
(2017) 03 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 6698 of 2016

Ashok

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Maharashtra Universities Act, 1994 — Section 77

Citation : (2017) 3 AIRBomR 212 : (2017) 3 BCR 444 : (2017) LIC 2308

Hon'ble Judges : T.V. Nalawade and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Shri. S.M. Kamble, Advocate holding for Shri. Eknath G. Irale, Advocate, for the Petitioners; Shri. A.S. Shinde, Assistant Government Pleader, for the Respondent No. 1; Shri. S.G. Chapalgaonkar, Advocate, for the Respondent No. 2; Shri. Pradeep Deshmukh, Advocate, holding for Shri. Y.P. Deshmukh, Advocate, for the Respondent No. 3; Shri. N.S. Tekale, Advocate, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The petition is filed for relief of quashing and setting aside the selection of the respondent Nos.3 and 4 on the post of Assistant Professor in respondent No. 2, Dr. Babasaheb Ambedkar Marathwada University in pursuance to the advertisement published by the University on 30/4/2016. Further direction is claimed to conduct fresh selection process for such appointments. The petitioners had applied for these two posts (one for open category and one for the reserved category). Though there are many grounds mentioned in the petition and more grounds were argued, this Court is considering two grounds viz. (1) want of jurisdiction to the committee due to non inclusion of the required members in the committee; and, (2) not following the procedure laid down by University Grants Commission for selection of such staff in the University.

3. On the first ground, the petitioners took this Court through the provision of section 77 of the Maharashtra Universities Act, 1994. This provision shows that when an appointment is to be made on temporary vacancy of a teacher of the University and if the Vice Chancellor is satisfied that in the interest of teaching it is necessary to fill in the vacancy immediately and the period for such appointment is not exceeding one year, the Vice Chancellor needs to constitute local selection committee and after completing the selection process the selection needs to be informed to the Managing Council. Section 77 runs as under:

"77. Filling temporary vacancies of university teachers: Where an appointment is to be made on a temporary vacancy of a teacher of university the appointment shall be made, if the vacancy is for a period of more than one year, on the recommendation of the selection committee in accordance with the provisions of section 76. The quorum for the selection committee shall be three, one of them being the expert under clause (iv) :

Provided that, if the Vice-Chancellor is satisfied that, in the interest of teaching, it is necessary to fill in the vacancy immediately, he may make the appointment of a person duly qualified, for a period not exceeding one year on the recommendation of a local selection committee constituted as follows, and shall inform the Managing Council of such appointments :

(i) the Vice Chancellor Chairman;

(ii) the Dean of the faculty concerned;

(iii) the head of the department concerned;

(iv) one expert nominated by the Vice-Chancellor, except that, where the head of the department is also the Dean the Vice Chancellor shall nominate two persons instead of one;

(v) one member belonging to Scheduled Caste or Scheduled Tribe or Denotified Tribes (Vimukta Jatis) / Nomadic Tribes or Other Backward Classes, nominated by the Vice Chancellor;

(vi) Director, Higher Education or his nominee not below the rank of Joint Director; and

(vii) Director, Technical Education or his nominee not below the rank of Joint Director.

Provided further that, before the expiry of one year as aforesaid, the Vice Chancellor shall take steps to fill up the post by appointment in accordance with the provisions of section 76."

4. In the present matter, it is not disputed that in the advertisement it was made clear that the appointment shall be for the period of 11 months and the appointment was to be made for the subject Pali and Buddhism. Two posts of Assistant Professor were available. Out of that one post was for open category

candidate and one post was for Scheduled Caste candidate. Appointment was to be made for fixed salary of Rs.24,000/per month on contract basis and by following procedure, Walk InInterviews, which were to be held on 1152016. In the advertisement the requisite educational qualifications were mentioned and the candidate who was holding Master's Degree with at least 55% marks in the aforesaid subject, from the Indian University or equivalent degree from an accredited foreign University could have applied. There was relaxation of 5% in the aforesaid marks for candidates belonging to the Scheduled Castes/Scheduled Tribes category. The next essential condition for eligibility was passing of National Eligibility Test (NET) conducted by UGC, CSIR etc. The condition of NET was relaxable for candidates who were awarded Ph.D. in accordance with the University Grant Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009. It was made clear that preference was to be given to the candidates who were possessing P.G. and Ph.D. in Pali and Buddhism and also to those candidates who were having experience of teaching in senior college or University.

