



2023:DHC:9177



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Pronounced on: 20th December, 2023

+ **W.P.(C) 2737/2019**

DR. PURVA YADAV

..... Petitioner

Through: Mr. Rajshekhar Rao, Sr. Advocate
with Ms. Akanksha Choudhary and
Mr. Deepak Biswas, Advocate

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Monika Arora, Mr. Yash
Tyagi and Mr. Subhrodeep Saha,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“a) Issuance of a writ in nature of mandamus or any other writ, order or direction setting aside the letter dated 3.08.2018 bearing No.Acad.I/SSS/487/2578 issued by the Respondent rejecting the Petitioner's application for promotion from Assistant Professor (Stage 1) to Assistant Professor (Stage 2),
b) Issuance of a writ in nature of mandamus or any other writ, order or direction quashing the minutes of the Executive Council's 275th meeting held on 22.08.2018 vide which the recommendation of the Screening-cum-Evaluation Committee rejecting the Petitioner's promotion was accepted;*



- c) Issuance of a writ in nature of mandamus or any other writ, order or direction quashing the recommendation made by the Screening cum Evaluation Committee set up to evaluate the suitability of the Petitioner for promotion to Assistant Professor (Stage 2) in its meeting dated 25.7.2018;*
- d) Issuance of a writ in nature of mandamus or any other writ, order or direction against the Respondent to re-consider the Petitioner's application for promotion to Assistant Professor (Stage 2) in accordance with law;*
- e) Issue such further appropriate writ/order/direction as this Hon'ble Court may be deem fit and proper in facts and circumstances of the case."*

FACTUAL MATRIX

2. The petitioner is an Assistant Professor (stage-I) in the Geography Department of the respondent University and was appointed at the said post on 12th November, 2015. Before joining the respondent University, the petitioner was working at the same post in Miranda House, University of Delhi till the time she joined the respondent University.
3. While working as an Assistant Professor (stage I) in University of Delhi, the petitioner was also pursuing her Ph. D and completed the same in the year 2013, and therefore became eligible to be promoted to the post of Assistant Professor (stage II) as per the regulations notified by the University Grants Commission ('UGC' hereinafter) in the year 2010. The relevant provision i.e. Regulation 6.4.2 provides for a candidate with a Ph. D to be eligible for the said promotion if he/she has completed 4 years in the service.
4. When the petitioner joined the respondent University in the year 2015, she was placed on probation for a period of 12 months and later on confirmed as a permanent employee.



5. Subsequently, in the year 2016, the said UGC guidelines were amended *vide* UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and measures for the Maintenance of Standards in Higher Education) (4th Amendment) Regulations, 2016 and the method of calculation of scores was modified where the new tables as substituted by the said amendment provided for more objective way of calculation of the API scores.

6. Thereafter, the 'UGC Regulations, 2018' were notified which replaced the earlier 2010 regulations and the employees falling under the category for which the promotion is due were given an option to be considered for the promotion by following of either the 2010 Regulations or the new Regulations i.e. the one adopted in the year 2018.

7. Pursuant to confirmation of her employment, the petitioner applied for the promotion to Stage II *vide* application dated 20th April, 2017 confirming to the eligibility criteria as mandated for the promotion.

8. In the year 2018, the respondent University rejected the application of the petitioner in the meeting held on 25th July, 2018 and communicated the same to the petitioner *vide* order dated 3rd August, 2019 stating rejection of the petitioner's application for the said promotion. The said rejection was also duly approved by the Executive Council in their 275th meeting.

9. Thereafter, the petitioner and the other aggrieved employees sent multiple representations regarding denial of the said promotion under the Career Advancement scheme (CAS) despite fulfilling the eligibility criteria, however, no action was taken by the respondent University.



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10. Aggrieved by the same, the petitioner has preferred the present petition.

