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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 5th April, 2023

+ W.P.(C) 2239/2016 & CM APPL. 9671/2016

DR. PRAVIR KUMAR Petitioner

Through: Mr. S. Sunil, Advocate.

versus

DELHI TECHNOLOGICAL
UNIVERSITY AND ANR.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Aliza
Alam and Ms. Laavanya Kaushik,
Advocates.

+ W.P.(C) 2650/2016

DR. JAI GOPAL SHARMA Petitioner

Through: Mr. Mohinder J.S. Rupal and
Mr. Hardik Rupal, Advocates.

versus

DELHI TECHNOLOGICAL UNIVERSITY..... Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Aliza
Alam and Ms. Laavanya Kaushik,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. W.P.(C) 2239/2016 is filed by Dr. Pravir Kumar seeking quashing of the impugned order dated 29.02.2016 whereby his appointment to the post of Associate Professor in Delhi Technological University/Respondent No.1 (hereinafter referred to as the

‘University’) has been declared void *ab initio*. Writ of mandamus is

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sought to grant all consequential reliefs arising out of quashing of the impugned order. W.P.(C) 2650/2016 has been filed by Dr. Jai Gopal Sharma for setting aside order dated 04.03.2016 whereby his appointment as Associate Professor has been declared void *ab initio*. Quashing of inquiry proceedings and the show-cause notice is also sought with a further direction to the University to treat the Petitioner as a confirmed employee on completion of probation period of one year, which expired on 15.06.2013. Since the two writ petitions arise out of the same Inquiry Committee's Report and reasons of termination are identical as also the fact that the legal issues are common, with the consent of the parties, the petitions were heard together and are being decided by a common judgment. Facts to the extent they are different in the two petitions are adverted to hereinafter.

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2. On 03.12.2011, an Advertisement was published in leading newspapers and on the University website, inviting applications from candidates having strong zeal for teaching, research and innovation for the post of Professor in PB-4 with Academic Grade Pay of Rs.10000/- and Associate Professor with Academic Grade Pay of Rs.9000/-. Applications were invited for 19 disciplines, one of them being Bio-Technology. Two posts of Professors and four of Associate Professors were advertised in the discipline of Bio-Technology.

3. Present petition concerns appointment to the post of Associate Professor. Petitioner applied against the Advertisement, going by the essential educational qualifications, relevant experience and additional desirable qualifications, notified therein. Essential qualifications prescribed were 'Ph.D. in the relevant area along with 1st class in B.Tech./B.E. and M.Tech./M.E. degrees'. The Advertisement also

contained 'Notes' and a 'Special Note', which, according to the Petitioner, dispensed the essential qualifications prescribed in the Advertisement. Since this petition concerns the essential qualifications only and Special Note (ix), the same is extracted hereunder, for ready reference:-

*"For the Discipline of Bio-Technology, candidates possessing B.Tech./BE and M.Tech./ME Degree in Bio-Informatics and Bio-Chemical Engineering are eligible. **The candidates possessing Master of Science, in Applied Bio-logical Sciences/ Zoology/ Botany/ Microbiology/ Genetics and Ph.D in Applied Biological Sciences are also eligible.**"*

4. Petitioner avers that though he did not possess the essential qualifications mentioned in the Advertisement in the column 'essential qualifications', he was possessing the requisite qualifications stipulated in Special Note (ix) i.e. Masters of Science in Zoology and Ph.D. in Applied Biological Sciences and therefore, applied for the post of Associate Professor in the discipline of Bio-Technology. Petitioner was called for interview on 27.04.2012 and was subsequently recommended for appointment by the Selection Committee, duly constituted under Clause 16(2) of the First Statutes of Delhi Technological University (First Statutes), 2009 published in Delhi Gazette dated 13.08.2009 (hereinafter referred to as the 'First Statutes').

5. Recommendations of the Selection Committee were sent to the Board of Management, which unanimously approved the recommendation in its meeting convened on 24.05.2012. Pursuant thereto, letters of appointment were issued to 38 selected candidates for the posts of Professor/Associate Professor, out of which 24 joined. Appointment letter dated 31.05.2012 was issued to the Petitioner, placing him on probation for one year, extendable at the discretion of the Appointing Authority. The appointment was terminable by one

month's notice to the appointee. Petitioner continued on probation beyond one year without extension and on 07.08.2012, an Office Order was issued including Petitioner's name in the sanctioned strength of the University.

6. Pursuant to certain frivolous complaints filed against the selection process of appointment to the post of Associate Professor in the discipline of Bio-Technology, litigation ensued starting from filing a Suit bearing No.96/2012 by Delhi College of Engineering Teachers' Association ('DCETA') before the Trial Court, which was dismissed. Writ petitions were filed in this Court including a PIL being W.P.(C) 709/2013, which was dismissed by the Court. DCETA filed another writ petition being W.P. (C) 7885/2013 in this Court which too was disposed of. Finally, a Committee was constituted by the then Hon'ble Lieutenant Governor, Chancellor of the University, for conducting inquiry into the recruitments made under the Advertisement dated 03.02.2011 and later years. Committee comprised of senior IAS officers and was headed by Sh. R. Narayanaswami, retired IAS officer. On the basis of the report dated 23.07.2014, rendered by the Committee, a show-cause notice dated 29.05.2015 was issued to the Petitioner, stating that he did not possess the prescribed qualifications for the post of Associate Professor and therefore, his services were liable to be terminated.

