

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4777 OF 2019

Dr.Tukaram Vitthal Daud,
Age: 46 years, Occ : Service as Asst. Professor,
R/o. Plot No. 236,
Block-3, 4/1 + 2, Guru Datta Nagar,
Near Manavseva School,
Jalgaon, Dist. Jalgaon.

.. PETITIONER

VERSUS

- 1] The Hon'ble Chancellor,
Rajbhavan, Malbar Hill,
Mumbai.
- 2] Kaviyatri Bahinabai Chaudhari
North Maharashtra University,
Jalgaon
Through its Registrar,
Umavi Nagar, Jalgaon,
Tq. and District Jalgaon
- 3] The Vice Chancellor,
Kaviyatri Bahinabai Chaudhari
North Maharashtra University,
Jalgaon, Umavi Nagar,
Jalgaon, Tq. and Dist. Jalgaon.
- 4] Dr. Sudhir Bhagwan Bhatkar,
Age: 54 years, Occ : Service as Asst. Professor,
R/o. Vivekanand Nagar, Ramanand Nagar Area,
Jalgaon, Tq. And Dist. Jalgaon.

.. RESPONDENTS

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Mr.R.N.Dhorde, Senior Advocate i/b. Mr.V.R.Dhorde with
Mr.P.S.Dighe, learned counsel for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State

Mr.A.B.Girase, Advocate for the respondent nos.2 and 3.
Mr.V.D.Sapkal, Senior Advocate i/b. Mr.Sanket
N.Suryawanshi, Advocate for the respondent no.4.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 05.12.2022

Pronounced on : 07.02.2023

JUDGMENT :

1] By the present petition, the petitioner is challenging the order dated 16th March, 2019 passed by the respondent no.1 – Hon’ble Chancellor directing the respondent no.3 - Vice Chancellor, Kaviyatri Bahinabai Chaudhari North Maharashtra University, Umavi nagar, Jalgaon to terminate the services of the petitioner on the post of Associate Professor in the subject of Mass Communication and Journalism and also consequential order dated 20.03.2019 issued by the respondent no. 3 – Vice Chancellor, thereby terminating the services of the petitioner to the post of Associate Professor with effect from 20.04.2019.

2] **Brief facts leading to filing of the petition can be summarized are as under :**

i] The respondent no. 2 – University published advertisement on 04.10.2012 in the daily news papers, namely, Indian Express, Dainik Samrat, Dainik Punya Nagari, Dainik Divya Marathi etc. and also on the website of the University, thereby calling upon the applications for various posts including the post of Associate Professor from Open Category in the Department of Mass Communication and Journalism. In the said advertisement, the following qualification was prescribed for the post of Associate Professor in the Department of Mass Communication and Journalism :

i. Good academic record with Ph.D. degree in the concerned / allied / relevant disciplines.

ii. A Masters Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed).

iii. A minimum of 8 years of experience of teaching and or research in an academic research position equivalent to that of Assistant Professor in a university, college or accredited research institution / industry excluding the period of Ph.D. research with evidence of published work and a minimum of 5

publications as books and/or research/policy paper.

iv. Contribution to educational innovation, design of new curricular and courses, and technology mediated teaching learning process with evidence of having guided Doctoral candidates and research students.

v. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in the UGC Regulations, appendix III dated 30/6/2010.

ii] Pursuant to the said advertisement, the respondent no.2 received the applications for the post of Associate Professor in the Department of Mass Communication and Journalism, NMU, Jalgaon of three candidates viz. Dr. Tukaram Vitthal Daud [petitioner], Dr.Vishaka Murlidhar Garkhedkar and Dr.Sudhir Bhagwan Bhatkar [respondent no.4]. On scrutiny of the applications, Dr.Vishaka Murlidhar Garkhedkar and Dr.Sudhir Bhagwan Bhatkar were not found ineligible and the petitioner was the only candidates found eligible. The case of the petitioner was considered by the duly constituted Selection Committee under Section 76 of the Maharashtra

