



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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W.P. (MD) .No.19616 of 2019

and

W.M.P. (MD) .No.16075 of 2019

Orders reserved on 30.07.2021	Orders pronounced on 29.09.2021
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A.Brita Nicy

... Petitioner

Vs.

1.The Registrar,
Tamil Nadu Dr.J.Jayalalitha Fisheries University,
Vettar River View Campus, Nagapattinam.

2.The Dean,
Fisheries College and Research Institute,
Thoothukudi.

3.The Principal Secretary to Government,
The Government of Tamil Nadu,
Animal Husbandry (Diary and Fisheries),
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the Application of the Petitioner dated 28.07.2019 for the post of Assistant Professor (Fish Processing Technology) in pursuant to the Advertisement No.03/2019 dated 27.06.2019 by the 1st respondent and to call the petitioner to attend the interview.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.V.Vijay Shankar
(For R1 & R2)

: Mr.K.S.Selvaganesan (For R3)
Government Advocate



O R D E R

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This petition is filed for a direction to the 1st respondent to consider the Application of the Petitioner dated 28.07.2019, for the post of Assistant Professor (Fish Processing Technology), pursuant to the Advertisement No.03/2019 dated 27.06.2019 and for a direction to the respondents to call the petitioner to attend the interview.

2. The case of the petitioner is that after completing Higher Secondary exams, she joined Bachelor of Fishery Sciences (BFSc) degree in Kerala. The said degree is four years professional course, imparting higher education on Fisheries Science and the petitioner obtained BFSc degree in the year, 2013. The petitioner pursued Post Graduate degree in Master of Fisheries (Fish Processing Technology) in the 2nd respondent College and received the Degree in the year 2016. The petitioner passed National Eligibility Test (NET), conducted by the Indian Council for Agriculture Research and passed the same in the year 2016. The respondent University conferred Ph.D. in Fish Processing Technology to the petitioner. The petitioner is aged 29 years, belonging to Backward Class (BC). She is fully qualified to be appointed as an Assistant Professor in any one of the Fisheries College in the Department of Fish Processing Technology. The 1st respondent, by notification under Advertisement No.3/2019 issued on 27.06.2019, called for applications for appointment of three Assistant Professors in Fish Processing Technology, apart from other posts. Out of these posts, one is reserved for BC Women / BC(W) category. The petitioner can be considered against the vacancy reserved, being a woman belonging to the BC community.

2(i). The selection is made by allotting maximum 75 marks for credentials of the candidates and 25 marks for interview, but score pattern for the credentials was published only after the last date of submission of applications viz., 02.08.2019. The petitioner would have been conferred Ph.D. even before the date of notification. The University altered the criteria on 02.11.2018, prescribing NAAS rating for the publication at 6 or above. It will take 6 to 8 months for getting research articles published in such rated journals. Due to such alteration, Ph.D. of the petitioner was delayed and petitioner got Ph.D. only on 07.09.2019. Such stipulation was done in the middle of the petitioner's Ph.D. thesis and due to which, the petitioner was prevented from increasing her credentials to add marks for the consideration of Selection Committee. According to the petitioner, such stipulation was deliberately added with ulterior motive to help a particular male candidate for the post reserved for BC women / BC (W) category. The said stipulation, which was done in the middle of the petitioner's Ph.D. thesis, was withdrawn subsequently.



2(ii). The petitioner submitted her application on 28.07.2019, by annexing her credentials. As per the score pattern published by the respondents, the petitioner calculated the marks and according to her, she would get 47 out of 75 marks. The minimum marks for being called for interview is 40. The petitioner has enclosed a separate sheet, in the typed set of papers filed, with regard to her marks as per her credentials. According to the petitioner, there are four applicants to the post of Assistant Professor in Fish Technology. Out of four, one of them is male and the said male candidate would not get 40 marks and he cannot even apply under the category of BC, as the same is reserved for BC Women. The petitioner is eligible to be called for interview, but she was not considered and she did not receive any call letter. In such circumstances, the petitioner has come out with the present Writ Petition, seeking for a direction from this Court to attend the interview, as the petitioner is fully qualified pursuant to the Advertisement No.03/2019 dated 27.06.2019.

3. The respondents filed counter affidavit and submitted that the 1st respondent University has issued notification, calling for applications for recruitment of Assistant Professor (Fish Processing Technology under the Faculty of Fisheries Science), vide Notification No.03/2019 dated 27.06.2019, with last date for submission as 02.08.2019. After receiving the applications, the University, by communication No.2978/R6/TNJFU/Teaching Posts/2019, dated 06.08.2019 and 20.08.2019, constituted a committee for screening all the applications as received for the post. The University received 12 applications and all the applications received were screened by Screening Committee and shortlisted to four, following the norms as detailed in attached score card prescribed by University and submitted its report to the University for dispatch of interview cards. As per the eligibility norms, score of 40 marks has been considered as a baseline eligibility for calling for personal interview and evaluation of teaching performance, which was also informed along with the score card in University Website. Based on the recommendations of the Screening Committee, interview cards were sent to the candidates to appear for interview on 12.09.2019, subject to verification of originals, before allowing the candidates for interview.

