

**IN THE HIGH COURT AT CALCUTTA**  
**CONSTITUTIONAL WRIT JURISDICTION**  
**APPELLATE SIDE**

**PRESENT:THE HON'BLE JUSTICE JAY SENGUPTA**

**WPA 7791 of 2023**

**TAPAN KUMAR DAS**

**... PETITIONER**

**VS.**

**THE STATE OF WEST BENGAL & OTHERS**

**... RESPONDENTS**

|                    |   |                                                 |
|--------------------|---|-------------------------------------------------|
| For the petitioner | : | Ms. Reshmi Ghosh<br>Ms. Parna Mukherjee         |
| For the CU         | : | Mr. Nilotpal Chatterjee<br>Mr. Sourabh Sengupta |
| For the UGC        | : | Mr. Anil Kr. Gupta                              |
| For the State      | : | Mr. Swapan Kr. Datta<br>Mr. Dipankar Dasgupta   |
| Heard lastly on    | : | 17.03.2025                                      |
| Judgment on        | : | 10.07.2025                                      |

**JAY SENGUPTA, J.**

**1.** This an application for directing the respondent authorities to appoint the petitioner as Professor in the Department of South and Southeast Asian Studies, reserved for the Scheduled Caste, pursuant to an advertisement being No. Est./Advt/6529/2019 dated 13.02.2019 for the direct requirement of the said post.

**2.** Learned counsel appearing on behalf of the petitioner submitted as follows. The University of Calcutta (hereinafter referred to as the 'said University') by an Advertisement being No. Est./Advt/6529/2019 dated 13.02.2019 invited application for direct requirement to the post of Professor, Associate Professor and Assistant Professor in different Departments of the said University. The petitioner applied in the Department of South and Southeast Asian Studies for the post of Professor, reserved for the Scheduled Caste. The petitioner being a Scheduled Caste candidate applied for that one vacancy in the scheduled caste category. The petitioner was then working as an Assistant Professor in the Department of AIHC under the said University. While working in the AIHC Department, the petitioner had throughout enhanced his qualification and had made several publications and had done extensive research work. The research publications of the petitioner were done from the year 1996 to 2019. The interview was held on 06.02.2020 before the Interview Board and the petitioner participated in the interview. Law was that, in the absence of a Scheduled Caste candidate as the case might be, to fill up such vacancy, such vacancy would remain unfilled. There is no provision of carrying forward such reserved vacancy. As per the guideline from the University Grant Commission, there had to be strict implementation of Reservation Policy. In case of a reserve vacancy, it had to be filled up in the existing recruitment process and in the absence of any specific notification for carry forward, the reserve vacancy could not be kept vacant, when there was already a qualified person. In

terms of the Guidelines for University Grant Commission, Guideline 8 provided the procedure to be followed in matters of reservation for Teaching as well as Non-teaching staffs. 8(a)(i) SC/ST: Candidates should be interviewed separately. 8(ii): One member of the Interview Committee should belong to the SC/ST category. 8(v): The Roster, 40 – point or 100-point as the case might be, should be applied to the total number of posts in cadre only. Reliance was placed on R.K. Sabharwal vs. The State of Punjab (AIR 1995 SC 1371). Cadre was based indicated by seniority list governing the members with the same pay scale. From the UGC guidelines, it was made clear that during the interview a SC and ST representative must be present and he must put his signature on the score sheet of interview. However, in the instant case, there was no such signature and it was enough to understand that there had been arbitrary decision. The respondent No. 3-6 had filed their affidavit. The petitioner had read and understood the purport of the affidavit. The petitioner was aware of the settled proposition of law that mere participation in the selection process did not create any right. But, the petitioner disagreed that he was found not suitable for the post of professor under Schedule Caste category in the Department of South and Southeast Asian Studies. The petitioner had participated for one vacancy out of the two existing vacancies. One vacancy was for the General Category and the other for the Scheduled Caste Category. The two vacancies could not be clubbed together at any point of time and, therefore, the petitioner could only qualify for the Reserved Category vacancy and not for the General

