

(2018) 11 J&K CK 0079

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2211 Of 2017, MP No. 01 Of 2017

**Dr Showkat Anwar Bhat @APPELLANT@Hash Central University Of
Kashmir Through Its Vice Chancellor & Ors**

Date of Decision : 02-11-2018

Acts Referred:

Citation : (2018) 11 J&K CK 0079

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Mohammad Ashraf Wani, Arshad Ahmad Wani, Z.A. Shah, A. Hanan

Final Decision : Dismissed

Judgement

1. The petitioner, a competing candidate for selection against the post of Assistant Professor in the Department of Economics, advertised in terms of Advertisement Notice No. 4 of 2017 dated 28th of April, 2017, has, on completion of the process of selection and prior to the issuance of the final selection list, filed the instant writ petition for the grant of following relief(s) in his favour:

- i. Writ in the nature of Certiorified Mandamus quashes the panel of experts who have conducted interview for the post of Assistant Professor Economics with further direction to constitute fresh panel in accordance with the UGC regulations;
- ii. Writ in the nature of Certiorari quashing the short listing of private respondent to the extent of inclusion private respondent as he is not entitled to points for publication acquired after cutoff dated and 2 points in presence of NET and 3 points in presence of JRF, as NET and SLET are alternate eligibility tests; and
- iii. Writ in the nature of Mandamus; - commanding the respondents to select and appoint petitioner for the post of Assistant Professor Economics as per his merit secured in academic qualification and interview.

2. The petitioner claims that the inclusion of Professor R. L. Bhat, as an expert member in the Selection Committee is arbitrary, as the same has not been

approved by the statutory authority, which is a requirement in terms of the Statute. It is claimed that Professor R. L. Bhat, as an expert member of the Selection Committee, happens to be a guide/ supervisor of respondent No.4, a competing candidate, therefore, his inclusion is not only impermissible in law, but also against the legal propriety. The petitioner states that the respondent No.4 has pursued M. Phil and is pursuing Ph.D. under the supervision and guidance of Professor R. L. Bhat, which reflects official and personal bias, thereby enhancing the possibility of a potential bias, therefore, the selection process is not in accordance with the settled principles of administrative law. Further, the petitioner challenges the selection criteria with reference to providing of separate points to NET/SLET, which, as a matter of fact, is a qualifying test conducted at the National and State levels, respectively. While admitting the allocation of 03 points for NET as being fair, the petitioner, in paragraph No.7 of the writ petition, has questioned the allocation of grant of 02 points for SLET as arbitrary and unreasonable on the ground that awarding of points to NET as well as SLET is only aimed at enhancing the merit position of the respondent No.4 so as to ensure his selection. The challenge to the selection process, as aforesaid, has further reference to the ground taken by the petitioner that the constitution of the Selection Committee/ Interview Panel is in violation of the University Grants Commission Regulations of 2010. Learned counsel for the petitioner has further submitted that the candidates who are possessed of NET/ SLET are also given the benefit of award of points for being Junior Research fellows.

3. On notice, the respondent Nos. 1, 2 and 3 have filed their reply, wherein they have denied all the averments made by the petitioner as regards there being any violation of the norms and the regulations of the University Grants Commission in the whole process of selection. They have further denied the averments made in the writ petition as factually incorrect and legally unsustainable.

4. In their objections, the respondent Nos. 1 and 2, have stated that the selection committee/ expert panel has been constituted strictly in keeping with the University Grants Commission regulations and with the approval of the statutory authority. It is stated that the writ petition filed by the petitioner is not maintainable as no cause of action has accrued to the petitioner to file the same in view of the fact that no final selection has been made which would have infringed any of the rights of the petitioner. It is submitted that the expert members, included in the Selection Committee, are duly approved by the statutory authority and there is no question of any deviation from the University Grants Commission regulations in this behalf. The inclusion of Professor R. L. Bhat as an expert member in the selection committee, as stated, is only aimed at ensuring that the selection is made in compliance with the mandate of the Statute and the law. The respondent University has proceeded to state that Professor R. L. Bhat is a qualified expert with a considerable standing in the field of academics and vast knowledge on the subject of economics to his credit. The respondent University has further pleaded that it is not the first time that Professor R. L. Bhat has been associated as an expert member with any selection

process, but he has been continuously contributing in the field of education, including rendering his unblemished assistance in the selection process(es). The allegations of bias have been categorically ruled out by stating there is no final selection made of any candidate, including that of the respondent No.4.