SUBMISSIONS

(on behalf of the petitioner)

11. Learned senior counsel appearing on behalf of the petitioner submitted that the rejection of the petitioner's application even before placing it before the Screening Committee is bad in law as the same is in violation of the procedure laid down in the UGC Regulations, 2010.

12. It is submitted that the Screening Committee did not circulate the minutes of the meeting in which the decision of rejection of the application of the petitioner was taken and therefore, Council did not deliberate upon the said rejection.

13. It is submitted that the process of the Screening-cum Evaluation Committee was completely arbitrary and shrouded in secrecy which is in contravention to the Regulation 6.0.1 of the UGC Regulations, 2010 which provides for a transparent, objective and credible methodology of analysis of the merits and credentials of a candidate.

14. It is submitted that the Screening Committee failed to adhere to the principles of transparency and did not provide any reasoning for the recommendations made to the Executive Council and only stated the decision of rejection, which was then approved by the Executive Council without any discussion on the same.

15. It is submitted that the alleged arbitrary decision making process also did not provide any opportunity to the petitioner and said rejection has badly impacted the career of the petitioner.



16. It is also submitted that the scope of the Screening Committee while considering the application for promotion from Stage I to Stage II of the Assistant Professor is limited to verification of the API scores secured by the candidates and if the same stands satisfied, the Committee ought to recommend the candidate for promotion and therefore, no discretion is provided to the Screening Committee in rejecting the name of the candidate once the API score and the eligibility criteria are met.

17. It is further submitted that the Executive Committee of the respondent University mechanically approved the recommendations made by the Screening Committee, whereas they ought to have applied their mind in the said decision and non-circulation of the minutes would amount to denial of information to the members on a matter they had to decide upon.

18. Therefore, in light of the foregoing submissions, the learned senior counsel for the petitioner submitted that the present petition may be allowed, and the reliefs be granted, as prayed.

(on behalf of respondents)

19. *Per Contra*, the learned counsel appearing on behalf of the respondent University vehemently opposed the present petition submitting to the effect that the same is liable to be dismissed being bereft of any merits.

20. It is submitted that the respondent University did not violate any of the petitioner's fundamental and legal rights, instead it performed its functions in accordance with the law. Further, the petitioner has not been able to advance any argument on the basis of material evidence which proves arbitrariness on the part of the respondent University.



21. It is submitted that the petitioner has alleged that she was meeting the eligibility criteria to be promoted but pertinently the obtainment of the APS score cannot be the sole metric to decide the promotion of an employee, rather there are other factors at play.

22. It is submitted that the promotion from stage I to stage II is done in accordance with the 'UGC Regulations on Minimum Qualifications for appointment of teachers and other academic staff in universities and colleges and Measures for Maintenance of Minimum Standard in Higher education, 2010' and Regulation 6 of the abovesaid Regulations provides the University to further assess the ability of the candidates for teaching and research aptitude.

23. It is submitted that Regulation 6.3.4 provides for promotion of the Assistant Professor from a lower grade to a higher grade and the same mandates the 'Screening-cum-evaluation committee' to adhere to the criteria as laid down in the API score.

24. It is submitted that Regulation 6.3.6 prescribes the Screening Committee to verify the score and then recommend the said candidate to the Executive Council about the *suitability* of the candidates to be promoted under the CAS scheme and the term *suitability* is not an objective term rather the same needs to be interpreted by the Screening Committee on a case to case basis and a decision related to the promotion or non-promotion of a particular candidate cannot be judicially reviewed.

25. It is further submitted that the process followed by the University was as per the regulations of the UGC where the petitioner was found not to be suitable for the promotion, therefore, her application was rejected.



26. In light of the foregoing submissions, the learned counsel for the respondent University prays that the petition being devoid of any merit may be dismissed.

ANALYSIS AND FINDINGS

27. Heard the learned counsel for the parties and perused the records.

28. By filing this petition, the petitioner has challenged the decision dated 3rd March, 2018 whereby, the respondent University had rejected the application for promotion of the petitioner which was subsequently approved by the Executive Council of the respondent University.