category vacancy. Since the petitioner had participated only for the Scheduled Caste category, in the absence of any cut off marks, the petitioner had scored the highest marks in the Reserved category to be appointed as Professor. For the post of Professor the minimum eligibility criteria was, a) An eminent scholar with consistently good academic record and a Ph.D degree in the concerned/ allied/ relevant discipline with a number of high quality research publications in reputed journals and/or publication of books, b) At least 10 years' experience in University/ College and/or experience in research institutions/industries. in university/reputed research, c) A minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS), set out the in UGC Regulations 2016 in Appendix III Table II (B), ORAn outstanding professional with established reputation in the relevant field, who had made significant contribution to the knowledge in the concerned/ allied/ relevant discipline, to be sustained by credentials, d) Additional Experience. Contribution to educational innovation, design of new curricula and courses and use of modern technology in teaching-learning process. Nowhere was it stated that for direct recruitment for the post of Professor a candidate had to secure the minimum score of 50%, as in the case of the petitioner. In this process of direct recruitment, there had to be a panel of General candidate and a panel of Scheduled Caste and others. Herein, no panel had been published. Herein, the candidate scoring highest and lowest, such marks had to be disclosed by the

University to arrive at the cut-off. In the event such marks were disclosed, the petitioner would score the highest among the two scheduled caste candidate. The cut-off of General candidate could under no circumstances be the cut-off of a Scheduled caste candidate. From the score sheet annexed to the said opposition at page 46, there was a column wherein marks were allotted for demo class. The petitioner stated that no demo class/ test was ever taken and therefore, the entire column was fabricated. Since it was for the Department of South and Southeast Asian Studies it ought to bear the signature of the Head of the Department in the score sheets along with the signature of the Dean, Faculty of Arts and the representative of the Reserved Category and such were pertinent in a Selection process. The candidate who was considered for appointment being Achintya Kumar Dutta was given 13 marks for the demo test, whereas in reality such test did not take place at any point of time. The Head of the Department was the authorized person to testify the authenticity of the score sheet in the event he was called upon before this Court. The selection of Achintya Kumar Dutta was for the vacancy of unreserved category and it had nothing to do with the Reserved category for which the petitioner had applied. The Appendix III, Table II (A) was applicable for University teachers for their promotion under Career Advancement Scheme (CAS) in University Departments, and Weightages For Expert Assessment. The petitioner's promotion was not to be adjudged in terms of Table II (A). The Appendix III, Table II (B) was applicable for the college teachers in colleges (UG and PG) under Career

Advancement Scheme (CAS). The petitioner's promotion was also not to be adjudged in terms of Table II (B). The petitioner being an Assistant Professor, his entire consideration for promotion was to be judged in accordance with Appendix III Table II (C). The petitioner had qualified from the post of Assistant Professor to Associate Professor. The petitioner had successfully completed 10 years of service as an Assistant Professor and therefore, had to his credit consolidated API score requirement of 400 points from category III of APIs. The petitioner had a consolidated API score of 1137 which was much above the minimum requirement of 400 points API. Since the petitioner did not come under Table II (A) and II (B), therefore, he was not required to score the minimum 50 marks out of 100. The petitioner was to be adjudged only at the basis of table II (C), wherein the candidate had to secure the highest API along with academic background which was 20%, Assessment of Domain Knowledge and Teaching Skills (20%) and Interview performance (20%). To conclude, once the University stated that for direct recruitment for the post of Professor a candidate had to secure a minimum score of 55% while on the other hand the University took a separate stand stating that the minimum score would be 50%. Therefore, it made it amply clear, the University was not aware of the cut off since in the above referred circumstances there was no cut off for direct recruitment to the post of Professor in the Scheduled Caste Category.

**3.** Learned counsel appearing on behalf of the University submitted as follows. The petitioner applied for the post of Professor under

Scheduled Caste Category pursuant to the said advertisement being No. Est./Advt./6529/2019 dated 13.02.2019 for the subject of South & South East Asian Studies under Faculty of Arts, University of Calcutta. The total number of vacant seats under Schedule Caste category was 1 (one), unreserved 1 (one) and Schedule Tribe 1 (one). Total 2 (two) numbers of candidates applied for the post of professor under Schedule Caste category and 9(nine) numbers of candidates applied for the post of professor under unreserved category. The petitioner duly participated in the interview conducted by the Selection Committee on 06.02.2020. The petitioner's allegation in the writ was that the authorities are sitting tight and not proceeding with the selection process. The petitioner made a representation on 27.02.2023 to the Vice Chancellor University of Calcutta and filed a writ petition under Article 226 of the Constitution of India on 27.03.2023. On 25.04.2023 after hearing the parties, this Court directed the University of Calcutta to produce original records pertaining to the selection process for the post of Professor in South and Southeast Asian Studies under Scheduled Caste category on the next date of hearing. On 15.05.2023 the University of Calcutta produced the original score-sheet of the relevant selection pursuant to the solemn order dated 25.04.2023. After producing the score sheet and the marks obtained by the petitioner in the Selection Committee interview, the prayer in terms of prayer (b) and (c) of the writ petition had already been satisfied. The score sheet also explained as to why the petitioner could not be appointed which is prayer (a) of the petitioner. The petitioner secured only 29.74