3(i). The petitioner has got only 37.9/75 marks, as per score card and hence, she was not called for interview. The petitioner claimed that she scored more than 47 marks by self-assessment, which is not admissible and she has not stated the basis on which she scored more than 47 out of 75 marks. The petitioner's application has been assessed based on the documents submitted by her and based on the evaluation of Screening Committee, she has not scored the minimum score of 40 marks for attending the interview. The petitioner has not published any books and no publisher details have



been given by the petitioner, as per the score card issued by the University. The book, what the petitioner claimed, is only a Training Manual and the Screening Committee has accorded suitable marks to the petitioner for the same. The petitioner does not possess adequate research papers and all the papers were published only in predatory/junk journals, which are against the norms of University/UGC/ICAR. The petitioner scored only least marks in publication. The petitioner was permitted to attend the interview on 12.09.2019, as per the directions of this Court. The respondents further stated that similar cases filed by one Mrs.V.Sonia in W.P.No.27104 of 2019 and one Mr.P.Yuvarajan in W.P.No.27110 of 2019 were dismissed by this Court on 10.09.2019 and prayed for dismissal of the Writ Petition.

4. The petitioner filed additional affidavit on 03.10.2019 and denied all the averments in the counter affidavit. The petitioner submitted that the statement in the counter affidavit that petitioner secured only 37.9 marks out of 75, is erroneous. The petitioner was not given marks under Serial No.1(d). The petitioner attended one day training for HACCP (Hazard Analysis Critical Control Point) on 09.03.2012 and two days internal Auditor Training during 10th - 11th March, 2012, both conducted by the Intertek Food Services. The respondents, with malafide intention, added a condition, which was not in the original score card, that training with minimum period of 10 days alone need to be considered. The respondents ought to have given mark to the petitioner for the training she underwent.

4(i). The petitioner further submitted that she was given only 6 marks for her publications, as 1st Author. However, she was not given any marks for the research article "Extruded fish snack from low valued Fatty Fish - An evaluation of nutritional and organoleptic characteristics". The petitioner was co-author for said publication and she is entitled to three marks as co-author. Both the articles were published in the same journal having NAAS rating, 6.8.

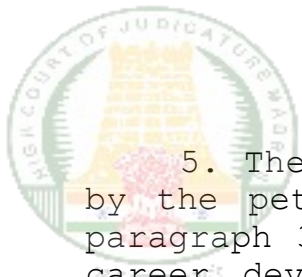
4(ii). Further, the petitioner is entitled to six marks in respect of technical articles/popular articles/pamphlets/folders, as petitioner has submitted more than 6 articles. As per score card, the petitioner is entitled to 2 marks for each of the article. The respondents, with malafide intention, modified the score card by reducing the mark as 0.2, instead of 2 marks.

4(iii). Similarly, the petitioner is entitled to 10 marks as co-author of a Book on 'Technology of Fish Freezing and Frozen Storage', which was published by the respondent University itself, under ISBN No.978-81-92 3578-7-4, funded by Indian Council for Agricultural Research. In order to deny marks to the petitioner, the respondents added a condition that "the agreement with the publisher must be produced", which was not there in original score card and



termed the book as 'Training Manual' and not a scientific book. The respondents also have stated in the counter that articles of petitioner were published in predatory/junk journals, which were against the norms of University/UGC/ICAR. In all the journals where the petitioner published articles, the Vice-Chancellor of respondent University also published his articles.