29. In his submissions, Mr. Rajshekhar Rao, learned senior counsel for the petitioner has submitted that the respondent University has misinterpreted the guidelines of the UGC where the word 'shall' as mentioned in the relevant provision, i.e. Regulation 6.3.6 of the UGC Regulations, 2010 is a term where the Screening Committee is only empowered to 'recommend' or 'not to recommend' the case of the petitioner on the basis of API scores and there is no weightage given to any other factors.

30. Therefore, the suitability is decided solely only on the basis of the API score and there is no scope for further discretion. It has been argued that such conduct of the respondent University violates the petitioner's fundamental and legal rights to be promoted to abovesaid post since she fulfills the eligibility criteria for promotion to the higher grade.

31. The said submissions by the learned senior counsel has been vehemently opposed by the learned counsel appearing for the respondent University where she has argued that the term *suitability* needs to be



interpreted as per the objectives set by the Screening Committee and the said decisions are not within the purview of the Courts.

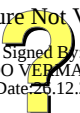
32. Therefore, this Court needs to adjudicate the present writ petition *first* on the question of whether the executive decision taken by the respondent University can be re-looked by this Court under the powers vested with this Court in its extraordinary writ jurisdiction. If yes, then whether the decision taken by the respondent University duly adhered to the Regulations of the UGC.

33. The Selection procedure for the promotion of an Assistant Professor (stage I) to stage II has been provided for in Regulation 6 of the UGC Regulations, 2010. The said provision is reproduced herein:

“6.0.1 The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages given to the performance of the candidate in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables to IX of Appendix III.

In order to make the system more credible, universities may assess the ability for teaching and/or research aptitude through a seminar or lecture in a classroom situation or discussion on the capacity to use latest technology in teaching and research at the interview stage. These procedures can be followed for both direct recruitment and CAS promotions wherever selection committees are prescribed in these Regulations.”

34. On perusal of the aforesaid provision, it is clear that the Universities are required to assess the candidate on the basis of their





ability to teach, research and capacity to use technology in their teachings and research. Furthermore, the said provision also mandates the Universities to adopt a transparent and credible methodologies to determine the merit of the applicants.

35. As per the procedure laid down by the said guidelines, the Universities are also required to initiate the process for promotion of the applicant as per the Regulation 6.3.4 which reads as follows:

“6.3.4 CAS promotions from a lower grade to a higher grade of Assistant Professor shall be conducted by a “Screening cum Evaluation Committee” adhering to the criteria laid out as API score in PBAS in the Tables of Appendix-III.”

36. As mentioned in the above cited provision, it is clear that the Universities are required to constitute a ‘Screening-cum-evaluation committee’ which shall adhere to the criteria laid out in the API score.

37. In adherence to the same, the respondent University had constituted the said committee for evaluation of the petitioner’s candidature for promotion to the higher grade of the Assistant Professor i.e. Stage II and decided the application whereby, the same was rejected and communicated to the petitioner *vide* order dated 3rd August, 2018 which is as under:

“..This is with reference to your application to consider your case for promotion to the post of Assistant Professor (Stage-2).

In this connection, it is to inform you that the Section Committee made the following recommendations:



"The Committee does not recommend Dr. Purva Yadav for promotion as Assistant Professor (Stage-2)".

Your suitability for promotion as Professor will be considered under repeat process as per UGC Regulations 2010 and its Amendment) 2016, which inter-alia provides as under:-

6.3.12(C)

"If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment his/her promotion will be deemed to be from the later date of successful assessment."

This is for your kind information..."

38. As per material on record, the decision was then communicated to the petitioner and was taken up by the Executive Council in their 275th meeting wherein the Council approved the decision of rejection of the petitioner's application..

39. Before getting into the merits of the said decision, it is imperative for this Court to visit the settled position of law regarding interference with an executive decision where a decision regarding suitability of an employee seeking promotion under certain scheme is taken.

