

18.05.2023

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W.P.A. No. 23752 of 2022

DR. MOHAMMAD FAIQUE

-VERSUS-

THE UNION OF INDIA AND OTHERS

Mr. Chittapriya Ghosh,
Mr. Somesh Ghosh,
Ms. Priyanka Saha
.. For the petitioner.

Mr. Kumar Jyoti Tiwari,
Ms. Sarda Sha
... For the Visva-Bharati.

Mr. Anil Kr. Gupta
...For the U.G.C.

The writ petitioner in this writ petition has prayed for a direction upon Visva-Bharati, Santiniketan to promote him to the post of Professor in Arabic, Persian Urdu and Islamic Studies following the Career Advancement Scheme (CAS, in short) under the U.G.C. Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (in short "U.G.C. Regulations, 2010").

The petitioner became an Associate Professor on December 04, 2018, and he became eligible for promotion under CAS to the post of Professor (Stage - 5)

from Associate Professor (Stage-4) after the completion of three years of service.

In the month of November 15, 2014, he submitted his application before the Chairman of Internal Quality Assurance Cell (IQAC, in short) of the Visva-Bharati for promotion under the said scheme.

The U.G.C. Regulations, 2010 have mandated Performance Based Appraisal System (PBAS, in short) for Career Advancement Scheme (CAS) promotion through Academic Performance Indicators (API, in short) under three board categories.

A. Contribution to Research:

Five Research Articles are examined by three external experts individually. Then these three sets of marks are added up and the final score is calculated from that total out of 50 marks.

B. Domain Knowledge and Teaching Practices:

The domain knowledge and the teaching practices of the applicant for Career Advancement Scheme Promotion are scrutinized and out of the points gained from the

academic activities of different descriptions the API score is calculated by the IQAC, Visva-Bharati, out of 30 marks as per Academic Performance Indicators Guidelines set out in University Grant Commission Regulations 2010 and also in the Performance Based Appraisal System Proforma as evolved by Visva-Bharati. The minimum requirement for qualifying in this assessment consists of 120 marks.

C. Interview Performance:

When the applicant qualifies in the above two stages then he/she is called to appear in an interview before a selection committee which is the third and last stage of the assessment. The score allotted to the Selection Committee is 20 marks for the interview.

The applicant should fulfill the “minimum eligibility period” (for getting a promotion to “Professor”, it is 3 years as Associate Professor).

The applicant should do “self-appraisal” to satisfy themselves of eligibility and then only should submit the application.

In the final assessment, the applicant should (a) fulfill minimum API scores and obtain (b) 50% in expert assessment. The subject experts for each of these assessments are chosen in a confidential process and they do their assessments confidentially and independent of each other.

It is not in dispute that the following marks were obtained by the petitioner in those three stages of assessment.

1. Contribution to Research: (50 marks)

Three external experts awarded average marks of 41 out of 50.

2. Domain Knowledge and Teaching Practices: (30 marks)

The petitioner scored 120 marks whereas the minimum requirement was 120 marks. Therefore, the petitioner has scored 30 out of 30 marks.

3. Interview Performance : (20 marks)

The petitioner was given 8 marks by the selection committee.

As per the aforesaid particulars, the petitioner would have scored 41+30+8 = 79 out of 100 marks against the minimum requirements of 50 marks.

However, the selection committee, which consisted of seven members, reduced the marks under the heading “Contribution to Research” and “Assessment of Domain Knowledge and Teaching Practices” in final selection from 41 to 25 and 30 to 10 respectively and awarded 8 marks for “Interview Performance.” Thus, the total marks awarded to the petitioner were 43 out of 100 as per the following details:

1. Contribution to Research = 25 out of 50
2. Assessment of Domain Knowledge and Teaching Practices = 10 out of 30
3. Interview Performance = 8 out of 20
- Total = 43 out of 100

For the sake of clarity the score sheet of the selection committee dated March 16, 2019, is reproduced:

Sl. No.	Nature of the candidate and Department	50%- Contribution to Research	30%- Assessment of domain Knowledge and teaching practices	20%- Interview performance	Marks obtained out of 100 (hundred)
1.	Dr. Mohammad Faique, Department of Arbic, Persian, Urdu and Islamic Studies, Visva-Bharati	25	10	8	43

4. Sd/-(illegible) 2. Sd/-(illegible)

3. Sd/-(illegible) 4. Sd/-(illegible)

5. Sd/-(illegible) 6. Sd/-(illegible)

7. Sd/-(illegible)

The petitioner, therefore, fell 7 marks short of the required 50 marks to be qualified as a Professor in the final selection.

Having regard to the aforesaid, I need not advert to the justification of the selection committee in scaling down the marks under the heading “Domain Knowledge and Teaching Practices” and awarding the marks under the heading “Interview Performance.” I assume that the marks awarded under the said headings by the selection committee are proper and justified. But if the selection committee had awarded the same marks as awarded by the expert committee under the heading “Contribution to Research”, he would have scored the required marks [10 (*Domain Knowledge and Teaching Practices*) + 41 (*Contribution to Research*) + 8 (*Interview Performance*)] = total 59 marks] for the promotion. Therefore, outcome of this writ petition depends on the question as to whether the selection committee was justified in reducing the marks of the petitioner from 41 to 25 under the heading “Contribution to Research.”

