
(2019) 03 UK CK 0044

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 586 Of 2018

Dr. Narayan Prasad Bhattarai

APPELLANT

Vs

Gurukul Kangdi Vishwavidyalaya And Others

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

University Grants Commission Act, 1956 — Section 3
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0044

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Bhupesh Kandpal, P.K. Chauhan, Arvind Vashisth, Monika Pant

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. An affidavit of service of notice on the 4th respondent has been filed by Sri P.K. Chauhan, learned counsel for the petitioner. Despite service of notice, no counsel has entered appearance on behalf of the 4th respondent, nor has 4th respondent chosen to appear in the matter, or to file his counter-affidavit. Respondent nos. 1 & 2 have filed a common counter-affidavit.

2. This writ petition is filed seeking a writ of certiorari to call for the records of the selection procedure pursuant to Advertisement No. GKV/Estt./02/2016, and to quash the letter of appointment dated 31.10.2018 issued by the 1st and 2nd respondent in favour of the 4th respondent; a writ of mandamus commanding the 1st and the 2nd respondent to issue a fresh select list as per merit, and to declare the petitioner successful and provide him appointment to the post of Assistant Professor (Veda) in Gurukul Kangdi Vishwavidyalaya, Haridwar.

3. Facts, to the limited extent necessary, are that the first respondent is a deemed University under Section 3 of the University Grants Commission Act. It issued the impugned advertisement inviting applications, among others, for one

post of Assistant Professor (Veda). The essential qualification prescribed in the advertisement, for appointment to the post of Assistant Professor (Veda), was M.A. (Veda) or equivalent examination from a recognized University. The advertisement also stipulated that candidates, having specialization of Sasvar Vedapatha in Shukla Yajurveda Madhyandin Samhita as well as Samvedeeya Kauthum and Ranayaneeya Samhita, shall be given preference.

4. It is the petitioner's case that he is a student of Shukla Yujurved in Poorva Madhyama, Uttar Madhyama, Shastri and Acharya and also a Ph.d. as per the University Grants Commission Regulations, 2009 (for short the '2009 Regulations'), and he was fully eligible for appointment to the post, as he possessed the desired educational qualifications; the guidelines, for screening / short-listing candidates for appointment to the post of Assistant Professor, provided for marks to be given as per academic records (for a maximum of 35 marks) i.e. for Graduation 10%, for Post Graduation 15%, for NET and Ph.D. 10 marks, and for research performance 15 marks, and 10 marks for teaching experience; a Screening Committee was constituted by the Registrar on 7.04.2017 and, even without a corrigendum being issued to the advertisement, the Chairman of the Screening Committee issued letter dated 01.05.2017 changing the qualification for the post only in order to accommodate the 4th respondent; a merit list was prepared for the 21 candidates, of which 12 were rejected; while the petitioner stood at the top of the list with 47.87 marks, the marks awarded to the 4th respondent was artificially raised to 46.37, though he was not entitled for 10 marks, as he did not have a Ph.D. Degree as per the 2009 UGC Regulations; with NET in Code 62, he could not have been awarded any marks under this Head; consequently, his marks could only have been 36.37, and not 46.37; another candidate (Dr. Ram Harish Maurya) had filed Writ Petition (S/B) No. 507 of 2017 seeking initiation of a high level inquiry in the selection of Assistant Professors in Gurukul Kangdi Vishwavidyalaya, Haridwar, wherein the 4th respondent was also arrayed as a respondent; and the Division Bench had, in its order in the said writ petition, recorded that the 4th respondent did not have NET in Ved, and did not have Ph.D. as per the 2009 Regulations.

5. In the counter-affidavit filed on behalf of respondent nos. 1 & 2, all that is stated is that the marks awarded by the Screening Committee for short-listing of candidates was not a yardstick for appointment; and selection of a candidate depends upon his understanding, knowledge of the subject and various other factors like his oration and presentation skills and his teaching abilities.

6. In its order, in Writ Petition (S/B) No. 507 of 2017 dated 1.11.2017, a Division Bench of this Court noted the submission of Sri Arvind Vashisth, learned Senior Counsel, that Deen Dayal-4th respondent herein did not have NET in Ved, and he had not done Ph.D. in Ved; as per Clause 3.3.2 of the U.G.C. 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, when NET is not available, in such cases, they will go by

Masters' qualification; and Mr. Deen Dayal (respondent no. 4) had got two Post Graduate Degrees, one in "Sanskrit" and another in "Ved". The said writ petition was, however, dismissed as the petitioner therein (Dr. Ram Harish Maurya) did not possess a post-graduate degree in "Ved"; and he was not eligible for being considered for appointment to the post of Assistant Professor (Ved).

