

(2019) 02 J&K CK 0076

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1158 Of 2014

Dr. Angelika Sharma

APPELLANT

Vs

Central University Of Jammu And Others

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Citation : (2019) 02 J&K CK 0076

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Rahul Pant, D.C. Raina, Govind Raina, Vishal Bharti

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner has filed the present writ petition, challenging the selection of respondent Nos. 4 and 5 as Assistant Professors in the department of Environmental Science. Further prayer has been made for a direction to the official respondents to appoint the petitioner on the post, with all consequential benefits.

2. Learned counsel for the petitioner submitted that initially an Advertisement was issued on 03.03.2012 for selection to various posts, however, the process was not completed for obvious reasons, as some of the favourites of the official respondents were not eligible for the posts, especially the respondent Nos. 4 and 5, who have now been selected.

Otherwise there was no good reason for abandoning that process and against that, appoint the candidates on contractual basis. Out of all the applicants who were interviewed for that, the petitioner being meritorious was selected and appointed on contract basis vide order dated 27.07.2012.

3. The selection process was again initiated when Notification No. 03 of 2012 dated 13.02.2013 was issued for the same posts, which were advertised on

03.03.2012. The academic qualification required for the posts was good academic record with at least 55% marks in Master's degree in the relevant Subject. The candidates should also have cleared the National Eligibility Test (in short, 'the NET') conducted by University Grant Commission (hereinafter referred to as 'the UGC'), CISR, or similar test accredited by UGC like SLET/SET. Call letters for interview were issued on 17.05.2013 and the interviews were held on 03.06.2013, however, the result was not published, hence, the petitioner did not come to know about the same. When she came to know that respondent No. 4 had been appointed and respondent No. 5 had been kept in the waiting list, she tried to get information from the University but failed. Uncle of the petitioner had to file application under Right to Information Act for seeking information, which was supplied vide Communication dated 11.10.2013, providing for the criteria adopted for selection and also the marks secured by different candidates, who were selected. Being aggrieved of the selection process, the petitioner filed the present writ petition in this Court, challenging the same.

4. Primary argument raised by the learned counsel for the petitioner is that the criteria for selection was not made known to the candidates before the selection process started and further whatever criteria, even as per the stand of the University, had been provided for in the UGC Regulations, the same was changed further. In fact, it was a case where the horses were changed midway just to benefit the selected candidates. UGC Regulations provided that for academic record and research performance, 50% marks were to be allocated, but the University of its own had bifurcated those marks in the manner, which cannot be justified. In fact the criteria was tailor-made to select certain favourites. NET/SET/SLET is not a qualification, for which any marks could be awarded, as these are the tests conducted for being eligible for appointment as a Teacher. If five extra marks awarded to the selected candidates are deleted, the petitioner comes in the select list as against respondent No. 5. Ph.D can be extra qualification, for which marks could be awarded. In support of the arguments, reliance was placed upon judgment of Hon'ble the Supreme Court in Hemani Malhotra Vs. High Court of Delhi; 2008 (2) S.C.T 736.

5. In response, Mr. D.C. Raina, learned senior counsel appearing for the University submitted that no doubt the process was initially started for selection to various posts in the University with the issuance of Notification on 03.03.2012, however, despite the fact that date of interview was also fixed, but nominee was not appointed by the visitor of the University, his Excellency-the President of India. As a result of which, the same was abandoned. As there was need of teachers, contractual appointments were made and the petitioner was one of the candidate, who was selected. She had even joined as such in pursuance to her selection dated 27.07.2012.

6. It was further submitted that the selection process, which has been challenged by the petitioner in the present writ petition was initiated with the issuance of Notification No. 03 of 2012 dated 13.02.2013. The same was not pertaining to

the posts only in the department of Environmental Science. Rather it was pertaining to the posts of Professor/Associate Professor and Assistant Professor in ten different departments. The total posts advertised were 68 pertaining to different categories. Immediately after the aforesaid notification was issued, meeting of Head of different departments was held on 22.04.2013 under the Chairmanship of the Vice Chancellor to discuss the criteria for faculty positions and short listing of candidates for interview of various posts, which had been advertised. Fifteen marks, which had been allocated for M.Phil and Ph.D/NET/SET/SLET in the case of Assistant Professor, were rationalized and similarly 10 marks reserved for teaching experience/research publications were also bifurcated to make the criteria more explicit. Interview letters were issued on 17.05.2013. The candidates appeared in interview on 03.06.2013 and thereafter the selection was finalized on 04.06.2013. The candidates, who were more meritorious were selected. The criteria was uniformly applied to all the candidates. In case, the petitioner had any grievance about the criteria being not known to her, she could have raised the issue before appearance in the interview and not after participating in the process of selection and having availed of chance. There is no challenge to the criteria by the petitioner. In fact the same criteria was applied for selection of Assistant Professors in different Subjects. Hence, it cannot be alleged that it was made to favour only respondent Nos. 4 and 5, as is sought to be alleged. Selection has been made by the body of experts. There is no allegation of malafide. In fact the petitioner is estopped from her conduct to challenge the selection at this belated stage when she could not be selected after participation. As per the criteria laid down, the petitioner had secured 78 marks, whereas selected candidate-respondent No. 4 had secured 83 marks, hence, she was far below. In support of his arguments, reliance was placed upon judgment of Hon'ble the Supreme Court in *Ranjan Kumar and others Vs. State of Bihar and others*; (2014) 16 SCC 187.