40. In many cases, there arise a conflict between the terms 'eligibility' and 'suitability' where the parties try to make a case benefiting themselves and sometimes argue that the said words are interchangeable, however, the meaning of the said terms has been differentiated by the Hon'ble Supreme Court and this Court time and again and therefore, the law regarding interpretation of both the terms is settled



41. In *Mahesh Chandra Gupta v. Union of India*, (2009) 8 SCC 273, the Hon'ble Supreme Court discussed the difference in both the terms and held as under:

“39. At this stage, we may state that, there is a basic difference between “eligibility” and “suitability”. The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of suitability. Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word “consultation” finds place in Article 217(1) whereas the word “qualify” finds place in Article 217(2).

40. This dichotomy is succinctly brought out in Constitutional Law of India by H.M. Seervai, 4th Edn., at p. 2729, which is quoted hereinbelow:

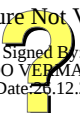
“From Article 217(1) as enacted in 1950 the following things are clear. First, Article 217(1) provided for the appointment of only permanent High Court Judges. They were permanent in the sense that they continued to hold their office till they attained the age of 60 years. They were not ‘permanent’ as opposed to Additional Judges who held office for a period not exceeding 2 years, because in 1950 our Constitution did not provide for Additional Judges. Secondly, Article 217(2) prescribed the qualifications which a person must possess before he could be appointed a High Court Judge. Thirdly, Article 217(1) provided the procedure to be followed before a person was appointed a High Court Judge. That procedure was designed to test the fitness of a person to be appointed a High Court Judge: his character, his integrity, and his competence in various branches of the law, and the like. In recruiting a person from the Bar, his



experience in different kinds of litigation would also be taken into account. The thing to note is that Article 217(1) provides for a once for all test [Ed.: Emphasis in original.] of a person's fitness to be a High Court Judge. A person who has passed that test is subject to no other test of fitness but will continue to hold his office till he attains the age of retirement which had been fixed at 60 years till 1963. But once appointed, his performance on the Bench may be good, bad or indifferent. His judgments and orders may be subject to appeal in the High Court, and are certainly subject to appeal to the Supreme Court under Article 136, if not under other articles of Chapter IV of Part VI.”

41. *The appointment of a Judge is an executive function of the President. Article 217(1) prescribes the constitutional requirement of “consultation”. Fitness of a person to be appointed a Judge of the High Court is evaluated in the consultation process (see Basu's Commentary on the Constitution of India, 6th Edn., p. 234). Once this dichotomy is kept in mind, then, it becomes clear that evaluation of the worth and merit of a person is a matter entirely different from eligibility of a candidate for elevation. Article 217(2), therefore, prescribes a threshold limit or an entry point for a person to become qualified to be a High Court Judge whereas Article 217(1) provides for a procedure to be followed before a person could be appointed as a High Court Judge, which procedure is designed to test the fitness of a person to be so appointed: his character, his integrity, his competence, his knowledge and the like.*

42. *Hence, Article 217(1) and Article 217(2) operate in different spheres. Article 217(1) answers the question as to who “should be elevated” whereas Article 217(2) deals with the question as to who “could be elevated”. Enrolment of an advocate under the 1961 Act comes in the category of who “could be elevated” whereas the number of years of actual*





practise put in by a person, which is a significant factor, comes in the category as to who “should be elevated”.

43. One more aspect needs to be highlighted. “Eligibility” is an objective factor. Who could be elevated is specifically answered by Article 217(2). When “eligibility” is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of “suitability”, stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in Supreme Court Advocates-on-Record Assn. [(1993) 4 SCC 441] and Special Reference No. 1 of 1998, Re [(1998) 7 SCC 739].

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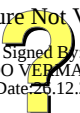
71. “The overarching constitutional justification for judicial review, the vindication of the rule of law, remains constant, but mechanisms for giving effect to that justification vary.”