7. Petitioner responded to the show-cause notice on 01.06.2015 and denied the allegations that he did not possess the essential qualifications and pointed out that no opportunity of hearing or the documents were provided to him. Petitioner also filed W.P.(C) 5999/2015 challenging the show-cause notice and seeking restraint against the University from terminating his services. Writ petition was disposed of by order dated 15.06.2015 directing the University to

grant oral hearing to the Petitioner within eight weeks from the date of the reply dated 01.06.2015 and thereafter take a decision on the show cause notice within four weeks. Liberty was granted to the Petitioner to challenge the final order, if adverse to him.

8. Petitioner was called for a personal hearing scheduled on 19.08.2015, which the Petitioner attended and made submissions and the proceedings were video recorded. After passage of almost six months, the impugned order dated 29.02.2016 was issued declaring the appointment of the Petitioner as void *ab initio*.

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9. Facts to the extent, they are different are, that Petitioner holds a Ph.D. degree from University of Delhi and also M.Sc. degree (1st class) in the same subject from Meerut University, specialising in Fish and Fisheries. Petitioner undertook Post-Doctoral research work in Kyoto University, Japan in Marine Bio-technology. He was awarded Senior Research Associateship by the Council for Scientific and Industrial Research ('CSIR') for research work in environmental Bio-Technology. Petitioner avers that he is a recipient of many awards and fellowships and his total research experience at the time of applying with the University was 18 years with more than 20 publications to his credit. Before joining the University, Petitioner was working as a Gazetted Officer on the post of Scientist 'C' in the Ministry of Earth Sciences, Government of India from 2006 to 2012.

10. Considering himself eligible for the post of Associate Professor in the Department of Bio-Technology under Special Note (ix), Petitioner sent his application on 21.12.2011, through proper channel, while he was working as Scientist 'C' in the Ministry of Earth Sciences, Government of India. Petitioner was called for interview on 12.05.2012 by the Selection Committee constituted in accordance with

Clause 16(2) of the First Statutes including three Experts who were not connected with the University and were eminent academicians in their respective fields, and was recommended for appointment.

11. On 31.05.2012, Petitioner received an offer of appointment, which he accepted on 05.06.2012 and joined on 15.06.2012. As per the terms of the Appointment letter, Petitioner was to be placed on probation for one year extendable at the discretion of the Appointing Authority. Petitioner lost his lien on the post of Scientist 'C' with his erstwhile employer, Ministry of Earth Sciences. Petitioner was sanctioned his annual increments in the years 2013 and 2014 and during his tenure, he discharged several responsibilities of administrative nature in addition to his academic assignments of teaching and research.

12. All of a sudden, Petitioner received a show-cause notice dated 29.05.2015, referring to an inquiry by a Committee constituted under the directions of the Hon'ble Lieutenant Governor of Delhi, asking him to show-cause as to why his services be not terminated on the ground that he did not possess the requisite qualifications. Petitioner sent a letter refuting the allegations and pointing out that the inquiry was held behind his back. Petitioner also approached this Court by filing W.P.(C) 5984/2015, which was disposed of on 12.06.2015 directing the University to grant an opportunity of showing cause to the Petitioner with reference to the material against him and providing a copy of the Inquiry Report. The decision was to be taken by the University within eight weeks after granting oral hearing to the Petitioner. Liberty was granted to the Petitioner to file a separate petition seeking confirmation of his probation.

13. After supplying incomplete and illegible copy of the Inquiry Report on 13.07.2015, meeting of the Board of Management was held

on 17.07.2015 and although Petitioner was called for oral hearing, without hearing him or looking into his reply, decision was taken to dispense with his services. The Board comprised of members who were signatories to the Resolution dated 30.05.2011, passed against the University administration when the selections were made and therefore, had vested interests and bias against the Petitioner. Four out of the five members of the Committee, were members of DCETA, on whose complaint the Inquiry Committee has been constituted.

14. While the Petitioner was pursuing his remedies, he learnt that relieving orders have been passed by University against two of the faculty members and apprehending an adverse order against him, Petitioner approached this Court in a writ petition being W.P. (C) 2040/2016, which was mentioned for urgent listing. However, before the writ petition could be listed on 09.03.2016, in order to overreach the Court, the University passed the impugned order dated 04.03.2016 relieving the Petitioner from services of the University on expiry of 30 days from the date of the order. In view of this, the writ petition was withdrawn with liberty to challenge the impugned order.

Common contentions on behalf of the Petitioners:

15. Petitioners applied pursuant to the Advertisement dated 03.12.2011 for the post of Associate Professors in Bio-Technology. The essential qualifications prescribed were Ph.D. in the relevant area along with 1st class in B.Tech./B.E. and M.Tech./M.E. degrees. Petitioners did not possess the aforesaid essential qualifications and were ineligible if the Advertisement was restricted to this column. However, the Advertisement contained a Special Note (ix), as per which candidates possessing Master of Science in Applied Biological Sciences/Zoology/Botany/Microbiology/Genetics and Ph.D. in Applied Biological Sciences were also eligible. Being

eligible under the Special Note (ix), Petitioners applied and were recommended for appointment by the Selection Committee comprising of Vice Chancellor, one of the Deans of the related Discipline nominated by the Board of Management and three Experts not connected with the University. The recommendations were placed before the Board of Management and were unanimously approved, pursuant to which Petitioners were appointed. Once the due procedure was followed for selection and the Petitioners were eligible, qualified and meritorious, there was no plausible reason or justification to treat the appointments void *ab initio*.

16. At the time of applying and before the interaction before the Selection Committee, the qualifications of the Petitioners were known to the Committee Members as well as subsequently to the Board of Management. It is not the case of the University that the Petitioners played any fraud or were guilty of misrepresentation with respect to their educational qualifications and the impugned action is based on a total misreading of the Advertisement and the Special Note (ix) therein.