Universities Act, 1994 [for short 'the 1994 Act']. The said Selection Committee recommended the name of the petitioner, and accordingly, the petitioner was appointed on 17.12.2012 on probation period of 2 years in the Department of Mass Communication and Journalism. The said appointment was, thereafter, confirmed on 14.07.2015.

iii] Dr. Sudhir Bhagwan Bhatkar i.e. respondent no.4 challenged the appointment of the petitioner on the post of Associate Professor before the Hon'ble High Court of Bombay Bench at Aurangabad by filing a Writ Petition No.11467/2014. This Court, while hearing the above Writ Petition, passed the order dated 16.12.2014 observing that there is an alternate remedy provided under sub-section (7) of Section 76 of the 1994 Act and the said Writ Petition was disposed of, with liberty to the petitioner therein to file appropriate proceeding under Section 76 (7) of the 1994 Act before the Hon'ble Chancellor.

iv] The respondent no.4, thereafter, filed a representation under Section 76 [7] of the Act of 1994

before the Hon'ble Chancellor on 22.12.2014. The Hon'ble Chancellor, vide letter / order dated 13.01.2015, directed the respondents to file reply to the grievance raised by the respondent no.4. Thereafter, the Registrar of the respondent no.2 University submitted factual report along with the documents vide communication dated 02.06.2015. The Chancellor found that the report of the Registrar was vague and sketchy and directed the Vice Chancellor to examine the issue of appointment of the petitioner afresh and send factual report on specific points along with relevant documents.

v] Thereafter, the Vice-Chancellor appointed a three Member Fact Finding Committee. After making an enquiry and after recording the statement of the petitioner and others, the said Committee made its report. The said report was placed before the Management Council of the University and the same was accepted and approved. Thereafter, the enquiry report and other material collected by the University was placed before the Chancellor for

appropriate decision. The Chancellor gave hearing to the petitioner and the concerned parties and thereafter by impugned order dated 16.03.2019 directed respondent no.3 to terminate the appointment of the petitioner to the post of Associate Professor as per Section 102 (6) of the Maharashtra Public Universities Act, 2016 [for short 'the 2016 Act']. The respondent no. 3 in compliance with the order dated 16.03.2019 passed by the Hon'ble Chancellor, terminated the services of the petitioner to the post of Associate Professor with effect from 20.04.2019 vide order dated 20.03.2019. The petitioner has thus challenged the order of termination passed by the Hon'ble Chancellor and corresponding order passed by the Vice Chancellor terminating the services of the petitioner in the instant petition.

3] The petitioner submits that the termination order dated 20.03.2019 is passed by the Chancellor, is on the following grounds (i) that the petitioner did not have requisite qualification, in terms of teaching experience, (ii)

insufficient API score and (iii) non guidance to the Ph.D. students, which was the required qualification at the relevant time. Apropos above, the learned Counsel Mr.Dighe for the petitioner contends that the petitioner had the requisite qualification.

vi] Mr.Dighe, learned counsel for the petitioner contends that the principles of natural justice were not followed. He further contends that the petition at the behest of respondent no. 4 under Section 76 (7) of the Act of 1994 is not maintainable as he himself has undergone the selection process. He further contends that the decision of the Selection Committee of Experts should not have been re-examined by three Member Committee consisting of Registrar, Advocate and Officer junior in rank to the petitioner in the University.

vii] The petitioner has given a chart to show his educational qualification and teaching experience in his application, which is as under:

11. Educational Qualification :

Examination	University / Board	Month & Year of passing	Subjects SPL / Gen		Marks		% of Marks	Class /Div / Grade awarded
			Prin.	Sub	Obtained	Out of		
Matriculation SCC / SSLC	A'bad	March 1991	All		420/700		60%	I/A
Higher Secondary / Pre University / Intermediate	A'bad	March 1993	All		328/600		55%	II
Bachelor's Decree BA	Dr.BAMU A'bad	March 1996	Hist, Social, Political		1249/2500		51%	II
Master's Degree BJ	-. -	April 1997	Jour, Mass comm, PR		513/900		57%	II
M.Phil MMCJ	-. -	1998	PR, Mass Comm		649/1000		64%	A/I
Ph.D.	-. -	22 Oct 2002	Journalism		-		-	Awarded
Post Doctoral Degree / Dip.	-	-	-		-		-	-
SET/NET	-	-	-		-		-	-
Others	-	-	-		-		-	-