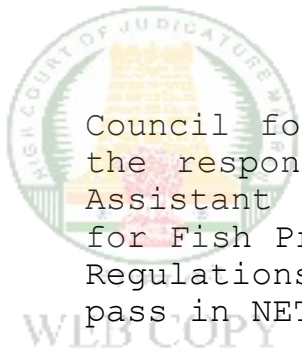
4(iv). The petitioner is a member of the Editorial Committee of scientific publications and is entitled to 10 marks for being Associate Editor of two journals viz., International Journal of Fisheries and Aquatic Research and International Journal of Multi Disciplinary Research and Development. The petitioner has filed all her credentials along with application. She is entitled to 47 marks. The respondents, changing the conditions in the score card, denied marks to the petitioner. Any change in the conditions or introduction of new condition during the course of selection process is illegal, arbitrary and unconstitutional. The Vice-Chancellor of the University has hand-picked the Screening Committee, by having incharge of University Officer as Chairman, while there are regular University Officers. The Chairman was at the mercy of Vice-Chancellor, as he is an applicant for the post of Regular University Officer. Though there are about 10 senior Professors, the Vice-Chancellor has included only Assistant Professors as Assistants in the Committee. The marks prescribed for each category is arbitrary, as no mark was given for NET exam, but 10 marks are given for Ph.D. The Screening Committee has acted arbitrarily and in an unfair manner, by prescribing minimum marks. The Screening Committee has no such power or authority to prescribe minimum marks after commencement of selection process on 27.06.2019, date of notification and on the next date of submission of applications started. The petitioner is fully qualified to be appointed as Assistant Professor (Fish Processing Technology) in the respondent University, as petitioner fulfilled the eligibility criteria as prescribed under the statute of University. When there is no competition, the respondents ought to have appointed the petitioner, as she is the only eligible candidate. The respondents illegally conducted interview for one Mr.K.Masilan, though he has no right to apply under the category reserved for BC women / BC (W). If his score card is correctly calculated, his mark would not exceed 40. Only to favour him, the Screening Committee introduced the score card, after commencement of selection process. As per statute of respondents University, the respondents can consider the candidature of a male candidate only when no female candidate is available. The introduction of minimum marks in the score card is illegal, arbitrary and unconstitutional. The attitude of the respondents, after filing the Writ Petition, would demonstrate their malafide intention. The petitioner further stated that she was working as a Teaching Assistant with the respondent University. She applied 'leave for personal reason' and the same was granted. After sanctioning leave, the Vice-Chancellor directed the Dean to call for explanation for the leave period from the petitioner.



5. The respondent University filed reply to the rejoinder filed by the petitioner and submitted that the said marks mentioned in paragraph 3 of the rejoinder are allotted for capacity building and career development. Any training given for 1 day to 5 days are generally considered as not full fledged training programme. ICAR also considers training programme of 10 days as "short course" and 21 days as "long and useful training for capacity building". As marks are given for capacity building and career development, the training must be for minimum 10 days. Further, the research articles which are connected with the candidate's original and actual research conducted alone would be considered for scoring marks. The tendency among the researchers is to get their names included in any type of papers, irrespective of their specialization or any research, just for number sake. If this type of papers are considered, true researchers who conduct research and publish papers will be evaluated lesser marks than the pseudo researchers. Many research organizations in the world consider only single author papers, to eliminate such candidates. Many of the candidates can have co-authorship in many articles, without actually contributing anything for the paper. The marks are allotted for popular article is only at 0.2 per article and the claim of the petitioner is false. The books written with due recognition are awarded scores "Text Books", as it is different from general books in any subject. The petitioner's claim for her articles as worthy articles cannot be maintained on the ground that many of the articles are published only in journals of less reputation. The petitioner has erroneously claimed as she had been Associate Editor of two Journals during the same period., i.e., 2017. However, both the Journals are from the same publication (Gupta Publication) and it is not regular practice to award any individual Editorship in journal, simply for submitting articles. Therefore, it has been considered as one and marks are awarded for one. Further, there is no rule that if only one is available in the particular category, she should be selected provided she is eligible. It is the discretion of Selection Committee to consider based on the merit. Further, it is the administrative process when the candidate is absent calling for explanation and the same cannot be considered as threat or vindictive action of the respondent University and prayed for dismissal of the Writ Petition.

6. Both the learned counsel appearing for the petitioner and respondents filed written submissions.

7. The learned counsel appearing for the petitioner submitted that the petitioner is a Woman belonging to Backward Community (BC) and passed Bachelor of Fishery Sciences (B.FSc) Course in Kerala in the year 2013 with 76% marks. In the year 2016, the petitioner passed Master of Fishery Sciences (M.FSc) with 92% marks and also passed the National Eligibility Test (NET) conducted by the Indian



Council for Agriculture Research in the same year. On 27.06.2019, the respondent University called for applications for the post of Assistant Professor in various faculties including three vacancies for Fish Processing Technology under Tamil Nadu Fisheries University Regulations that a candidate with 55% marks in Master Degree and pass in NET test is eligible to be appointed as Assistant Professor.

7(i). The applicants in the application are to fill credentials like experience, publication, research, etc,. The application form did not contain any detail as to the mark under each category. The respondent University in July 2019 published in its website a model score pattern for the credentials. The said score card stipulates marks for each category and that only a minimum of 40 marks out of 75 marks alone will qualify the candidates for interview. On 28.07.2019, the petitioner submitted her application and as per her estimate, she would get a minimum of 47 marks out of 75 marks as per the marks stipulated in the model score card. The learned counsel appearing for the petitioner further submitted that the interview was fixed on 12.09.2019 but the petitioner did not receive any call letter. According to the petitioner, in order to accommodate a male candidate, the respondent has not called the petitioner for the interview. The petitioner, after filing a Writ Petition, as per the interim order of this Court dated 12.09.2019, attended the interview on 12.09.2019. This Court, by the order dated 23.10.2019, directed the respondents to keep one post vacant and the said post is still vacant.

