



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CWP-34842-2024
Date of decision: 15.01.2025

RAJESH KUMAR

.....Petitioner

VERSUS

CENTRAL UNIVERSITY OF HARYANA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Rohit Mittal, Advocate alongwith
Petitioner-in-person.

Mr. Puneet Gupta, Advocate
for respondents No.1 and 2.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner has approached this Court seeking quashing of the advertisement dated 16.02.2024 issued by the respondents-Central University of Haryana inviting applications for appointment to the post of the Assistant Professor (English).

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner possesses the qualification of M.A. (English), B.Ed, M.Phil (English), UGC/NET (English), Ph.D. (English) and has to his credit-5 published International Research Papers establishing his academic

**CWP-34842-2024**

-2-

excellence in English Literature. He further contends that the petitioner belongs to the Saini Community, which is recognized as “Other Backward Class (OBC)” in the State of Haryana. It is submitted that the respondent-University had issued an advertisement No.03/2012 dated 31.10.2012 for filling up various faculty positions including four (04) posts of Assistant Professor in the Department of English, by way of direct recruitment. Two of the said posts were reserved for the OBC category. Since the petitioner fulfilled the eligibility conditions prescribed for the post of Assistant Professor, he applied for the same. As per the final result declared by the respondents on 31.12.2013, the petitioner was second in the waiting list (i.e. at running serial No. 4) in the said recruitment process. The three candidates above the petitioner were Miss Rinu, Mr. Manoj Kumar and Mr. Umesh Kumar. He contends that although Rinu and Manoj Kumar were issued appointment letters, however, Manoj Kumar was ineligible as he did not possess Ph.D. degree as per the UGC Regulations, 2009 at the relevant time and also did not hold NET qualification and his candidature was required to be rejected. The petitioner hence filed CWP-16894 of 2016 before this Court challenging the appointment of Manoj Kumar. A Committee headed by Dr. S.N. Singh was constituted by the respondent-University to enquire into the allegations leveled by the petitioner. Vide its enquiry report dated 08.10.2018, the said Committee submitted its report recording a finding that Manoj Kumar was ineligible for the said post.

3. On consideration of the report of the Committee, the Executive Council of the respondent-University, in its 39th meeting resolved that the



same be accepted and in compliance of the orders dated 13.09.2018 of this Court, the report be submitted to the High Court on 31/10/2018. The said information was accordingly furnished before this Court whereupon the above CWP-16894 of 2016 was disposed of vide order dated 24.01.2019 permitting the University to take an appropriate decision in accordance with law in view of the enquiry report.

4. Accordingly, services of Manoj Kumar were terminated by the respondent University vide its order dated 21.02.2019. The above said order of termination however was a subject matter of challenge in CWP-5313 of 2019 preferred by Manoj Kumar before this Court on the ground that no show cause notice was served upon him and no opportunity of hearing was afforded before the order of dismissal was passed. The above said writ petition was disposed of by this Court vide order dated 27.02.2019 by setting aside the termination order and granting liberty to the respondent-University to pass a fresh order, in accordance with law, and after granting an opportunity of hearing to the petitioner.

5. In compliance thereto, the respondent-University constituted a four members sub Committee of the Executive Council to examine the submissions of Manoj Kumar and to give him personal hearing. Manoj Kumar, however, filed CWP-11380 of 2019 before this Court challenging the constitution of the said Sub Committee. Vide order dated 24.05.2019, the proceedings of Sub Committee was stayed. The University later withdrew the notification of constitution of the said Sub Committee and asked Manoj Kumar to appear before the Executive Council for personal hearing. Instead



of appearing before the Executive Council, Manoj Kumar started delaying the proceedings and got issued Legal Notices to individual members of the Executive Council. He also approached the National Commission for Backward Classes (NCBC) which stayed the proceedings being conducted by the University and also directed UGC and Ministry of Education, Govt. of India to conduct an independent inquiry. Even in the said independent inquiry, Manoj Kumar was again found ineligible for the post in question.

6. The petitioner also submitted a representation dated 13.08.2019 and thereafter filed another CWP-35338 of 2019 before this Court seeking setting aside of the selection and appointment dated 04.01.2014 of Manoj Kumar to the post of Assistant Professor being ineligible. Vide order dated 05.12.2019, the said writ petition was disposed of by issuing a direction to the respondents to objectively consider the representation of the petitioner and to pass a speaking order in accordance with law and within a period of three months from the receipt of certified copy of the said order.

7. A review petition was thereafter filed by Manoj Kumar bearing RA-CW-20-2020 in CWP-35338 of 2019. At the same time, the respondent-University also approached this Court challenging the orders of the National Commission for Backward Classes (NCBC) by way of CWP-17123 of 2021 and an interim stay was granted against the proceedings before the said NCBC. The said writ petition CWP-17123 of 2021 filed by the University was eventually withdrawn vide order dated 06.10.2021. It is also stated that the University did not comply with the order of 05.12.2019 passed by this Court in CWP-35338 of 2019 assailing the selection and appointment of

**CWP-34842-2024**

-5-

Manoj Kumar, despite passing of more than 22 months and that the respondent-University issued an office letter dated 24.01.2022 referring to the order dated 27.02.2019 passed in CWP-5313 of 2019 and took an exemption from considering the claim of the petitioner in view of the pending CWP-11380 of 2019 and RA-CW-20-2020.

