

(2022) 04 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 124 Of 2014

Ajay Sharma

APPELLANT

Vs

Dr. Yashwant Singh Parmar And Others

RESPONDENT

Date of Decision : 02-04-2022

Acts Referred:

Citation : (2022) 04 SHI CK 0002

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Shalini Thakur, Avinash Jaryal, Dilip Sharma, Manish Shurma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. Dr. Yashwant Singh Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. (for short the University), issued advertisement No.07 of 2008 dated 6.8.2008, (for short, "advertisement"), inviting applications for 46 posts of Assistant Scientist/Assistant Professor/Assistant Extension Specialist/ Equivalent in the UGC Scale of 8000-13500 in various disciplines, including Entomology and Apiculture. The subject matter of present lis pertains only to two posts advertised in the Department of Entomology and Apiculture and one post in Forest Plant Protection Unit (hereafter referred to as posts in question).

2. Qualifications for the post of Assistant Scientist/Assistant Professor/Assistant Extension Specialist/ Equivalent were prescribed as under: -

"for the post of Assistant Scientist/Assistant Professor/Assistant Extension Specialist/ Equivalent

(i) Ph.D. Degree in the concerned subject, relaxable to Master's Degree with consistently good academic record i.e. 55% marks at Master's level.

(ii) A relaxation of 5% from 55% of marks at Master's level shall be provided to

SC/ST categories.

(iii) A relaxation of 5% will be provided from 55% of marks to the Ph.D. degree holders, who have passed their masters degree prior to September, 1991.

(iv) Candidates should have qualified National Eligibility Test (in the particular discipline/ subject) conducted by the UGC, CSIR or similar test accredited by the UGC/ICAR.

(v) B in the 7 point scale with letter grades, O, A, B, C, D, E & F shall be regarded as equivalent to 55% wherever the grading system is followed”.

3. The appellant (hereinafter referred to as petitioner) along with others submitted their respective applications for the posts in question. Screening Committee constituted by the University prepared the lists of eligible candidates on the basis of prescribed objective criteria. 39 candidates including petitioner were found eligible for two posts in the Department of Entomology and Apiculture and total 19 candidates were found eligible for one post in the discipline of Entomology in Forest Plant Protection Unit. Petitioner's name found place in both the above said lists. The selection committees interviewed all the eligible candidates. Respondents no. 3 and 4 were selected in the department of Entomology and Apiculture and respondent No.5 was selected in Forest Plant Protection Unit.

4. Aggrieved against the afore said selections, petitioner preferred CWP No. 2103 of 2011, inter-alia praying for following reliefs: -

“a) This Hon'ble Court may kindly be pleased to quash appointment of respondents 3 to 5 as Assistant Professors in Entomology and Apiculture made vide orders dated 5.4.2010 appended with the petition as Annexure P-22, 23 & 24 by way of issuance of a Writ of Certiorari;

b) That this Hon'ble Court may be pleased to issue a writ of Mandamus directing respondents No. 1 & 2 to re-assess the merit of the candidates interviewed by them and also grant to the petitioner marks to which he is entitled to and thereafter offer appointment to the petitioner against the post of Assistant Professor in the Department of Entomology or Forest Protection Unit w.e.f.4.5.2010 i.e. the date on which respondents No. 3 to 5 were appointed against the said posts, with all consequential benefits.”

5. The grievance of the petitioner was that respondents No. 3 to 5 lacked prescribed essential qualifications. Neither their degrees in Ph.D nor National Eligibility Test (for short,“NET”) were in the concerned discipline/subject. According to the petitioner, he was the only candidate, who had done his M.Sc and Ph.D thesis in Forest Entomology. It was contended by the petitioner that respondents No. 3 and 4 had their Ph.D thesis in Toxicology and Nematology respectively and respondent No. 5 was Ph.D in Acarology, which were un-related to the discipline/subject of Entomology and Apiculture.