marks, which was not even 50 percent marks required for the selection as per the provisions of UGC Regulations 2010 and 4th Amendment UGC Regulations 2016 as per the advertisement dated 13.02.2019. Hence, petitioner's prayer in terms of the writ had already been satisfied and nothing was left which required further adjudication by this Court. The University of Calcutta gave an advertisement being Advertisement No. Est./Advt./6529/2019 dated 13.02.2019 for recruitment to the posts of Professor, Associate Professor and Assistant Professor. As per the said advertisement dated 13.02.2019, the required qualification and experience was-"As per the UGC Notification No.F.3-1/2009, dated 30.06.2010, as amended up-to-date notified in Gazette of India on 18.09.2010,UGC Notification No. F. 1-2/2016 (PS/Amendment) the 04.05.2016, No. F. 1-2/2016 (PS/Amendment) dated 11th July, 2016 and up-to-date relevant Memorandum of Department of Higher Education, Government of West Bengal No. 120-Edn. (U)/1U-91/10, dated 21.02.2011; No.121- Edn. (U)/1U-91/10, dated 21.02.2011; No, 516-Edn(U)/1U-91/10, dated Kolkata the 16th May 2017."That as per the Government of West Bengal, Department of Higher Education's Memorandum being No.516-Edn (U)/1U-91/10 dated 16th May 2017 for the post of Professor under clause (A) sub-clause (iv) at internal page 4 and 5 one of the criteria was -"A minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS), set out in the UGC Regulations 2016 in Appendix III Table (B)." Appendix -III Table -II (B) was given at internal

page 8 of the memorandum. Although no minimum qualifying marks was given in Appendix –III Table II (B) and only selection Committee criteria/weightages (Total weightages 100) was mentioned in the said Table, it was specifically mentioned under point no.7 at internal page 8 of the said memorandum that-"The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicant based on weightages given to the performance of the candidates in different relevant dimensions and his/her performance on a scoring system proforma, based on Academic Performance Indicators (API) as provided in the UGC Regulations 2016 (4th Amendment) in Tables I to XI. In addition to Tables I to XI of Regulations 2016 (4th Amendment) the minimum eligibility criteria and experience as stated above for each category of academic positions, the concerned universities may include other relevant qualifications/experiences."Regulation 6.1.0.(a) of the aforesaid "UGC Notification No.F.3-1/2009, dated 30.06.2010" (hereinafter referred Regulation 2010) prescribed that -"Tables I and III of Appendix III are applicable to the selection of Professors/ Associate Professors/ Assistant Professors in universities and colleges;" Regulation 6.2.0 of the UGC Regulation 2010 inter alia stated that-"The minimum norms of Selection Committees and Selection Procedures as well as API score requirements for the above cadres, either through direct recruitment or through Career Advancement Schemes Regulations, shall be similar." It meant that minimum norms for "Direct Recruitment" and norms for "Career

Advancement Scheme (CAS) for Promotion" should be similar. Appendix III: Table - II(A) Minimum APIS for performance of teachers under Career Advancement Scheme (CAS) in universities departments and colleges, and weightages for expert assessment for the post of Professor (stage 5 & 6) was 50 out of 100 as per the UGC Notification No. F.1-2/2016 (PS/Amendment) the 4th May 2016, No.F.1-2/2016(PS/Amendment) dated 11th July, 2016 [hereinafter referred to as UGC Regulation (4th Amendment) 2016]. Hence, on conjoint reading of Regulations 6.2.0 of the UGC Regulation 2010 and Appendix III: Table-II (A) as per the UGC Regulation (4th Amendment), 2016, the minimum score for direct recruitment was 50 out of 100 for selection in expert assessment for the post of Professor pursuant to an advertisement being No. Est./Advt./6529/2019 dated 13.02.2019 for the subject of South & Southeast Asian Studies under Faculty of Arts, University of Calcutta. Flow chart showing eligibility criteria and marks secured by the petitioner as discussed. In its Affidavit-in-Opposition the University annexed Notification No. F.1-2/2016 (PS/Amendment) the 4th May 2016 in which page 33 was relevant and the expert assessment score sheet, which showed that the writ petitioner scored 29.7. The University had inadvertently stated that 55% marks was the minimum qualifying marks for direct recruitment in the Post of Professor. However, it did not make the petitioner's case any better as the petitioner applied for the recruitment selection process after going through the advertisement, participated in the selection process and thereby accepted the norms and