8. The review application filed by Manoj Kumar was dismissed by this Court vide order dated 31.03.2022. The petitioner also filed yet another CWP-21419 of 2021 assailing selection and appointment letter to Manoj Kumar. During the pendency of the CWP-21419 of 2021 filed by the petitioner, it was informed that Manoj Kumar had left the respondent-University and was working somewhere else. Accordingly, the petitioner did not press the said writ petition which was accordingly dismissed as not pressed vide order dated 22.12.2023.

9. He further contends that CWP-11380 of 2019 filed by Manoj Kumar raising a challenge to the composition and constitution of the sub Committee was also disposed of by this Court vide order dated 06.02.2024 after noticing that Manoj Kumar had already joined Department of English and Modern European Languages, University of Allahabad, Prayagraj and the impugned order constituting the Sub-Committee also stands withdrawn.

10. The petitioner thereafter submitted another representation dated 26.02.2024 before the respondent-University requesting for appointment to the post of Assistant Professor (English) in light of the fact that the seat was wrongly occupied by Manoj Kumar already stands vacated on account of him being ineligible and he having accepted job at another University and

**CWP-34842-2024**

-6-

Umesh Kumar-the next person in the waiting list and who was above the petitioner in the list did not intend to join the University. As no action was taken on the representation, the petitioner hence filed CWP-31450 of 2024 for directing the respondent to appoint him to the vacant post of Assistant Professor. The said CWP-31450-2024 was also withdrawn by him vide order dated 22.11.2024 on being confronted with the fact that an advertisement for filling up the said post afresh had already been initiated by the respondent-University.

11. The petitioner has now approached this Court yet again challenging the advertisement issued by the respondent-University and claiming that under the given circumstances, since the petitioner was at Sr. No. 4 of the merit list as prepared by the respondent-University and at No.2 in the waiting list, hence, he deserves to be appointed to the vacant post against which Manoj Kumar had been wrongly appointed despite being ineligible. The counsel for the petitioner contends that he has been continuously approaching this Court against the injustice done to him and against the wrongful denial of appointment to the said post.

12. Learned Counsel appearing on behalf of respondent-University, however, contends that notwithstanding the aforesaid facts as noticed above, the crucial aspect is that the petitioner was never in the waiting list prepared by the Selection Committee. He contends that the two names of Rinu daughter of Ramesh Kumar and Manoj Kumar son of Satish Chand had only been recommended against the post reserved for Other Backward Classes and that only one candidate was kept in the waiting list namely Umesh



Kumar son of Hanuman Singh. He contends that the petitioner was thus never in the waiting list at Sr. No.2 as has been portrayed by him. Thus, notwithstanding the marks obtained by him in the original merit list prepared pursuant to the objective assessment of the candidates, the Selection Committee never made a recommendation of the petitioner to be kept in the waiting list, hence, he cannot claim for himself the right of seeking appointment to the said post even though the same may have fallen vacant. He further submits that notwithstanding the same, the petitioner had earlier filed CWP-21419 of 2021 wherein one of the prayers made by the petitioner was for seeking directions to the respondent –University to consider and to appoint him to the post of Assistant Professor (Department of English) alongwith all consequential benefits including seniority, arrears of salary and increments from the date when the petitioner became eligible to be appointed to the said post. The said writ petition was dismissed as not pressed vide order dated 22.12.2023. It is submitted that it was open to the petitioner to seek liberty to seek enforcement of his right, however, no such liberty was availed. He further contends that the petitioner had also filed CWP- 31450 of 2024 on 24.11.2024 for seeking the same relief of appointment. It is submitted that the advertisement dated 16.02.2024, which is under challenge in the present writ petition, had already been issued by the respondents at the time when the above writ petition was filed. The prayer made by the petitioner in the said writ petition was again for directing the respondents to appoint the petitioner to the vacant post of Assistant Professor consequent to finding Dr. Manoj Kumar as ineligible and having left the University by joining somewhere else i.e. a prayer which is akin to



the prayer made herein in its consequence and impact. The said writ petition was withdrawn by the petitioner. He thus contends that the petitioner was neither in the waiting list nor did he pursue his remedy rather in CWP-21419 of 2021 or even in CWP-31450 of 2024 and both these petitions were dismissed either or not pressed or as withdrawn without availing any liberty. He is thus estopped from filing this writ petition again for the same substantial relief by a mere rephrasing of the petition.