17. The impugned action stems out of an erroneous understanding of the University that the Special Note did not dispense with the essential qualifications prescribed in the 'essential qualification column' in the Advertisement. The essential qualifications were Ph.D. in the relevant subject with 1st class in B.Tech./B.E. or M.Tech./M.E. degrees. It is clear that the Special Note was carved out as an exception to the Advertisement and candidates not possessing the said degrees were made eligible. A careful reading of the Special Note would show that all clauses therein were in the form of exceptions to the main clause dealing with essential qualifications. Any other interpretation, if accepted, would render the Special Note meaningless

and redundant and no candidate other than the one possessing the Engineering/Technical degrees prescribed in the essential qualification column would be eligible, even though covered under the Special Note.

18. The stand of the University that essential qualifications required 1st class at Under Graduate ('UG') and Post Graduate ('PG') levels, is a misreading of the Advertisement, as the requirement of 1st class was only with respect to B.Tech./B.E. degrees and 1st class UG degree is clearly not stipulated under Special Note (ix). Wherever 1st class was required at UG level, it was so specified in the Advertisement itself, such as in the case of appointments to the post of Associate Professor in Applied Sciences and Humanities. It is a settled law that a candidate is required to meet only the prescribed qualifications in an Advertisement and if the University intended 1st class UG degree as one of the essential qualifications, it should have prescribed so under Special Note (ix), in which case the Petitioners would not have applied.

19. Petitioner in W.P. (C) 2239/2016 was working as Associate Professor and Assistant Director in School of Bio-Sciences and Technology, Vellore Institute of Technology at the relevant time and resigned from the said job on being offered appointment by the University. Petitioner in W.P. (C) 2650/2016 joined the University at the age of 44 years when he was already working as a Scientist-'C', in Ministry of Earth Sciences, Government of India on a regular Gazetted Class-1 post and gave up the job to join the University. Petitioners had an academic background and were doing extremely well in their respective jobs, when they applied. Illustratively, drawing the attention of the Court to the *Curriculum-Vitae* of Dr. Sharma, it was urged that he (a) successfully supervised 12 Ph.D. students, 3

Postdoctoral fellows and was supervising Ph.D. students even on the date of filing the petition; (b) has been conferred with several awards and honours; (c) has 140 research publications and 10 research projects from various Government and Foreign Agencies to his credit; (d) was promoted by the University as Professor in June, 2015 through an Expert Selection Committee; and (e) has served as Head of Department of Bio-Technology between the years 2018 to 2020 in the University. It is illegal, arbitrary, unfair and unjust for the University to treat the appointments of the Petitioners as null and void, after nearly 03 years of appointments by misreading the Advertisement and importing/adding essential qualifications, which were not prescribed. Reliance was placed on the judgment of the Supreme Court in *Dr. M. S. Mudhol and Another v. S.D. Halegkar and Others*, (1993) 3 SCC 591, which was followed subsequently in *Tridip Kumar Dingal and Others v. State of West Bengal and Others*, (2009) 1 SCC 768.

20. In W.P. (C) 2560/2016, the Petitioner has raised an additional contention of personal bias against the four members of the Committee which granted personal hearing after the show cause notice, pursuant to the order passed by this Court on 19.08.2015 in W.P. (C) 7825/2015, on the ground that they were members of DCETA, which was instrumental in objecting to the appointments made by the University, including that of the Petitioner and had vested interests.

Common contentions raised on behalf of the University:

21. After the appointments were made pursuant to the Advertisement dated 03.12.2011, number of complaints were received by the University against the Vice Chancellor who actively participated in the recruitment process, initiated through the subsequent Advertisements in 2012 and 2013. This led to constitution

of an Inquiry Committee comprising of and headed by senior retired IAS officers, to inquire into the complaints and the appointments made. After inquiring into the complaints, the Committee submitted its report, rendering a finding that the appointments of the Petitioners and others were *de hors* the Regulations and the Advertisement, as they did not possess the requisite essential qualification for the post of Associate Professor i.e. 1st class in UG degrees, as admittedly both had 2nd divisions. In fact, the Scrutiny Committee, prior to their selection, had taken an objection to their eligibility, however, under the instructions of the then Vice Chancellor, Prof. B.S. Sharma, they were wrongly called for the interview and erroneously recommended by the Selection Committee.

22. The Inquiry Committee scrutinized 64 applications with respect to which irregularities were noted and came to a conclusion that essential qualifications prescribed in the Advertisement were not met by the appointees. In para 6.2, serial nos. 5 and 6, in Chapter VI of the Report, there are categorical findings with respect to the Petitioners herein that they lacked essential qualifications of 1st class UG degrees. The Committee observed that being ineligible, their candidature should have been rejected at the outset and they should not have been called even for the interview. As per the recommendations of the Committee, show cause notices were issued to the Petitioners, providing them the gist of the Report and only after receiving representations/replies, their services were terminated. Since the Petitioners were ineligible for appointment, no fault can be found with the impugned orders declaring their appointments as null and void.

23. Petitioners are wrong in contending that the Special Note (ix) is an exception to the essential qualifications prescribed in the

Advertisement and/or that the stipulation in the said Note in any manner dispenses with or relaxes the essential qualifications. This interpretation of the Petitioners is clearly a misreading of the Advertisement inasmuch as a Special Note can only be read in consonance with the main part of the Advertisement and not contrary thereto. Once the required essential qualification was 1st class at UG and PG levels and was so stated in the column pertaining to ‘essential qualifications’, the Special Note cannot be read or interpreted to mean that candidates with 2nd class at UG level were eligible. It is an admitted fact that Petitioners do not possess 1st class UG degrees and cannot be given any special treatment as there would have been many aspiring candidates who may not have applied in view of the essential qualification of 1st class UG degree.

