

(2007) 02 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7149 of 1998

Aejaz Ahmad and Ors.

APPELLANT

Vs

Aligarh Muslim University & Ors.

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Citation : (2007) 02 AHC CK 0149

Hon'ble Judges : Sushil Harkauli, J and Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—In this petition, a challenge has been made to the appointment of respondent No. 4 on the post of lecturer in Islamic Studies, Aligarh Muslim University, Aligarh on the ground that he does not possess the requisite minimum qualifications in the ?relevant subject?.

2. In pursuance of the advertisement No. 6A/9596 dated 1531996 applications were invited for appointment on several posts in the University including the post of lecturer in Islamic Studies, Department of Islamic Studies. The advertisement prescribed the following as the essential qualifications for the said post :

(i) Good academic record with at least 55% marks or equivalent grade at Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University.

(ii) Candidates, besides fulfilling the above qualifications, should have cleared the eligibility test for Lecturers conducted by U.G.C.

Or

Should have submitted their Ph.D. thesis, or completed their M. Phil, degree by 31121993.

Note Relaxation of the minimum marks at PG level from 55% to 60% for appointment as Lecturer to the candidates who have cleared the JRF examination

conducted by UGC/CSIR only, prior to 1989. when the minimum marks required to appear for JRF exam were 50%.

Desirable. Should have specialization in Iranian Studies (for the post of Lecturer in Islamic Studies only).

3. In pursuance of the above advertisement all the three petitioners applied alongwith the respondent Nos. 4 and 5. The petitioners were duly invited to face the Selection Committee in an interview to be held on 11/11/1998. Petitioners duly appeared but to their surprise respondent No. 4 was selected and was given appointment letter on 11/11/1998 itself appointing him as lecturer in Islamic Studies.

4. The contention on behalf of the petitioners is that the respondent No. 4 is not qualified for appointment as a lecturer in Islamic Studies as he only possesses the qualification of M.A. Ph.D. in Arabic and is not having Master's degree in the ? relevant subject? i.e. Islamic Studies.

5. The above challenge is being resisted by the University and the respondent No. 4 on the ground that the petitioners having participated in the selection process and on being unsuccessful are not entitled to challenge the selection process. In a similar matter concerning the same University, this Court in Writ Petition No. 9990 of 1998, Dr. Syed Ahsan & Ors. v. Aligarh Muslim University, Aligarh & Ors., decided today itself has ruled that the above principle would not have any application where an unqualified candidate has been appointed to a public post or a post concerned with the performance of the public duties such as the post of teacher in an University. Therefore, for the same reasons as given in the above referred judgment we hold that the writ petition challenging the selection and appointment of respondent No. 4 is maintainable by the petitioner.

6. It is admitted on record that the respondent No. 4 does not possess a master's degree in Islamic Studies. The University and the respondent No. 4 contend that the Islamic Studies is an inter disciplinary course and its syllabus consists all papers of elementary and advance Arabic. The department of Islamic Studies was initially part of Arabic department. Therefore, even if the respondent No. 4 is not having a master's degree in Islamic Studies, he is qualified and competent to teach the subject of Islamic Studies.

7. The minimum essential qualifications prescribed for the post in question, contained in the advertisement must have been laid down by the experts. If the experts have considered it fit and desirable that a master's degree in the relevant subject i.e., Islamic Studies is essential for the post there is no occasion to deviate from the said minimum prescribed qualification and to substitute a master's degree in some other subjects i.e., Arabic in place of Islamic Studies. The master's degree in the ?relevant subject? undoubtedly means the master's degree in Islamic Studies. Therefore, the respondent No. 4 having master's degree in Arabic is not a person holding prescribed essential minimum qualifications for appointment as lecturer in Islamic Studies.

8. We have also perused the syllabus of the Islamic Studies and Arabic which forms part of the rejoinder affidavit. A comparison of the two syllabus prima facie indicates that the two courses are quite distinct and different. Therefore, we are of the opinion that the master's degree in Arabic cannot be equated or held to be equivalent to the degree of MA in Islamic Studies.

9. A Division Bench of this Court in the case of Mohd. Sohrab Khan v. Aligarh Muslim University, Aligarh & Ors., 2006 (3) ESC 2270, has ruled that the subjects of Chemistry and Industrial Chemistry in the Aligarh Muslim University, Aligarh are two different subjects. Therefore, a candidate possessing M.Sc. in Industrial Chemistry cannot be said to be possessing the minimum qualification i. e., M.Sc. in Chemistry which is essential for appointment for the post of lecturer in Chemistry. To conclude the necessary minimum qualifications prescribed for holding a post are not liable to be ignored and no appointment can be made in ignorance of, the same. The minimum essential qualifications prescribed have not been relaxed. Accordingly, we hold that since the respondent No. 4 does not possess the master's degree in the subject of Islamic Studies, he is not qualified to be appointed as Lecturer in Islamic Studies.

10. In the circumstances, the appointment of the respondent No. 4 dated 1111998 on the post of lecturer in Islamic Studies, Aligarh Muslim University, is quashed. The post shall be readvertised and filled up in accordance with law.

11. The writ petition is allowed.