
(2008) 11 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Petition No. 3624 of 2005

Dr. Rajiv Shankar Kher

APPELLANT

Vs

Guru Ghasidas University, Bilaspur and Another

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Chhattisgarh Vishwavidyalaya (Sanshodhan) Adhiniyam, 2002 — Section 49
Constitution of India, 1950 — Article 14, 226

Citation : (2009) 1 MPJR 130

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

S.K. Agnihotri, J.

By this petition, the petitioner seeks a direction, inter alia, that the selection of the respondent No. 2 in the meeting of the Selection Committee held on 5.6.2005 for the post of Reader (Physics) be quashed and the respondent No. 1 be directed to appoint the petitioner on the said post.

The indisputable facts, in nutshell, as projected by the petitioner, are that the petitioner is working as Assistant Professor (Selection Grade) in the Department of Physics in the Government Science P.G. College, Bilaspur. After completing 21 years of service, the petitioner applied for selection to the post of Reader in the Department of Physics, pursuant to the advertisement dated 1.2.2005 (Annexure-P/2). The qualification prescribed for appointment to the post of Reader was as per the norms of UGC/AICTE University/MCI i.e. for the post of Reader (Open Selection). The UGC guidelines provides the following qualification for the post of Reader (Open Selection):

(2) A Reader (Open Selection): Good academic record with a doctoral degree or equivalent published work. Candidates from outside the universally system in addition shall also possess at least 56% marks or an equivalent grade at the Master's degree level. Eight years experience of teaching and/or research including upto 3 year for research degrees and has made some mark in the areas

of scholarship as evidenced by quality of publications, contribution to educational renovation, design of new courses and curricula.

The petitioner along with other candidates applied and appeared in the interview before the Selection Committee presided over by the Vice Chancellor on 5.6.2005. The Coordination Committee of the respondent University recommended to award 80% marks on merit and 20% marks in interview for the post of Reader. The allocation of marks was distributed in the following manner:

(i) For becoming Guide of one candidate for Ph.D. (5 marks each).

Max. 25 marks

(ii) Research Publication:

(a) At the National Level Publication 1 mark for each

(b) International Level Publication 1 mark for each Total Max.

20 marks

(iii) Book Publication

10 marks

(iv) For post Doctoral Degree/Visiting Professor

10 marks

(v) Confidential Reports of last 5 years Total

15 marks 80 marks

(2) For interview

20 marks

The petitioner claims to be eligible and more qualified than the respondent No. 2, still the respondent No. 2 was selected and the candidature of the petitioner was rejected.

Shri P. Diwakar, learned senior counsel appearing on behalf of the petitioner, would submit that the discrepancy is writ large. The petitioner has guided in total 8 candidates for Ph.D. degree, which is evident from Annexure-P/1, whereas the respondent No. 2 has not guided a single candidate. Thus, the petitioner was entitled to 25 marks and the respondent No. 2 was entitled to "0" marks against the column No. 1 for guidance of candidates for Ph.D. degree. Both the petitioner and the respondent No. 2 are entitled to 20 marks for research publication, for book publication they are entitled to 10 marks. For post Doctoral Degree/Visiting Professor the petitioner and the respondent No. 2 are not entitled to any marks. On confidential reports of last five years both are entitled to 15 marks. Apart from the fact that the petitioner was awarded "0" marks in interview. The petitioner in total ought to have been awarded 70 marks and the respondent No.

2,45 marks. Thus, the petitioner was better qualified and was entitled to appointment on the post of Reader. The Selection Committee has completely ignored the guidelines fixed by the Coordination Committee for awarding marks for the post of Reader as stated above. Thus, the recommendation of the Selection Committee in favour of the respondent No. 2 for his appointment on the post of Reader is illegal, contrary to the guidelines, unreasonable and speaks for favoritism.

Per contra, Shri Ashish Shrivastava, learned counsel appearing on behalf of the respondent No. 2, supported the selection of the respondent No. 2 on the post of Reader. Learned counsel would submit that the Selection Committee was fully competent to scrutinize the records and give due weightage to the merits of the candidates. Recommendation of the Selection Committee i.e. the expert body need not be interfered as the expert body is more competent to assess the merit of the candidates. The recommendation of the University Coordination Committee held on 5.3.2005 at Raj Bhawan, Raipu for allocation of marks i.e. allotment of 25 marks for guiding students for Ph.D. degree (5 marks each candidate), 20 marks for research publication, 10 marks for book publication, 10 marks for post Doctoral Degree/Visiting Professor and 15 marks for confidential reports of last 5 years is neither applicable nor binding. The Selection Committee derives its power from Section 49 of the Chhattisgarh Vishwavidyalaya (Sanshodhan) Adhiniyam, 2002. Further since the Coordination Committee decided about the allocation of marks after publication of the advertisement, the said recommendations were neither applicable nor binding in the selection process.