13. He contends that when the above petition was filed, the advertisement had already been issued on 16.02.2024, yet, no liberty was prayed by the petitioner to file a fresh petition on the same cause of action with any better particulars. Since the cause of action was already available, all relief had to be claimed in the above CWP-31450-2024. The institution of the present writ petition would be barred also by the principles of Order 2 Rule 2 of the Code of Civil Procedure, 1908 apart from the petitioner being stopped to file a fresh petition from the same substantive relief. He further contends that as per the judgment of the Hon'ble Supreme Court in the matter of ***“Union of India and others versus G. Ramesh”*** passed in Civil Appeal No. 140 of 2020 decided on 09.01.2020 and reported as ***2020 (1) S.C.T. 599***, it was held that a dismissal of an appointed candidate from service would not revive a select list. The relevant extract of the said judgment reads thus:-

“7. The facts, as they have emerged on record indicate that the selection process which was initiated in pursuance of the notification dated 4 November 2013 culminated in the order of appointment of G Vijender.



Subsequently, his services came to be terminated following the order of dismissal upon the conclusion of the disciplinary enquiry. Once a candidate had been selected upon the conclusion of the selection process and was appointed to the post, the Select List stood exhausted. There was one vacancy. The subsequent dismissal from service of the appointed candidate in 2016 would not either revive the Select List or result in the appointment of the respondent.

8. This principle emerges from the judgment of this Court in Thrissur District Co-operative Bank Limited where it was held:

*"When once the selection process is complete and appointment had been made, that process comes to an end and if any vacancy arises on the appointee having joined the post leaves the same, it must be treated as a fresh vacancy and fresh steps in accordance with the appropriate rules should be taken. This view is fortified by the judgment of this Court in **State of Punjab v. Raghubir Chand Sharma and Anr.** [2002(2) S.C.T. 234: JT 2001 (9) SC 266]"*

14. Reference is also made to the judgment in the matter of ***“Thrissur District Co-op Bank Ltd. versus Delson Davis”*** reported as **2002 (2) SLR 410**. He contends that the process of filling up of the post through direct recruitment cannot be stalled at the instance of a person who was neither in the select list nor in the waiting list and that the petitioner does not have any better/preferential right to claim such an appointment solely



because he pointed out and diligently pursued against Manoj Kumar, who was ineligible for the said post.

15. In rebuttal, Counsel for the petitioner contends that the daughter of the petitioner had passed away on 11.02.2024 and as such he was not aware of the advertisement dated 16.02.2024 that had been published by the University. The writ petition was hence withdrawn under those circumstances.

16. No other argument has been raised nor any judgment has been cited.

17. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition as also the entire sequence of facts alongwith judgments cited by the Counsel for the respondents.

18. I am of the opinion that the entire foundation of the case of the petitioner is on a premise that he was in the waiting list. The said claim, however, stands decimated by the Selection Committee report produced by the Counsel for the respondent-University as per which the petitioner was not even recommended to be in the waiting list. Hence, it is not up to the petitioner to assume himself to be a candidate in the waiting list in the absence of the Committee not making any recommendation of the case of the petitioner to be at No.2 in the waiting list. Merely because, the petitioner was at Sr. No.4 in the merit list, does not mean that he would be in the waiting list.



19. The right of a person for seeking appointment against a post fallen vacant, at best enures, in favour of a person who is kept in a waiting list as recommended by the Selection Committee. Since the petitioner was not in the waiting list, hence, such a status cannot be conferred upon him by this Court more so when the recommendations of the selection Committee are not under challenge and the petitioner never prayed that the selection result be modified and he should be kept in the waiting list.

20. Further, it is also evident from a perusal of the entire sequence of facts that in both the writ petitions i.e. CWP-21419 of 2021 as well as in CWP-3150 of 2024, the petitioner had sought his appointment to the said post on account of the fact that Manoj Kumar had been found ineligible for holding the post of Assistant Professor (English) in the respondent-University. While on the first occasion, the writ petition was dismissed as having not pressed, on the second occasion it was withdrawn by the petitioner on being confronted that an advertisement for direct appointment dated 16.02.2024 had already been issued. The petitioner, would thus be, estopped from seeking the same substantial relief by successive petitions by altering the claim. Once the said relief has not been granted by this Court in the earlier two rounds of litigation initiated by the petitioner, he would be stopped from re-agitating the said issue.

21. Further, the contention of the petitioner that since his daughter had passed away on 11.02.2024 and hence, he was not aware of the issuance of the advertisement on 16.02.2024 is concerned, despite this Court being sympathetic of the circumstances that prevailed then, however, there was no



CWP-34842-2024

-12-

embargo/prohibition against the petitioner to seek liberty to file a fresh petition on better particulars while withdrawing CWP-31450 of 2024 on 22.11.2024. In the absence of having availed any liberty to raise a subsequent challenge, such liberty cannot be deemed to be inherent on the petitioner. It would thus not be appropriate for this Court to reopen the case which already stands examined twice by this Court.

22. Further, the judgment in the matter of *“Union of India and others versus G. Ramesh”* reported as *2020 (1) S.C.T. 599* would also be applicable against the petitioner.

23. Considering it from either of the perspectives, fresh challenge raised to the advertisement dated 16.02.2024 would thus not be available to the petitioner at this juncture.

24. The present writ petition is accordingly dismissed at this stage.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 15, 2025
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No