Mark Elliott

“Judicial review must ultimately be justified by constitutional principle.”

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In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, “eligibility” is a matter of fact whereas “suitability” is a matter of opinion. In cases involving lack of





“eligibility” writ of quo warranto would certainly lie. One reason being that “eligibility” is not a matter of subjectivity. However, “suitability” or “fitness” of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.

72. Appointment under Article 217(1), vis-à-vis qualification under Article 217(2), is the function of participatory integrated process in which there is deliberation and consultation between the Supreme Court Collegium and the High Court Collegium. In cases of consensus, the question of primacy does not arise. The Supreme Court Collegium does not sit in appeal over the recommendations of the High Court Collegium.”

42. The aspect related to the interpretation of the said terms was again discussed by the Hon’ble Court in ***Union of India v. Manomoy Ganguly, (2018) 9 SCC 65***, whereby the Hon’ble Court referred to the literal meanings of the term and their applicability in the cases pertaining to appointment to a certain position. The relevant paragraphs of the judgment are reproduced herein:

“42. When we read the aforesaid Para (i) as a whole, we find force in the submission of the appellant that the word “inter se” applies both to seniority as well as suitability. Therefore, “inter se suitability” is also to be assessed inasmuch as this assessment is “in the light of their earlier experience of serving in a particular service”. As far as consideration on the parameters of “inter se seniority” is concerned, it would mean that a person who is senior gets precedence. To this extent, there is no quarrel. Question is as to what meaning is to be assigned to “inter se suitability”. Two questions arise from the above. First, what is the meaning of “suitability”.



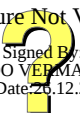
Second, how the expression “inter se suitability” is to be construed i.e. whether it should be understood as choosing a “more suitable” officer for appointment as DGsMS. As far as inter se suitability is concerned, all the eligible officers in the rank of Lt. General (& equiv.), having regard to their earlier experience of serving in particular services, they are to be considered for appointment as DGsMS of services [i.e. DGMS (Army)].

43. *Let us first consider the meaning of “suitability”.*

44. *In English parlance, the word “suitable” is assigned the meaning as “appropriate, fitted for the purpose or acceptable”. Concise Oxford Dictionary defines the word “suitable” as “well fitted for the purpose; appropriate”. This ordinary meaning is to be given effect to as a general guide, unless this expression is given special meaning in a statute or rule in administrative instructions. In R. (Quintavalle) v. Human Fertilisation and Embryology Authority [R. (Quintavalle) v. Human Fertilisation and Embryology Authority, (2005) 2 AC 561 : (2005) 2 WLR 1061 : 2005 UKHL 28] , the House of Lords remarked that “the word “suitability” is an empty vessel which is filled with meaning by context and background”.*

45. *In service jurisprudence, where the word “suitable” is normally examined from the point of view as to whether a particular person is suitable to hold a particular post, it is construed as “fit” to hold that post. It would mean that the job profile and job requirement of a particular post would be seen and then, going by the calibre, competence, attributes, skill and experience of the candidate, it would be ascertained as to whether such a person would be able to discharge the duties of the post i.e. whether he is suited to carry out the functions of the post, to the satisfaction of his employer.*

46 *[Ed.: Para 46 corrected vide Official Corrigendum No. F.3/Ed.B.J./55/2018 dated 12-10-*





2018.] . It, thus, follows from the above that the person to be eligible should qualify the following conditions:

- (i) the officer should be in the rank of Lt. General (& equiv.);
- (ii) such an officer should be holding the post of Comdt. AM C&C; and
- (iii) he should have a minimum remainder service of one year from the date of occurrence of the vacancy.