12. Teaching Experience :

a) Under Graduate: Total Experience : 12

Institution	Position held	Nature of Appointment	Subject		Period of Appointment with dates
			Special	General	
Appendix – IV (A) Special Sheet Attached.					

b) Post Graduate : Total Experience : 12

Institution	Position held	Nature of Appointment	Subject		Period of Appointment with dates
			Special	General	
Appendix – IV (A) Special Sheet Attached.					

13. No. of Projects and Grants sanctioned by various funding Agencies, if any :

Sr.No.	Year	Name of Funding Agencies	Whether Principal Investigator or Co-Investigator	Amount of project Rs.(in Lac)
1)	Nil			
2)				
3)				
4)				
			Total amount (Rs.)	

14. Research work supervised :

No. of students	Awarded	Registered	In Progress
M.Phil	Dr.BAMU Proposal submitted		
Ph.D.			

viii] The learned counsel for the petitioner submits that his total teaching experience is of 8 years and 10 months. In the Writ Petition, the petitioner has given his chart of teaching experience as under :-

Sr.	Particulars	Dr.T.V.Daund			
01.	Educational qualification	B.A., B.J. M.M.C.J. Ph.D. (22 Oct. 2002)		From	To
02.	Teaching Experience	1) Mahatma Gandhi Missions College of	Lecturer	23.10.2002 (After Ph.D.)	20.09.2007

		Journalism & Mass Communication, Aurangabad			
		2) MIT College of Mass Communication, Latur	Lecturer	26.09.2007	30.04.2011
		3) S.V.S.P. Mandal's Swami Vivekanand College, Udgir	Assistant Professor	16.06.2011	15.11.2011
				Total-8 Years 10 Months	
03.	API score	395 (calculated by Chairman of API Assessment Committee of this University).			
04.	Publications	Book-01 Articles-45 (22 considered by Chairman of API Assessment Committee) Journals-20 (08 National 06-International considered by Chairman of API Assessment Committee. Review-01			
05.	Research work supervised				

viii] The Selection Committee constituted of the following members, is as under :

Sr.No.	Name	Designation	
1.	Prof.Dr.Sudhir U.Meshram	Hon'ble Vice Chancellor	Chairman
2.	Prof.Dr.K.N.Munshi	Chancellor's Nominee	Member
3.	Prin.Dr.A.S.Paithane	Dean of the Faculty	Member

4.	Dr.T.R.Borse	In-charge Director	Member
5.	Prof.V.L.Dharurkar	Subject Expert	Member
6.	Pof.S.K.Kulkarni	Subject Expert	Member
7.	Pro.Dr.Ram Mohan Pathak	Subject Expert	Member
8.	Prof.Dr.B.A.Chopde	Chancellor's Nominee – Belonging to Reserved Category	Member
9.	Dr.A.B.Sali	Joint Director, Higher Education	Member
10.	Prof.Dr.A.M.Mahajan	Registrar	Secretary

ix] The statement showing the position held by the petitioner prior to applying the institution, as under :

	Designation	Name of employer	Date		Salary with grade	Reason for leaving
			Joining	Leaving		
1	Lecturer Contributory	Dept of Journalism Dr.BAMU Aurangabad	1998	2001	Consulted	Nil
2	Project fellow	Dept of Journalism Dr.BAMU Aurangabad	5 Oct 2000	8 th April 2003	3.000 monthly UGC	Higher of prospects
3	Lecturer	M.G.M. College of Journalism and Mass communication, Aurangabad	10 April 2001	20 Sept 2007	8000 Fix p	do
4	Lecturer	MAEER,s MIT Pune MIT Jansanwad College Latur	26 Sept 2007	30 April 2011	15000	do
5	Assistant Professor	Swami Vivekanand College Udgir	16 June 2011	15 November 2011	15000	Resigned

4] The learned counsel for the petitioner submits that as far as requirement of guidance to the Ph.D. students is concerned, the Selection Committee clearly stated that he had not guided any students, however, selection committee of the experts looked into the overall record of the petitioner and made a expert opinion that although he did not guide any Ph.D. students, his overall qualification is sufficient as such he can be considered for the post of Associate Professor and as such recommended the petitioner. The said recommendation should not have been commented upon by three Member Committee consisted completely non qualified people and reliance placed on three member Committee by the Chancellor is bad in law.