Shri Shrivastava, would further submit that in the field of education, a Court of law cannot sit as an expert. Normally therefore, whether or not a student/candidate possesses requisite qualifications should be better left to educational institutions. This is particularly so when it is supported by an expert committee. Learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the matters of Bihar Public Service Commission and Others Vs. Kamini and Others, The The University of Mysore and Another Vs. C.D. Govinda Rao and Another, and Vijay Syal and Another Vs. State of Punjab and Others,

With regard to Dr. H.S. Tiwari it is submitted that Dr. Tiwari was temporarily appointed for one year against the post reserved for Scheduled Tribe candidate. He has already been promoted on the post of Reader (Physics) on 14.2.2006 under the merit promotion scheme/career advancement scheme. Fresh advertisement has been published for appointment on the post of Reader (Physics) on 23.9.2006. Even the Minister of Human Resources Development, Government of India, New Delhi by his letter dated 29.4.2008 has advised the State Government not to proceed with any recruitment as the University in principle has been converted into a Central University. Thus, if the selection of the respondent No. 2 is found bad, no appointment can be given to the petitioner.

I have heard learned counsel appearing for the rival parties, perused the

pleadings and the documents appended thereto.

There is no quarrel on the preposition that the Court of law should not sit as an expert in order to assess the requisite qualification particularly when it is assessed by the expert committee, in normal circumstances. However, when the recommendation or opinion of the expert committee is unreasonable, arbitrary, discriminatory or perverse, the High Court has jurisdiction to intervene by way of judicial review under Article 226 of the Constitution of India. (See Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary and Others, and M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another,

In the facts of this case wherein the guidelines/recommendation as decided by the Coordination Committee for allocation of marks was followed by the Selection Committee, there was no scope to grant less than 25 marks to the petitioner. The petitioner was awarded 2.5 marks, which clearly go to show that there was irregularity and perversity in the decision.

The contention of the learned counsel for the respondent No. 1 that the recommendation of the Coordination Committee in its meeting held on 5.3.2005 at Raj Bhawan, Raipur, was neither applicable nor binding on the Selection Committee, does not merit acceptance as the Selection Committee has not adopted any other criteria except the guidelines/recommendation laid down by the Coordination Committee. Thus, at this stage, when the guidelines made by the Coordination Committee has not only been adopted but followed in selection of the respondent No. 2, cannot be ignored. There was a limited scope for the Selection Committee in respect of award of marks on various heads i.e. 5 marks for becoming guide of each candidate for Ph.D. There was no occasion to give less than 5 marks. Admittedly, the petitioner has guided 8 candidates for Ph.D. degree. Thus, he is entitled to maximum 25 marks. The respondent No. 2 has not guided a single candidate, therefore, he was entitled to "0" marks. All other marks are similar. Even in the interview it is beyond once comprehension that a candidate having better qualification than other candidates can be awarded "0" mark. The respondent No. 2 does not have better qualification than the petitioner, still he was awarded maximum 20 marks in the interview. The entire exercise smacks of discrimination and unreasonableness, which amounts to violation of Article 14 of the Constitution of India.

The chart filed by the respondent No. 1 as Annexure-DX/3 indicating distribution of marks to all the candidates by the Selection Committee reads as under :

S.No.

Max. Marks

25

20

10

10

15

20

100

Name of the Candidate

(Ph.D./ Thesis submitted Awarded

Research Paper Journals published in Journals

Books Authored

Post Doc/ Visiting Prof. Ship

C.R.

Interview

Total

1.

Dr. K.P. Tiwari

-

2

-

-

-

5

7

2.

Dr. H.S. Tiwari

-

16

-

-

-

18

34

3.

Dr. Amit Khaskalam

-

6

-

-

-

5

11

4.

Dr. Anurag Shrivastava

-

9

-

-

-

4

13

5.

Dr. Kamal Prasad

5

20

10

-

-

18

53

6.

Dr. R.S. Kher

2.5

6

5

-

-

4

17.5

7.

Dr. D.S. Chandra

-

0

-

-

-

4

4

8.

Dr. S.K. Shrivastava

-

20

-

-

-

8

28

Sd/-

(Prof. J.L. Gupta)

5.6.05

Sd/-

(Prof. S.P. Ojha)

5.6.05

Sd/-

(Prof. feroz Ahmad)

5.6.05

Sd/-

(Prof. V.K. Gupta)

5.6.05

From perusal of the chart (Annexure-D-X/3) it appears that initially 25 marks were awarded to the petitioner, thereafter it was mentioned as 2.5 marks. As per the Bio-Data of the respondent No. 2 (Annexure-P/7) it appears that the respondent No. 2 has authored one book and as per the Bio-Data of the petitioner (Annexure-P/1) it appears that the petitioner has authored 7 books. Thus, in accordance with the recommendation/guidelines laid down by the Coordination Committee, the petitioner as well as the respondent No. 2 both were entitled to 10 marks.

For the reasons stated hereinabove, the recommendation of the Selection Committee for appointment of the respondent No. 2 on the post of Reader (Physics), ignoring the merit of the petitioner by not awarding the marks, which he was actually entitled, is arbitrary, unreasonable, discriminatory and perverse. The same deserve to be quashed. Accordingly, the appointment of the respondent No. 2 on the post of Reader (Physics) is quashed. The petitioner is entitled to appointment on the post of Reader (Physics) on the basis of interview and selection held on 5th June 2005.

In the result, the petition is allowed to the above extent. No order as to costs.