5. For the first ground, the ground in respect of improper constitution of the committee, relevant provision of the Act is mentioned. It is not disputed that there were no members in the committee of categories (v) to (vii). The second proviso to section 77 shows that if the vacancy is for period of more than one year that requires following of the procedure laid down under section 76 of the Act within one year from the date of the appointment. Thus, the provision shows that when the local selection committee is to be constituted that needs to be in accordance with the first proviso mentioned in section 77. In view of these circumstances this Court holds that it was mandatory on the part of the Vice Chancellor to constitute the local selection committee as per the first proviso. It needs to be kept in mind that in view of the reservation policy accepted by the State for such posts, it was mandatory for the Vice Chancellor to see that one member belonging to Scheduled Caste or the Scheduled Tribe etc as mentioned in (iv) category was included in the local selection committee. A query was made by this Court to the learned counsel for the University and he was asked to show and submit as to whether order of the constitution of the committee was made and any member of that category was appointed specifically. The submissions made show that no such order of constitution of the committee was made. The learned counsel submitted that the person from the category of (iii) or (iv) can be of reserved category of SC/ST and in that case there is no need to apply the provision of category (iv) of section 77. This submission is not at all acceptable. Even if other members from category other than (v) belong to SC or ST category that cannot absolve the authority from the duty to include one member from category (v). Each category has its own importance and the members mentioned in all the categories viz. (i) to (vii) need to be there as the decision of the local selection committee will not be placed before the committee which is required to be constituted under section 76 of the Act. As there was no such constitution of the committee, this Court holds that the committee had no jurisdiction to make

the selection of the candidates as per the aforesaid advertisement and so the selection itself is illegal.

6. So far as the second ground is concerned, "UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010" show that these Regulations are applicable to all the Universities including respondent University. Appendix III Table II(c) is as under :

Assistant Professor/equivalent cadres (Stage 1)

Minimum API Scores

Minimum Qualification as stipulated in these regulations.

Selection Committee criteria / weightages (Total Weightages = 100)

a) Academic Record and Research Performance (50%)

b) Assessment of Domain Knowledge and Teaching Skills (30%)

c) Interview performance (20%).

(Only the portion showing the selection committee criteria / weightages equivalent to 100 are quoted).

7. The aforesaid Regulation shows that before starting of the oral interview at least one table of Academic Record and Research Performance for which 50% marks are assigned needs to be prepared. It can be said that at the most the assessment for criteria (b) and (c) can be made by the interview committee. Admittedly in the present matter, no such separate charts were prepared. The candidates who were having Ph. D. degree and who had published papers in international journals and who were having Ph. D. in addition to passing of NET are given less than 5 marks by one member. The record of marking system shows that each member was to give marks out of 100. In such a case it can be said that the first marking ought to have been done on the basis of educational qualification and other academic record as mentioned above and out of 50% marks, the candidate ought to have been given specific marks. Such procedure was not at all adopted and surprisingly one member gave 2 marks to a candidate like, Smt. Waghmare from SC category and the total number of marks given by five members in respect of this candidate was 50. Same can be said in respect of other SC candidate, Munja Kamble. Same is the case of Kamble Uttam Hariba, petitioner No. 2, and to him two members have given less than 10 marks and three members gave less than 20 marks and total marks of 56 were given to him. The petitioner Suchita Ingle (No. 3) was interviewed as open category candidate and to her one member gave 2 marks and other 4 members gave between 11 and 20 marks and total marks of 66 were given to her. To the petitioner Ashok Sarwade (No. 5) two members gave less than 10 marks and 3 members gave marks between 18 and 25.

8. All the aforesaid instances show that the members of the interview committee did not know the marking system which is given by UGC and as per the guidelines given by UGC the interviews were not taken. As per the guidelines for oral interview only 20 marks were available and so each member could have given either out of 4 marks or out of 20 marks. If each member had given out of 20 marks then the average could have been drawn on the basis of the total marks to ascertain the marks secured out of 20 marks.

9. Copy of application given by respondent No. 3 ? Kunali Keshav Bodele to whom members gave maximum marks had passed M.A. with 74.5% marks and she was gold medalist in that examination. She had done post graduate like Diploma in Buddhist Study and in that examination she had secured 74.5% and she had stood first in merit list. She has passed NET in Pali. She had obtained Ph.D. in Pali. She had published 3 papers in international journal and five papers in national journal. She had attended 13 seminars, 8 workshops and 3 Symposia National. In addition to that she had presented three more papers to international journal and 19 papers to national journal. Her one book was published on the date of the application. She had experience of one year in subject Pali and she had P.G. experience of 4 years in subject Pali and Buddhism. She secured 295 marks. She was selected from open category though she had faced interview as reserved category candidate also.

10. Copy of application of respondent No. 4, Varsha Agale shows that she had applied from reserved category, Scheduled Caste. She had completed M.A. B.Ed. in Pali subject and she had secured 62% marks. She has passed NET in Pali subject and she had secured 59% marks. She had completed M.Phil. in Pali and she had secured 60% marks. Her experience was of 7 years but it was Under Graduate experience in Pali and Buddhism. She secured 162 marks and she came to be selected.

11. Kunali Keshav Bodele, respondent No. 3 was considered from open category also and in the mark sheet prepared for selection it is shown that she secured 297 marks. Thus, apparently to make space to Smt. Varsha Agale, Smt. Kunali was shown to be selected from open category.