5] The learned counsel for the petitioner relies upon the Notification dated 18th July, 2018 whereby the condition of Ph.D. guidance is not essential condition by the UGC. The learned counsel for the petitioner submits that respondent no. 4 is not directly affected as he was not even

called for interview for being not having sufficient qualification and as such no enquiry under Section 76 (7) of the 1994 Act would have initiated.

6] The petitioner further contends that hearing before the Chancellor is done on 03.07.2018 and the impugned order is passed on 16.03.2019 and the judgment in this case is given after long period of time and as such the counsel should have called for further hearing before rendering the judgment. The learned counsel submits that no *mala fide* has been attributed to the Selection Committee, and thus, the decision of the Selection Committee in absence of any *mala fides* being expert body should not have been interfered.

7] The learned counsel for the petitioner submits that there is no provision under the Maharashtra Universities Act, 1994 to constitute a Fact Finding Committee to inquire into the qualifications of the petitioner, so also, the recommendation made by the statutorily constituted expert body and the petitioner having

been once selected by the expert selection body and his appointment having been confirmed by the University after two years period of probation, it was not available for the University to constitute a Committee to go into aspect of the selection of the petitioner and reverse decision of the Selection Committee.

8] It is also the contention of the petitioner that the subsequent report submitted by the Vice Chancellor was not given to him and as such there was denial of natural justice and he was not able to put up his case before the Vice Chancellor with regard to his approval to teaching post and API score. It is further the contention of the petitioner that the Vice Chancellor under whom enquiry commences, was also the member of the Selection Committee and that he had duly selected the petitioner without any protest. However, it is the contention of the petitioner that the Vice Chancellor is closely connected with the respondent no. 4 and after resuming the charge as Vice Chancellor, enquiry against the petitioner was started and all the authorities of

the University has acted in collusion including three Member Fact Finding Committee at the instance of the vice Chancellor to non suit the petitioner.

9] It is the contention of the petitioner that the petitioner submitted a detailed application to the Chancellor on 03.07.2018 requesting to supply necessary documents and requested to grant further date of hearing for submitting detailed reply on merits. The petitioner was also trying to engage an Advocate and tried to file his Vakalatnama but the Chancellor refused to accept it. The petitioner further submits that since he had asked for all the documents, no documents were given to the petitioner, and therefore, on the basis of record available with the petitioner, the petitioner has filed his reply.

10] The petitioner relies upon the Notification dated 18th July, 2018 and the regulations in respect of eligibility for the post of Associate Professor, as under :

II. Associate Professor :

Eligibility :

i) A good academic record, with a Ph.D. Degree in the concerned / allied / relevant disciplines.

ii) A Master's Degree with at least 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed).

iii) A minimum of eight years of experience of teaching and/or research in an academic / research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution / industry with a minimum of seven publication in the peer-reviewed or UGC-listed journals and a total research score of Seventy five (75) as per the criteria given in Appendix II, Table 2.

11] The learned counsel for the petitioner relies on the judgments in the cases of **Prakash Ratan Sinha Vs. State of Bihar & others** reported in (2009) 14 SCC 690, **Mr.Antonio Jose da Silva (D) thr. LRs Vs. M/s. Horizon Realtors** reported in 2015 (6) All MR 651, **Mrs.Celina Almeida Vs. Minister of Urban Development & Ors.** reported in 2013 (5) All MR 586, **Dr.Shailaja d/o. Bhujangrao Wadikar Vs. The Hon'ble Chancellor & Anr.** reported in