8. The learned counsel appearing for the petitioner referred to the documents filed in typed set of papers and submitted that petitioner was denied marks arbitrarily under the following headings:

8(i). As per S.No.I(d), the petitioner is entitled to 2 marks for training and petitioner produced certificates to prove the training undergone by her. The respondents altered the said condition to the effect that training must be for a minimum period of 10 days. This condition was not in the model score card published before the last date of submission of application. The score card was altered only to bring down the marks of the petitioner. The respondents cannot change the condition after the commencement of the selection process.

8(ii). In S.No.IV under International Publication, the petitioner is given 6 marks as first author. The petitioner is entitled to 3 marks as co-author in another article which has NAAS rating 6.8. The author and co-authors are all Professors of Fisheries University. The respondents without any reason, did not give 3 marks for co-authorship. In the first two counter, the respondents did not give any reason for not granting 3 marks. In the 3rd counter, the respondents gave an ambiguous answer. The reason



given by the respondents is contrary to the score card and purposefully denied 3 marks on imaginary grounds.

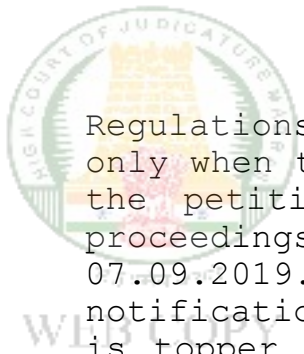
8(iii). In S.No.IV for Technical article / popular articles / folders, the petitioner is entitled to 6 marks at the rate of 2 marks per article. But the respondents altered in the score card as 0.2 marks per article. As per the model score card, the petitioner is entitled to 6 marks. The respondents arbitrarily changed the mark as 0.2 per article instead of 2 marks per article. The Selection Committee has no power to change the score card after commencement of selection process.

8(iv). The petitioner, as co-author of Book published by the respondent University is entitled to 10 marks. The respondent University introduced a new condition that candidates must produce the agreement with publisher. The petitioner could not produce any agreement as she was not aware of the said condition. The said book was funded by Indian Council for Agricultural Research and published by the respondent University under ISBN No978-81-923578-7-4. The other authors are all Professors of same University. The petitioner is denied 10 marks under this category. It is pertinent to note that the respondents removed the said condition in the score card for the year 2020 and the petitioner is given marks as co-author in the 2020 under the same category.

8(v). Under S.No.IV, the petitioner as member in the Editorial Committee in respect of two journals, is entitled to 10 marks but, the petitioner was given only 5 marks. In the counter affidavit, the respondents have stated that both the journals are from the same publishers. There is no such condition in the original score card or subsequent score card. Only to reduce the mark of the petitioner below 40, the respondents have taken such a stand and to accommodate a male candidate.

9. The learned counsel appearing for the petitioner further submitted that the respondent University cannot add new condition in the score card which was not stipulated at the time of submission of application. If the respondent University is permitted to add or delete the condition, it will enable the University either accommodate or remove any candidate. The Selection Committee or Vice Chancellor has no right to prescribe or add any condition in the scoring pattern without the resolution of Syndicate of the University. The Selection Committee cannot exercise the right and power of Syndicate to add any condition. If Selection Committee is permitted to do so, it will lead to arbitrariness and favoritism.

10. The learned counsel appearing for the petitioner further submitted that the petitioner is fully qualified for being appointed as she is having minimum qualification as prescribed in the notification and also in the Tamil Nadu Fisheries University



Regulations. Minimum marks in scoring pattern will come into play only when there is competition. The respondents deliberately delayed the petitioner in getting her Ph.D by adding new condition by proceedings dated 02.11.2018. The petitioner received Ph.D only on 07.09.2019. Had the petitioner received the Ph.D. Degree before notification, she would have got 10 marks for Ph.D. The petitioner is topper in Ph.D and Gold Medalist, but for receiving Ph.D., the petitioner has to file the Writ Petition and as per the directions of this Court only, the petitioner was permitted. The petitioner is a meritorious candidate. The respondent has caused injustice to the petitioner and prayed for allowing the Writ Petition. In support of his contention, the learned counsel appearing for the petitioner, relied on the judgments reported in:

(i) **(2008) 3 SCC 512 [K.Manjusree Vs. State of Andhra Pradesh and another]:**

"12.This appeal is by K.Manjusree whose name was found in the first list. She contended that the minimum marks for interview not having been prescribed either under the Rules or by the Resolution dated 30-11-2004 by the Administrative Committee, the action of the Full Court altering the norms for selection by introducing minimum marks for interview, after completion of the selection process, would amount to changing the rules of the game, not only after the game was started but after the game was played.

.....

27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them *P. K. Ramachandra Iyer v. Union of India* 1984 (2) SCC 141, *Umesh Chandra Shukla v.*



Union of India 1985 (3) SCC 721, and Durgacharan Misra v. State of Orissa 1987 (4) SCC 646.