24. The Supreme Court in *Maharashtra Public Service Commission v. Sandeep Shriram Warade and Others*, (2019) 6 SCC 362, has held that it is not for the Courts to lay down conditions of eligibility, which is the domain of the employer/Executive and nor can the Court dispense with or relax the essential qualifications provided in the Advertisement. Reliance was also placed on the judgment of this Court in *Dr. Ashutosh Mishra v. Indian Institute of Mass Communication Through its Chairman & Ors.*, in W.P. (C) 4164/2020, decided on 06.11.2020, wherein the Court has held that experts in the field with knowledge in the subjects are best equipped to decide whether a candidate fulfils the requirements of an Advertisement and in the absence of *mala fides*, it is not for the Court to interfere with the wisdom of the experts. A duly constituted Inquiry Committee has after inquiring into the matter come to a conclusion that Petitioners do not fulfil the essential qualifications prescribed in the Advertisement and it is beyond the scope of this Court exercising

powers of judicial review in a writ jurisdiction to substitute the views of experts comprising the Inquiry Committee.

25. I have heard the learned counsels for the parties and examined their contentions.

26. Respondent herein (erstwhile Delhi College of Engineering) is the Delhi Technological University established by the Government of NCT of Delhi vide First Statutes. Under Clause 10 of First Statutes, ‘Vice Chancellor of the University’ is defined as Scholar of Eminence in one of the areas of applied sciences, engineering and management, having administrative experience in a PG degree level institution of higher learning and is appointed by the Chancellor. By virtue of Clause 10(3), Vice Chancellor is the Principal Academic and Executive Officer of the University and exercises supervision and control over its affairs and gives effect to the decisions of all Authorities of the University. ‘Board of Management’ has a power of management in administration of the revenues and properties of the University in addition to make appointments of Professors, Associate Professors, Assistant Professors and other Teachers and academic staff on recommendations of the Selection Committees. ‘Selection Committees’ have the function and power of making recommendations for the said appointments to the Board of Management and their constitution is laid down in Clause 16(2) of the First Statutes.

27. Indisputably, University advertised 60 posts of Associate Professors for filling up posts in various departments, including 4 posts in the Department of Bio-Technology. The essential qualification prescribed in the Advertisement is as follows:-

“Qualifications & Experience:

	<i>Professor</i>	<i>Associate Professor</i>
<i>Essential</i>	<i>Ph D in the relevant area along</i>	<i>Ph D in the relevant</i>

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Qualification	<i>with 1st class in B Tech/BE and M Tech/ ME degrees.</i>	area along with 1st class in B Tech/ BE and M Tech/ME degrees
Relevant Experience	<i>06 years as Associate Professor or equivalent with AGP Rs 9,000/- and above in PB-4</i>	<i>06 years as Assistant Professor or equivalent with AGP Rs 7,000/- and above in PB-3 or 8 years of service as Assistant Professor with the AGP of Rs. 6,000/- in the PB-3</i>

28. Additionally, in the Advertisement itself, the University had incorporated ‘Notes’ and a ‘Special Note’ and Special Note (ix) prescribed that ‘candidates possessing Master of Science, in Applied Bio-logical Sciences/Zoology/Botany/Microbiology/Genetics and Ph.D. in Applied Biological Sciences are also eligible.’

29. Finding themselves eligible under the essential qualifications prescribed in Special Note (ix), Petitioners applied for the post of Associate Professor in the Bio-Technology discipline and were shortlisted after scrutiny of their applications. Selection Committee recommended their names for appointment after interview and the Board of Management approved the recommendations. It is undisputed that the Petitioners were thereafter appointed and rendered services till the passing of the impugned orders, whereby their appointments have been held as void *ab initio*.

30. At this stage, it is pertinent to mention that when W.P. (C) 2239/2016 was listed on 30.03.2016, Court noted the rival contentions of the parties and stayed the operation of the impugned order dated 29.02.2016 and further directing that status quo shall be maintained with regard to the employment of the Petitioner. *Prima facie* opinion of the Court was that nothing prevented the University from specifically providing in the Advertisement that the applicants were

required to possess 1st class UG degrees, as provided for similar

positions in Applied Sciences and Humanities. Based on this interim order, the Court in W.P. (C) 2650/2016 also stayed the operation of the impugned order dated 04.03.2016 on 01.04.2016. The interim orders are operating till date and Petitioners have continued to work, as apprised during the course of hearing.

31. The primordial issue that arises for consideration before this Court is whether the Petitioners fulfil the educational qualifications required for the post of Associate Professor in Bio-Technology as prescribed in the Advertisement. Both parties naturally have a different stand on this issue. While Petitioners contend that they met the requisite qualifications by virtue of Special Note (ix), which did not require a 1st class UG degree, University adopts a contrary stand. There is no contest by the University that the Petitioners meet the qualifications explicitly stated in the Special Note (ix) and the only bone of contention is '1st class' UG degree, which admittedly none of the two Petitioners possess. The controversy thus narrows down to whether 1st class UG degree was an essential qualification for the candidates applying under Special Note (ix), incorporated in the Advertisement.

32. A plain reading of the Advertisement shows that the essential qualification for Associate Professor in Bio-Technology discipline was 'Ph.D. in the relevant area along with 1st class in B.Tech./B.E. and M.Tech./M.E. degrees'. Clearly, Petitioners do not fulfil this pre-requisite and were ineligible to apply if the Advertisement was restricted to this qualification. However, in the Advertisement itself, University incorporated a 'Special Note' pertaining to other disciplines such as Mechanical/Civil/Computer Engineering etc. including Bio-Technology and by virtue of this Note, the pool of eligibility with respect to educational qualifications was enlarged by

including qualifications in other fields over and above the degrees stipulated in the essential qualification column of the Advertisement. Clause (ix) of the Special Note provided that candidates possessing Master of Science in Applied Biological Sciences/Zoology/Botany/Microbiology/Genetics and Ph.D. in Applied Biological Sciences were 'also eligible'.

