

(2008) 08 RAJ CK 0056
In the Rajasthan High Court

Dr. Shishupal Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Citation : (2008) 4 RLW 3689

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—To be considered for appointment as Professor (MBA) at Engineering College, Bikaner, the petitioner appeared before a competent selection committee on 3.4.2007, however, the recommendation of such committee was not placed before the Executive Committee of the College, hence this petition for writ is preferred seeking directions as follows:

I. by an appropriate writ, order or direction, the respondents may be directed to place the recommendations of the selection committee for the post of Professor in MBA department undertaken pursuant to the advertisement dated 4.1.2007 before the executive council of the Engineering College Bikaner for consideration forthwith or within such time as this Hon"ble Court may deem fit to prescribe;

II. by an appropriate writ, order or direction, in the event, the petitioner is recommended and approved for appointment, the respondents may be directed to offer appointment to the petitioner on the post of Professor in MBA department with effect from the date the other persons selected pursuant to the advertisement dated 4.1.2007 have been given such appointment with all consequential benefits.

2. In reply to the writ petition the respondents came forward with the stand that the petitioner is not possessing the eligibility to hold the post of Professor (MBA) as per the norms prescribed by All India Council of Technical Education (hereinafter referred to as "the AICTE"), thus, the recommendation made by the

selection committee were not placed before the executive committee. While lis pendence the recommendation of the selection committee was tabled before the executive committee on 29.5.2008 and the executive committee also found the petitioner lacking eligibility to hold the post of Professor (MBA). Precisely, the issue now survives is that "WHETHER the petitioner, as per the norms prescribed by the AICTE, possess eligibility to be considered and employed as Professor at Engineering College, Bikaner?" The petitioner, after obtaining Master's Degree in Commerce (Business Administration) in the year 1992 completed Ph.D. in Business Administration (Human Resources) Management in the year 1997. He also underwent faculty development programme at Indian Institute of Management Ahmedabad in the year 2004. He served Jai Narain Vyas University, Jodhpur as Lecturer in adhoc capacity from September, 1995 to June, 1996. On selection as Assistant Professor in the year 1997 he joined services of the Mohanlal Sukhadia University, Udaipur. The senior scale in the cadre of the Assistant Professor was awarded to the petitioner in the month of January 2001 and the selection scale on 4.1.2006. A promotion was granted to him as Associate Professor under the career advancement scheme under an order dated 17.5.2007.

3. The Engineering College, Bikaner (hereinafter referred as "the College") is a society registered under the Societies Registration Act, 1958 and no dispute is there about its amenability to writ jurisdiction of this Court. Being a technical institute the College is required to adhere the norms prescribed by the AICTE and the eligibility prescribed to hold various teaching posts at the College as per the norms of the AICTE is as follows:

-----	S.	No.	Cadre	Prescribed
Qualification and Experience	-----			
1. Lecturer First Class Master's Degree in Qualification & the appropriate branch of Experience for Engineering(Engg.)/Technology Candidates from (Tech.) (No minimum experience Teaching required) OR First Class Bachelor's degree in the appropriate branch of Engineering/Technology or equivalent, valid GATE score, minimum 75 percentile; to complete M.Tech/ME within 5 years failing which the increments will be stopped until the postgraduate degree is earned. The institutions to provide adequate opportunity to its teaching staff to complete this requirement. Qualification & Experience for candidates from Same as above Industry & Profession	2.	Assistant Professor	Ph.D. degree with the first Professor class at Bachelor's or Qualification & Master's level in the Experience for appropriate branch of candidates from Engineering/Technology with 2 teaching years experience in Teaching/ Industry/Research at the level of Lecturer or equivalent. OR First Class at Master's level in the appropriate branch of Engineering/Technology with 5 years experience in teaching/ Industry/Research at the level of lecturer or equivalent. Such candidates will be required to obtain Ph.D. degree within a period of 7 years from the date of appointment as Assistant Professor. In the case of Universities/University departments and the institutions offering PG programmes/Research, Ph.D. is a	

must. For candidates from Industry, Professional experience in R&D and patents would be desirable requirement failing which the increments will be stopped until Ph.D. is earned. Qualification & Candidates from Industry/ Experience for Profession with First Class Candidates from Bachelor's degree in the Industry & appropriate branch of Profession Engineering/Technology or First Class Master's Degree in the appropriate branch of Engineering/ Technology. AND Professional work, which is significant and can be recognized as equivalent to Ph.D. degree and with 2 years experience at a position equivalent to lecturer level would also be eligible. 3. Professor Ph.D. degree with first class Qualification & degree at Bachelor's or Experience for Master's level in the Candidates from appropriate branch of Teaching Engineering/ Technology with 10 years experience in Teaching/ Industry/Research out of which 5 years must be at the level of Assistant Professor and/or equivalent. Qualification & Candidates from Industry/ Experience for Profession with Master's Candidates from degree in Engineering/ Industry & Technology and with Profession professional work which is significant and can be recognized as equivalent to Ph.D. degree and with 10 years experience of which at least 5 years should be at a Senior Level comparable to that of an Assistant Professor would also be eligible. -----