7. The guidelines for screening / short-listing of candidates for appointment to the posts of Assistant Professors, as prescribed by the Gurukul Kangdi Vishwavidyalaya, Haridwar, for selection of applicants to the posts of Assistant Professor pursuant to the Advertisement No. GKV No. GKV/Estt./02/2016, stipulate that short-listing of candidates shall be based on a 60 marks scale, with 10% for Graduation, 15% for Post Graduation, 10 marks for Ph.D., 15 marks for research performance, and 10 marks for teaching experience. The qualification criteria prescribed, in terms of the guidelines for the post of Assistant Professor, is 50% marks in Under-Graduation, 55% marks in Post Graduation, NET / SLET / SET-UGC / CSIR/ University, and the candidates, who were awarded Ph.D. Degree in compliance of the UGC Regulations 2009 were exempt from the requirement of minimum qualification of NET/SLET/SET. Weightage was awarded for the post of Assistant Professor, in which 50% was for academic record and research performance, 30% for assessment of domain knowledge and teaching skill and 20% for interview performance. Clause (4) of the said General Conditions stipulated that the candidates holding Ph.D. degree, and requiring exemption from NET/SET/SLET, must produce a certificate from the competent authority that the Ph.D. degree awarded to them is in compliance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree), Regulations 2009.

8. The merit-list of the candidates, selected for interview after screening, reflects the name of the 4th respondent at Serial No. 3, and the petitioner at Serial No. 13. While the 4th respondent was awarded 46.37 marks, the petitioner was awarded 47.87 marks. Both the petitioner and the 4th respondent were awarded 10 out of 10 marks under the Head 'NET with Ph.D.'.

9. As noted by the Division Bench, in its order in Writ Petition (S/B) No. 507 of 2017 dated 01.11.2017, the 4th respondent did not have NET in 'Ved', and he did not possess Ph.D., in terms of the 2009 Regulations. It defies reason, therefore, that he should be awarded 10 marks out of 10 under the Head 'NET with Ph.D,' when it is the admitted case of the University, and was in fact conceded before the Division Bench in Writ Petition (S/B) No. 507 of 2017, that the 4th respondent neither had the NET qualification, nor did he possess Ph.D. in terms of the 2009 Regulations. The petitioner is, therefore, justified in his submission that the 4th respondent should not have been awarded any marks out of 10, in which case his total marks would only have been 36.37, and not 46.37.

10. While it is, no doubt, true that these marks were awarded for short-listing of candidates for the purpose of interview, the fact remain that it is only the short-

listed candidates who were called for interview for appointment to the post of Assistant Professors. The 4th respondent was short-listed, as he was shown to have secured 46.37 marks, which included 10 marks for NET / Ph.D. As he could not have been awarded any marks under the Head 'NET/Ph.D.', his total marks would only have been 36.37. Whether the 4th respondent would still have been short-listed for interview, and whether the Selection Committee would have appointed him as an Assistant Professor, if it had known that the 4th respondent neither possessed NET nor Ph.D. in terms of the 2009 Regulations, are all matter for the Selection Committee to consider, and not for this Court to examine in proceedings under Article 226 of the Constitution of India.

11. Suffice it to hold that the 4th respondent was short-listed on the erroneous premise that he possessed the requisite qualification of Ph.D., and was, therefore, awarded 10 marks out of 10 marks under the Head 'NET/Ph.D.' Since it is not in dispute that the 4th respondent does not possess 'Ph.D.' in terms of the 2009 Regulations, and he did not possess the NET qualification either, he could, evidently, not have been awarded 10 marks out of 10, or a total of 46.37 marks. As the exercise of short-listing of candidates for interview is *ex facie* illegal, we set aside the appointment of the 4th respondent as an Assistant Professor (Ved) as his selection and appointment was based on his being initially shortlisted for interview.

12. While the petitioner would contend that he should have been appointed, as he had secured the highest marks among the eligible candidates, the fact remains that all short-listed candidates are called for interview, and the Select Committee selects the most suitable candidate, among the short-listed candidates, on the basis of the criteria prescribed for selection. It would be wholly inappropriate for this Court, therefore, to direct that the petitioner be appointed straightway as an Assistant Professor (Ved).

13. We, therefore, direct the respondent-University to prepare a fresh list of short-listed candidates, eligible for appointment as Assistant Professor (Ved), strictly in the order of merit; and conduct interviews afresh for appointment to the post of Assistant Professor (Ved).

14. The writ petition stands disposed of accordingly. No costs.