

(2022) 12 OHC CK 0056
In the Orissa High Court
Case No : Writ Appeal No. 258 Of 2018

Dr. Prabir Kumar Mohanty

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

University Grants Commission Act, 1956 — Section 22(1), 26(1)(e), 26(1)(g)

Citation : (2022) 12 OHC CK 0056

Hon'ble Judges : Dr. S. Muralidhar, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : D.N. Pattnaik, Ishwar Mohanty, Bikash Jena, Sanjeev Udgate, T.K. Satapathy

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The challenge in the present writ appeal is to an order dated 2nd April, 2018 passed by the learned Single Judge in W.P.(C) No.4281 of 2018 filed by the present Appellant, questioning the rejection of his candidature for the post of Associate Professor for the constituent colleges of the Biju Patnaik University and Technology (BPUT), i.e., the College of Engineering and Technology, Bhubaneswar (CET), Parala Maharaja College of Engineering (PMEC), Berhampur and Government Engineering College (GEC), Kalahandi on the ground that he had not secured the Academic Performance Indicator (API) marks.

2. The background facts are that pursuant to the advertisements issued by the BPUT on 26th February, 2014 and 30th September, 2014 for the post of Associate Professor, the Appellant had applied. On 11th March 2015, a third advertisement was issued by BPUT for regular faculty positions of Professor, Associate Professor and Assistant Professor in the five Centers for Advanced Post Graduate Studies (M. Tech.) of BPUT, Orissa. Three more advertisements were issued on 13th April, 27th June and 21st December of 2015 asking candidates

who had applied earlier for the post of Associate Professor to submit the API form duly filled up with required information for each applied post. It is stated that the Appellant filled up his application form along with the self-attested API score.

3. BPUT came out with another advertisement dated 19th July, 2017 for the post of Associate Professor for its constituent colleges. The Appellant is stated to have applied for the post along with all the requisites and API score with separate summary sheet for each Centre. The Selection Committee called the Appellant for an interview on 18th February, 2018 with the condition of fulfillment of the required API score. The Appellant is stated to have appeared before the Selection Committee. His API score in Categories-I, II and III was about 263. The Appellant was informed verbally that his API score in Category-III was way below than the required score 300. He was accordingly debarred from attending the interview.

4. It is in the above background that W.P.(C) No.4281 of 2018 was filed by the Appellant in this Court. One of the grounds of challenge was that his candidature could not have been rejected on the basis of the API score since this was not a stipulation in the initial advertisement issued on 26th February, 2014; even if it had been provided in a notification dated 5th March, 2010 of the All India Council for Technical Education (AICTE) or the University Grants Commission (UGC) Regulation, without it being adopted by the State Government or reflected in the advertisement, it could not form the basis for rejection of the Appellant's candidature. It was further contended that in other technical colleges, for which the advertisement was issued, there was no such stipulation of minimum API score. Since there were many vacancies, the Appellant had a legitimate expectation of getting the appointment.

5. The response of the State was that in terms of the UGC Guidelines, the minimum API score was a mandatory requirement. For the post of Associate Professor, a candidate had to get the consolidated API score of 300 points in Category-III. This requirement had been formulated by the UGC in terms of Section 26 (1) (e) & (g) of the University Grants Commission Act, 1956 (UGC Act) as well as an Office Memorandum (O.M.) dated 23rd October, 2008 of the Ministry of Human Resources Development (MHRD) read with another O.M. dated 30th August, 2008 of the Ministry of Finance (Department of Expenditure) and in terms of a notification dated 31st December, 2008 of the MHRD. Reference was also made to the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations 2010 (hereafter UGC Regulations of 2010) which were in supersession of the earlier set of UGC Regulations made in 2000.

6. The learned Single Judge referred to the UGC Regulations 2010 which stipulated the minimum qualification for appointment to various teaching and academic positions. Under Clause 4.3.0 of the UGC Regulations 2010, the

minimum qualification for the post of Associate Professor included inter alia "a minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in Appendix III". It was evident from the Appendix-III that for the post of Associate Professor, the minimum API score to be possessed by a candidate was 300 points from Category-III of APIs.

7. The learned Single Judge also noted that the Government of Orissa had pursuant to Section 22 (1) of the UGC Act, 1989 issued a notification dated 15th February, 2010 issuing the Orissa Revised Scales of Pay for University Teachers (UGC Scale of Pay) Rules, 2010 where the pay fixation was based on the UGC Regulations. In other words, if the appointment was not in terms of the UGC Regulations, the person appointed would not get the UGC Pay Scale. The advertisement further indicated that the pay scale reflected for the post of Associate Professor was the UGC Pay Scale as contained in Appendix-I of the UGC Regulations, 2010. Since the selection was made after the making of the UGC Regulations, 2010, those had to be followed. Since the Appellant's API was less than the minimum required, no illegality was committed in declining to call him for the interview thereby rejecting his candidature.

8. This Court has heard the submissions of Mr. D.N. Pattnaik-1, learned counsel appearing for the Appellant, Mr. Sanjeev Udgata, learned counsel appearing for the BPUT, Mr. T.K. Satapathy, learned counsel appearing for the UGC, Mr. Bikash Jena, learned counsel appearing for the AICTE and Mr. Ishwar Mohanty, learned Additional Standing Counsel appearing for the State of Odisha.