7. Heard learned counsel for the parties and perused the paper book.

8. Some of the basic facts, which are not in dispute are that the Central University of Jammu initially issued advertisement for recruitment to various posts of Professors, Associate Professors and Assistant Professors on 03.03.2012, however, as claimed by the learned senior counsel appearing for the University, the process could not be finalized, as the nominee had not been appointed by the visitor of the University, who is a member of the selection committee. However, as the teachers were required, appointments were made on contractual basis, in which the petitioner was also selected.

9. Fresh advertisement was issued vide Notification No. 03 of 2012 dated 13.02.2013, inviting applications for 68 posts of Professors, Associate Professors and Assistant Professors in ten different departments of the University. Eligibility criteria was specified and so the other requirements. The process of selection was completed, in which finally respondent Nos. 4 and 5 were appointed. The selection has been challenged by the petitioner, who was a candidate for the

post, after participation in the process.

10. First ground raised by the learned counsel for the petitioner to challenge the selection is that the criteria for selection was changed midway just with a view to select the respondent Nos. 4 and 5, as the same was not notified before the process of selection started. The stand taken by the University in response to the aforesaid argument is that as per UGC Regulations, the selection criteria is based on following three components:-

(a) Academic Record and Research Performance 50%

(b) Assessment of domain knowledge and teaching skills 30%

(c) Interview Performance 20%

11. As the criteria for award of marks for academic record and research performance had not been detailed out in the Regulations framed by the UGC, the University had elucidated the same further, which is in the following terms:-

(i) Academic Background; Graduation 10 Marks

(ii) Post Graduation 15 Marks

(iii) M. Phil 05 Marks

(iv) Ph.D/NET/SET/SLET 10 Marks

(v) Teaching experience/Research Publications 10 Marks

12. It is further elucidated by the University that 15 marks reserved for M.Phil and Ph.D/NET/SET/SLET (5+10) in case of Assistant Professor be awarded as under:-

(i) NET/SET/SLET only 10 Marks

(ii) Ph.D only 10 Marks

(iii) M. Phil and NET/SET/SLET 15 Marks

(iv) M. Phil and Ph.D 15 Marks

(v) Ph.D and NET/SET/SLET 15 Marks

13. As was referred to from the record produced in Court, the detailing out of the marks to be awarded under this head had been done by the high power committee constituted by the Vice Chancellor under his chairmanship, in the meeting held on 22.04.2013. Not only this, even the marks provided for teaching experience were also further bifurcated with reference to the period, experience and the kind of research publications. The idea was to obviate arbitrariness in the exercise of award of marks. All the candidates, who were applicants for different posts, not only in the Environmental Engineering Department but also in all other departments were subjected to process of selection by adopting the same criteria. Call letters for interviews were issued on 17.05.2013 and the interviews

were conducted on 03.06.2013, thereafter, the selections were finalized. The petitioner never raised an issue before participating in the process of selection that the criteria, on the basis of which she will be subjected to selection, had not been made known to the candidates. Knowing this fact, she participated and having secured marks less than the last selected candidate has filed the present writ petition now taking the plea that the criteria was not notified. This cannot be accepted at this stage, as it is evident from the record that the criteria for selection, as per the stand of the University was provided for in UGC Regulations and the University had further elucidated the same by providing marks for different levels of qualifications and experience so that there is no ground of any arbitrariness in the exercise powers for award of marks. This needful had been done much prior to the date of dispatch of letters for interviews to the candidates. The petitioner as well as the selected candidates had secured same marks as far as the academic record and research papers are concerned. Difference was ultimately made in the assessment of domain knowledge, teaching skills and performance in the interviews. After the detailed marks were known, the petitioner thought of challenging the criteria adopted after having participated in the process of selection and taking her chance.

14. There is not merit in the plea raised by the petitioner that the criteria was tailor-made to select the respondent Nos. 4 and 5, as there is no basis in support thereof in the pleadings. No malafides have been alleged. The argument is further misconceived for the reason that the selection did not pertain to only one post in a single department. Rather as has already been noticed above, it was pertaining to selection to various posts in ten different departments of the University. The criteria laid down for selection was uniformly applied for all selections.

15. Judgment of Hon'ble the Supreme Court in Hemani Malhotra's case (supra) relied upon by the learned counsel for the petitioner is not applicable in the facts of the case, as in that case, the criteria was changed after the written test had been conducted, at the stage of interview when minimum qualifying marks were provided. The case in hand is not similar. In the present case, 50% marks were provided for academic record and research performance, whereas 50% were to the basis of interaction and interview. The Committee, which laid down the criteria was not the one, which interviewed the candidates.

16. For the reasons mentioned above, I do not find any merit in the present writ petition. The same is, accordingly, dismissed.