2013 (6) All MR 741, **D.Sarojakumari Vs. R.Helen Thilakom and others** reported in (2017) 9 SCC 478, **Pradeep Kumar Rai & others Vs. Dinesh Kumar Pandey & others** reported in (2015) 11 SCC 493, **State Bank of India & Subsidiary Banks Employees Union & another Vs. General Manager (Operations), State Bank of India & others** reported in 2003 (1) Mh.L.J. 28, **The Registrar, University of Mumbai & Anr. Vs. Sandeep Kumar Khatri** reported in 2006 (6) All MR 598, **The University of Mysore Vs. C.D.Govinda Rao & another** reported in AIR 1965 SC 491, **The Chancellor & another Vs. Dr.Bijayananda Kar & Others** reported in (1994) 1 SCC 169, **Anil Rai Vs. State of Bihar** reported in AIR 2001 SC 3173, **Neelima Misra Vs. Harinder Kaur Paintal & others** reported in (1990) 2 SCC 746, **B.C.Mylarappa alias Dr.Chikkamylarappa** reported in (2008) 14 SCC 306 and in the case of **Vikas Pratap Singh and others Vs. State of Chhattisgarh and others** reported in (2013) 14 SCC 494.

12] *Per contra*, the learned Senior Counsel Mr.Sapkal appearing for the respondent no.4 submits that

the qualification has to be teaching experience as per Section 2 (34) of the Act of 1994, in terms of which the petitioner has to be on the post of Assistant Professor for a period of 8 years. His appointment on the post of Assistant Professor has to be approved by the concerned University and the chart of the petitioner's teaching experience shows that there was no approval of University for the post held by him. The learned counsel further submits that in terms of the advertisement and the eligibility criteria on the date of application, it was mandatory to guide the Ph.D. students and that there can be no waiver of requirement of guidance of Ph.D. students, and thus, the petitioner did not have essential qualification to hold the petitioner eligible. The learned counsel further submits that API score was not available on the day of the application and subsequently procured.

13] Mr.V.D.Sapkal, learned Senior Counsel relies upon the judgment in the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School**

Society, Vizianagaram & Ors. Vs. M.Tripura Sundari Devi
reported in MANU/SC/0478/1990 (Civil Appeal No.2559 of
1988 decided on 20.04.1990).

14] Mr.A.B.Girase, learned counsel for the
respondent nos.2 and 3 has made similar submission as that
of respondent no. 4 and also pointed out that there is no
statement made anywhere in the petition or reply sought
by the universities to the show cause notice that the
petitioner had approval of any university on the post he
earlier held. The person, who issued a API certificate, was
not authorized to issue such certificate and that there is
specific letter issued by the authority giving API score that
the API score was not verified. The application form given
by the petitioner had not come through the proper channel
and that the remarks put on the application form do not
contain API score, however, the candidate has been called
for interview subject to producing API score. The learned
Advocate for University submits that the University
conducted inquiry and found out that on only one post of

Lecturer, the petitioner's post was approved by the University and it was for the period of 3 years and 8 months and the API score was issued by wrong authority. The learned counsel for the respondent nos.2 and 3 relies upon the judgments in the cases of **Sunil Gayaprasad Mishra Vs. Rashtra Sant Tukdoji Maharaj University** reported in (2012) 6 Bom CR 37 and **Sambhaji Shivaji Mali Vs. Honourable Vice Chancellor Shivaji University and others** reported in 2017 (2) Bom. C.R. 243.

15] Having considered the rival submissions, it is necessary to point out the relevant provisions of the Maharashtra Universities Act, 1994 relating to the appointment and the power of the Chancellor to go into the selection process. Section 76 of the 1994 Act deals with selection and appointment of university teachers, reads as under :

76. Selection and appointment of university teachers.

(1) Subject to the provisions of this Act, Statutes and Ordinances, the Vice-Chancellor shall, till the University Grants Commission's

scheme of recruitment becomes operative, appoint according to the order of merit and recommendations made by the selection committee, a university teacher.