28. In *Ramachandra Iyer (supra)*, this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribe the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed :

"44.....Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained."

29. In *Umesh Chandra (supra)*, the scope of the Delhi Judicial Service Rules, 1970 came up for consideration. The rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the



candidates ranking shall depend on the aggregate of both 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates. But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination.

30. It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed :

"14.....There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in paragraph 7 of the counter-affidavit filed in Writ Petition 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The



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prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an addition requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix.. We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal.

31. In *Durgacharan Misra (supra)*, this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

32. In *Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve* 2001 (10) SCC 51, this Court observed that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks



prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

(ii) The learned counsel appearing for the petitioner also relied on the judgment of the Hon'ble Apex Court dated **03.08.2021** made in **Civil Appeal Nos.4568 and 4569 of 2021 (Arising out of SLP. (C) Nos.3523 - 3524 of 2019)** and contended that once a journal is approved by authority, the Selection Committee cannot reject the publication in the said journal. The learned counsel referred to the following portions:

"A perusal of Exhibit P1 which is dated 16.11.1995 would show that the Board of Studies did recommend the inclusion of the journal 'Experiments of Education; as an approved journal:

"IV. LIST OF STANDARD JOURNALS:

The Board recommended to include the journal "Experiments in Education" in the List of the Standard Journals."

We find further that the Faculty of Education in its meeting held on 06.02.1996 has, after referring to the recommendation of the Board, including the journal 'Experiments of Education' in the List of Standard Journal approved the said recommendation of the Board



Lastly, the Academic Council also has on 16.05.1996 approved the rest of the minutes of the Faculty which would apparently include the recommendation to include the journal 'Experiments of Education'. Finally, in reply of the University under the Right to Information Act, we find in the details of the orders issued from 1993, reference is made to the University List of Standard Journals dated 19.07.1996 and it included 'Experiments in Education'.

It may be true that the order which is referred to in the answer given under the Right to Information Act has not been produced.

We would think that in the first place there is no stipulated procedure to be followed in the matter of publication. It is not the case of any of the parties that the University is duty bound in law to publish the List of approved journals by way of publication in the gazette. No statutory provision is brought to our attention indicating any stipulated and inviolable procedure in publishing a matter of this nature. No doubt, there must be some form of publication. This is for the reason that candidates who appear for selection as members teaching staff should know before hand which are the journals in which the articles published would secure them appropriate marks. But having regard to the facts present in this case, we are of the view that the Division Bench has erred in not finding that the documents would clearly show that the journal 'Experiments in Education' was included as approved after the process was undergone at the hands of the concerned bodies of the University, viz., the Board of Studies, Faculty of Education and finally, the Academic Council.

It is to be noticed the stand of the University is that the practice of publication was commenced in the year 2000-2001. This is evident from the counter affidavit filed in this Court:

"9. With regard to the averment of the petitioner regarding the non-availability of the University order including "Experiments in Education" as approved journals it is submitted as follows. Practice of keeping copy of orders have started from 2000-2001 onwards only. An official list including all the journals approved so far were issued only in 2013."

We are concerned with the decision which is of the year 1996. We are unable to accept the contention of the respondents that it is not to be



treated as approved journal for the reason that it is not published for the reasons which we have indicated herein."

11. The learned counsel appearing for the respondents 1 & 2 submitted that the petitioner's grievance is that after calling for applications and after publication of score card in the website, the University has changed the methodology of awarding marks. According to the petitioner, such change is not permissible and such change is made deliberately to accommodate or remove candidates at the University's discretion and further contended that the petitioner must have got higher marks, but awarded only 37.9 marks which was less than the minimum prescribed marks for calling a candidate for interview. The learned counsel appearing for the respondents 1 & 2 further contended that the respondents have explained in the counter affidavit and additional counter affidavit that score card is a criteria adopted by the University in accordance with the UGC and ICAR norms so as to evolve transparent, objective and credible methodology to assess the merits and credentials of the applicants. The broad outline was indicated in the website so as to enable the candidates to submit / upload required documents and certificates. All the candidates including the petitioner had forwarded a big bundle containing the documents. However, at the time of selection, the Selection Committee consisting of Vice Chancellor, prescribed certain guidelines or indicators as to how marks under each caption is to be awarded. The power of the Selection Committee cannot be taken away as it lies within the discretion and domain of the Selection Committee to decide the manner of awarding marks under each caption / heading. Such power is similar to the system of shortlisting the candidates.

12. The prerogative of the Selection Committee cannot be questioned as long as it is done in a transparent, fair and equitable manner. The criteria was adopted uniformly to all the candidates. In the case of the petitioner, as per the criteria, she had secured only 37.9 marks out of 75 marks, less than the minimum of 40 marks required to be called for interview. All four candidates including the petitioner who applied for the post of Assistant Professor in Fish Processing Technology against the vacancy meant for BC (W), were found ineligible. However, the petitioner was called for interview as per the direction of this Court. In subsequent selection also, the same criteria was applied. The respondent University was adopting a fair and transparent criteria to all the candidates.

