

(2014) 01 AHC CK 0301

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 64283 of 2013

Dr. Sriprakash

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 22, 36

Citation : (2014) 3 ADJ 185 : (2014) 4 AWC 3758

Hon'ble Judges : Surya Prakash Kesarwani, J; Arun Tandon, J

Bench : Division Bench

Advocate : Indra Raj Singh and Shams Vikas, Advocate for the Appellant; Ajit Kumar Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Indra Raj Singh, learned counsel for the petitioner and Sri Ajit Kumar Singh, learned counsel on behalf of Banaras Hindu University. An advertisement was published by Banaras Hindu University in newspapers on 14.2.2013 being advertisement No. 5/2012-13, inviting applications from eligible candidates for direct recruitment with specified qualifications and experience for the post of Professors, Associate Professors and Assistant Professors. The cut of date for receipt of applications for these posts was 21.3.2013. The candidates were required to visit the website of the University as disclosed in the advertisement for further details. The present writ petition pertains to the appointment on the posts of Reader in the faculty of Ayurveda in the Department of Kayachikitsa.

2. The petitioner had submitted his application in response to the advertisement and after visit to the website which provided for the qualifications required for the posts. The petitioner has not been invited for interview on the ground that he did not satisfy the essential minimum qualifications for the post. The petitioner made a representation against non consideration of his case in the matter of selection. The representation of the petitioner has been rejected by the

University under order dated 24.11.2013. The petitioner has been informed that he does not fulfill the essential qualifications of eight years" teaching experience as Lecturer including three years of post graduate teaching in the concerned subject for the post applied for by the petitioner. Hence, he was not eligible for being called for interview.

3. Challenging the decision so taken, learned counsel for the petitioner initially made an attempt to submit before this Court that as per the details supplied by the petitioner alongwith application, he does satisfy the minimum requirements of teaching experience. However, on being confronted that the petitioner does not specify the required number of years of teaching in concerned subject, learned counsel for the petitioner made an attempt to suggest that the Regulations named by the University "UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010" provides for the teaching experience for the post of teachers equivalent to that of Readers as "a minimum of eight years of experience of teaching and/or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry excluding the period of Ph.D. research with evidence of published work and a minimum of 5 publications as books and/or research/policy papers." It is contended that the petitioner has thus teaching experience and, therefore, is eligible for being considered in the matter of selection.

4. Sri Ajit Kumar Singh, learned counsel on behalf of the University points out that contention raised is wholly misconceived inasmuch in the notification dated 30.6.2010, issued by the University Gant Commission, published in official gazette on 18.9.2010, it has specifically been mentioned under Clause-III that for Teachers in the Faculties of Medicine, Dentistry, Nursing and AYUSH, the norms and Regulations of Ministry of Health and Family Welfare, Government of India would apply. He, therefore, submits that in view of Clause 1.1.1 which discloses the coverage of the faculty post under the UGC Regulations of 2010. The notification dated 3.2.2005 published by the Central Council of Indian Medicines would prevail. The notification dated 3.2.2005 has been made by exercising powers conferred by Clauses (i), (j) and (k) of sub-Section (1) of Section 36 of the Indian Medicine Central Council Act, 1970. The said notification provides for the teaching experience on the post of Associate Professors/Readers as follows:

16. Qualifications for Post-graduate teachers.--(1) The teachers deputed/appointed for post-graduate teaching shall possess post-graduate degree qualifications in the concerned subject.

(2) For the post of Professor, thirteen years teaching experience including five years as Reader in Postgraduate teaching in the concerned subject shall be required.

(3) For the post of Reader, eight years teaching experience as Lecturer including three years in post-graduate teaching or total ten years experience of undergraduate teaching in the concerned subject shall be required.

5. Learned counsel for the petitioner in rejoinder refers to the amendment application, which has been filed for challenging the advertisement. It is his case that Section 36 of the Indian Medicine Central Council Act, 1970 does not authorise framing of any Regulations for laying down the academic and teaching qualifications for the post of Associate Professors or other teaching faculties in Universities like BHU. Therefore, the norms laid down under the Notification of 2005 referred to above could not have been applied by the University.

6. The contentions raised on behalf of the petitioner do not appeal to us for the following reasons. Section 22 of the Indian Medicine Central Council Act, 1970 confers power upon the Central Council to prescribe the minimum standards of education in Indian Medicine, required for granting recognised medical degrees by Universities, Boards or institutions in India. These standards have to be referred to the Central Government for sanction. Section 36 of the Act, 1970 confers the power upon the Central Council with the previous sanction of the Central Government by the notification in the official gazette to make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for the various subjects as enumerated in Clauses (a) to (p) in Clause (j), (q) speaks of standards of staff, equipment, accommodation, training and other facilities for education in Indian medicine.

7. We are of the considered opinion that the power to lay down the minimum standards of education in Indian medicine includes read with Section 36 specifically Clause (j) includes power to lay down the minimum standards/qualifications on which a faculty member can be appointed in institutions including Universities and Boards where education in Indian medicine is carried. Therefore, the Notification of 2005 as framed by the Indian Medicine Central Council with the previous sanction of the Central Government cannot be said to be without jurisdiction. Even otherwise the University Grant Commission in Regulation 1.1.1 g Regulation 2010 has declared that the Rules framed by the Central Government in the matter of appointment of Teachers in the Faculties of Medicine, Dentistry, Nursing and AYUSH shall prevail.

8. We see no good reason to interfere with the advertisement or the decision of the University in so far as it declares that the petitioner is not eligible for the post of Associate Professor/Reader. The writ petition fails and is accordingly dismissed.