(2) The selection committee for making recommendations for appointment of university teachers shall consist of the following members:-

(a) the Vice-Chancellor, or the Pro-Vice-Chancellor upon directions of the Vice-Chancellor-Chairman;

(b) one person, nominated by the Chancellor;

(c) the Dean of the faculty concerned;

(d) the Head of the university department or a head of the concerned [school or multi-disciplinary institution, nominated by the Vice-Chancellor,];

(e) [not less than three experts], nominated by the Management Council out of a panel of not less than six names of experts not connected with the university, recommended by the Academic Council, who have special knowledge of the subject for which the teacher is to be selected;

(f) One person belonging to Scheduled Castes or Scheduled Tribes [Denotified Tribes (Vimukta Jatis) and Nomadic Tribes] or Other Backward Classes, nominated by the Chancellor :

Provided that, a head, referred to in clause (d), who is a reader shall be a member of the selection committee for the selection to the posts of lecturer.

[(g) Director, Higher Education or his nominee not below the rank of Joint Director;

(h) Director, Technical Education or his nominee not below the rank of Joint Director.]

(3) The Registrar shall act as the Secretary of the committee.

(4) Every post of a university teacher, to be filled by selection, shall be duly and widely advertised, according to the draft approved by the Vice-Chancellor, together with particulars of the minimum and additional qualifications, as prescribed, the emoluments and number of posts to be filled, the number of posts which are reserved for the members of the Scheduled Castes or Scheduled Tribes or Other Backward Classes and reasonable time, to be determined by the Vice-Chancellor, shall be allowed within which the applicants may, in response to the advertisement, submit their applications.

(5) The date of the meeting of every selection committee shall be so fixed as to allow a notice of at least thirty days of such meeting, being given to each member; and the particulars of each candidate shall be sent to each member of the selection committee so as to reach him at least seven days before the date of meeting.

(6) The quorum to constitute a meeting of every selection committee shall be four

members, of whom at least two shall be persons nominated under clause (e) of sub-section (2):

Provided that, for the post of professor, the selection committee may in preference to the candidates who have applied and appeared before it, recommend for appointment, with all the requisite details, the name of any other person who may not have applied or appeared before it, but who is duly qualified and has to his credit exceptionally high academic achievements or proficiency in the specialisation or has extraordinary academic contribution, to be recorded in writing.

(7) If, on a petition by any person directly affected, or suo motu, the Chancellor, after making or having made such inquiries or obtaining or having obtained such explanations, including explanations from the teachers whose appointments are likely to be affected, as may be or may have been necessary, is satisfied that the appointment of a teacher of the university, made by any authority or officer of the university at any time was not in accordance with the law at that time in force, the Chancellor, may, by order notwithstanding anything contained in the contract relating to the conditions of service of such teacher, direct the Vice-Chancellor to terminate his appointment after giving him one month's notice or one month's salary in lieu of such notice, and the Vice-Chancellor shall forthwith comply and take steps for a fresh selection to be made. The person whose appointment has been so terminated shall be eligible to apply again for the same post.

(8) Any order made by the Chancellor, under the last preceding sub-section, shall be final and

a copy of the order shall be served on the teacher concerned by the Vice-Chancellor within three days from its receipt.

(9) It shall be the duty of the Vice-Chancellor to ensure that no payment whatsoever is made to any person, by way of salary or allowance, from the funds of the University, for any period after the termination of his services, and any authority or officer authorising or making any such payment shall be liable to reimburse the amount so paid to the University.

16] Section 2 (32) and 2 (41) of the 1994 Act are relevant for the purpose and reads as under :

2. Definitions.

In this Act, unless the context otherwise requires, -

(34) “Teacher” means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, [principal, deputy or assistant librarian and documentation officer in the university, and college librarian], Director or Instructor of physical education in any university department, conducted, affiliated or autonomous college, autonomous institution or department or recognised institution in the university;

(41) “University teacher” means a teacher appointed by the university.

