

(1998) 12 AHC CK 0068
In the Allahabad High Court
Case No : C.M.W.P. No. 28173 of 1998

Dinesh Kumar Srivastava

APPELLANT

Vs

Sampoornand Sanskrit Vishwavidyalaya and another

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (1999) 2 AWC 1130

Hon'ble Judges : Palok Basu, J;B.K. Sharma, J

Bench : Division Bench

Advocate : V.K. Upadhyaya, for the Appellant; Anil Tewari, for the Respondent

Final Decision : Allowed

Judgement

Palok Basu, J.—The petitioner Dinesh Kumar Srivastava through this writ petition wanted a writ in the nature of mandamus commanding the respondents to consider him for appointment to the post of Lecturer in Education against the Advertisement No. 1 of 1998 for which he had made an application and wanted a direction to permit him to appear before Selection Committee in the meeting scheduled to be held for selecting a person from candidates who had applied.

2. When the writ petition was filed, time was granted to the learned counsel for the opposite parties to file a counter-affidavit which has been filed and rejoinder-affidavit has also been filed. As Jointly requested by the learned counsel for the parties, this writ petition is being finally disposed of at the admission stage.

3. Sri V. K. Upadhyaya, learned counsel for the petitioner has been heard at substantial length and Sri Anil Tewari, learned counsel for the two respondents, i.e., Sampoornanand Sanskrit Vishwavidyalaya. Varanasi (For short. hereinafter referred to as the Vishwavidyalaya and its Vice- chancellor).

4. The post advertised through the aforesaid advertisement is that of Lecturer in the department of Education in the Vishwavidyalaya. It is clear from Item No. 2 of the vacancies advertised through the said advertisement and admittedly the

petitioner has made an application for being selected towards the vacant post of Lecturer in Education in the Vishwavidyalaya. The advertisement further indicates that the minimum qualifications will be those which are delineated in the Statutes of the Vishwavidyalaya. Admittedly, for the post of Lecturer in Education department specific and special qualifications are mentioned in clauses (2) and (3) of the Statutes whereas those clauses would not apply for the vacant post of Lecturer in any other department. This will be clear from a reading of clauses (1), (2) and (3) which are for ready reference quoted below :

1? izk/;kid in gsrq ?f"k{kk&"kkL= foHkkx dks NksM+dkj? vgZrk,a % ?d? lqlaxr fo"k; esa de ls de 55 izfr"kr vad ;k mlds led{k Js.kh lfgr LukrdsRrj mikf/k ;k fdlh fons"kh fo"ofo|ky; dh led{k vikf/k] vkSj

[k? vfofPNUu mRre "kS{kf.kd vfHkys[k A

-11.01 (1) in the case of Faculties of Ved-Vedanga. Sahitya-Sanskriti, Darshan, Sharman Vidya and Adhunik Jyana-Vijnana (except the department of shiksha Shastra) the minimum qualifications for the post of a lecturer in the University shall be Master's degree or an equivalent degree of foreign University in relevant subject with at least 55 percent marks or its equivalent grade and consistently good academic record.

2? izk/;kid in gsrq ?f"k{kk&"kkL= foHkkx dh fLFkfr esa? vgZrk,a % ?d? de ls de 55 izfr"kr vad ;k mlds led{k Js.kh lfgr LukrdsRrj mikf/k ;k fdlh fons"kh fo"ofo|ky; dh led{k mikf/k dh vFkkZr~ ,e- Mh- dh mikf/k A vkSj

[k? vfofPNUu mRre "kS{kf.kd vfHkys[k A

(2) In the case of department of Shiksha Shastra in the Faculty of Adhunik Jnana-Vijnana, the minimum qualification for the post of a Lecturer in the University shall be Master's degree or an equivalent degree of a foreign University in Education (that is an M.Ed. degree) with at least 55 percent marks or its equivalent grade and consistently good academic record.

3? bl ifjfu;e ds iz;kstu ds fy;s&& ?d? dksbZ ,slk vH;FkhZ ?f"k{kk&"kkL= foHkkx esa izk/;kid ds in ds fy, fdlh vH;FkhZ ls fHkUUk? ftlus ;k rks Lukrd dh mikf/k ijh{kk esa 55 izfr"kr vad vkSj b.VjehfM,V ijh{kk eas f}rh; Js.kh ;k nksuksa ijh{kkvksa esa ls izR;sd esa i`Fkd&i`Fkd 50 izfr"kr vad izkIr fd;s gksa] vfofPNUu v?ke "kS{kf.kd vfHkys[k okyk dgk tk;sxk A

(3) For the purposes of this Statutes: (a) A candidate (other than a candidate for Lecturership in the Department of Shiksha Shastra) having obtained either 55 percent marks in Bachelor's degree examination and second class in intermediate examination separately is said to have consistently good academic record:

[k? f"k{kk"kkL= foHkkx esa izk/;kid in ds fy;s dksbZ ,slk vH;FkhZ] ftlus ;k rks ch- ,M- dh mikf/k ijh{kk eas 55 izfr"kr vad vkSj fdlh vU; Lukrd mikf/k ijh{kk esa f}rh; Js.kh ;k nksuksa ijh{kkvksa esa ls izR;sd esa i`Fkd&i`Fkd 50 izfr"kr vad

izkIr fd;s gksa] vfofPNUu m?ke "kS{kf.kd vfHkys[k okyk dgk tks;xk A** (b) A candidate for Lecturership in the Department of Shiksha Shastra having obtained either 55 percent marks in B.Ed. Degree examination and second class in any other Bachelor's degree examination or 50 percent marks in each of the two examinations separately is the said to have consistently good academic record."

