post in question. However, the Selection Committee formed by the University has not called the petitioner for interview and they appointed the third respondent herein to the post of Associate Professor in Department of Education by grossly violating the UGC Regulations. Furthermore, no rejection order, rejecting the petitioner for the post in question was communicated to him.

2.3. In the above backgrounds, the petitioner invoked Right to Information Act seeking details of rejection of the petitioner. Thereafter, it comes to light that the Selection Committee and the University Authorities have conducted the entire selection procedure on their own whims and fancies with intent to provide appointment to the third respondent. Subsequently, the petitioner counsel has also filed RTI application on 02.08.2013 and came to know that there is serious illegality in the matter of appointment of the third respondent. The qualification prescribed by the University in Clause 3 of Recruitment Notification for the post of Associate Professor in Department of Education in Centre for Distance Education has not been possessed by the third respondent. Further, though UGC Regulations Clause 4.3.0 clearly stipulates that there should be a minimum of eight years of teaching experience excluding the period of Ph.D Research whereas, the University had fixed the qualification of teaching experience contrary to UGC Regulations.

2.4. Though the petitioner completed more than eight years of teaching experience on the date of issuance of recruitment notification, the third respondent has only completed teaching experience of four years, five months and 21 days as against the UGC norms of minimum of eight years of teaching experience. Further, as per Clause 5.1.2 of UGC Regulations, for direct recruitment to the post of Associate Professor in the University, a Selection committee should be constituted consisting of nine members as per norms, however, the University had constituted only a Three Member Committee as against the constitution enumerated in UGC Regulations which would vitiate the entire selection process conducted by the University. Hence, the present Writ Petition has been filed by the Writ Petitioner.

3. *Per contra*, the first respondent through his counter affidavit would submit that the petitioner had admitted that



he served as Lecturer on temporary basis at St.Xavier College of Education, Palayamkottai from 01.10.2003 to 31.01.2006 totally for a period of two years and six months. However, he had not produced any proof of evidence for receipt of salary on time scale of pay for the above said period. It is pertinent to note that the temporary service rendered without prescribed scale of pay could not be considered as eligible service. Hence, the above said service was not admitted by the Scrutiny Committee constituted for short listing the application. At the time of scrutiny, the petitioner had completed six years of service only. Hence, his application was not considered, since he has not fulfilled the required qualification of eight years of service as Assistant Professor. As per Section 44-A Bharathidasan University Act 1981 (Tamil Nadu Act 2 of 1982) provides constitution of Selection Committee for selection of Professor, Assistant Professor and Reader (Associate Professor). Hence, there is no violation of any Act/Regulation as alleged by the petitioner. Further, the petitioner has wrongly mentioned the words "Associate Professor" in the tabular column. The correct words applicable are "Assistant Professor". The third respondent herein had fulfilled the required qualification since he has completed more than nine years of experience on the date of notification. In view of the above said facts, there is no violation or mistake on the part of the University in selecting the third respondent for the post in question, as alleged by the petitioner.

3.1. Further, it is relevant to clarify that the Three Member Committee is not a Selection Committee as stated by the petitioner in his affidavit. It is only a Screening Committee constituted to short-list the applications received for the post of Associate Professor in the Department of Education under Centre for Distance Education of Bharathidasan University. Hence, it is submitted that the Selection Committee for the post of Associate Professor was duly constituted consisting of nine members as per the provisions of Section 44-A of Bharathidasan University Act 1981.

3.2. It is well settled law that the person having participated in selection process and after becoming unsuccessful, cannot once again turn around and challenge the notification itself. In the advertisement/notification itself it was mentioned that specialisation as "In ICT (Information and Communication Technology) Experience in developing multimedia modular". The petitioner himself stated that he published articles related to ICT after his Ph.D and he has not possessed the required specialisation in his Ph.D. Hence, the petitioner's application was rightly rejected by the Screening Committee. This Writ Petition is devoid of merits and it is liable to be dismissed.

4. The learned counsel for the second respondent would support the contentions raised by the first respondent.

5. The learned counsel for the petitioner through his written submissions would submit that the essential qualification



prescribed by the University in the recruitment notification for the post of Associate Professor in Department of Education in Centre for Distance Education is contrary to the qualification provided in University Grants Commission Regulations 2010 in Clause 4.3.0. Hence, the recruitment notification fixing qualification is not in consonance with UGC Regulation suffers from serious legal infirmities. The action of the University in diluting the qualification standard to suit the third respondent is illegal and arbitrary. Further, the arbitrary action of the University rejecting the application at threshold on flimsy grounds and failure to communicate the reasons for such rejection to the petitioner is in violation of principles of natural justice. The constitution of Selection Committee is against Clause 5.1.2 of UGC Regulations. The third respondent has not completed minimum eight years of teaching experience excluding the period spent for Ph.D degree. Clause 6.0.1 to 6.3.11 of UGC Regulations contains provision for selection procedures to be followed by a Selection Committee in the matter of appointment to the post of Associate Professor and Professor which had not been followed by the Selection Committee. The method of Academic Performance Indicator Scoring System and Performance Based Appraisal System and its criteria had been enumerated in Table 1, Table 2(c) in Appendix-III of UGC Regulations, which has also not been followed by the Selection Committee. Therefore, according to the petitioner, the entire selection procedure followed by the University is non-transparent and in violation of mandatory regulation prescribed by University Grants Commission Regulation 2010 and the appointment of the third respondent is liable to be set aside.

