

(2006) 04 AHC CK 0115
In the Allahabad High Court
Case No : Writ Petition No. 651 (SB) of 2005

Dr. (Smt.) Santwana Dwivedi

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Uttar Pradesh Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 — Regulation 6

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 31

Citation : (2006) 04 AHC CK 0115

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Advocate : H.G.S. Parihar, for the Appellant; S.B. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

1. Learned counsel for the petitioner Sri H.G.S. Parihar has very fairly stated that there is no arbitrariness in the U.P. Higher Education Service Commission (Procedure for Selection of Teachers) Regulations, 1983 and in particular Regulation 6, which permits the screening of the candidates, who had applied for selection to a particular post of teacher on the basis of the academic qualifications but says that non calling of the petitioner for interview is hit by the Government Order dated 23.12.03 issued by the State Government and, therefore, the action of the Commission is bad in law.

2. It cannot be disputed that in a selection where a large number of forms are received from prospective candidates possessing minimum or essential prescribed qualification, the selecting body has a right to screen out the candidates, or in other words, to short list the candidates for consideration. The only requirement, while doing so, is that the criteria adopted must be reasonable and uniform and it should not suffer from the vice of arbitrariness or malafide.

3. Regulation 6 aforesaid, gives a right to the Commission to screen out or short list the candidates on any criteria, which is reasonable, on the basis of the

academic record. The Commission had allocated quality point marks towards the academic achievement and since the petitioner could not fall within the prescribed minimum marks, she has not been called for interview.

4. The letter, which is said to be a government order issued by the State Government under the signature of the Joint Secretary dated 23.12.02 does not, in fact, lay down any policy for calling the candidates in interview, nor the State Government could have done so, in view of the fact that the appointments on the post of teacher in degree colleges were governed by the U.P. Higher Education Service Commission Act and the Regulations framed therein. The State had no jurisdiction or power to issue any direction or even suggestion in violation of the Regulations to the Commission for calling candidates for interview in the matter of selection of teachers. Of course, if the Commission violates the statutory provisions in holding the selection, that could give a cause of grievance to the aggrieved person to challenge the said action in appropriate forum. Simply because one or the other person has not been called for interview on being short listed, an officer of the State Government of the rank of Joint Secretary could not have asked the Commission to deviate from the statutory provisions or the Regulations. Writing letter to the Secretary of the Commission was thus, of no consequence, so far the merits of the present case is concerned.

5. In the counter affidavit filed by the Commission, the academic record of the petitioner has been recorded in Para 3 of the same and it also takes note of the Government order dated 23.12.02, on which the petitioner is placing reliance. The counter affidavit records that u/s 31 of the Uttar Pradesh Higher Education Services Commission Act, 1980, the U.P. Higher Education Services Commission, with the previous approval of the Government, has framed the Regulations known as U. P. Higher Education Service Commission (Procedure for Selection of Teachers) Regulations, 1983, in which Regulation 6 prescribes the procedure for selection and for preliminary screening/short listing of the applications and also that the number of candidates to be called for interview shall as far as possible be between 3 to 8 times of the vacancies. After scrutinizing the applications, a list of candidate has been prepared in order of merit and the candidates have been given points known as Index Points. Index Point of Dr. (Smt.) Santawana Dwivedi, namely, the petitioner, is 84, whereas Index Point of the last candidate called for interview is 88 and not even a single candidate having lesser Index Point has been called for interview.

6. In regard to the aforesaid Government order under the signature of the Joint Secretary of the Commission, learned counsel for the Commission says that it was advisory in nature and it has no mandatory or statutory force.

7. We find that in view of the specific Regulations framed for the purpose, any advice sent by the Government, unless adopted by the Commission or it is made part of the Regulations or the Statute, cannot be binding and the selection cannot be faulted on this ground.

8. Learned counsel for the petitioner has already submitted that he does not challenge the vires of the aforesaid provision nor takes it as arbitrary and, therefore, we also do not find any illegality in the action of the Commission in not calling the petitioner for interview.

9. The writ petition is dismissed.