4. As per the respondents in the teaching faculty hierarchy of the College there is no post with the nomenclature of "Associate Professor" and the post of "Assistant Professor" in the pay scale of Rs. 12000- 420-18300 is a post equivalent to the post of Associate Professor available with the universities governed by the norms prescribed by the University Grants Commission (hereinafter referred to as "the UGC"). As per the norms of the AICTE an aspirant to be considered for the purpose of appointment to the post of Professor must have experience of five years on the post of Assistant Professor in the pay scale of Rs. 12000-18300 and the petitioner being appointed in the pay scale aforesaid on 17.5.2007 is not having requisite experience.

5. To meet with the contention of the respondents it is urged on behalf of the petitioner that the AICTE by the communication dated 10.9.2003 as per the recommendations of an expert committee clarified that since the teachers in the Universities/University, Department of Science/ Humanities are governed by the UGC, whereas in the same university Engineering faculty is governed by the AICTE, thus, the Engineering faculty is required to be treated at par with the Science/Humanities in terms of experience as per UGC norms. It is also urged by counsel for the petitioner that the executive council is nobody to examine eligibility requirements and also that the claim of the petitioner is rejected with a view to support an Assistant Professor already working at Bikaner Engineering College.

6. Heard counsel for the parties. The AICTE has been established by an act of the parliament for planning and coordinated development regulation and the maintenance of the norms and standards in technical education system. The

AICTE has notified service conditions of teachers in degree level technical institutions and also incorporated the pay scales for the teachers working with such institutions. The cadre structure of the teachers at technical institutions is of four levels, consisting the posts of the Professor, Assistant Professor, Lecturer and the Principal/Director with the ratio among Professor/Assistant Professor/Lecturer of 1:2:4. The recruitment to the posts above is based on merit by open national level selection without any relaxation in the prescribed qualification and the experience. The work load for the cadred posts of teachers is as follows:

1. Professors - five hours per week.
2. Assistant Professors - 16 hours per week.
3. Lecturers - 16 hours per week.

7. The scales of pay of various teaching posts in the technical education sector at degree level including the Engineering College, Bikaner is as follows:

1. Lecturer - 8000-275-13500
2. Assistant Professor - 12000-420-18300
3. Professor - 16400-450-20900-500-22400

8. As per the norms prescribed by the AICTE the eligibility for consideration and appointment to the post of Professor (MBA) in degree level technical institutions is Ph.D. degree or fellowship of IIMS, ICA or ICWA with first class Master's degree in Business Management / Administration / other relevant Management related discipline with 10 years experience in teaching / industry / research, out of which five years must be at the level of Assistant Professor and/or equivalent.

9. The eligibility to hold the post of Assistant Professor (Management) in degree level technical institutions is that the incumbent must have Ph.D. degree or a fellowship of IIMS, ICA or ICWA with first class Master's degree in Business Management / Administration / other relevant management related discipline with three years experience in teaching / industry / research / profession. The eligibility for appointment to the post of lecturer is first class Master's degree in Business Management / Administration / other relevant Management related discipline. No experience is required to be considered for appointment as lecturer in degree level technical institutions.

10. On the other hand the pay scales prescribed by the UGC for teachers other than of the technical institutions is as follows:

1. Lecturer/Asstt.Professor - 8000-275-13500
2. Lecturer(Sr. Scale)/ Asstt. Professor (Sr. Scale) - 10000-15200
3. Lecturer(Selection Grade)/ Reader/ Associate Professor - 12000-420-18300
4. Professor - 16400-450-20900-500-22400

11. The eligibility prescribed by the UGC for the teachers in Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law is as follows:

1. Professor-

An eminent scholar with published work of high quality, actively engaged in

research, with 10 years of experience in postgraduate teaching, and/or experience in research at the University/National Level Institutions, including experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

2. Reader/Associate Professor-

Good academic record with a doctoral degree or equivalent published work. In addition to these, candidates who join from outside the university system, shall also possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E & F at Master's degree level.

3. Lecturer-

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E & F at Master's degree level, in the relevant subject from an Indian University, or, an equivalent degree from a foreign University.

12. From narration of the eligibility for appointment to various posts and the pay scales pertaining to those posts, it is apparent that the hierarchy of the teachers in technical institutions is quite different to that of the institutions relating to Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and the Law. Though the nomenclature of the post of Assistant Professor is available in the technical institutions as well as in the other institutions, however, complexion and nature of the posts is entirely different.