6. Learned Single Judge dismissed the petition of the petitioner vide judgment dated 28.4.2014 by holding that Entomology and Apiculture was the major subject with seven fields of specialization i.e. Fruit Entomology, Vegetable and Floriculture Entomology, Biological Control, Forest Entomology, Toxicology, Nematology and Apiculture. Thus, the contention of petitioner regarding ineligibility of respondents No. 3 to 5 on this count was rejected. It was specifically held that the Ph. D degrees of petitioner and private respondents were in Entomology and Apiculture and they all had qualified their NET in the concerned subject, conducted by ASRB (ICAR).

7. Learned Single Judge by placing reliance on various judicial precedents came to the conclusion that judicial re-assessment of comparative merits of candidates was not permissible and such assessment was the domain of expert body. The Screening Committee was held to be duly constituted and the Selection Committee comprised of the nominees of Chancellor and Vice-Chancellor of the University, ICAR, Dean College of Horticulture, Professor and Head of Department of EAP and Vice Chancellor was found to be duly constituted.

8. Further, learned Single Judge applied principle of estoppels against the petitioner on the ground that the petitioner ought to have challenged the recommendations of the Screening Committee before the date of interview. It also weighed with learned Single Judge that there was no allegation much less proof of malafide against the Screening Committee or Selection Committee, therefore, also the claim of petitioner was without merit.

9. Petitioner has assailed the judgment passed by the learned Single Judge, by way of instant appeal, inter-alia on the grounds, as under: -

i) The discipline/specialization is determined by the university on the basis of the subject of thesis. The discipline/specialization of respondent No.3 was in Toxicology, respondent No.4 was in Nematology and respondent No.5 was in Acarology. Thus, as per petitioner, none of the private respondents were having their discipline/specialization in Entomology and Apiculture or Entomology.

ii) The name of department i.e. Entomology and Apiculture mentioned against the major subject in respect of Ph.D degrees of private respondents was not indicative of their respective discipline/ specialization.

iii) The post in Forest Plant Protection Unit was specifically meant for Entomology discipline and petitioner was the only eligible candidate, as he had studied course in Forest Entomology and Forestry.

iv) The private respondents were eligible for appointment only against the posts of their specialization. The posts in Toxicology and Acarology were available in the University. The Screening Committee as well as Selection Committee had selected ineligible candidates. The Selection Committee had deliberately mentioned the specialization of all the candidates as Entomology and Apiculture, whereas the petitioner and private respondents in their respective application

form had clearly mentioned their specialization as Toxicology, Nematology and Entomology and Forest Entomology.

10. We have heard learned counsel for the parties and have also gone through the records.

11. The core question, which fell for determination of learned Single Judge was whether respondents No. 3 to 5 were eligible in terms of prescribed qualifications? As noticed above, a candidate to be eligible for the post of Assistant Scientist/Assistant Professor/Assistant Extension Specialist/ Equivalent was required to be holding of Ph.D degree in the "concerned subject" relaxable to Master's degree with consistently good academic record i.e. 55% marks at Master's level and qualified NET (in the "particular discipline/subject"), conducted by the UGC, CSIR or similar test accredited by the UGC/ICAR.

12. The terms "concerned subject" and "particular discipline/subject" used while prescribing qualifications in the advertisement, have to be read in conjunction with other requirements of the advertisement, in which "Entomology and Apiculture" had been mentioned in column-2 of the tabulated information against discipline(s)/specialization(s) of the post. Relevant extract of such tabulated information is reproduced as under for clarity and better understanding: -

Sr.

No.

Discipline(s)/ specialization(s) of the post

Department/Research Station/Centre

Reservation

Total

5.

Entomology & Apiculture

E.A.P 02

General 03

SC

ST

OBC

PWD 01

04

Forest Plant

13. Thus, it does not remain in realm of doubt as to what was required by the university and how the Screening Committee or/and Selection Committee considered the same.