rules applicable as per the advertisement dated 13.02.2019. In his Affidavit-in-Reply the petitioner made additional claims, inter alia, that vacancies for unreserved and reserved category were clubbed together, nowhere in the advertisement dated 13.02.2019 the minimum qualifying marks was provided for any of the posts, there was no representative of reserved category in selection board. Such claims are not part of the writ petition. In his writ petition, the petitioner had prayed that he should be appointed immediately in the post of Professor for the Department of South and South East Studies, immediate publication of results and production of original records before the court. The additional grounds taken in the reply to the opposition should not be allowed. The selection committee was an expert body, which assessed and considered all the relevant criteria for selection of Professor for the Department of South and South East Studies under University of Calcutta. And the selection Committee after considering all the criteria prescribed under the advertisement dated 13.02.2019, which includes UGC Regulation 2010 and UGC Regulation (4th Amendment) 2016 found none suitable under the Schedule Caste category for the said post. Hence, the purpose of selection committee and the selection list came to an end. In this case the candidate merely participated in the selection process and was not one of the successful candidates and named in the selection list. Even getting placed in select list would not confer any right to appointment to a candidate. The Supreme Court had again and again reiterated the settled proposition of law that a candidate placed in the select list had no

indefeasible right to be appointed even if vacancies were available. Extracts of few judgments were as follows, (a) Supreme Court, in a judgment rendered by a Constitution Bench in *Shankarsan Dash v. Union of India*, [1991] 3 SCC 47, (1991) 2 S.C.R observed as under: "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies." b) In *Commissioner of Police & Anr. Vs. Umesh Kumar* (2020) 11SCR 583, the Hon'ble Apex Court has observed: "The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative." The minimum norms of Selections Committees and Selection Procedures as well as API score requirements for the above cadres, either through direct recruitment or through Career Advancement Schemes Regulations, should be similar. However, since teachers recruited directly can be from different backgrounds and institutions, Table II(c) of Appendix III provides norms for direct recruitment of teachers to different cadres, while Tables II (a) and Table II(b) provide for CAS promotions of teaches in Universities and Colleges respectively, which accommodate

these differences. Candidates who did not fulfill the minimum score requirement under the API Scoring System proposed in the Regulations as per Tables II (a and b) of Appendix III or those who obtained less than 50% in the expert assessment of the selection process would have to be re-assessed only after a minimum period of one year. The date of promotion should be the date on which he/she had successfully got re-assessed.

**4.** I heard the learned counsels appearing for the respective parties and perused the writ petition, the affidavits and the written note of submissions.

**5.** It is an admitted fact that the petitioner had applied for the post of Professor under the Schedule Caste category pursuant to the said advertisement for the subject of South and Southeast Asian Studies under faculty of Arts, University of Calcutta. The total number of vacancies under Scheduled Caste category was one, Un-Reserved one and Schedule Tribe one. Two candidates applied for the post of Professor under the Schedule Caste category and nine applied under the un-reserved categories. The petitioner duly participated in the interview conducted by the Selection Committee on 06.02.2020.

**6.** As the petitioner was aggrieved at the authorities not proceeding further with the selection process, he made a representation on 27.02.2023 and then filed a writ petition before this Court on 27.03.2023.

**7.** After production of records as directed by this Court, it was found that the petitioner secured 29.74 marks as per the score sheet.