47. Adverting to the second question, the prefix “inter se” has also to be given some meaning as it cannot be rendered otiose. Therefore, whereas while assessing “suitability”, it has to be seen that a particular officer is not unfit for the post, when it comes to “inter se suitability”, it has reference to assessing the suitability of all eligible officers and thereafter finding who is more suitable to occupy such a post. We have to keep in mind that these are very high ranking posts and, therefore, the competent authority is supposed to choose a more suitable officer for such posts. We are of the opinion that for expressing such an intention, the Circular could have been worded more appropriately and with clarity to avoid such doubts. However, since the word “inter se” is used, it implies that the intention behind laying down this criteria was to give these posts to a better suited person after evaluating their inter se suitability. Of course, while doing this exercise seniority of an officer is also to be given due weightage, meaning thereby if the seniormost person is competent to hold the post, he is to be given preference. Therefore, we conclude that the view of the AFT that the post of DGMS (Army) is to be filled by the officer on the strength of “seniority-cum-suitability”, where seniority is a decisive factor and suitability is a secondary factor, is not correct. In the entire discussion resting with the aforesaid view, the Tribunal ignored the fact that it is not only seniority and suitability simpliciter but “inter se”



seniority and suitability. The expression “inter se” is totally ignored and there is no discussion thereupon at all, which has led the AFT to take wrong view insofar as interpretation of the criteria laid down in the Circular dated 10-7-1992 is concerned, which talks of “inter se seniority and suitability”.

43. The question of judicial interference when the appointment/promotion criteria specifically prescribe for determining the suitability of a person again came up recently before the Hon’ble Supreme Court in the case of ***Anna Mathews v. Supreme Court of India, (2023) 5 SCC 661***, whereby, the Hon’ble Court referred to the above cited judicial dicta and held that the term suitability with regards to appointment is not something under the clear ambit of the writ Courts.

44. Therefore, the perusal of the above-cited judicial dictum clears the difference between both the term, where *eligibility* can be determined objectively, however, the term *suitability* as provided for in the relevant regulations need to be determined on a subjective criteria.

45. As mentioned earlier, the interpretation of the term *suitability* is not something that needs to be done by the judiciary, rather it has different meanings where the experts entrusted to determine the same are expected to discharge their duties and interpret the suitability of an individual on a case to case basis.

46. The doctrine of separation of powers as enshrined in the Constitution of India is one of the important principles that all the organs of the democracy need to adhere to. The question of interference of the Courts in an executive decision normally does not occur if the said decision does not suffer from blatant illegality.



47. In the present case, the learned counsel for the respondent University has contended that the Screening-cum-Evaluation committee did not find the petitioner suitable for promotion, therefore, rejected her application for the same and the said decision cannot be looked into by this Court as the same is not within the powers conferred to it under Article 226 of the Constitution of India.

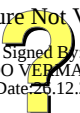
48. While this Court agrees with the said contention, and does not want to act in a manner that may be termed as judicial overreach, at the same time, this Court needs to analyze whether the said decision has been taken by duly following the procedure or not. Therefore, it is imperative to analyze whether the respondent University had followed the due process as provided for under the UGC Regulations for the said promotion or not.

49. As reproduced earlier, Regulation 6.0.1 mandates the Universities to opt for transparent procedure for the decision making. Therefore, this Court deems it appropriate to adjudicate whether the method adopted by the respondent University was transparent or not.

50. As per material on record, the said decision of rejection of the application was communicated to the petitioner even before it was approved by the Executive council of the respondent University.

51. The material on record suggests that the Executive Council is the highest decision making body of the respondent University consisting of the Vice-Chancellor and other senior members of the University. The said Council also consists of a faculty representative who had opposed the said rejection of candidature as the same did not provide any reasons.

52. The non-providing of reasons for the said rejection can only be termed as an opaque process and the same is prohibited under the





Regulations of the UGC which clearly mandates the Universities to opt for transparency in their decisions.