13. As a matter of fact the post of Assistant Professor in technical institutions is a post equivalent to the post of Lecturer (Selection Grade)/ Reader/Associate Professor with the institutions relating to Humanities, Social Sciences, Sciences etc. The eligibility for appointment on the post of Lecturer/Assistant Professor with the institutions governed as per the UGC norms is good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades at Master's degree level in the relevant subject from an Indian University, or, an equivalent degree from a foreign University.

14. Whereas, the posts of Lecturer and Assistant Professor are two different posts in the technical institutions. The post of Lecturer in Technical Institution (Management Programmes) is the lowest post where appointment is required to be made from among the persons having first class degree in Business Management/ Administration/other relevant management related disciplines and for Assistant Professor the eligibility is Ph.D. degree or a fellowship with first class degree with three years experience in teaching/ industry / research / profession. The qualification prescribed for the post of Assistant Professor in technical institutions is akin to the qualification prescribed for the Associate

Professors / Readers with the institutions governed by the norms prescribed by the UGC.

15. In the present case the petitioner was appointed as Assistant Professor with a University governed by UGC norms at the first instance in the year 1995 on adhoc basis and thereafter in regular capacity in the year 1997. He earned senior scale in the month of January 2001. The petitioner received selection scale relating to the post of Assistant Professor w.e.f. 4.1.2006, as such at first instance he came in the pay scale of Rs. 12000-420-18300 on 4.1.2006. The eligibility experience prescribed for consideration to the post of Professor in technical institutions is of 10 years and out of that five years must be to the post of Assistant Professor as per the AICTE norms. The petitioner being appointed as Assistant Professor in the pay scale of Rs. 12000-18300 on 4.1.2006 by no stretch of imagination can be treated to be a person having five years experience as Assistant Professor as per the norms of the AICTE. Mere analogous nomenclature of the post does not make the petitioner eligible to be considered for appointment as Professor at the College. The equivalence have to be examined on basis of various factors including mode of appointment, eligibility to hold the post, pay, powers, duties etc. From examination of all the relevant factors the post of Assistant Professor in Technical Institutions is a post higher to the post of Assistant Professor with the institutions governed as per the norms prescribed by the UGC.

16. The reliance upon the decision of the AICTE communicated under the communication dated 10.9.2003 is having no relevance in present controversy being taken in totally different context. The item on which reliance is placed reads as follows:

Item No.35: Consideration on the issue regarding relaxation of the condition of 5 years experience at the level of Assistant Professor to 10 years teaching experience for promotion to the post of Professor in a University Departments/ Technological Universities.

Decision taken : As the teachers in Universities / University Departments of Science / Humanities are Governed by UGC, where as in the same university Engineering faculty is governed by AICTE. Since the different experience criteria were fixed by UGC & AICTE, Engg. faculty in University / University Departments are facing lot of hardship. In lieu of the above the committee recommends to treat Engg. faculty in par with Science / Humanities in terms of experience as per UGC. But at the same time to apply AICTE qualifications for the concerned posts.

17. From reading of the issue, it is apparent that consideration was made regarding teaching experience for promotion to the post of Professor in a University Departments / Technological Universities. It is true that no appointment by way of promotion is prescribed to the post of Professor but the term used in the decision relates to the grant of career advancement benefits and not to the direct recruitment. It is also relevant to note that the decision

concerned was taken to remove disparity among the teachers working with the universities those are having the Departments Governed as per the UGC norms as well as by the AICTE norms. So far as Engineering College, Bikaner is concerned, it is absolutely a technical institution and for this reason too the decision concerned is having no relevance in present controversy. Counsel for the petitioner has also placed reliance upon certain advertisements issued by the University of Rajasthan while making appointment to the post of Professor in its faculty of management studies and also by the Indian Institute of Management, Calcutta. In the advertisements issued by institutions referred above the required teaching experience is not bifurcated as it is prescribed under the norms given by the AICTE. By referring those advertisements it is contended by counsel for the petitioner that the institutions aforesaid rightly interpreted the item No.35 communicated under the communication dated 10.9.2003 and, therefore, have not prescribed any experience on the post of Assistant Professor.

18. I do not find any force in the contention advanced. If, those institutions are not adhering the norms prescribed by the AICTE then the consequences are required to be followed by those institutions and non adherence of the norms by those institutions cannot be a precedent for the respondent College. Worthwhile to note here that as per the AICTE norms the College while making recruitment in no manner can provide any relaxation in educational qualification and experience.

19. The other contentions of counsel for the petitioner relating to malafides and also relating to the authority of executive council are of no consequence. So far as the allegations of malafides are concerned, those are absolutely ill-founded and the persons against whom such allegations are made, are not party to the proceedings. The authority of the executive council is not required to be discussed as I have already examined the provisions relating to the eligibility for the post of Professor.

20. For the reasons discussed above, I do not find any merit in this petition for writ and, therefore, the same is dismissed.