12. Petitioner No. 1 ? Ashok Baladhan Uke had appeared for interview as Scheduled Caste candidate. His application shows that he is M.A. in Pali and Buddhism and he had secured 57.57% marks. He is M.A. in English also and in that examination he secured 51.53% marks. He has completed NET and he is also Ph.D. He has done LL.B. and he is Post Doctorate Fellow from 2014 onward for subject "Distortion of Buddhism, Prevention and Remedy". He has published 4 papers in international journals and 8 papers in national journals. He had attended 15 seminars, 6 workshops and two Symposia National. He has presented 11 more papers in international journals and 22 papers in national journals. His two books are published and one book is in process. In press also his papers are published. In spite of these circumstances, the marks given to him are between 10 and 30 and total 108 marks were given to him. If his case is

considered and compared for academic record and excellence record it can be said that he was definitely entitled to get more than 25 marks out of 50 marks which were expected to be reserved for such academic record. If average of marks given by 5 members is calculated, it comes to 21.

13. The application form of Uttam Hariba Kamble, petitioner No. 2 shows that he has done M.A. with 57% marks in Pali subject. He has passed NET in Pali. He is completing Ph.D. in Pali. In spite of these circumstances, two members gave him less than 10 marks showing that the marking system given by UGC is not followed. Same is the case of the petitioner, Suchita Ingle who was eligible as she has done M.A. in Pali with 68.12% marks. She has passed NET in Pali and she has done M. Phil. In Pali. She was given two marks by one member.

14. The petitioner ? Balu Ambhore has done M.A. in Pali and Buddhism with 66.50% marks. He has passed NET in Pali. He has done Ph.D. in Pali and he has done other courses like B.A. in Library Science etc. Five papers are published in international journals and three papers in National Journals. He has attended Seminars and Workshops. To him, marks were given during interview between 14 and 27 and the total number of 92 of marks were given to him.

15. The petitioner?Ashok Sarwade has completed M.A. in First Division. M.Phil in first Division. He has done Ph.D. in Pali and he has passed NET. He has obtained Under Graduate experience in Pali and Buddhism of 7 years and post graduate experience of 3 years. He also published papers in international journals and 4 papers in national journals. He has attended many seminars and workshops. He has also presented two papers. But one member gave one mark and other members gave him 9 marks. Total number of marks given to him were 72. Average was 14.

16. The aforesaid illustrations are sufficient to show that the marking system given by UGC is not at all followed by the University. Such marking system is given to see that there is no scope left for favourotism and selection is made mainly on the basis of other record. It is already observed that the University is not disputing that such marking system was not followed. That has certainly given scope for favourotism and it can be said that even when respondent No. 4 had no experience of teaching of Post Graduate, when no paper of this candidate was published either in international journal or in nation journal, when she has not done Ph.D., she is selected.

17. The learned counsel for the University and the learned counsel for the selected candidates placed reliance on following reported cases :

(1) (2016) 1 SCC 454 (Madras Institute of Development Studies v. K. Sivasubramaniyan);

(2) (2009) 4 SCC 516 (Sri Jyotish Kaiborta v. The State of Assam);

(3) 2016(1) Mh.L.J. 443 (Ashok v. Dr. B.A.M. University) of this Court.

On the basis of observations made in these cases it was submitted for the respondents that the petitioners had participated in the process of selection and so they cannot have any grievance with regard to the process of selection. Facts of all the reported cases were different. In the present matter this Court is expected to consider the specific provisions of the Maharashtra Universities Act already quoted. There are also guidelines given by UGC for marking system. When necessary information was called which could have been used for aforesaid marking system, it can be presumed that the petitioners participated in the process with the presumption that the marking system will be followed. It was Walkin Interview and as the University was making recruitment, there was reason for the petitioners to believe that the University will be following the procedure as laid down by law.

18. The aforesaid circumstances show that the University has not given effect to the law which regulates the powers of the University. That may have happened either due to absence of knowledge or incompetency or it may have happened due to some mala fide intention behind it. In any case, the University was bound to follow the procedure with regard to constitution of the committee as per the provisions quoted. As the committee itself was not properly constituted it had no power to make selection and so the selection done by such committee cannot be called as legal.

19. When the procedure which is expected to be followed in a case like the present one, is not followed and scope is left for arbitrariness or for favouritism and there are circumstances showing that due to such improper procedure, the expected fairness was not achieved this Court cannot ignore such circumstances.

20. It was submitted for the respondents that the period of appointment will come to an end in April 2017 and hardly one month is left of the period for which appointment was given and so it is not desirable to set aside the appointments. This Court holds that this submission is not at all acceptable. Due to such circumstances the Court cannot avoid to declare the decision of the authority, like the respondent University as illegal. Declaration becomes more necessary in cases like the present one as the body, statutory authority of Government needs to be kept within proper control. If that is not done, the illegality and abuse of the power will continue. The power of issuing writ of certiorari needs to be exercised in such cases and the circumstances that the period is about to end and further the candidates already appointed may face difficulty in using this experience for getting other post cannot be considered while setting aside the order.

21. In the result, the petition is allowed. The appointments of respondent Nos.3 and 4 made in pursuance of the advertisement dated 30/4/2016 published by respondent No. 2 University are hereby quashed and set aside. Rule made absolute in aforesaid terms.