9. Mr. D.N. Pattnaik-1, learned counsel appearing for the Appellant submitted that the initial advertisement issued on 26th February, 2014 had no stipulation regarding the API. Such stipulation came to be introduced only from the advertisement issued on 21st December, 2015 and thereafter. It was the initial advertisement of 2014, which was modified repeatedly and on the basis of which the interviews were held in 2018. Therefore, the insistence upon an API score from the candidates, like the Appellant, who had applied pursuant to the advertisement issued in 2014, was unfair and irrational. It was further submitted that the State Government had not formally adopted the UGC norms. Although, the UGC Regulations of 2010 stipulated the requirement of API, it was implemented for the first time by the UGC only on 18th September, 2010, i.e., seven months after the making of the 2010 Regulations. Despite this, till March 2014, API was not introduced by the other Universities. In fact, VSS University, Burla another University which issued an advertisement on 8th March, 2016 had no such stipulation.

10. Mr. Pattnaik further submitted that while BPUT required API minimum score of 300 from the Category-III only, in terms of the AICTE norms, the score had to be calculated from Categories-II and III, therefore, there was a contradiction between the UGC norms and the AICTE norms. He further submitted that the Appellant possessed vast teaching experience and there were vacancies available

which could easily be filled up. Therefore, rejecting his candidature at the stage of interview, after shortlisting him for that purpose, was unfair and unreasonable. Mr. Pattnaik reiterated that the Appellant had a legitimate expectation of being appointed as an Associate Professor as he satisfied all other norms in terms of both qualification and experience.

11. Mr. Sanjeev Udgata, learned counsel appearing for the BPUT submitted that the norms were stipulated in the last advertisement issued pursuant to which the Appellant had admittedly applied. Those norms had to be followed. Reliance was placed on the decisions in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655 and *Sasmita Manjari Das v. State of Orissa* 2015 (II) ILR-CUT-827. Inasmuch as the UGC Regulations applied, those had to be strictly complied with. Reliance was placed on the decision in *J & K Public Service Commission v. Dr. Narinder Mohan* AIR 1994 SC 1808. It was further submitted that the settled legal position was that it was for the rule-making authority to prescribe the mode of selection and minimum qualification for any recruitment. As long as those qualifications had a rational nexus to the function and duties attached to the post and not violative of the provisions of the Constitution, statute and Rules, they had to be complied with. Reliance was placed on the decision in *Chandigarh Administration v. Usha Kheterpal Waie* AIR 2011 SC 2956. Finally, it is submitted that with the Appellant having participated in the selection process, it was not open to him to turn around and challenge the selection process. Reliance was placed on the decision in *Taniya Malik v. Registrar General of High Court of Delhi* AIR 2018 SC 1245.

12. The above submissions have been considered. The advertisement that is relevant to be considered as far as the present case is concerned, is the last one issued on 19th July, 2017. This was after the UGC Regulations, 2010 became applicable. The UGC Regulations were implicitly adopted by the State of Orissa when it formulated the Orissa Revised Scales of Pay for University Teachers (UGC Scale of Pay Rules, 2010). The advertisement made it clear that the pay scale for Associate Professor was on the basis of the UGC pay scale. This meant that the candidate selected had to fulfill the requirements of the UGC Regulations, 2010.

13. As noted by the learned Single Judge, Clause 4.3.0 of the UGC Regulations, 2010, mandated the candidate possessing the minimum API score based on the Performance Based Appraisal System (PBAS). Therefore, it is futile for the Appellant to contend that the above norm of possessing the minimum API score was not applicable since the Appellant had applied pursuant to the initial advertisement dated 26th February, 2014. The fact remains that the Appellant applied again pursuant to the last advertisement issued in 2017 and by this time, it was clear that the UGC norms would apply for selection to the post in question.

14. Once there is a minimum requirement in terms of qualification for the post in question, which has been indicated at the advertisement, then that norm has to strictly be followed. It was explained by the Supreme Court in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura*

Sundari Devi (supra) as under:

"6. It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

15. In matters of appointment to teaching posts, it is for the appointing authority to prescribe the norms to be fulfilled. If those norms have a rational nexus to the duties to be performed in the post, then the Court will ordinarily not interfere as pointed out in Chandigarh Administration v. Usha Kheterpal Waie (supra). Once the recruitment rules were notified "they became binding executive instructions which would hold good". It was further explained in Chandigarh Administration v. Usha Kheterpal Waie (supra) as under:

"12... When the said qualification is not unrelated to the duties and functions of the post of Principal and is reasonably relevant to maintain the high standards of education, there is absolutely no reason to interfere with the provision of the said requirement as an eligibility requirement. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules."

16. The above observations were made in the context of the requirement in the aforementioned case of a minimum requirement of possessing the qualification of Ph.D.

17. The fact further remains that the Appellant participated in the selection process knowing fully well the requirements. He could not be permitted thereafter to challenge those very requirements. This position is well settled as expounded in a series of decisions of the Supreme Court including Taniya Malik v. Registrar General of High Court of Delhi (supra) which in turn referred to the earlier decision in K.H. Siraj v. High Court of Kerala AIR 2006 SC 2339 to the effect that:

"19... when the candidates participated in the interview with the knowledge that for selection they have to clear the prescribed minimum pass marks, on being unsuccessful in interview, could not turn around and challenge that the

prescription of minimum marks was improper...”

18. The Appellant is unable to dispute that he did not possess the minimum API score of 300 in Category-III and, therefore, did not satisfy one of the essential requirements for the post for which he had applied. His candidature was therefore rightly rejected.

19. The Court is unable to find any error having been committed by the learned Single Judge in dismissing the writ petition. The writ appeal is accordingly dismissed but in the circumstances with no order as to costs.

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