13. As far as 2 marks claimed by the petitioner for training is concerned, the Selection Committee had decided that only for minimum of 10 days training and above, marks can be awarded. The training for 1 day or ½ day do not impart the required knowledge or experience and are not sufficient to mould an individual. 10 days



training gives an individual enough exposure and enriches the candidate. Hence, the petitioner was not given any marks for training.

14. Under the heading publication, the petitioner was awarded 6 marks being the first author. She is not entitled to 3 marks for being the 2nd author. Many persons lend their names for being associated with the project of writing a book. However, the said book was not in the area of research or specialty of the petitioner. In the past, the University found that many claiming to be a co-author in subjects unconnected with their specialty, ended up getting more marks by merely lending their names to several publications. To curb this unhealthy practice, it was decided by the University to restrict the marks in such areas. Further under the head publication, the petitioner is claiming 6 marks at 2 marks per item. Originally, by clerical error, 2 marks per item was indicated, but later it was changed to 0.2 marks per item. The petitioner cannot take advantage of the clerical error to claim additional marks.

15. Under the heading Scientific book, the petitioner was not awarded any marks. A Scientific book is the one which was written and published of one's own study, research or invention and are to be extremely high standard and must be renowned and well regarded. General books are compiled on the basis of research for the study of others. It is relevant to point out that maximum mark that can be awarded under this heading is only 25. A candidate proclaiming her book as Scientific book cannot claim 10 marks. The book published by the petitioner is not a Scientific book and therefore, she was not awarded any marks. In support of his contention, the learned counsel appearing for the respondents relied on the following judgments:

(i) **(2013) 10 SCC 519 [University Grants Commission and another Vs. Neha Anil Bobde (Gadekar)]:-**

"31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This court in *University of Mysore v. C.D. Govinda Rao* (AIR 1965 SC 491), *Tariq Islam Vs. Aligarh Muslim University* ((2001) 8 SCC 546) and *Rajbir Singh Dalal Vs. Chaudhari Devi Lal University* ((2008) 9 SCC 284), has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance



of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

(ii) **(2019) 9 SCC 276 [Pradeep Singh Dehal Vs. State of Himachal Pradesh and others]:**

"12. As per the conditions pertaining to Advertisement No.3 of 2011, the applications submitted earlier were to be considered. This shows that the "publications" of the writ petitioner were with the University when the writ petitioner was granted marks for "publications". Even if the Selection Committee has undergone a change as well as norms of selection as per the Regulations, the Selection Committee was within its jurisdiction not to award any marks for "publications" if it was not meeting the requisite conditions. But surprisingly, the writ petitioner has not been granted any marks under the heading "publications" in the interview held on 12-5-2012, when the candidates for under OBC category were interviewed but the writ petitioner was granted five marks for "publications" when the interview was being conducted for the post of Assistant Professor under general category on 13-5-2012. Though, the writ petitioner has not appeared in the interview but the fact remains that he has been granted five marks for "publications". It is the same Selection Committee who conducted interview on 12-05-2012 and on 13-5-2012. Therefore, the stand of the appellant that the writ petitioner has not submitted any "publications" does not merit acceptance. Such "publications" were before the Search Committee when the writ petitioner was interviewed on 13-5-2012.

13. But it is equally true that it is for the experts to award marks for "publications". The High Court, while exercising the power of judicial review, does not sit in the arm chair of the experts to award the marks for publications, that too, on the basis of



an earlier selection process. The marks obtained by the writ petitioner under the heading "publications" on 13-5-2012 were not before the High Court. The appellant was granted three marks for "publications" in the earlier selection process initiated vide Advertisement No.3 of 2010. Such "publications" were also required to be taken into consideration by the Selection Committee."

16. The learned counsel appearing for the respondents 1 and 2 further submitted that the non-selection of petitioner is only on account of her scoring low marks than the cut off marks fixed by the University. Selection Committee has acted in impartial and fair manner and such action of experts cannot be interfered with by this Court and prayed for dismissal of the Writ Petition.

17. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents 1 and 2 as well as the learned Government Advocate appearing for the 3rd respondent and perused the entire materials on record.

18. The petitioner is possessing Bachelor of Fishery Sciences (B.FSc) degree, Master of Fisheries (Fish Processing Technology), passed National Eligibility Test (NET) conducted by the Indian Council for Agriculture Research and is conferred Ph.D. According to the petitioner, she is eligible to be appointed as Assistant Professor in any one of the Fisheries College in the Department of Fish Processing Technology. The petitioner is aged 29 years, belonging to the Backward Class community. The 1st respondent, by notification under Advertisement No.3/3019, dated 27.06.2019, called for applications for appointment as Assistant Professors, one of the said post is reserved for BC Women / BC (W) category.