33. Petitioners do not even contest the position that they were ineligible under the essential qualification column of the Advertisement and it was only under Special Note (ix), inserted in the Advertisement, which prompted them to apply. The submission is that had the University intended 1st Class UG degree to be an essential qualification under Special Note (ix), the same should have been specifically prescribed in the Advertisement. However, Special Note (ix) does not even remotely refer to a UG degree, least of requirement of possessing 1st class and in absence of such a stipulation, University is proscribed from taking a stand that Petitioners are ineligible for lack of 1st class UG degrees.

34. This Court entirely agrees with the stand of the Petitioners. Reading clause (ix) of the Special Note leaves no doubt that the prescribed educational qualification was Master of Science in Applied Bio-logical Sciences/Zoology/Botany/Microbiology/Genetics and Ph.D. in Applied Biological Sciences and there was no mention of 1st class at UG level. Therefore, it is legally impermissible for the University to read into the Advertisement a qualification which is not prescribed specifically as an essential qualification. While incorporating the Special Note, University had consciously prescribed the requisite qualifications in Masters and Ph.D. and nothing prevented it from prescribing that at the UG level, a 1st class degree would be essential. Essential qualifications for appointments and

recruitments have to be explicitly stipulated in the Advertisements and cannot be implied or left to imagination.

35. Without burdening this judgment with several precedents on the issue, relevant would be in this regard to allude to a judgment of the Supreme Court in *State of Uttarakhand and Others v. Deep Chandra Tewari and Another, (2013) 15 SCC 557*, wherein the sanctity and importance of prescribing qualifications in an Advertisement is highlighted by the Supreme Court *albeit* in a slightly different context. Facts of the case before the Supreme Court were that the Appellants therein had issued an Advertisement inviting applications for appointment as Assistant Teachers and the educational qualifications required were Bachelor's degree in any two subjects out of Geography, Economics, Political Science and History. Respondents, who possessed the qualification of B.Ed. with specialization in vocational education, applied against the said Advertisement. As the Respondents did not hold a degree required under the Advertisement, their applications were not considered. The High Court allowed the writ petition and directed the Appellants to process the applications. The contention of the Appellants before the Supreme Court was that there is a marked difference between B.Ed. degree and B.Ed. with specialization in vocational education and the candidates were required to apply strictly in accordance with the terms of the Advertisement. On behalf of the Respondents, it was urged that there was hardly any difference between B.Ed. simpliciter and a degree with specialization in vocational education. Agreeing with the Appellants, the Supreme Court observed that when an Advertisement simply says 'B.Ed. degree', it reflects what the Appointing Authority meant and what is meant is said, written and shown in the Advertisement. The Supreme Court further observed that on going through the Notification

in its entirety, it was evident that wherever any particular specialization was required, it was specifically mentioned in the Advertisement, for example, for the post of Assistant Teacher (Drawing), the requirement was Bachelor's degree in instrumental or vocal music for Assistant Teacher (Music), Bachelor's degree with Home Science or Home Arts for Assistant Teacher (Home Science). Therefore, if B.Ed. with specialization in vocational education, was the required qualification, the Advertisement would have specifically so mentioned. For ready reference, paras 9 and 10 are extracted herein:-

"9. We notice that the appointment of Assistant Teacher LT Grade is made to impart education to the students in schools on the subjects which are being sanctioned in the schools. When the advertisement simply says "BEd degree", it reveals what the appointing authority meant and what is meant is said, written and shown in the advertisement. If we go through para 5 of the notification in its entirety, we find wherever specialisation is required, it has been specifically mentioned in the advertisement. For example, for appointment to the post of Assistant Teacher Drawing, the requirement is Bachelor degree in BFA from any university established by law in India, for the post of Assistant Teacher Music, it has been stated that the requirement is Bachelor degree in instrumental or vocal in music from any university established by law in India. For the post of Assistant Teacher Home Science, it is stated the requirement is Bachelor degree with Home Arts or Home Science from any University established by law in India and for the post of Assistant Teacher Commerce, the requirement is Bachelor degree in Commerce from any university established by law in India.

10. We notice, however, for the post in question i.e. Assistant Teacher (General), the qualification is simply Bachelor's degree in any of two subjects, Geography, Economics, Political Science and History from any university established by law in India, or LT Diploma from any training institution/degree college. If BEd with specialisation in vocational education was the required qualification, then it would have been specifically mentioned in the notification, which has not been done. Consequently, we have to take it that the BEd degree mentioned in the Advertisement is BEd degree simpliciter and not BEd with specialisation in vocational education. The post to be filled up i.e. Assistant Teacher (General) nowhere indicates that for the purpose of appointment to the said post, specialisation in vocational education is a necessary requirement."