**8.** It appears that as per the Memorandum No. 516-Edn(U)/1U-91/10 dated 16.05.2017 of the Department of Higher Education's as referred to in the advertisement for the post of Professor one of the criteria was "A minimum score as stipulated in the Academic Performance Indicator (API) based on Performance Based Appraisal System (PBAS), set out in the UGC Regulations 2016 in Appendix III Table (B)." Although no minimum qualifying marks was given in Appendix –III Table II (B) and only selection Committee criteria/ weightages was mentioned in the said Table, it is specifically mentioned under point no.7 that "the overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicant based on weightages given to the performance of the candidates in different relevant dimensions and his/her performance on a scoring system proforma, based on Academic Performance Indicators (API) as provided in the UGC Regulations 2016 (4th Amendment) in Tables I to XI.

**9.** In addition to Tables I to XI of the minimum eligibility criteria and experience for each category of academic positions, the concerned universities might include other relevant qualifications/ experiences. Regulation 6.1.0 (a) of the aforesaid UGC Notification dated 30.06.2010 prescribes that Tables I and III of Appendix III were applicable to the selection of Professors/ Associate Professors/ Assistant Professors in universities and colleges.

**10.** As further contended on behalf of the University, Regulation 6.2.0 of the UGC Regulation 2010 stated that the minimum norms of Selection Committees and Selection Procedures as well as API score requirements for the above cadres, either through direct recruitment or through Career Advancement Schemes Regulations, shall be similar. According to Table-II(A), the minimum APIS for performance of teachers under CAS in the Universities departments and colleges, and weightages for expert assessment for the post of Professor (stages 5 and 6) was 50 out of 100 as per the UGC Notifications.

**11.** In view of the above, it was argued on behalf of the University that a conjoint reading of the Regulations 6.2.0 of the UGC Regulation 2010 and Appendix III: Table-II (A), the minimum score for direct recruitment was 50 out of 100 for selection in expert assessment for the post of Professor pursuant to the said advertisement.

**12.** The petitioner, on other hand, went on to claim that as the advertisement in question did not clearly specify the minimum qualifying marks provided for the post, even if one candidate applied for the said post, he should be appointed.

**13.** First, the petitioner participated in the selection process and after becoming unsuccessful inasmuch as he was not selected for the post, he cannot turn around and challenge the terms of engagement.

**14.** Secondly, the minimum norms of the Selection Committees and selection procedures as well as API score requirements for the above

cadres, either through direct requirement or through CAS Scheme Regulations, have been found to be similar. It was only because teachers recruited directly would be from different background and institutions that Table II(C) of Appendix III provided the norms for direct recruitment of teachers to different cadres, while Table II (A) and Table II(B) provided for CAS promotions of teachers in Universities and Colleges respectively. However, the candidates who did not fulfill the minimum requirement under the API scoring system proposed in the Regulations as per Table II (A & B) of Appendix III or those who obtained less than 50% in the expert assessment of the selection process would have to be re-assessed only after a minimum period of one year.

**15.** The existing norms for selection and the requirement of minimum score were evident from the relevant provisions.

**16.** Even otherwise, it would be an absurd proposition that as the advertisement allegedly did not clearly specify minimum qualifying marks, a candidate applying for the post and getting any marks, even a zero, would be entitled to be appointed for the post as there was no other candidate under the said category.

**17.** That apart, it does not appear that applicable reservation norms were flouted in the present case. As contended on behalf of the University, a candidate must qualify to attract the provisions of the West Bengal Schedule Castes and Schedule Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. The University was not bound to fill up

vacant seats unless eligible candidates could be found through the selections process. Such vacancy would then remain unfilled. This is in keeping with Section 6 of the said Act.

**18.** It is pertinent to note that the minimum requirement, as given in the Regulations and as submitted on behalf of the University, was 50% marks. A marks of 29.74 as obtained by the petitioner would be a far cry, by any stretch of imagination, in qualifying for the post.

**19.** It is also germane to mention here that the Selection Committee consisted of eminent scholars. Their wisdom cannot be questioned by a candidate in the hind side once he becomes unsuccessful in making the grade.

**20.** The petitioner's rather extreme claim that no 'demo test' was held could only render his writ petition incapable of being adjudicated as it would then be faced with starkly disputed questions of fact.

**21.** That apart, the Hon'ble Apex Court had time and again reiterated the settled proposition of law that a candidate placed in the selection list had no indefeasible right to be appointed even if vacancies were available.

**22.** In view of the above discussions, I do not find any merit in the writ petition.

**23.** Accordingly, the writ petition is dismissed, however, without any order as to costs.

**24.** Urgent certified copy of this order be supplied to the learned counsels for the parties upon compliance of usual formalities.

**( JAY SENGUPTA, J.)**