

(2018) 04 OHC CK 0032
In the Orissa High Court
Case No : W.P.(C) No.4281 of 2018

DR.PRABIR KU.MOHANTY

APPELLANT

Vs

STATE OF ORISSA AND OTHERS

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

University Grants Commission Act, 1956 — Section 22(1), 26(1)
Constitution of India, 1950 — Article 226

Citation : (2018) 04 OHC CK 0032

Hon'ble Judges : SUJIT NARAYAN PRASAD

Bench : Single Bench

Advocate : D.N. Pattnaik, B.P. Tripathy

Final Decision : Dismissed

Judgement

S. N. Prasad, J. Â

1. The writ petition is against the rejection of candidature for the post of Associate Professor on the basis of not found to be up to the mark by not

securing Academic Performance Indicator (in short "API") marks, which has been stated to be illegal and arbitrary, as such the same criteria

was not in the initial advertisement dated 26.02.2014 as contained under Annexure-1 with issuance of further direction upon the opposite party no.3 to

give appointment to him as against the post of Associate Professor against the lying vacant posts under 3 constituent Colleges and Universities.

2. Case of the petitioner in brief is that the opposite party no.3Biju Patnaik University and Technology (in short "BPUT") has come out with an

advertisement on 26.02.2014 to fill-up the post of Associate Professor at College of Engineering and Technology, Bhubaneswar (CET), Parala

Maharaja College of Engineering (PMEC), Berhampur and Govt. Engineering

College, Kalahandi, in pursuance of the said advertisement, the petitioner had applied for being considered to the post of Associate Professor. The opposite party no.3 has again come out with an advertisement on 30.09.2014 for the post of Associate Professor for constituent colleges of BPUT i.e. College of Engineering and Technology, Bhubaneswar (CET), Parala Maharaja College of Engineering (PMEC), Berhampur and Govt. Engineering College, Kalahandi. The petitioner has again applied for the same. Opposite party no.3 has come out with an advertisement on 11.03.2015 inviting applications third time with details of qualification, experience and contribution to profession/research from Indian Nationals for the regular faculty positions (Professor, Associate Professor and Assistant Professor) in the Five Centre for Advanced Post Graduate Studies (M.Tech) of BPUT, Odisha and he has again re-advertised by issuing the advertisement dated 13.04.2015, thereafter another advertisement has come on 27.06.2015 and again on 21.12.2015 asking the candidates who had applied earlier for the post of Associate Professor to submit API form duly filled up with required information for each applied post earlier. Accordingly, the petitioner has filled-up his application form along with self attested API score. The authorities, at that juncture, has asked all the candidates who had applied earlier to submit again fresh applications along with revised API score and new summary sheet for each post applied earlier. Opposite party no.3 has again come out with an advertisement dated 19.07.2017 for the post of Associate Professor to be posted at Centre Bhubaneswar, Kalahandi, Berhampur and CAPGS, BPUT, Rourkela. Accordingly, the petitioner has applied for said post along with all requisites with API score with separate summary sheet for each center. The Selection Committee, after scrutiny and short listing of the candidates those applied had called upon the petitioner to attend the interview in person with all certificates/ documents in support of claimed API score with the condition that the petitioner will be allowed to appear interview on 18.02.2018 subject to fulfilling the required API score without any explicit information on methodology of calculation of API by University or minimum cut off score as would be evident from the call letter dated 2.2.2018 (Annexure-8). The petitioner in terms of the same, had appeared before the Selection Committee, according to the petitioner the API score of category-I, II and III

is about 263, the Committee finalized the API score as 200 and some odd and verbally debarred the petitioner from attending the interview held on

18.02.2018 and on that date the Committee took signature of the petitioner on those finalized API score sheet, verbally informing him that API score

from Category-III is way below than the required score 300.

3. The petitioner being aggrieved with the rejection of his candidature, is before this Court by way of the instant writ petition on the ground that his

candidature cannot be rejected on the basis of scrutiny made by taking API score into consideration, since it was not in the advertisement initially on

26.02.2014 and even if it has been provided under AICTE in its notification dated 5.3.2010 or the UGC Regulation but the same without being adopted

by the State Government or without being reflected in the advertisement, cannot be made basis of rejection of the candidature of one or the other

candidates, accordingly rejection of candidature is nothing but an arbitrary exercise of power of the Selection Committee. Learned counsel for the

petitioner submits that in other Colleges or Technical Colleges, where they are coming with the advertisement, there is no such stipulation in the same

and candidature of candidates are being considered without taking into consideration the API score and after their selection, they are also continuing

at the present place of posting. It is the argument of the learned counsel for the petitioner that so many posts are lying vacant and once the petitioner

has made an application, he has got legitimate expectation to get the job, as such appropriate direction may be passed directing the authority to appoint

him to the said post.