36. The stand of the University as discernible from the show cause notices, Report of Narayanaswami Committee as well as the counter affidavits filed before this Court including the arguments canvassed during the course of hearing, is that Petitioners are ineligible for appointment as they do not possess 1st class UG degree. To support the plea, an ingenuous ground is created by the University that Special Note is to be read in consonance with the stipulations in the essential qualification column and the prescription of 1st class UG therein i.e. for B.Tech./B.E. would give colour to the requirements pertaining to educational qualifications under the Special Note. Howsoever ingenuous the ground may be, in my view, the same does not aid the University to defend the impugned orders. Essential qualifications required as eligibility conditions for appointments/recruitments have to be specifically prescribed in the Advertisements so that aspiring candidates are aware of the qualifications they are required to possess before applying. Eligibility conditions cannot be left to imagination or interpretation or read into as implied conditions. It is settled law that an Advertisement should clearly and unequivocally specify the terms and conditions of employment and there cannot be uncertainty or ambiguity. [Ref. *Renu and Others v. District and Sessions Judge, Tis Hazari Courts, Delhi and Another, (2014) 14 SCC 50*]. There is, to my mind, a basic fallacy in the argument of the University that the essential qualification prescribed for the post of Associate Professor in Bio-Technology required 1st class in 'UG' and 'PG' degrees. Firstly, even in the column prescribing essential qualifications the requirement is 1st class in B.Tech./B.E. and M.Tech./M.E. degrees only. This Court is unable to find any general stipulation for the post in question or the Advertisement, which mandates 1st class in UG degrees for all disciplines. This is fortified by reading the entire Advertisement,

which makes it palpably evident that wherever the intent was to prescribe 1st class at UG level, it was so stated specifically, as in the case of Associate Professor in Applied Sciences and Humanities. Petitioners are right in contending that the Special Note (ix) was incorporated to carve out from the 'essential qualification' column in the substantive part of the Advertisement and provide a separate and larger pool of eligible candidates by permitting those who had Ph.D. and Masters degrees outside the Engineering and Technical degrees i.e B.Tech./B.E. and M.Tech./M.E. to apply and with no stipulation of 1st class at UG level.

37. In order to support its case, an argument was also canvassed on behalf of the University that as a Technical Institute of great repute, high standards of education are required to be maintained and therefore, the University cannot appoint Assistant Professors with 2nd class degrees at UG/PG levels. It needs no reiteration that standards of educational institutions cannot and should not be compromised and it was certainly open to the University to prescribe 1st class UG degree as an essential qualification in the Special Note. However, having chosen not to stipulate this as an eligibility criteria, it is not open to argue that such a condition must be imported or read into the essential qualification column or that the Special Note would take colour from the prescribed qualifications relating to B.Tech./B.E. degrees. Accepting this contention of the University would lead to a very dangerous and unwarranted consequence, where even after prescribing eligibility conditions in any recruitment Advertisement, it would be open to an employer/candidate to read into Advertisements conditions on mere presumptions and conjectures. It bears repetition to state that had the University intended or desired to insist on 1st class UG degree, there was nothing preventing the University from prescribing the said

qualification as an essential qualification under the Special Note. The intent of the University at that stage of there being no requirement of 1st class UG degree is conspicuous by the absence of such a stipulation.

38. Much stress was laid by the learned counsel for the University on the report of the Sh. R. Narayanaswami Committee, constituted to look into the complaints against the appointments initiated by the then Vice Chancellor, the trigger for which were the appointments made in the years 2012 and 2013. The Inquiry Report has been appended to the counter affidavit and with the assistance of the counsel for the University, the Court has closely and carefully perused the same. Chapter VI of the Report deals with ‘identification of erroneously selected candidates and incorrectly interviewed candidates who did not have essential qualifications or relevant experience (or both)’. As per the Report, Committee went through the applications and in respect of the Petitioners noted that they did not meet the essential qualifications and ought not to have been called for the interview. Relevant part of the Report is as under:-

“6.2.(2) Inquiry Committee’s Scrutiny of Applications selected candidates- RESULT

The Inquiry Committee went through the applications of all the 38 selected candidates and examined the same in relation to prescribed essential qualifications in the Recruitment Regulations as advertised on 3rd December, 2011 (a copy of which is placed at Annexure-9). Observations of the Inquiry Committee are that the following selected candidates to whom offer letters were sent by DTU, actually did not meet either the Essential Qualifications, or Relevant Experience criteria or both and ought not to have even been called for interview. This is indicated categorywise (Professor or Associate Professor)

S. No.	Name	Selected as	Sr. No. In subpara 6.2 (A)	Reasons for disqualification
...	.		...	...

5.	<i>Dr. Pravir Kumar</i>	<i>Associate Prof. (Biotechnology)</i>	<i>Subpara 6.2(B) No. 25</i>	<i>He only had a II division at the BSc level. The prescribed essential qualifications as advertised require a 1st division at both the UG and PG levels. (In fact the Scrutiny Committee pointed out this deficiency and did not recommend his case for interview. However he was called at the instance of the Vice Chancellor and selected. <u>The Inquiry Committee is of the view that he should have been called for interview. Dr. Pravir Kumar HAS JOINED.</u></i>
6.	<i>Dr. Jaigopal Sharma</i>	<i>Associate Prof. (Biotechnology)</i>	<i>Subpara 6.2(B) No. 12</i>	<i>He had a 2nd division at the B.Sc. (Zoo) level. The prescribed essential qualifications and duly advertised require a 1st division at both the UG and PG levels. In fact even the Scrutiny Committee pointed out this deficiency. However he was called at the instance of the Vice Chancellor, and selected. <u>The Inquiry</u></i>

				<u>Committee is of the view that he should not have been called for interview. Dr. Jaigopal Sharma HAS JOINED.</u>
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The Inquiry Committee finds it unacceptable that prescribed essential qualifications and relevant experience as advertised should have been selectively relaxed in the aforementioned cases, whereby not only have these candidates been irregularly called for interview but also selected. Of these Dr. Pushpender Singh, Assoc. Prof. (Mech. Engg.), Dr. C.P. Singh, Assoc Prof (Applied Maths), Dr. Pravir Kumar, Assoc. Prof. (Biotechnology) and Dr. Jaigopal Sharma Assoc. Prof. (Biotechnology) have actually joined DTU and continue to serve.”