5. Mr Z. A. Shah, the learned senior counsel, representing the respondent No.4, in his objections filed in opposition to the writ petition, has also questioned the maintainability of the writ petition being premature as, as per the learned senior counsel, no indefeasible right has accrued to the petitioner merely because he has participated in the selection process of which the result is yet to be declared. The learned senior counsel submits that the application of selection criteria by awarding points to NET/ SLET in favour of the competing candidates has nothing bad in it, as, equally, the candidate possessed with Ph.D. degree are declared qualified for competing in the process of selection, notwithstanding they being possessed of NET/ SLET qualification(s). It is also submitted by the learned senior counsel that in case, the ground taken by the petitioner as regards the grant of points on account of qualifying the NET/ SLET is excluded, then, in such eventuality, same shall deprive the candidates possessed of such qualification from the legally earned points. The learned senior counsel pleads that such a formula can also be applied to the case of the petitioner, who has consumed Ph.D. degree as a qualifying one in competing the process of selection. It is also the case of the learned senior counsel that the petitioner, having competed in the process of selection on the basis of the criteria notified by the respondent University in its meeting dated 20th of February, 2017, i.e. prior to the issuance of advertisement notice dated 28th of April, 2017. In that backdrop, the learned senior counsel has proceeded to state that the petitioner was fully aware of the selection criteria notified by the respondent University well in advance of the initiation of the selection process and, accordingly, after participating in the said process without any grievance, the petitioner cannot, in law, now, turn around and challenge the selection criteria so adopted by the respondent University.

6. Heard the learned counsel for the parties, considered the matter and perused the record.

7. Admittedly, no selection is made on the basis of the process initiated in terms of the advertisement notice dated 28th of April, 2017, issued by the respondent University, therefore, there cannot, at this stage, be any challenge thrown to the selection process, what has not been taken to its logical conclusion. The grounds of challenge, as taken in the writ petition by the petitioner, against the application of selection criteria as also against the inclusion of expert members without any approval from the statutory body, cannot be looked into by this Court, at this stage at least, as the selection process in question is yet to culminate and there is nothing before the Court which could give cause to the petitioner for taking all these grounds. In the event, the Court, at this stage, returns any finding on the grounds taken by the petitioner challenging the selection process, the same shall seriously prejudice the cause of both, the

petitioner as well as the selected candidate. In this backdrop, the Court feels it necessary and in the interests of justice, to desist from returning any finding on the grounds taken in the petition, as otherwise, same will result in depriving the selected candidate, who may be selected on the basis of the criteria in vogue, of providing him opportunity of being heard.

8. It needs must be said that merely because a particular member has been associated with the selection committee does not give the teeth to the petitioner to claim bias on the part of such a member against any particular candidate, that too, without there being any material to substantiate so. It is only after culmination of the selection process, when the final selection list is issued by the respondents, that the petitioner, if aggrieved, can raise all these grounds as regards the loopholes, if any, having been resorted to by the respondents in the process. In the event, the petitioner is aggrieved of the final selection made by the respondents, he shall be at liberty to challenge the selection of the selected candidate on the grounds taken in the petition as also by substantiating the same with further grounds.

9. Viewed in the context of all that has been said and done above, I am of the considered view that the writ petition on hand, at this stage, is premature as none of the rights of the petitioner has been violated in view of the fact that the result of the selection process, in question, is yet to be finalized/ declared. It being so, the writ petition, alongwith connected IA(s), is dismissed. Interim directions, if any, in force as on date shall stand vacated. The respondent University shall go ahead, finalize and publish the selection process. However, it is made clear that mere dismissal of the writ petition, as above, shall not form an impediment for the petitioner to challenge the selection of the selected candidate, if aggrieved, on the grounds taken in this writ petition coupled with further grounds as may be available to him.