
(2013) 02 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Review Petition No. 220759 of 2011 in Civil
Miscellaneous Writ Petition No. 56401 of 2008

Anshu Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 2 ADJ 375

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Dushyant Kumar, Anshu Kumar, Desh Raj Singh In Person, for the Appellant; A.B.L. Gaur, Anita Srivastava, B.P. Mishra, Gautam Baghel and Ram Gopal Tripathi, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard Sri Anil Tiwari, learned counsel for the petitioner applicant in this review petition and Sri V.K. Singh, learned senior counsel assisted by Sri Gautam Baghel, learned counsel for respondents, 2 to 5, Allahabad University and its authorities. Petitioner was denied admission in Ph.D. Course in Law by the Allahabad University in the year 2008, hence he filed this writ petition. Petitioner argued the writ petition in person. It was dismissed by me on 5.7.2011. As the petitioner had not engaged any counsel hence while arguing the writ petition he could not place the things in proper perspective. The main thing to be decided in this review petition is as to whether Doctoral Programme Committee (D.P.C.), which interviewed 21 candidates for admission in Ph.D. including the petitioner on 2.7.2008 was competent to decide in its meeting held one day before (on 1.7.2008) to prescribe 55% cut off marks.

2. As admitted in the counter-affidavit to the writ petition, "11 candidates out of 21 appeared candidates were selected", (as they in the interview obtained more than 55% marks.) (Para-16 (VIII).]

3. In this review petition on 11.9.2012 following order was passed:

Shri Anil Tewari, learned counsel who has filed Vakalatnama on behalf of petitioner has argued the review petition. Shri Gautam Baghel, learned counsel appearing for the respondent-University has also been heard and his arguments are almost over. However just one thing requires clarification. Annexure-5 to the rejoinder-affidavit on its page 28 states that there were 17 seats were available for admission in L.L.M. and out of that only 11 were filled up during the relevant year. Let Shri Baghel seek instructions in this regard.

List in the next cause list.

Office is directed to supply a copy of this order free of cost to Shri Gautam Baghel learned standing counsel for respondent Allahabad University by tomorrow.

4. On subsequent dates when review petition was heard, this fact was not denied by the respondent-University that there were 17 seats.

5. Ordinance LVI: The Doctor of Philosophy Programme made u/s 29(1)(d) of State Universities Act has been annexed as Annexure-2 to the review petition. Its copy has been obtained by the petitioner applicant from the University under Right to Information Act. Under Ordinance 1(a)(iii), it has been provided that a candidate can be considered for admission by D.P.C. only if he has qualified in a preliminary test or assessment called as the eligibility test. Thereafter, under clause (v) of the same Ordinance 1(a), it is provided that a candidate must possess in the opinion of D.P.C. and of the Research Degree Committee, the requisite qualifications, aptitude and capability for pursuing the D.Phil. programme in the concerned subject. Thereafter, under Ordinance 2(e), it is provided that the D.P.C. shall interview the applicants who have been found to be eligible under Ordinance. 1(a) and thereafter a draw up on the basis of criteria laid down by the Academic Council or, pending the same, by the Departmental Committee, under intimation to the Board of the concerned Faculty, the priority order of the applicants so interviewed for each subject or area of research.

6. Admittedly, Academic Council had not laid down the criteria of minimum marks in interview. Annexure-3 to the review petition is copy of minutes of Core Committee meeting of C.R.E.T. 2007 dated 28.6.2007, which has also been supplied to the petitioner by the University under R.T.I. Act. Para-15 of the said minutes provides that "After qualifying "Written Screening Test" and/or "Written Subject Test", all the eligible candidates shall be treated at par and be required to appear for an interview before the DPC for their final selection for enrolment to the D. Phil Programme of the respective Department. No weightage shall be admissible to the candidates on their Written Subject Test scores." In the present case we are concerned with C.R.E.T.-2007.

7. In para-16 of the counter-affidavit, which is main paragraph, it has been admitted that D.P.C. in its meeting dated 1.7.2008 (which is one day before the

interview) decided the criteria of 55% minimum marks, however it is nowhere stated that how D.P.C. was authorised to fix such criteria particularly after the start of the process for selection to D.Phil./Ph.D. Petitioner admittedly got 42 out of 100 marks. Learned counsel for University has not been able to point out any provision under which D.P.C. can fix minimum marks. In this regard, the main argument of learned counsel for University and its authorities is that for maintaining the standard of education qualifying marks can be prescribed and for the said purpose heavy reliance has been placed upon *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, In the said judgment, it has been held that University or State Government concerned can fix higher eligibility criteria than the minimum prescribed by Central Government Body and such higher criteria cannot be questioned on the ground that by following the said criteria seats would remain vacant. However in the instant case seats remaining vacant is not the main point involved. The main point involved is as to whether D.P.C. had any authority to fix the criteria of 55% minimum marks.

8. Sri Anil Tiwari, learned counsel for the petitioner has cited the following authorities in support of his contention that in the matter of employment (as well as admission) procedure cannot be changed after proceedings for selection have started:

(i) *Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others*,

(ii) *Hemani Malhotra Vs. High Court of Delhi*,

(iii) *State of Orissa and Another Vs. Mamata Mohanty*, particularly its para-51 wherein it has been held as follows:

More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over.

(iv) *Parmender Kumar and Others Vs. State of Haryana and Others*, In this case, one day before counseling fresh instructions had been put on Government website which were not approved by the Supreme Court and it was further held that as applications had already shown their competence in written test and therefore, revised eligibility test could not be applied to them on the pretext of upholding standard of education.

9. As it has not been shown that D.P.C. was authorised to fix minimum passing marks and that also for the session for which applications had already been invited and, written test had already been held, hence review petition is to be allowed. My judgment dated 5.7.2011 is erroneous in law as the question of power of D.P.C. to fix norms was not considered therein. It is directed that whenever the next selection for D.Phil. is made, petitioner shall be given admission without undergoing the selection process. Review Petition is accordingly allowed. Judgment and order dismissing the writ petition is set aside.

Writ Petition is allowed.