39. The findings of the Committee against the Petitioners are primarily based on lacking the prescribed essential qualifications, which according to the Committee required a 1st class at both UG and PG levels. The Committee notes that the Scrutiny Committee had pointed out the deficiency and did not recommend their case for interview, however, they were called at the instance of the Vice Chancellor and selected. Needless to state that the Committee Members committed a grave error in reading into the Advertisement, the requirement of 1st class UG degree, which does not exist in the Advertisement in the Special Note (ix), under which the Petitioners were eligible and shortlisted. Since the Committee posed itself a wrong question and treaded on a wrong path, it reached a wrong destination.

40. There is also merit in the submission of the Petitioners that the impugned orders have been passed entirely on the basis of the Narayanaswami Report, which is wholly erroneous, since this Court had in its order dated 12.06.2015 in W.P.(C) 5984/2015 had noticed that the findings of the Report could by no means be construed as final opinion of the University and the matter had to be judged after reply to

the show-cause notice was filed. Reading of the impugned orders shows a total non-application of mind by the concerned Authority. The orders are in three parts. The first part contains the narrative of the facts as mentioned in the Inquiry Report, after which there is a reference to the litigation between the parties in this Court and this is followed by the conclusion that the appointments of the Petitioners are void *ab initio*. There is nothing in the order to show that the matter was independently examined by the University. In fact, there is no deliberation/consideration in the impugned orders even of the issues raised by the Petitioners in their defence, in their respective replies to the show-cause notices. Therefore, in essence, the Inquiry Report has been taken as a final opinion, pre-judging the issue against the Petitioners, contrary to the observations of the Court, aforementioned.

41. University has attempted to oversimplify the procedure for selection of the Petitioners which is also evident from the Inquiry Committee's Report that the scrutiny at the initial stage being erroneous the whole procedure was vitiated. This stand completely overlooks the rigorous process of selection undergone by the Petitioners with experts in the field involved at every step. The Selection Committee which recommended the Petitioners for appointment comprised of the members in consonance with Clause 16(2) of the First Statutes and as averred in the petitions were experts nominated from the panel of 7 names approved by the Academic Council for each department and the list of experts was approved by the Hon'ble Lieutenant Governor of Delhi in his capacity as Chancellor of the University. The list of experts comprised of eminent senior faculty not below the rank of Professors from IITs, JNU, BHU, DU, Jamia Millia, NPL, DRDO and other renowned National Institutions/Research and Development Organisations. All members of

the Committees were apprised of the qualifications advertised and were also provided with the biodatas of the candidates. The candidates were interviewed and after due deliberation and considerations, the recommendations were sent to the Board of Management. The Board unanimously approved the recommendations. Under Clause 10 of the First Statutes, the Board of Management has the power of making appointments of Professors, Associate Professors etc. on the recommendations of the Selection Committee constituted for the purpose. It is not the stand of the University that any of the members of the Selection Committee or the Board of Management were ineligible or disqualified or were favourably inclined to the Petitioners. None of the averments in the writ petition to this effect have been traversed by the University in the counter affidavits. The appointments have been made following the due process in consonance with the First Statutes and warrant no interference.

42. At this stage, it needs to be noted that allegations had been levelled against the then Vice Chancellor for having committed illegalities/irregularities in the recruitment process. While this issue may not be by itself very relevant to the present case of the Petitioners which clearly stands on its own foundation, however, the developments that have taken place during the pendency of this case may only add strength to the case of the Petitioners that they were eligible as per the prescribed essential qualifications in Special Note (ix) of the Advertisement and their selection cannot be attributed to any alleged illegality of the Vice Chancellor. During the course of arguments, the Court was apprised that an FIR had been filed against Prof. P.B. Sharma for offences under Section 13 of the Prevention of Corruption Act, 1988 and after due investigation, CBI had furnished a closure report. The Trial Court declined to accept the closure report

and the order was challenged by Prof. P.B. Sharma before this Court in *Prof. P.B. Sharma v. Central Bureau of Investigation (CBI), 2019 SCC OnLine Del 8068*, where this Court held as under:-

“10. Upon hearing and on perusal of impugned order, closure report and the decisions cited, I find that the exercise of the powers by petitioner- Prof. P.B. Sharma was in terms of the Provisions of Delhi Technology University Act, 2009 and the recommendations made by him were duly put up before the Board of Management in its seventh meeting held on 24th May, 2012, which had duly approved the recommendations made by the Selection Committee for appointment on the posts in question. A bare perusal of the closure report reveals that the allegations levelled against petitioners have been minutely scrutinized and thereafter, it is concluded that the view of Prof. P.B. Sharma was right about the appointments being made on the posts in question.

11. Trial court in the impugned order has disagreed with the closure report, while over ruling with the Selection Committee and the disagreement, according to this Court, is without any justification. Relaxation of qualification has been granted in terms of the applicable Rules and Regulations and on the recommendation made by the Screening Committee as well as Selection Committee. The Supreme Court in C.K. Jaffer Sharief (Supra) has clarified that even if the action of the authorities concerned is contrary to departmental norms, still it would not justify criminal prosecution, unless it is actuated by dishonest intention to obtain an undue pecuniary advantage as dishonest intention “is the gist of the offence under Section 13(1)(d) of Prevention Corruption Act”.

12. In the instant case, I find that no dishonest intention can be attributed to any of the petitioners nor the trial court has done so. Applying the above-referred dictum of Supreme Court in C.K. Jaffer Sharief (Supra) to the facts of the instant case, I find that the impugned order cannot be sustained and is accordingly set aside. The closure report filed by respondent-CBI is hereby accepted.”