14. As per advertisement, "Entomology and Apiculture" without there being any further qualification, was the discipline/specialization. Ph. D thesis of private respondents in Toxicology, Nematology and Acarology were the different branches under one umbrella of the discipline/specialization i.e. "Entomology and Apiculture". Since there was no ambiguity in the advertisement, no added meaning could be attached to the terms "concerned subject" and "particular discipline/subject"

15. Thus, the contention of the petitioner that Screening Committee had made ineligible candidates eligible cannot be countenanced. Nothing could be pointed out from the records to show that the Screening Committee and/or Selection Committee had any specific reference vis-à-vis assessment of the discipline/specialization of candidates and such committees had over-reached their jurisdiction. In absence of any material to that effect, no fault can be found in the decision-making process undertaken by the Screening as well as Selection Committees.

16. We also do not find any fault in the view taken by the learned Single Judge which, in our considered view, also is the only plausible view borne from the material on record. The contention of petitioner that only those candidates, who had specialization in Entomology, could be held eligible by the Screening Committee appears to be self-assumed.

17. The petitioner has also not been able to show any rule or regulation adopted by the University to provide credence to the contention that "discipline/specialization" mentioned in the advertisement had to be considered only in respect of the particular specialized subject and not the discipline of Entomology and Apiculture.

18. Petitioner was fully aware or otherwise should have been vigilant enough to appreciate the respective subjects in which private respondents had their Ph.D degrees. That being so, petitioner should have challenged the proceedings of Selection Committee before participating in further process of selection. Petitioner seemingly participated in the entire selection process and then turned around to challenge the same. Such conduct of petitioner cannot be approved.

19. Learned counsel for petitioner has also laid challenge to the findings returned by learned single judge to the effect that Court could not revisit the competitive merit of candidates in view of involvement of experts in the selection process. As per petitioner, selection process was purely an administrative matter and the presence of academicians (experts) could not change its complexion. Reliance, in

that regard, has been placed on the judgment passed by a division Bench of Hon'ble Andhra Pradesh High Court in Writ Appeal No. 233 of 2013, titled Gowda Rajender & others vs. Dr. M. Radha Krishna & others. Such reliance, in our considered view, is clearly mis-placed for the reasons that in the instant case, petitioner had raised a dispute as to the eligibility of private respondents vis-à-vis his own on the basis of specialized subjects of their respective Ph.D degrees, whereas no such question was involved before the Hon'ble High Court of Andhra Pradesh. Otherwise also, the technical distinction sought to be drawn by petitioner could be better resolved by the experts.

20. Further, learned counsel for the petitioner has made an attempt to persuade us by inviting our attention to the definition of discipline, as contained in "Rules for Recruitment and promotion of Scientists Grade-IV in CSIR". According to her, discipline means the specialization in which the scientists are assessed for promotion and hence discipline has direct relation with specialization. We do not find any substance in such contention of the petitioner as the definition of term "discipline" referred to above has its application in specific rules adopted by CSIR and cannot have universal application.

21. Reliance has also been placed on the judgment passed by the Hon'ble Supreme Court in Avtar Singh vs. Chaudhary Charan Singh University, 2002 (10) SCC 2012. This judgment again will not help the cause of petitioner as their Lordships were dealing with a fact situation where the candidate was found lacking in requisite five years experience. So far as qualification of the candidate was concerned, Hon'ble Supreme Court did not concur with the findings of High Court in holding that eligibility qualification was lacking.

22. Learned counsel for the appellant has made another unsuccessful attempt to persuade us by placing reliance on para-30 of a judgment passed by Hon'ble Madras High Court in T.A. Chidambaram vs. The University of Madras (1989)1 MLJ 302, which reads as under:-

"Since the third respondent does not possess a Ph. D. in the subject, since he does not possess teaching and research experience in the subject and since he does not possess the specialization in the delinquency at the doctoral level, the appointment of the third respondent is in violation of the qualification prescribed under the Ordinance of the University and as advertised by it. His appointment, therefore, is quashed."

Again, the judgment rendered by the Hon'ble Madras High Court was in its own facts situation where the candidate was not found to possess Ph.D. degree in the subject coupled with other disqualifications as dealt in para-30 of the judgment (supra), which became the basis for quashing of appointment.

23. In light of the above discussion, we find no merit in the instant appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.