

(2010) 11 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 181 of 2004

Dr. Mohammed Ahmed Ali

APPELLANT

Vs

Osmania University and Mohd Nazeer Ahmed Assistant
Professor Department of Urdu, University College for Women
Koti

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Andhra Pradesh University Act, 1991 — Section 19

Citation : (2010) 11 AP CK 0059

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D.V. Sitharam Murthy, for the Appellant; Deepak Bhattacharjee, for Respondent Nos. 1 and 2, Bhooma Goud and K.S. Murthy, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Osmania University, the 1st Respondent herein, issued an advertisement, dated 25.03.1996, inviting applications for various posts, on academic side, including two posts of Lecturer in Urdu. One of it was reserved in favour of woman candidates. A clause was incorporated to the effect that, in case a suitable woman candidate is not available, the post can be filled by a male candidate, duly carrying forward the vacancy to the next recruitment. The Petitioner, Respondents 3 and 4, and certain others applied. Through orders, dated 18.09.2003, the University appointed Respondents 3 and 4 as Lecturers, now designated as Assistant Professors. The Petitioner challenges the said orders.

2. The Petitioner contends that Respondents 3 and 4 do not possess the prescribed qualifications, and though the selection committee selected them, the Executive Council, i.e., the appointing authority, did not accept the recommendations. He contends that, in spite of the fact that he possessed the requisite qualifications, he was not selected. The Petitioner points out that the

panel for the post of Lecturers in Urdu lapsed, on expiry of one year, and despite the same, the University appointed Respondents 3 and 4, six years, after it was Prepared.

3. On behalf of the Respondents 1 and 2 counter-affidavit and additional counter-affidavit are filed. According to them, the Selection Committee found Respondents 3 and 4 suitable, and selected them, but the Executive Council did not approve the recommendations of the Selection Committee. It is stated that the matter was dealt with at various levels, including the Minorities Commission, and the University has also appointed sub-committees, to examine the matter. It is urged that the matter was ultimately referred to the Government by the Executive Council, as required u/s 19 of the A.P. Universities Act (for short "the Act"), and the Government, in turn, issued directions to the University, to accept the recommendations of the Selection Committee. It is urged that the Petitioner was not found suitable by the Selection Committee, and he has no right to challenge the appointment of Respondents 3 and 4.

4. Respondents 3 and 4 filed separate counter-affidavits. They deny the allegations of the Petitioner, that they do not possess the requisite qualifications. It is stated that on account of complaints made by the Petitioner, the process of their appointment was delayed, and in fact, they suffered a lot, on account of the delay of issuance of orders of appointment.

5. Sri Aka Venkataramana, learned Counsel for the Petitioner, submits that, in the advertisement issued by the University, it was clearly mentioned that, apart from holding a post graduate degree in Urdu, and pass in NET or SLET, a candidate must possess specialization in Deccan language and Literature and Diploma in Linguistics. He contends that the Respondents 3 and 4 lacked one qualification, or the other, and the Select icon Committee found them suitable, without verification of the proper record. He submits that once the appointing authority viz., the Executive Council, refused to accept the recommendations of the Selection Committee, the matter ought to have ended at that, and there is no justification in issuing orders of appointment to the Respondents 3 and 4. He further contends that, one of the vacancies was reserved in favour of a woman candidate and still, the University appointed a male candidate, contrary to law.

6. Sri Deepak Battacharjee, learned Standing Counsel for the University, Sri K.S. Murthy, learned Counsel for the 4th Respondent and Sri Bhuma Gowd, learned Counsel for the 3rd Respondent, on the other hand, submit that the Executive Council of the University proceeded on the assumption that candidate must possess independent degrees or certificates in specialization, such as Decanis language and Linguistics, and on a close analysis of the matter, it ultimately emerged that the specialization need not be in a particular form. They submit that the 4th Respondent possessed independent degrees/certificates in the Deccani language and Linguistics, whereas the 3rd Respondent studied Deccani language as a specialization in degree level and possessed the Diploma, and a certificate in Linguistics. The allegation of the Petitioner that Respondents 3 and

4 do not possess the NET or SLET is flatly denied. It is also stated that Section 19 of the Act mandates that, whenever they take a decision not to accept the recommendations of the Selection Committee, it shall refer the matter to the Government and the directions that may be given in that regard, shall be final.