17] Upon examination of the chart submitted by the petitioner of the teaching experience it can be noticed that

the petitioner was appointed on 15.01.2004 by the MGM College, Aurangabad and his approved qualification as per the respondent no.3 – University's affidavit is from 15.01.2004 to 20.09.2007 i.e. 3 years and 8 months only and the said appointment is on the post of Lecturer. The requirement is that the appointment has to be on the post equivalent to the Assistant Professor. It has to be noticed that the post of teacher under Section 2 (34) of the Universities Act is a full time post. The petitioner had not submitted the appointment orders as well as the approval granted by the concerned University. The petitioner, in the present petition, has also not produced approval letters to his earlier post. Section 2 (34) of the 1994 Act defines teacher as a full time appointment on approved post, and the advertisement indicates that the experience has to be of 8 years on the post of Assistant Professor. Only that experience is to be taken into consideration, which is on full time basis and which is approved by the concerned University and in the instant case, since the petitioner's teaching experience is not beyond period of 3 years and 8

months on approved post and it is not on the post of Assistant Professor, the petitioner cannot be said to be holding the requisite teaching experience.

18] From the above, it is obvious that the petitioner at the relevant time did not have requisite teaching experience to hold the post of Associate Professor. The question arises whether the required qualification could have been reduced by the Selection Committee which consists of Experts. This issue has been answered in various judgments. In the case of *Mohd. Sohrab Khan v. Aligarh Muslim University*, (2009) 4 SCC 555, it is held as under:-

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry

could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Master's degree-holder in the said subject would also be suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post.

27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

28. In *A.P. Public Service Commission v. B. Swapna*², at para 14 it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding qualification for appointment, if amended, during continuation of the process of selection do not affect the same.

29. Further at para 15 of *B. Swapna case*² it was held that the power to relax the eligibility

condition, if any, to the selection must be clearly spelt out and cannot be otherwise exercised. The said observations are extracted herein below: (SCC pp. 159-60, paras 14-15)

“14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned  counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See *P. Mahendran v. State of Karnataka*³ and *Gopal Krushna Rath v. M.A.A. Baig*⁴.)

15. Another aspect which this Court has highlighted is scope for relaxation of

norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on the rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramachandra Iyer v. Union of India*⁵ this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.”

30. In *Krushna Chandra Sahu (Dr.) v. State of Orissa*⁶ at SCC p. 13, para 34 it was held by this Court that “the Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication”.

19] In the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and others Vs. M. Tripura Sundari Devi** reported in [1990] 3 SCC 655, at para 6 has held as under:

6. It must further be realised by all concerned

that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

Thus in the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and others Vs. M. Tripura Sundari Devi (supra)** and **Mohd. Sohrab Khan [supra]** it has been held in the said judgments that unless advertisement clearly states that the qualifications are relaxable; it is not open for the Selection Committee to relax the qualification.

20] As regards the API score, the learned counsel for the petitioner contends that requirement is of 300 point

and he had 395 points. In the application of the petitioner, it was noticed that the petitioner did not have API score. Although, the University contends that the API score is wrongly calculated and issued by the authority, who was not authorised to give such a certificate. I have not gone into this aspect as the petitioner contends that the inquiry report as regards his API score was not given to him and he was prejudiced in his defence as regards his API score certificate. I leave API score out of consideration in this judgment and only deal with the aspect of 'guidance of Ph.D. students' and 'Eight years teaching experience', I proceed on the basis that the API score was in favour of the petitioner.

21] As regards guidance to the Ph.D. students, at the relevant time the petitioner has admitted that he had not guided any Ph.D. students. The contention of the petitioner is that it is not a mandatory requirement and that the selection committee having examined the entire qualification and having looked at them done away with

requisite qualification of guiding Ph.D. students and same cannot be questioned by a three member committee. The advertisement speaks about the basic qualification and the selection committee cannot do away with the basic qualification and it is not permissible for the Selection Committee to reduce the advertised qualification.

22] Having held that the petitioner is not qualified in terms of the advertisement. The Chancellor was right in directing removal of the petitioner from the post of Associate Professor. The Selection Committee cannot relax the basic qualification as advertised.

