

1 29-03-2023
AKG

WPA 30734 of 2013
Pankaj Kumar Mandal
Vs.
State of West Bengal & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Ajit Kumar Mishra,
Mr. Abhishek Dey
...for the Petitioner

Mr. Supratik Basu,
Ms. Bratati pramanick
...for the Respondent No.8

Mr. Anil Kr. Gupta
...for UGC

Ms. Nandini Mitra
...for Calcutta University

Unfortunately, this Court is unable to grant the relief sought by the petitioner in the present writ petition though he has suffered injustice due to the purported selection process conducted by the University of Calcutta.

The university published an advertisement to recruit an Assistant Professor for the Department of South and South East Asian Studies. As per the UGC Regulation of January 30, 2010, the eligibility criteria for the aforementioned post were specified. The university explicitly stated in the advertisement that prospective candidates must possess expertise in International Relations, History, or Economics to be considered eligible for the position.

It is an accepted fact that the petitioner possesses a Master's degree in History, whereas respondent no. 8 holds a Master's degree in Human Rights. Despite this, the selection committee chose respondent no. 8 for the aforementioned position. Consequently, the petitioner approached this Court to challenge the selection process.

No interim order was passed, and this writ petition has been pending in this Court for approximately a decade.

To justify the decision to appoint a candidate without the requisite qualifications, the university has disclosed a letter dated September 13, 2013, written by the Chairman of the selection committee to the Vice-Chancellor of the university. This letter was written after the selection of respondent no.8 when some questions were raised regarding her eligibility for the post in question.

The relevant paragraphs are quoted below:

“The candidate selected for the afore-mentioned post, Madhurima Chowdhury, qualifies for the said post as per the requirements indicated in the advertisement, including mandatory requirements of NET which she cleared in 2007.

The subject in which she had her Master's degree under the Calcutta University, i.e. Human Rights, is an interdisciplinary programme of studies, which is an integral part of all three areas of specialization mentioned advertisement-namely, in the

International Relations, History, and Economics.

Additionally, she is registered for Ph.D. level research, her subject being the "Right to Education for Scheduled Caste and Scheduled Tribes". This clearly falls under the parameters of required specialization within the broad canvass of Social Sciences”

In my view, the aforementioned letter fails to validate the selection process, even if the version of the Chairman is assumed to be correct.

An advertisement is a representation before the public at large.

The relevant advertisement clearly stated that only candidates with a background in History, Economics, or International Relations would be considered for the position. When the other candidates with a degree in Human Rights could not apply for the post in terms of the advertisement, respondent no.8 could not have been allowed to participate in the selection process. The requirement specified in the advertisement could not be diluted by the Chairman of the selection committee after the selection process was over.

The learned advocate representing the petitioner has correctly pointed out that respondent no.8 in her application form intentionally left the specialization column blank. This implies that respondent no.8 was aware that she was not an

eligible candidate for the position as per the advertisement. Nonetheless, the university proceeded to select her.

It is crucial to note the resolution of the selection committee's meeting. The same is reproduced verbatim.

“RESOLUTION OF THE MEETING OF THE SELECTION COMMITTEE FOR SELECTION OF ASSISTANT PROFESSOR (ISC) IN THE DEPARTMENT OF SOUTH & S.E. ASIAN STUDIES, UNIVERSITY OF CALCUTTA ON 23.07.13.

9 (Nine) candidates were called for interview and 7 (seven) candidates appeared before the Selection Committee.

Candidates were assessed on their academic attainment including research capability and potential," teaching ability and experience as well as general performance in the interview. Based on the overall performance, the following person/persons is/are recommended for the post of Assistant Professor in the Department of South & S.E. Asian Studies.

Two names are recommended to be kept in panel as well in order of preference. Candidates in the panel may be considered for appointment if the person selected refuses to join.

Selected Candidate: MADHURIMA CHOWDHURY

Panel: X

Sd/-
23.07.13
Prof. Radharaman
Chakrabarti (Chairman)

Sd/-
Prof. Ganganath Jha
(Chancellor's Nominee)

Sd/-
Prof. Samita Sen
(Vice-Chancellor's Nominee)

Sd/-
Prof. Partha Ghosh
(Vice-Chancellor's Nominee)

Sd/-
Prof. Sanjukta Bhattacharya
(Vice-Chancellor's Nominee)

Sd/-
Prof. Lipi Ghosh
(HOD of SSEAS)

Sd/-
Prof. Tapas Ranjan Middya
(SC/ST representative)”

This Court notes with surprise that although the resolution indicates that two names were recommended to be kept in the panel in order of preference, the selection committee did not prepare any panel. Instead, it only selected respondent no. 8 for the position.

Moreover, the university has failed to produce the score sheet prepared by the selection committee to demonstrate that respondent no.8 was selected in a fair manner and in compliance with the extant UGC recruitment rules. The minutes of the meeting of the selection committee as quoted above do not at all reveal that the said committee awarded any marks to

the aspiring candidates to determine their *inter se* merit. No criteria for such selection is apparent.

The university has submitted an affidavit-in-opposition that does not disclose the relevant documents related to the selection process.

During the hearing, this Court asked the university to produce the records related to the selection process. Unfortunately, the university submitted that the records pertaining to the selection could not be traced.

This, however, does not prevent this Court to hold that respondent no.8 was not eligible to apply for the post in question since the advertisement clearly stated that only History, Economics, and International Relations would be considered as relevant subjects for the post.

It is clear that respondent no.8 has been appointed with a qualification that fell outside the ambit of the advertisement.

This Court is convinced that the appointment process was solely aimed at selecting respondent no. 8 while disregarding other qualified and deserving candidates including the petitioner.

The learned advocate appearing for the petitioner has appropriately relied on the judgment reported at **(2014) 3 SCC 767 (Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University)**.

The relevant paragraph 23 of the said judgment is quoted below:

“23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters degree in MCA is available, the Board of Appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. The natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters of Computer Application.”

The facts involved in this case are almost identical to the aforesaid case. In that case also, despite an eligible candidate in terms of the advertisement being available, the selection committee offered the appointment to a candidate who was not eligible for the post in question. Such selection was interfered with by the Supreme Court.

During the pendency, respondent no. 8 was appointed as an Assistant Professor and subsequently promoted to the position of Head of the Department.

Meanwhile, the petitioner was also appointed as an Associate Professor at a college affiliated with Calcutta University.

These subsequent developments have rendered the present writ petition infructuous as far as the appointment of the petitioner to the post in question is concerned.

Having regard to the facts of this case, I am not inclined to interfere with the appointment of respondent no. 8. The interference with the selection at this juncture will not serve any effective purpose.

However, in light of the facts of the case, I direct the university and respondent no. 8 to pay Rs.1 lakh and Rs.5 lakh respectively to the petitioner towards the litigation costs and compensation for the damages suffered by him due to the illegalities in the selection process. Such payment should be made within a period of one month from the date of communication of this order.

With the aforementioned observations, the writ petition bearing number **WPA 30734 of 2013** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)