7. An advertisement for various posts, including the Lecturers in Urdu, was issued way back in the year 1996. While selection and appointment of other posts covered by the notification were finalized almost instantly, the appointment of Lecturers in Urdu was not finalized for quite a long time. One of the two posts, was reserved in favour of woman candidates.

8. The Selection Committee, however, found Respondents 3 and 4 suitable to be appointed. No woman candidate was found suitable.

9. The Petitioner raised objections at the initial stages itself, alleging that Respondents 3 and 4 do not have the basic qualifications. Though he pleaded that Respondents 3 and 4 do not have prescribed qualification etc., it ultimately emerged that they possess that. The area of controversy was about the specialization. For the posts of Lecturers in Urdu, the following specialization is insisted: "Decanis Language sand Literature Diploma in Linguistics." There is some ambiguity about this. The notification is not clear as to whether the Deccani language and Literature must be a subject of study at any point of time or it should be obtained in the form of a degree or diploma independently. Further, it is not clear as to whether both Decanis language and Literature on the one hand and the Diploma in Linguistics on the other must be possessed by the candidates or one of them would serve the purpose. This and other doubts expressed by the Executive Council resulted in a resolution refusing to accept the recommendations of the Selection Committee. The record placed before this Court discloses that at one point of time, the Executive Council itself reopened the issue and referred the matter to a sub-committee. The Council in turn expressed the view that the 3rd Respondent did not hold both the special qualifications and cannot be appointed as such. As regards the 4th Respondent, it took the view that though he can be appointed, his name figured at serial No. 2. Obviously no body wanted to express any clear view. The matter came before the Council on more occasions than one.

10. Section 19 of the A.P. Universities Act, reads as under:

19. Powers and duties of the Board of Management:

The Board of Management shall be the Executive Authority of the University and shall have power,-

(5) subject to such Statutes as may be prescribed in this behalf, -

(i) to appoint the teachers of the University below the rank of lecturers;

(ii) to appoint the teachers of the University and above the rank of lecturers on the recommendations of the Selection Committee constituted for the purpose.

Provided that the Board of Management may invite any person of high academic distinction and professional attainments to accept post of Professor in the University and appoint him to that post;

Provided further that if the Board of Management rejects the selections made by the Selection Committee, the matter shall be referred by the University to the State Government whose decision thereon shall be final.

11. From this it is evident that, in case the Council/Board of Management takes a decision not to accept the recommendations of the Selection Committee, it is under obligation to refer the matter to the Government. Though with some delay and after lot vacillation, the Executive Committee, passed a resolution, dated 27.02.2003, referring the matter to the Government, obviously u/s 19 of the Act. The Government, in turn, passed an order, dated 29.08.2003, directing the University to implement the assurance given by the University to the Legislative Committee, on 07.11.2002. It appears that the controversy has drawn the attention of the Minority Commission as well as the State Legislative Assembly and the University has assured to accept the recommendations of Selection Committee. In pursuance of the orders of the Government, the University issued orders of appointment to Respondents 3 and 4, almost a decade after the advertisement.

12. The Petitioner started his attack with the plea that Respondents 3 and 4 lacked the basic qualifications of research etc. That was found to be not true. So far as the special qualifications prescribed for the post of Urdu Lecturers are concerned, the Selection Committee found that Respondents 3 and 4 possess them. The Petitioner is not able to point out any basic flaw. At any rate, the ambiguity cannot be interpreted to the detriment of Respondents 3 and 4. Another ground of attack made by the Petitioner is that the post earmarked for woman candidate was filled through men. The ready answer for this is clause-6 of the note appended to the notification. It reads as under:

In case of posts reserved for Women, if for any reason, suitable Women candidates are not available against their posts, such posts shall be filled by male candidates subject to their availability. Sliding of vacancy/posts shall not be allowed under any circumstances.

13. Admittedly, the Selection Committee did not find any woman candidate suitable. Viewed from angle, there are no merits in the writ petition.

14. Accordingly, the Writ Petition is dismissed. There shall be no order as costs.