19. The selection is by allotting maximum of 75 marks for credentials and 25 marks for interview. The score pattern for credentials is in the Website of the respondents. According to the petitioner, for her credentials, she is entitled to get 47 marks and in order to grant less marks for her credentials, and to favour one male candidate, the respondents modified and changed score pattern and also introduced new conditions. The contention of the learned counsel for the petitioner is that the Vice-Chancellor or Selection Committee has no right to prescribe or add any condition in scoring pattern, without resolution of syndicate of the University, any additional condition by Vice-Chancellor or Selection Committee leads to arbitrariness and will permit the Vice-Chancellor to favour a particular candidate. It is the further contention of the learned counsel for the petitioner that after selection process has started, the conditions of selection cannot be changed and Vice-Chancellor and the Selection Committee has no right or power to change or add conditions of selection. The learned counsel for the petitioner



relied on paragraph nos.27-33 of the judgment of the Hon'ble Apex Court reported in **(2008) 3 SCC 512**, cited *supra*.

20. On the other hand, it is the contention of the learned counsel appearing for the respondents 1 and 2 that broad outline of score pattern was published in Website of the University so as to enable the candidates to submit/upload required documents and certificates. The score card is a criteria adopted by the University in accordance with the UGC and ICAR norms. The score card is to evolve a transparent, objective and credible methodology to assess the merits and credentials of the candidates. After publication of score card, the Vice-Chancellor and Selection Committee has power to issue certain guidelines and indicate as to how marks under each caption has to be awarded. This power of Selection Committee cannot be taken away, as it is the discretion and domain of Selection Committee. This power is to shortlist the candidates. The learned counsel appearing for the respondents relied on paragraph No.31 of the judgment reported in **(2013) 10 SCC 519** and paragraph Nos.12 and 13 of the judgment reported in **(2019) 9 SCC 276**, referred to above.

21. The main contention of the learned counsel appearing for the petitioner is that, after commencement of selection process, the Selection Committee has no power to alter the score pattern under various captions, by adding, deleting or modifying the score card. Further, only Syndicate of the University, by resolution can formulate score pattern and Selection Committee has no power to alter the score pattern. This contention has considerable force and is acceptable. The judgment of the Hon'ble Apex Court reported in **(2008) 3 SCC 512**, cited *supra*, is squarely applicable to the facts of the present case as projected by the learned counsel for the petitioner. In that case, the Hon'ble Apex Court has considered the selection of District and Sessions Judges, Grade - II in Andhra Pradesh State. The selection was by 75 marks for written examination and 25 marks for interview. The committee fixed minimum marks to be obtained by a candidate in the written examination to be called for interview. No minimum mark was fixed to be obtained in the interview. Based on the said selection method, the interview committee prepared the list of 10 candidates recommended for appointment. The Full Court appointed a Sub Committee of two Judges for preparing fresh list of candidates to be recommended for appointment. The Sub Committee in addition to minimum marks for written examination, prescribed minimum marks for interview also. Based on the said changed selection method, a second list of 9 candidates was prepared and recommended for appointment. In the 2nd list, some candidates included in the 1st list were deleted and some new candidates were included. The aggrieved candidates challenged the same. After conclusion of proceedings initiated in the High Court, the matter was taken up before the Hon'ble Apex Court by the aggrieved candidates. The Hon'ble Apex Court, considering the above materials, held that the introduction of requirement of minimum



marks for interview, after entire selection process consisting of written examination and interview was completed, would amount to "changing the rules of game, after the game was played, which is clearly impermissible".

22. The Hon'ble Apex Court held that similar view was taken in number of decisions and referred to with approval the following judgments:

(i) The judgment of the Hon'ble Apex Court reported in **1984 (2) SCC 141 (P.K.Ramachandra Iyer Vs. Union of India)**, the Hon'ble Apex Court at paragraph No.44, held as follows:

"...44.Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by ASRB on the ground that he has not obtained qualifying marks at viva voce test. This was impermissible and contrary to Rules and the merit list prepared in contravention of Rules cannot be sustained"

(ii) The judgment of the Hon'ble Apex Court reported in **1985 (3) SCC 721 (Umesh Chandra Shukla Vs. Union of India)**, the Hon'ble Apex Court at paragraph No.14, held as follows:

"...14.There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in Para 7 of the counter-affidavit filed in Writ Petition No.4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service. ... But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because Clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service."

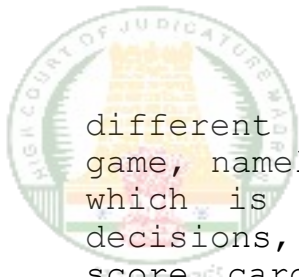


The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an additional requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by Clause (6) of the Appendix. ... We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal."