53. At last, it is imperative for this Court to determine whether the decision of the Screening Committee needs further scrutiny by the higher decision making body in the respondent University. For the same, it is pertinent for this Court to refer to the relevant provision of the UGC Regulations, 2010 i.e. Regulation 6.3.6 which is as under:

"The Screening cum Evaluation Committee on verification/evaluation of API score secured by the candidate through the 'PBAS' methodology designed by the respective university based on these Regulations and as per the minimum requirement specified: (a) in Tables II and III for each of the cadre of Assistant Professor; shall recommend to the Syndicate/Executive Council/Board of Management of the University about the suitability for the promotion of the candidate(s) under CAS for implementation."

54. On perusal of the aforesaid provision, this Court believes that the decision taken by the Screening Committee had to be placed before the decision making body of the respondent University and the said body was responsible to deliberate upon the same and then decide the candidature of the applicant.

55. In the present case, the decision regarding the said rejection was communicated to the petitioner on 3rd August, 2018, however, the approval of the Executive Council was taken on 23rd August, 2018.

56. The aforesaid chain of events clearly suggests that the decision of the Screening-cum-evaluation committee was rendered final and no discussion took place with regards to the said decision in the Executive



Council's meeting, asserting towards the assumption that the Council is merely to approve anything without applying its mind.

57. The minutes of the meeting as placed on record by the respondent University also suggests the same. The relevant part of the said minutes is as under:

"...The Committee does not recommend Dr. Purva Yadav for promotion as Assistant Professor (Stage - 2)..."

58. The perusal of the relevant part of the minutes clearly suggests that no further reasoning was provided either by the Screening-cum-evaluation committee or by the Executive Council, thereby making the entire process opaque which is clearly in contravention to the Regulations of the UGC.

59. Therefore, the decision can only be termed as non-transparent as the same does not provide for the reasons for rejection of the candidature of the petitioner despite her fulfilling the criteria i.e. securing an API score above the minimum threshold.

60. In light of the same, this Court is of the view that the decision of rejection of petitioner's candidature for promotion does not conform to the procedure prescribed under the UGC Regulations mainly for two reasons, *firstly* being the opacity in the decision making where the suitability of the candidate has not been determined on the objective criteria, rather the candidate was conveyed the decision without providing the reasons for her rejection, and *secondly* that the Executive council also did not discuss the aspect of suitability and merely approved the decision of the Screening-cum-evaluation Committee without applying its mind to



the decision on merits, rather it passed its decision considering it to be a mere formality which is against the true spirit of its existence. It is apparent that the basic purpose of the formation of the Executive Council is contravened by its members since it failed to adhere to the due process of appointment/promotion/decision making as prescribed by the aforesaid Regulations and also under the Constitution of India.

CONCLUSION

61. The promotion of an employee is an important consideration for the individual in their career. Denying of the rightful promotion is something that hinders the optimum performance of the individual and therefore, the employers are duty bound to follow due process while determining the suitability of their employees for the promotion.

62. In the present case, the non-adherence to the procedure as prescribed by the body governing the functioning of the educational institution has clearly been established where the respondent University did not fully comply with the provisions rather deemed it necessary to do mere formality by constituting the Screening-cum-Evaluation Committee.

63. Even after fulfilling the eligibility criteria, the petitioner was denied the promotion on reasons of her being unsuitable for the same. As clarified earlier, the term *suitability* is not subject to the interpretation of this Court, however, this Court is duty bound to make sure that the respondent University provides reasons for the said denial as the same impacts the career of the petitioner.

64. Therefore, in light of the foregoing discussion, this Court deems it appropriate to issue the writ of mandamus, thereby, directing the



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respondent University to completely adhere to the guidelines/Regulations formulated by the UGC and initiate a fresh process to evaluate the petitioner's candidature for promotion to the Stage II.

65. In view of the above discussions of facts and law, the present writ petition is allowed and the impugned orders/decisions dated 3rd August, 2018 and 23rd August, 2018 are set aside.

66. Accordingly, the instant petition stands disposed of along with pending applications, if any.

67. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 20, 2023
gs/av/ryp