43. The significance of the observations of the Court in para 10 aforementioned is that not only has the Court found that the exercise of powers by the Vice Chancellor were in terms of provisions of the First Statutes and the recommendations were put up before the Board of Management in its meeting held on 24.05.2012 and duly approved by the Board, but also that the closure report wherein the allegations were minutely scrutinized revealed that the allegations were wrong and that the Vice Chancellor was right in making the appointments in

question. Therefore, looked at holistically it cannot be said that the Petitioners did not fulfil the essential qualifications prescribed in Special Note (ix) in the Advertisement dated 03.12.2011 and therefore, it is held that the impugned orders dated 29.02.2016 in W.P.(C) 2239/2016 and dated 04.03.2016 in W.P.(C) 2650/2016 declaring the appointments of the Petitioners void *ab initio* are illegal and cannot be sustained in law.

44. Dr. Sharma has taken an additional point in W.P. (C) 2650/2016 to challenge the impugned order and the show cause notice that 4 out of 5 members of the Inquiry Committee constituted by the University to give a personal hearing to the Petitioner were signatories to the Resolution dated 30.05.2011 against the erstwhile Vice Chancellor and had vested interests in quashing the appointments of the Petitioners. The argument is based on an alleged bias of the said Inquiry Committee. Factually, the composition of the Committee is not denied by the University and even the response to the allegation of bias is vague. While this Court is not delving into the issue of bias as even otherwise the impugned orders are unsustainable in law but it does need a mention that propriety demanded that the Committee constituted to give a personal hearing to the Petitioners should have been constituted by people who were not part of so-called tirade against the erstwhile Vice Chancellor and holding a flag for quashing the appointments in question. As was rightly said by Lord Hewart in the case of *Rex v. Sussex Justices, (1924) 1 KB 256*, that 'Justice must not only be done, but must also be seen to be done'. The Court had remanded the matter to the University for giving personal hearing to the Petitioner, reposing faith in the Institution and the personal hearing should have been free from any biases.

45. Additionally, Petitioners are right in pointing out that when the

Advertisement was published they were already working and had the University specifically prescribed 1st class at UG level in the Special Note (ix), they may not have applied and left their lucrative jobs. Dr. Pravir Kumar was working as Associate Professor and Assistant Director at VIT University, Tamil Nadu for the last 03 years and Dr. Jai Gopal Sharma was working as Scientist-C with the Ministry of Earth Sciences and on account of the offer letter issued by the University, his lien was terminated with the Ministry w.e.f. 15.06.2020. Petitioners have also stressed on their CVs which are appended with the petition and by way of illustration it was pointed out that Dr. Jai Gopal Sharma has successfully supervised several Ph.D. students and 3 postdoctoral fellows. He has been conferred with various awards including 'Commendable Research Excellence Award-2021' by the University for 05 research papers on 03.03.2022. Since the Petitioners are working under the interim orders of this Court, it is further stated that he is even currently supervising few Ph.D. students. In June, 2015, Dr. Sharma has been promoted as Professor through an Expert Selection Committee and has served as Head of Department of Bio-Technology from 2018-2020 as well as Chairman of Cultural Council, Founder Chairman of National Service Scheme and since February, 2021, he is serving as Faculty Coordinator with the University. The contention, pithily put, is that at this stage and age of life their services should not be terminated as they are not at fault and were selected through a regular and rigorous process of selection. Petitioners have rendered dedicated service to the University with no complaints or blemish and have already suffered mental trauma due to the illegal and *mala fide* acts of the University, actuated by the vested interests of a handful of people, who had personal scores to settle with the then Vice-Chancellor.

46. Having carefully considered this submission, Court finds merit in the plea that the status quo should not be disturbed at this stage, particularly when the Court has found the terminations to be bad in law. Petitioners were doing well for themselves when they were offered appointments by the University and are today overage for seeking employment elsewhere. In fact to say the least, University has been extremely unfair to the Petitioners. Having appointed them as per the prescribed qualifications in the Advertisement, Petitioners have been unnecessarily constrained to litigate and have suffered financially and mentally on this score. This is not to overshadow the finding of the Court that the impugned action is illegal and arbitrary and is only an added reason to quash the impugned orders of termination.

47. Learned counsel for the University relied on the judgment of the Supreme Court in *Maharashtra Public Service Commission (supra)* and of this Court in *Dr. Ashutosh Mishra (supra)*, for the proposition that it is for the employer to prescribe the qualifications and eligibility conditions for appointment. Indisputably, this is the binding dicta of the Supreme Court and this is the contention of the Petitioners that it was open to the University to prescribe 1st class UG degree as essential qualification, if they so intended. There is no contest to the power or prerogative of the University to do so. However, as aforementioned, having failed to prescribe an essential qualification in the Advertisement, it is not open to read an additional qualification by implication and thus the judgements would not help the University.

48. Accordingly, for all the aforesaid reasons, the impugned orders dated 29.02.2016 and 04.03.2016 are set aside along with the show cause notices that preceded the said orders as well as the findings of the Narayanaswami Inquiry Report qua the Petitioners herein and it is

held that the appointments of the Petitioners are legal and valid. Interim orders dated 30.03.2016 in W.P. (C) 2239/2016 and 01.04.2016 in W.P. (C) 2650/2016 are made absolute. Needless to state that Petitioners shall be entitled to all consequential benefits flowing out of the setting aside of the impugned orders, including continuity of service.

49. Insofar as Petitioner in W.P. (C) 2650/2016 is concerned, it is averred by him that he was promoted in the year 2015 as a Professor but neither side has placed on record the status of his confirmation. This aspect of the matter is thus left open for the University to examine and the Petitioner to take recourse to appropriate remedies, if so advised.

50. Writ petitions are allowed, with cost of Rs.25,000/- each payable to the Petitioners within a period of six weeks from today.

51. Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 5, 2023/kks/shivam