(iii) In the case of **Durgacharan Misra Vs. State of Orissa**, reported in **1987 (4) SCC 646**, the Hon'ble Apex Court considered the selection under the Orissa Service Rules, which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The Rules merely required that after the viva voce test, the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission, which was the selecting authority, prescribed minimum qualifying marks for the viva voce test also. The Hon'ble Apex Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

22(i). In addition to the above three judgments, the Hon'ble Apex Court also referred to judgment reported in **2001 (10) SCC 51, (Maharashtra SRTC Vs. Rajendra Bhimrao Mandve)**. In para 32 of the said judgment, the Hon'ble Apex Court extracted a portion of the said judgment namely "the rules of the game, meaning thereby, with the criteria that selection cannot be altered by authorities concerned in the middle or after the process of selection has commenced".

22(ii). The judgment of the Hon'ble Apex Court reported in **(2008) 3 SCC 512**, cited *supra*, and earlier judgments of the Hon'ble Apex Court referred to in the said judgment are squarely applicable to the facts of the present case. The respondents published the score card in their Website, so as to enable the candidates to upload or submit the requisite documents and certificates. But, the respondents, after the selection process commenced, changed the score card, namely the scoring pattern for allotting marks under



different captions. The respondents have changed "the rules of the game, namely the criteria for selection, after the game has started, which is impermissible and is invalid". In view of the above decisions, the petitioner is entitled to marks as per the original score card only and respondents cannot apply the modified and altered score card in the case of the petitioner and also other candidates.

22(iii). The appellant before the Hon'ble Apex Court in the judgment dated 03.08.2021 made in Civil Appeal Nos.4568 and 4569 of 2021 arising out of S.L.P.(C).Nos.3523 and 3524 of 2019, published articles in the journal "characteristics in education". But, she was not granted marks for the said publication. The Hon'ble Apex Court, considering the fact that the said journal was included as approved, after the process was undergone at the hands of the concerned bodies of University viz., the Board of Studies, the faculty of education and academic council, held that the appellant is entitled to marks for her publication in the said journal and directed the University to award marks for the said publications. On marks so awarded, the appellant therein was treated as attained 1st place and directed the University to appoint her as Assistant Professor. As the Hon'ble Apex Court passed the order after 14 years of selection, did not order payment of arrears of salary, but ordered all consequential annual increments, etc., and continuity of service on such basis.

22(iv).The judgments relied on by the learned counsel appearing for the respondents do not advance the case of the respondents, in view of the facts and circumstances of the present case. On the other hand, the judgments relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case.

23. The learned counsel for the petitioner has filed score card as published in the Website and also score indicating the marks the petitioner is entitled to, namely 47 marks as per the score pattern. The learned counsel for the respondents also filed a score sheet of the petitioner, showing the mark of the petitioner and contended that the petitioner is entitled to only 37.9 marks out of 75 marks and is not eligible to be called for interview. The score sheet filed by the respondents would reveal that the respondents have applied the modified scoring pattern. It is already held that the respondents are not entitled to change the scoring pattern once the selection process has started. The learned counsel for the petitioner also filed a comparative chart showing the marks which the petitioner is entitled, marks awarded by the respondents and marks denied to the petitioner. The learned counsel for the petitioner submitted that the petitioner was denied or given less marks under different captions and pointed out the following captions:

(1) *S.No.I(d) training*

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



(2) S.No.IV International publication

(i) The petitioner was not given marks for article of petitioner as co-author.

(ii) 2 marks per article was modified as 0.2.

(iii) For Scientific book, no mark was awarded.

(iv) For editorial board for two journals, mark was given for only one publication.

24.The learned counsel for the respondents vehemently contended that with respect to two items viz., the articles published in journals were rejected as the said journals are junk journals. But, according to the counsel for the petitioner, the Vice-Chancellor also published in the said journals and therefore, the petitioner is entitled to marks for publication of articles. Secondly, there is no condition that marks will be allotted for publication in editorial board, the publisher must be different and if publisher is same, marks will be given for only one publication.

25.In view of the modification of score pattern after commencement of selection process, the petitioner is entitled to marks as per the score pattern published in the Website. As per the orders of this Court dated 12.09.2019, the petitioner attended the interview and one post is kept vacant.

26.Considering the above materials and judgments of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner, the respondents are directed to consider the credentials of the petitioner and award marks as per the original score card and if the petitioner gets minimum of 40 marks or above, consider the petitioner for appointment taking into consideration her performance in the interview.

27.With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Registrar,

Tamil Nadu Dr.J.Jayalalitha Fisheries University,
Vettar River View Campus, Nagapattinam.

2.The Dean,

Fisheries College and Research Institute,
Thoothukudi.

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



3.The Principal Secretary to Government,
The Government of Tamil Nadu,
Animal Husbandry (Diary and Fisheries),
Chennai.

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+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-30630[F] dated
29/09/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-30823[F] dated
30/09/2021)

W.P. (MD) .No.19616 of 2019
29.09.2021

MGJ(07.10.2021) 24P 6C