4. Mr. Amit Pattnaik, learned Addl. Govt. Advocate appearing on behalf of the State has argued by submitting that as per the pleading made in the

writ petition, there is no dispute that the first advertisement was issued on 26.02.2014 without reflecting anything regarding API consideration and

thereafter subsequent advertisements have come and ultimately the authorities have come out with the advertisement making the selection process to

be done on the basis of API score, which is the mandatory requirement as per the UGC guideline, which contains a provision for possessing essential

qualification for direct recruitment to the post of Professor/Associate Professor or Assistant Professor depending upon the essential qualification and

the API score for a candidate to get consolidated API score of 300 points from

Category-III for the post of Associate Professor/equivalent cadres.

The said regulation has been formulated by the UGC in exercise of power conferred under clause (e) and (g) of sub-section (1) of Section 26 of

University Grants Commission Act, 1956 and in pursuance of the MHRD O.M. No.F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of

Finance (Department of Expenditure) O.M. No. F.1-1/2008-IC dated 30th August, 2008 and in terms of the MHRD Notification No.1-32/2006-

U.II/U.I(I) issued on 31st December, 2008 and in supersession of the University Grants Commission (Minimum Qualifications Required for the

appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000, as per which the University

Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures

for the Maintenance of Standards in Higher Education) Regulations 2010 has been formulated.

It has been provided therein that for direct recruitment to the post of Professor/ Principal or Associate Professor or Assistant Professor along with

good academic record with a Ph.D Degree in the concerned/allied/relevant disciplines with a Master's Degree with at least 55% marks, minimum

of 8 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, contribution to educational innovation, design of new curricula and courses and technology and minimum

score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in

Appendix-III. Accordingly, before making any appointment, the candidature is to be scrutinized on the basis of essential qualification as provided under

the UGC Regulations 2010, since the advertisements have been issued after 2010, as such the selection is to be made on the basis of UGC

Regulations 2010 and that has been notified also by the authority by issuing Annexure-8 dated 2.2.2018, apprising the candidates to come out with the

documents and fulfill the required API score.

In terms thereof, the petitioner has appeared but has found to be securer of less marks in API than 300, which has been fixed as per the UGC

Regulations and accordingly has been screened out and not allowed to participate

in the interview, hence there is no illegality in the decision taken by the Selection Committee. He submits that the contention raised by the learned counsel for the petitioner that the decision taken by the authorities cannot be given retrospective effect but that is not the case here, because the UGC Regulations has come in the year 2010 and prior to that there was another Regulation notified in the year 2000 but in supersession to the Regulations 2000, Regulations 2010 has come, containing therein the essential educational qualification and the parameter for selection of a candidate to a particular faculty member, since the first advertisement has come in the year 2014, as such there is no doubt about the fact that the selection process is to be made on the basis of the essential qualification as provided under the UGC Regulations, 2010, by following it, the Selection Committee has screened out the candidature of the petitioner, hence there is no illegality. He submits that in the selection process, there is no principle of legitimate expectation rather if a candidate is not found on the basis of the parameter fixed under the Regulations, 2010, such candidate has got no right to be considered for their engagement/appointment to the said post. He further submits that this Court cannot look into the decision of the authority since the authority has taken decision strictly on the basis of UGC Regulations 2010, rather this Court sitting under Article 226 of the Constitution of India can only be interfered with the decision making process, if it is found to be illegal but on the basis of the pleading made in the writ petition which is the admitted case of the petitioner that API score is less than 300 as required under the UGC Regulations 2010, hence the decision taken by the Selection Committee cannot be said to be illegal, as such on the basis of these arguments, has submitted that the writ petition lacks merit.

5. Heard the learned counsel for the parties and on appreciation of their rival submission, this Court thinks it proper, before going into the factual aspect, to note here the duty of University Grants Commission, which is a statutory body constituted in the year 1956 by way of parliamentary legislation known as UGC Act, 1956 and in exercise of power conferred under clause (e) and (g) of sub-section (1) of Section 26 of UGC Act, 1956, UGC has formulated a Regulation known as UGC (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000 which has been

superseded by virtue of Regulations known as University Grants

Commission (Minimum Qualifications for the Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for

the Maintenance of Standards in Higher Education) Regulations, 2010. UGC Regulations, 2010 stipulates a condition for fixing minimum qualification

for appointment of teaching and other academic staff. Here the relevant post is Associate Professor, as such to hold the post of Associate Professor,

the minimum qualification prescribed under Clause-4.3.0, which is being reproduced herein below:-

(i) Good academic record with a Ph.D. Degree in the concerned/allied/relevant disciplines.