6. The learned counsel appearing for the first respondent would submit that since the petitioner did not fulfill the eligibility criteria, he was not called for the interview in question. He also did not have the requisite experience for the post in question. The official respondents have followed all the norms fixed by the UGC and accordingly and in this regard, proper committee was formed by the official respondents and thereafter, selected the third respondent for the post in question, in which, there could be no infirmity or illegality found, as alleged by the respondents. All the factors were taken into consideration at the time of selecting the third respondent and this Writ Petition has no merits whatsoever and it is liable to be dismissed.

7. The learned counsel for the second respondent would adopt the arguments advanced by the learned counsel appearing for the third respondent.

8. Heard the learned counsel for the Petitioner and the learned counsel for the first respondent and the second respondent and perused the materials available on record. There is no appearance on behalf of the third respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

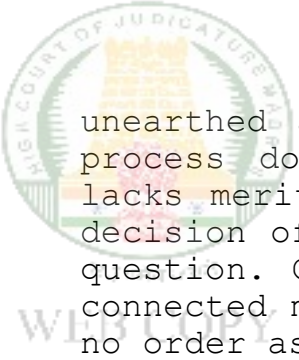
9. From a reading of the necessary qualifications



mentioned in the counter affidavit at paragraph No.7 between the petitioner and the third respondent, it reveals that though the petitioner has claimed that he is having more than eight years of teaching experience on the date of issuance of recruitment notification, in which, he has rendered service from 01.10.2003 to 31.01.2006 as Lecturer at St.Xavier College of Education, Palayamkottai on temporary basis, in otherwords, it is not on regular basis with time scale of pay and therefore, at the most, the service of the petitioner can be taken as 6 years, 6 months and 14 days of teaching experience as on the date of notification. Hence, the above said service was not admitted by the Scrutiny Committee constituted for short listing the application. No where in the affidavit filed in support of the writ petition the petitioner did not refute the fact that the petitioner had worked as Lecturer at St.Xavier College of Education, Palayamkottai on regular basis and therefore, the service rendered in that institution cannot be considered as regular service. It goes without saying that the criteria for eight years of teaching experience for the post in question is very much essential and in the case on hand, the petitioner miserably fails to meet the eligibility criteria itself and therefore, the official respondents have rightly rejected the candidature of the petitioner. Whereas, in the counter affidavit filed by the first respondent at paragraph No.8, the official respondents have produced the third respondent's teaching experience with facts and figures who is having more than nine years of experience as required by the official respondents. Therefore, this Court is of the view that it need not go into the other grounds raised by the petitioner.

10. Be that as it may, according to the petitioner, that the notification itself is illegal and contrary to UGC Regulation. It is to be pertinent to point out that the advertisement contained a description of qualification required to be possessed by the candidate. Several persons including the writ petitioner submitted application for the post in question. The writ petitioner without raising any objection to the alleged variations in the contents of the advertisement and the Rules had participated in the selection process and it was only after he was not selected for appointment, he cannot turn around and challenge the very selection process, after the selection process was over. It is well settled law that the person having participated in the selection process and after becoming unsuccessful he cannot once again turn around and challenge the notification and subsequent events. Nothing prevented the petitioner from questioning the advertisement issued by the official respondents or to raise his little finger against the selection process atleast before applying for the post in question. Having missed the bus on time, the writ petitioner cannot turn the clock back on the ground of lack of qualification and experience.

11. Taking into consideration the entire facts of the case and law laid down by this Court as well as by the Supreme Court in a catena of decision, I am of the view that the writ petition has not



unearthed any justifiable grounds to interfere with the selection process done by the official respondents and this writ petition lacks merit in the case inasmuch as there is no illegality in the decision of the official respondents for appointment of the post in question. Consequently, this writ petition stands dismissed and its connected miscellaneous petition is closed. However, there will be no order as to costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Registrar,
Bharathidasan University,
Tiruchirapalli-625 024.
- 2.The Secretary,
Higher Education Department,
Secretariat,
Fort.St.George, Chennai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-3934[F] dated
09/02/2021)

W.P (MD) No.20770 of 2013
09.02.2021

ES (CO)
KB (05.03.2021) 7P 4C