5. The petitioner admittedly has mentioned his qualifications in the application form which is submitted to the Vishwavidyalaya as under :

5. The petitioner admittedly has mentioned his qualifications in the application form which is submitted to the Vishwavidyalaya as under :

1. High School = Purva Madhyama-? 1974?II Division? 48.6%

2. Intermediate = Uttar Madhyama? 1977? II Division? 56.6%

3. B.A=Shastri = B.Lib.Sc. _____ (Emphasis by the Court)

1979-II Division? 57.1%

4. B.Ed. ?????? - 1981- II/I Division? 49.4% 62 Practical

5. M.A. = M.Ed. = Achaiya ?1982?I Division? 72.8%

The petitioner further alleges that he has undertaken research studies and has submitted some thesis on 7.10.1990.

6. The question which requires determination by this Court is whether the petitioner, having possessed the aforesaid qualifications, can be taken to be complying the requirements as, laid down by Statutes of Vishwavidyalaya and should have been called for the interview by the Selection Committee which admittedly has not been done by the Vishwavidyalaya and his application has been rejected.

7. Sri V. K. Upadhyaya has raised two arguments in order to justify the claim of the petitioner that by obtaining the B.Lib. Science Degree, he should be deemed to be qualified for the post of Lecturer in Education Department in the Vishwavidyalaya. First, he contends that no student can obtain B.Lib. Science degree unless he is a graduate and since the petitioner is admittedly B.Lib. Science degree holder, his being a graduate should be taken to be a /ait accompli. Second, the argument of Sri Upadhyaya is that even Independently the marks obtained in B.Lib. Sc, which are 57.1% should be enough to permit the petitioner to claim the benefit of obtaining 55% marks in the Intermediate and the graduate degree so as to claim the criteria of having "consistently good academic career." Sri Upadhyaya contended that the Vishwavidyalaya has wrongly rejected the application of the petitioner. Sri Anil Tewari has contended that not only that the petitioner does not possess the required qualifications as delineated in the Statutes, he has intentionally concealed the fact that he was a IIIrd Divisioner in B.A.. The argument of Sri Anil Tewari proceeds that since the petitioner had obtained IIIrd Division in the B.A. he does not possess the

qualifications specifically delineated in 3 (b) of the aforesaid Statutes. It was further contended that in the Advertisement, a copy of which has been filed as Annexure-1 to the writ petition, it has been specifically mentioned that the candidate must have a graduation degree in some other discipline and for that purpose B.Lib. Science is not treated by the Vishwavidyalaya as a Graduation degree. Emphasis was laid on the language used in the aforesaid Statute 3 (b) and a distinction was drawn with reference to what is stated about B.Ed, result which should be 55% and above whereas graduation degree in any other subject has to be in IInd division or individually in both these examinations, the candidate should be possessing 50% marks in each.

8. It is admitted position now in view of the averments made in the respective affidavits that the petitioner has passed B.A Examination in IIIrd division and further that there is no mention of his aforesaid degree in the application which he has submitted to the Vishwavidyalaya. While the learned counsel for the petitioner may be right in saying that none could get admission into the B.Lib. Science unless he is having a graduation degree, nonetheless the type of degree which the petitioner was having does not entitle him to fulfill the requisite qualifications as delineated in 3 (b) of the aforesaid statutes because he was admittedly a IIIrd divisioner and nothing short of B.A. IInd Division could have made the application entertainable for that post.

9. B.Lib. Science examination is admittedly one year's course. There is no material on the record to indicate that B.Lib. Science is a graduation degree recognised by the Vishwavidyalaya through any of its statutes or any resolution of the academic council.

10. It was rightly contended by the learned counsel for the respondents--Vishwavidyalaya that in the Advertisement itself, reference was made to the qualifications as laid down in the statutes which a candidate for the post of Lecturer in Education was bound to possess and he rightly relied upon the language used in 3 (b) of the aforesaid Statutes. While at the first instance B.Ed. degree examination has been described as "Upadhi Pariksha", i.e.. a pass examination, the reference in the second line is specific to "Kisi anya Snatak Upadhi Pariksha = Any other Bachelor's degree examination". The Vishwavidyalaya does appear to be not accepting the B.Ed, as a graduation degree and, therefore, it further insists that in order to enable a candidate to claiming consistently good academic career in B.Ed, as well as in the other degree examinations, the candidate must be having 50% marks. Since B.Lib. Science is not a graduation degree within the meaning of the academic qualifications of the Vishwavidyalaya, the petitioner shall have to fall back upon his initial B.A. degree for claiming to be a candidate for the aforesaid post. It has already been noted that so far as B.A. degree of the petitioner is concerned, that was in IIIrd division, therefore, the petitioner does not possess the minimum educational qualifications as delineated in the aforesaid rules and, therefore, the Vishwavidyalaya has not committed any error in rejecting the petitioner's

application for being considered as a candidate for the vacant post of Lecturer in Education department of the Vishwavidyalaya.

11. It may be clarified at once that the Courts are not to sit over the judgment or the decision on the academic side taken by the Vishwavidyalaya and would normally uphold the decision and, therefore, no cause of action is disclosed as to why the decision of the Vishwavidyalaya not to treat B.Lib. Science as a regular academic graduation degree should not be upheld.

Before parting, it may, be mentioned that there is an application moved by the Vishwavidyalaya for taking action under Article 215 of the Constitution alleging that due to certain averments having not been made and a contrary impression having been tried to be conveyed to the Court, this Court should take action under Article 215 of the Constitution of India against the petitioner, After hearing learned counsel for the parties, there is no force in the aforesaid application which is dismissed.

12. The writ petition is consequently devoid of merits and is hereby dismissed. The parties will bear their own costs.