23] On the aspect where the respondent no.4 could have challenged the appointment of the petitioner. The respondent no.4 had filed Writ Petition No.11467/2014 before this Court and this Court, by order dated 16.12.2014, has granted liberty to the respondent no.4 to approach the Chancellor. Thereafter, the respondent no.4 had made representation to the Vice Chancellor and the Vice Chancellor had conducted enquiry and thereafter given

sufficient opportunity to the petitioner to defend his case. The petitioner contends that subsequent report of University was not made available to him and he was prejudiced in his defence qua his API score and approval to his teaching post given as teaching experience. However, the petitioner has not filed any approval letter of University before this Court. Even before this Court the petitioner has not been able to demonstrate that as on the cut off date he was having 8 years teaching experience on the approved post of Assistant Professor. The petitioner has admitted that he has not guided any Ph.D. student.

24] The petitioner has submitted that the subsequent report of the University i.e. the inquiry conducted by the University towards the teaching experience certificates and the API score, which was forwarded to the Chancellor, he did not get an opportunity to defend the same. However, in the Writ Petition also, the petitioner is not contending that he had approval to any of his teaching post, rather the contention of the petitioner is

that approval of University is not required to the teaching post. In the case of **Mohd. Sartaj and Anr. Vs. State of U.P. and Ors.** reported in **AIR 2006 SC 3492** at paras 17 and 18 it has been held as under:

17. In M. C. Mehta v. UOI, 1999 (6) SCC 237, this Court has laid down that there can be certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned interference under Article 226 is not necessary.

18. In the case of Aligarh Muslim University v. Mansoor Ali Khan, AIR. 2000 SC 2783, this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in M. C. Mehta v. UOI (supra), the exceptions laid down in S. L. Kapoor's case (supra) and K. L. Tripathi v. State Bank of India AIR 1984 SC 273, where it has been laid down that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved. The Court has also placed reliance in the matter of S. K. Sharma v. State Bank of Patiala, 1996 (3) SCC 364, and Rajendra Singh v. State of M.P. 1996 (5) SCC

450, where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In Viveka Nand Sethi v. Chairman, J. and K. Bank Ltd. and others (2005) 5 SCC 337, this Court has held that the principles of natural justice are required to be complied with having regard to the fact-situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply.....

Thus, in the instant sending the matter is a empty formality as the petitioner has not produced approval letters to any of his post nor does he contend that he holds approval of the University to the teaching post held by him as such he does not hold requisite teaching experience on approved post and even as per his teaching experience chart produced in the Writ Petition, the petitioner did not work for 8 years on the post of Assistant Professor.

25] Reliance was placed by the petitioner on the

judgment of **Pradeep Kumar Rai & others** [supra] on the aspect of the challenge by the respondent no.4 to the selection process. The respondent no.4 has not challenged the entire selection process, but only the selection of the petitioner as he was not holding the requisite advertised qualification. The respondent no.4 can challenge the appointment of the petitioner on the ground of not possessing basic advertised qualification. If the advertised qualification is permitted to be relaxed by the Selection Committee, number of candidates could have become eligible who were not before the Selection Committee.

26] The learned counsel for the petitioner relies on the judgment in the case of **Neelima Misra** [supra], wherein it has been held that in the matters of appointment in the academic field the Court generally does not interfere with the opinion expressed by the experts in the absence of *mala fide* alleged against the experts. At para 31 of the judgment of **Neelima Misra** (supra), the Hon'ble Supreme Court held as under :

31. The minimum qualification prescribed for the post is a doctorate in the subject of study concerned or a published work of high standard in the subject. The appellant then was found to have an alternate qualification though not a doctorate in the subject. The Selection Committee has accepted the alternate qualification as sufficient and did not relax the essential qualification prescribed for the post. The Executive Council appears to have committed an error in stating that the appellant has lacked the essential qualification and the Selection Committee has relaxed the essential qualification. The Chancellor was, therefore, justified in rejecting the opinion of the Executive Council.

Thus, in the case of **Neelima Misra** [supra] there was alternate qualification prescribed in the advertisement for candidates not holding Ph.D. and the same was accepted by the 'Selection Committee'. In the instant case, there is no alternate qualification prescribed to guidance of Ph.D. students and thus there is no 'expert opinion' of the Selection Committee that can be accepted. The Selection

Committee cannot do away with the advertised qualification of guidance of Ph.D. students.

26] Thus, this Writ Petition fails and is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC