

(2020) 02 PAT CK 0003

In the Patna High Court

Case No : Letters Patent Appeal No. 1506 Of 2018 In Civil Writ Jurisdiction Case No. 549 Of 2018

Dr. Randhir Kumar

APPELLANT

Vs

Union Of India Through Secretary And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0003

Hon'ble Judges : Prabhat Kumar Singh, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Advocate : Rajendra Nath Sinha, S.D Sanjay, Alok Kumar Agrawal, Mohit Agrawal, Anand Kumar Ojha

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against an order dated 05-09-2018 passed in C.W.J.C. No. 549 of 2018, whereby and whereunder, the writ petition, preferred by the appellant, was dismissed. In the aforesaid writ petition, the petitioner (appellant herein) had prayed for directing the respondents to appoint him in place of private respondent no. 6 (Dr. Kundan Kishor Rajak) on the post of Assistant Professor in Zoology Department, Mahatma Gandhi Central University, Motihari, Bihar (hereinafter referred to as the 'University').

2. Short fact, as per memo of appeal, is that an Employment Notice, bearing No. 003 of 2016 dated 05-07-2016, was issued by the University inviting applications in the prescribed proforma for filling-up various posts at the level of Professor, Associate Professor and Assistant Professor in various disciplines on regular/re-employment (after superannuation) basis. On 08-07-2016, notice was issued to incorporate the eligibility as per the 4th amendment in University Grants Commission (for short "UGC") Regulation 2010, published in the year 2016, with assurance to issue requisite information about the aforesaid advertisement. On 13-08-2016, as per schedule, the written examination was held and on 17-08-2016, the provisional list of candidates, who had qualified in the written

examination for their interview, was published. On 19-10-2016, the University published final list of selected candidates for interview, in which, respondent no. 6 was not declared eligible by the Screening Committee with remarks "neither NET nor Ph.D.". Thereafter, on 22-10-2016, the respondent no. 6 sent e-mail attaching required documents and mentioned therein that documents were already supplied alongwith the application form. Thereafter, the respondent no. 6 was provisionally allowed to appear for the interview. Finally, the respondent no. 6 was selected and appointment was made on 28-10-2016 and after lapse of fifteen months on 18-01-2018, the petitioner filed the aforesaid writ petition i.e. C.W.J.C. No. 549 of 2018 for his appointment in place of respondent no. 6.

3. Sri Rajendra Nath Sinha, learned counsel appearing on behalf of appellant, differing with the impugned order, has challenged the appointment of respondent no. 6 mainly on two grounds:-

"(i) That, it was the contention of the appellant that though, initially, he was shortlisted for interview for the purpose of selection for the post of Assistant Professor in Zoology Department of the aforesaid University and respondent no. 6, who even did not find place amongst the top five candidates in the final result for interview in Scheduled Caste Category, published on 19-10-2016, was appointed, whereas, the petitioner, who was placed at sl.no.4 in top five candidates in SC category for the post of Assistant Professor, was not selected.

(ii) That, respondent no. 6, who did not possess requisite qualification in terms of the advertisement and he was not worth considerable, since necessary documents like NET, Ph.D. degree were not available, was selected for the post of Assistant Professor."

4. It was further contended by learned counsel for the appellant that the private respondent did not possess Ph.D. degree in regular mode nor his thesis was evaluated by experts from outside State, which was mandatory under the provisions of UGC Guidelines.

5. In support of the above submission, learned counsel for the appellant has placed heavy reliance on various judgments of the Hon'ble Supreme Court, which are as follows:-

(i) 2015 (3) PLJR (SC) 279 (P. Suseela vs. U.G.C.)

(ii) (2013) 10 SCC 519 (University Grants Commission vs. Neha Anil Bobde),

(iii) (2015) 6 SCC 363 (Kalyani Mathivanan vs. K.V. Jeyaraj), and

(iv) (2013) 8 SCC 633 (Jagdish Prasad Sharma and Ors. vs. State of Bihar and Ors.).

6. Sri S.D. Sanjay, learned senior counsel appearing on behalf of respondent/ University submitted that the entire selection process was duly followed and thereafter, the private respondent no. 6 was appointed. It was further submitted that in continuation to the Employment Notice dated 5th July 2016, a Notice No.

F.1-1 /MGCUB/Rectt./2016/104 dated 8th July 2016 was published in the University website. It was informed that in the light of 4th Amendment to the UGC Regulations on Minimum Qualifications for appointment of Teachers and other Academic Staff in University and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010, applications were invited for various posts including four post of Assistant Professor (SC-1, OBC-1 and Unreserved-2) in the Department of Zoology and as per Clause 4.4.1 of UGC Regulations 2010 amended from time-to-time, the minimum qualification prescribed by UGC for the post of Assistant Professor in Zoology are as follows:

(i) Good academic record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

(ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.\

'Provided further, the award of degree to candidates registered for the M.Phil./ Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/By laws/Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted from the requirement of NET/SLET/Set for recruitment and appointment of Assistant Professor or equivalent positions in Universities /Colleges/Institutions subject to the fulfilment of the following conditions:

- a) Ph.D. degree of the candidate awarded in regular mode only;
- b) Evaluation of the Ph.D. thesis by at least two external examiners;
- c) Open Ph.D. viva voce of the candidate had been conducted;
- d) A candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a refereed journal;
- e) Candidate has made at least two presentations in conferences/ seminars, based on his/her Ph.D. work.
- f) (a) to (e) as above are to be certified by the Vice-Chancellor / Pro-Vice-Chancellor / Dean (Academic Affairs) / Dean (University Instructions)."

7. It was further submitted by learned senior counsel for the University that it is true that a provisional list of candidates was shortlisted for their interview for various posts in teaching position, in connection with Employment Notice No. 003 of 2016, and for the post of Assistant Professor in SC Category, the appellant was placed at serial no. 67, whereas respondent no. 6 was placed at serial no. 65, however; the appellant was found below the cut-off marks. Further, it is pertinent to mention that due to an inadvertent error, the respondent no. 6, bearing Roll No. 2804 at serial no. 65 and one Mr. Amit Kumar Singh, bearing Roll No. 2902, were declared 'ineligible' with remarks 'Neither NET nor Ph.D.', other two candidates i.e. appellant and one Mr. Bidyut Purkait were subsequently included in the list of short-listed candidates. Consequent upon the recommendations of the Screening Committee, a revised list of candidates for interview was uploaded on the University website on 19-10-2016. In response thereof, the University received an e-mail dated 22-10-2016 from respondent no. 6 that the Screening Committee overlooked his NET and Ph.D. certificate appended to his application. The aforesaid request of respondent no. 6 was placed before the competent authority of the University with all required documents and finally, it was decided to provisionally call respondent no. 6 to appear before the Selection Committee for interview. The Selection Committee had conducted the interview and recommended the name of respondent no. 6 for the post of Assistant Professor in Zoology Department against the post reserved for Scheduled Caste Category. The recommendation of the Selection Committee was placed before the Executive Council on 26-10-2016 for approval and the same was approved and pursuant thereof, the appointment letter no. F.1- 1/ MGCUB/Rectt./2016 dated 28th October, 2016 was issued to respondent no. 6 for the post of Assistant Professor in Zoology.

8. In the aforesaid facts and circumstances, it was submitted by learned senior counsel for the University that the selection of respondent no. 6 was made in complete transparency and in compliance to the Guidelines, as laid down by the U.G.C., and prescribed by the Employment Notice No. 003/2016.

9. Similarly, besides adopting the submission of learned senior counsel for the University, Sri Anand Kumar Ojha, learned counsel for the respondent no. 6 submitted that the impugned order may not be interfered with, in view of the fact that the learned Single Judge, after considering all the facts available on the record, has rejected the writ petition filed by the petitioner. It was further submitted by counsel for respondent no. 6 that this Letters Patent Appeal itself is not maintainable, in view of the fact that the appellant has not pointed out any finding of the learned Single Judge in the impugned order to be perverse or arbitrary or in violation of settled principle of law. It was further submitted that it is settled law that unless there is any apparent error or perversity in the order under challenge, the appeal against that order may not lie. In support of the same, counsel for the respondent no. 6 has relied upon a decision of the Hon'ble Supreme Court in a case reported in (2016) 3 SCC 340 {Narendra & Co. (P) Ltd. vs. Workmen}.

10. He has further submitted that there is inordinate delay of 15 months in challenging the appointment of respondent no. 6. He further contended that the selection of respondent no. 6 is based on recommendation of the Selection Committee, which is Expert Committee, and the recommendation of the Expert Committee has been approved by the Executive Council. It has further been submitted that the recommendation of the Selection Committee, annexed by the University, shows participation of experts and specialists. The qualification and eligibility of candidates had been examined before recommendation to the Executive Committee, which approved the same and the entire matter falls in the domain of expert.

11. Relying upon a decision of the Hon'ble Supreme Court reported in (2019) 7 SCC 172 (Vasavi Engineering College Parents Association vs. State of Telangana), Sri Ojha, learned counsel for respondent no. 6 submits that the Hon'ble Supreme Court had already dealt with and laid down the ambit and limitation of judicial review in large number of cases involving expert's domain issues. Apart from above, he has also relied upon another judgment of the Supreme Court, reported in (2010) 8 SCC 372 {Basavaiah (Dr.) vs. Dr. H.L. Ramesh}. It was further submitted that the selection of the respondent no. 6 to the post of Assistant Professor in SC Category has been made in due compliance of UGC Regulation 2016 (4th Amendment), which is statutory in nature. The eligibility and qualification were evaluated in the light of eligibility prescribed under the Regulation, 2016. He further submitted that Ph.D. degree under UGC Regulation 2016 was duly certified by the concerned University i.e. Dr. Rajendra Prasad Central Agricultural University, Pusa, Samastipur, which entitled respondent no. 6 for exemption. It was further submitted that the Ph.D. Degree of respondent no. 6 was duly certified by the Dean of the University in terms of the UGC Notification No. F.1-2/2016 dated 11th July, 2016. The genuineness of the aforesaid fact has not been disputed by the appellant. He further submitted that 4th Amendment allowed exemption to those candidates, who registered for Ph.D. degree prior to 11-07-2009 and respondent no. 6 submitted his thesis in 2009 and he has been awarded Ph.D. degree in the year 2010. He further submitted that respondent no. 6 had been 1st Class in Graduation, 1st Class in M.Sc., teaching experience of more than five years and the research paper published in the journal, which fact has also been mentioned by the University in its counter affidavit. Learned counsel for respondent no. 6 has further referred to the evaluation-sheet of the written examination conducted by the University, wherein, respondent no. 6 got 55.2 marks, whereas petitioner (appellant herein) secured only 44.8 marks, which shows that there is no ambiguity in the selection process. Accordingly, it was prayed by learned counsel for the respondent no. 6 that the present appeal, filed by the appellant, has got no merit and same is liable to be rejected.

12. Having heard learned counsel for the parties and having gone through the materials on record, I do not find any irregularity or illegality in the impugned order. The learned Single Judge has rightly, after taking into consideration the

entire facts & circumstances and on going through the records and materials, dismissed the writ application. I also find that selection process of respondent no. 6 has been followed after due procedure and in compliance of the advertisement and since the respondent no. 6 had obtained more marks than the appellant, he had rightly been selected for being appointed as Assistant Professor, Zoology Department in the Scheduled Caste Category in the Mahatma Gandhi Central University, Motihari.

13. It is settled principle of law that judicial review is limited in selection process. Judicial review is done in appointment process, unless there is specific case of bias or arbitrariness, but in this appeal, there is no such allegation. Furthermore, the appellant has not disputed the fact that the respondent no. 6 had applied his form with necessary documents alongwith other documents. He has also not disputed the certificate of respondent no. 6 granted by Dean of University, which clearly mentions that Ph.D. degree of respondent no. 6 is in terms of UGC guidelines.

14. So far as judgments cited by the appellant P.Suseela Devi's case (supra) is concerned, the instant case is distinguishable of fact inasmuch as in that case, the 4th Amendment of 2016 was not an issue involved, whereas, this case relates to 4th Amendment of UGC Regulation 2016 and as such, the factual situation of the above-referred case does not fit into the case at hand. In the instant case, a Selection Committee made of experts, who after following Guidelines of UGC and in terms of advertisement, made recommendation for appointment of respondent no. 6 to the post of Assistant Professor in SC Category and thereafter, respondent no. 6 was appointed on the said post.

15. Similarly, the decision of the Supreme Court in Jagdish Prasad Sharma's case (supra) is also entirely different, in which, the matter relating to the issue of age of superannuation to the teachers is involved. Similarly, other two cases, on which appellant has heavily relied, are also distinguishable of facts.

16. Considering the aforesaid facts and circumstances and the law laid down by the Hon'ble Apex Court, I am of the considered view that the decisions cited by the appellant are of no avail. I also find that the learned Single Judge, after noticing all these facts, has rightly dismissed the writ application.

17. Hence, this Letters Patent Appeal is devoid of merit and is accordingly dismissed.