Appearing for the petitioner, Mr. Chittapriya Ghosh has argued that the notification of the University inviting application for CAS promotion dated January 7, 2013, and July 23, 2013, specifically provided that evaluation of the publication by the experts shall be factored into the weightage score while finalising the outcome of selection. Rule 6.0.7 of the U.G.C. Regulations, 2010 also provides for the same. The selection committee has not factored in the marks allotted by the expert committee and thereby acted in violation of the U.G.C. Regulations, 2010 with the oblique motive to ensure that the petitioner was not promoted under the CAS.

Mr. Chittopriya Ghosh, learned advocate appearing for the petitioner submits that this case is entirely covered by the judgment of this Court delivered in **[WPA 10132 of 2019 (Dr. Ms. Tanuka Das vs. The Union of India and others)]**. He further submits that the similar benefits should be extended to the petitioner since in this case also the petitioner's marks as awarded by the External Experts have been reduced drastically without providing any reason.

Mr. Kalyan Jyoti Tiwari, learned advocate appearing on behalf of the University, on the other hand, submits that the University had preferred an appeal against the judgment passed in **Dr. Ms. Tanuka**

Das (supra) before a Division Bench of this Court but the said appeal was withdrawn and subsequently the University preferred a Special Leave Petition against the said judgment. The Supreme Court has issued notice in that case without any stay order but the matter has not yet been decided by the Supreme Court.

He further relies upon a judgment reported at **(2018) 15 SCC 796 (Union Public Service Commission vs. M. Sathiya Priya and Others)** to argue that this Court should not be sit in appeal over the decision rendered by an expert committee in academic field.

I am of the opinion that the impugned selection process cannot be sustained and the petitioner should have been promoted to the post of Professor from the post of Associate Professor.

The score sheet of the selection committee has been quoted above. The said score sheet makes it clear that the members of the selection committee in the interview did not award marks individually. All the members awarded consolidated marks. The Supreme Court in the judgment reported at **(2015) 11 SCC 493 (Pradeep Kumar Rai v. Dinesh Kumar Pandey)** after noticing the judgment reported at **(1981) 4 SCC 159 (Lila Dhar v. State of Rajasthan)** held as follows:

“19. Now, so far as the question of awarding consolidated marks by all the panellists in the interview is concerned, we are in agreement with the finding of the learned Single Judge. The purpose of constituting multi-member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panellist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though not conclusive, whether each panellist applied his/her own mind independently. ...”

I am, however, not inclined to interfere with the selection process on the sole ground of awarding consolidated marks by the members of the selection committee.

The particulars of marking by the expert committee under the heading “Contribution to Research” are as follows:

a) Professor of Department	(9+9+10+9+8) = 45 out
of Persian faculty of Arts,	of 50
University of Delhi,	

b) Professor,	40 out of 50
Department of Persian faculty of	
Humanities, Jamia Millia Islamic	

University,

c) Professor,	7 out of 10
Department of English,	
Calcutta University (Retd.)	
Wajee Huddin, officiating head	
Department of Arabic & Urdu faculty	
of Arts, The Maharaja Sayajirao	
University of Boroda.	
Total = 92 of 110	
i.e. average 41 out of 50	

It is also necessary to quote regulation 6.0.7. of the U.G.C. Regulations, 2010, which provides as follows:

“6.0.7. The process of selection of Professor shall involve inviting the bio-data with duly filled Performance Based Appraisal System (PBAS) proforma developed by the respective universities based on the API criteria based PBAS set out in this Regulation and reprints of five major publications of the candidates.

Provided that such publications submitted by the candidate shall have been published subsequent to the period from which the teacher was placed in the Assistant Professor stage-II.

Provided further that such publications shall be provided to the subject experts for assessment before the interview and the evaluation of the publications by the experts shall be factored into the

weightage scores while finalizing the outcome of selection.”

There cannot be any doubt that a selection committee cannot violate the said U.G.C. Regulations, 2010, and is bound to factor the marks awarded by the expert committee in the final selection.

The selection committee, in violation of regulation 6.0.7. of U.G.C. Regulations, 2010, could not altogether ignore the evaluation of the expert committee with regard to the publications made by the petitioner.

In my view, if the selection committee differs with the expert committee on any ground, the reason for the same must be provided. The reasoning of the experts in support of their marking was before the selection committee. Though forceful argument was advanced on the authority of the selection committee to differ with the expert committee, the justification for the same could not at all be demonstrated. If the selection committee chooses to differ, the burden lies heavily upon it to demonstrate the justified reason for such difference.

In the present case, the documents related to the selection in question do not disclose any reason whatsoever as to why the selection committee drastically reduced the average of marks from 41 out of 50 to 25 out of 50. It is anybody's guess how the

selection committee awarded even lower than the lowest marks amongst three members of the expert committee. Nothing has been demonstrated to show the assessment of the three-member expert committee was at all factored in the final assessment in terms of regulation 6.0.7. of U.G.C. Regulations, 2010.

In view of the discussion, as above, the impugned selection proceeding is set aside. I am not inclined to remand back the matter to the selection committee once again. The petitioner retired from service on December 31, 2020. It is wholly unjustified to direct the petitioner again to face the ordeal of the interview at this stage.

The writ petition is accordingly allowed. The University will recalculate the salary, pension, and other retiral dues of the petitioner treating her to be promoted as Professor on the basis of the interview held on March 16, 2019, and release the same accordingly together with the arrears within two months from the date of communication of this order.

Accordingly, W.P.A. No. 23752 of 2022 is allowed.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)