(ii) A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed).

(iii) A minimum of 8 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.

(iv) Contribution to educational innovation, design of new curricula and courses, and technology mediated teaching learning process with evidence

of having guided doctoral candidates and research students.

(v) A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Bases Appraisal System (PBAS), set out in this

Regulation in Appendix III. It is evident from Appendix-III, which contains the minimum score to be possessed under the API for direct recruitment

of teachers in Universities/Colleges, Associate Professors/equivalent cadres, the minimum API score is to be possessed by a candidature of 300 point

from category-III of APIs.

6. It is further evident that Government of Odisha has come out with notification dated 15.02.2010, which has been notified in pursuance to the

provision of sub-section (1) of Section 22 of the University Grants Commission Act, 1989, whereby and where under the State of Odisha has

formulated Orissa Revised Scales of Pay for University Teachers (U.G.C. Scale of Pay) Rules, 2010, whereby and where under the pay fixation has

been done by the State of Odisha which has directly to be extended as per the

UGC Regulations, if the appointment has been made strictly in accordance with UGC Regulations, meaning thereby if the appointment is not in terms of the UGC Regulations, the appointee will not get the pay scale as per the UGC Pay Scale. It is evident from the Advertisement that whatever pay scale for the Associate Professor has been reflected i.e. pay scale of Rs. 37,400/- 67,000/-+ Rs.9000/- AGP, that is on the basis of UGC Pay Scale as contained under Appendix-I of UGC Regulations, 2010.

7. Thus, it is evident if any incumbent will be appointed to the post of Associate Professor who will get the pay scale of Rs.37,400/- 67,000/- +

Rs.9000/- AGP, one or the other candidates is to possess the essential qualification as per UGC Regulations and since it has been adopted by the

State of Odisha vide notification issued on 15.02.2010 as reflected herein above, the minimum qualification to be possessed by one or the other

candidate for being appointed as Associate Professor is strictly in terms of the UGC Regulations that is along with API score of 300. In the light of

this factual situation, case of the petitioner has been examined.

It is not in dispute that the first advertisement was issued on 26.02.2014 but selection process has not been initiated and thereafter time and again

series of advertisements have come and ultimately the petitioner has been informed to appear before the Selection Committee for scrutiny of his

candidature strictly on the basis of the UGC Regulations, 2010 in which the Selection Committee has found that he has secured less than 300 API

score, as such he has been screened out.

8. The petitioner has tried to make out a case that UGC Regulations cannot be said to be applicable since the advertisement is prior to the UGC

Regulations, but this contention is absolutely incorrect since UGC Regulations has come in the year 2010 which is now applicable, as such the

selection is to be made strictly on the basis of the UGC Regulations, 2010 i.e. basing upon the API score apart from other educational qualifications as

reflected under clause 4.3.0 of the UGC Regulations, 2010 as quoted herein above. Â

The first advertisement has come in the year 2014 and prior to that UGC Regulations 2010 has been implemented which has been adopted by the

State of Odisha in the year 2010 by extending the pay scale as per the UGC Regulations, hence it is not a case of retrospective application rather it

will be held to be prospective application since the advertisement has come after 2010 i.e. the date of UGC Regulations or the Notification by the State of Odisha.

9. Further it is the case of the petitioner that his candidature has not been considered even though the same condition is not mentioned in the advertisement but mentioning a condition for selection is not required to be mentioned in the advertisement rather the advertisement is simply for inviting applications and the selection process is to be made strictly in accordance with the recruitment rules applicable, hence UGC Regulations, prevalent at the time of the date of advertisement, as such the contention of the petitioner that the API score consideration was not mentioned in the advertisement which will not of any aid to him. Be that as it may, the candidature of the petitioner has been considered on the basis of the API but he has found to be less securer of API, hence not selected.

10. So far as the contention of the petitioner that he has got legitimate expectation of being appointed since there are so many vacancies but in the service jurisprudence, the question of legitimate expectation is not applicable, if the candidature of the candidate is not up to mark rather the selection is to be made on the basis of the provision made in the Regulations and on merit of the candidates, but here in the instant case the petitioner is securer of less API which is the essential requirement for consideration of a candidate to appear in the interview, in which the petitioner has found to be not up to the mark, accordingly his candidature has been rejected, in view thereof he is found not be fit to be considered, hence there is no question of legitimate expectation. In view thereof, in the entirety of facts and circumstances, the petitioner has failed to make out a case in his favour. Accordingly, the writ petition is dismissed.