

(1997) 06 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15610 of 1994

G. Sagar

APPELLANT

Vs

Board of Management, J.N.T.U. and Others

RESPONDENT

Date of Decision : 11-06-1997

Acts Referred:

Citation : (1997) 4 ALT 505 : (1997) 2 APLJ 322

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : A. Satya Prasad, for the Appellant; R. Subhash Reddy, for Respondent Nos. 1 and 2 and A. Sudershan Reddy, for the Respondent

Final Decision : Allowed

Judgement

Y.V. Narayana, J.—The petitioner, who is working as Assistant Professor in the Jawaharlal Nehru Technological University, Hyderabad (1st Respondent herein), filed this writ petition for the issuance of a writ of mandamus praying to call for records pertaining to the appointment of Professor in Computer Science & Engineering pursuant to Advertisement No. C3/1/94 dated 15-4-1994 on the file of the 1st respondent and set aside the same as illegal.

2. The matter relates to the selection of in-service candidates to the post of Professor in Computer Science and Engineering in the 1st respondent-University. This writ petition was filed at the time when the entire selection process was completed but the order of appointment was, however, not issued in favour of the candidate selected. The main contention of the petitioner is that the 3rd respondent, who is also working as Assistant Professor in the very same 1st respondent-University and who was one of the applicants for the post of Professor in Computer Science & Engineering, for which post the petitioner also applied, was not qualified by the date of notification to apply for the said post of Professor and that the authorities have shown undue favour towards 3rd respondent in accepting his candidature. He, therefore, filed this writ petition with the prayer which is stated supra. In the light of the contention raised by the

petitioner, it appears to me that the prayer portion of the writ petition is not aptly worded. Yet, I am of the view, this Court can mould the relief and issue an appropriate writ in the facts and circumstances of the case. Now, the facts of the case.

3. A notification was issued by the 1st respondent-University on 15-4-1994 calling for applications from eligible candidates for various posts including the posts of Professors in Computer Science & Engineering, with which we are now concerned. In response to the said advertisement, the petitioner herein, the 3rd respondent and some other candidates have applied. On a perusal of the record pertaining to the selection to the post of Professors in Computer Science & Engineering, which has been produced before this Court by the learned Standing Counsel for the University during the course of arguments, it is noticed that a Screening Committee, headed by Professor M.R.K. Reddy, had been constituted to scrutinise the applications received for the said post. A total number of 14 candidates have sent applications for the post. Out of them, the Screening Committee identified only six candidates to have been qualified and accordingly call letters were despatched to them. They are-(1) Mr. V. Radha Krishna; (2) Mr. E.V. Prasad; (3) Mr. K.S. Sarma; (4) Mr. G. Sagar (writ petitioner); (5) Mr. P. Sarweswara Avadhani and (6) Mr. A. Venugopala Reddy (3rd Respondent). Interviews were conducted on 17-8-1994 on which date all the candidates except Mr. P Sarveswara Avadhani attended the interview. The process of selection was completed by the Selection Committee. A perusal of the records and the sealed cover produced by the learned Standing Counsel goes to show that the Selection Committee had selected and recommended one candidate and the same was intimated to the Board of Management of the University for the purpose of appointment. It was at that stage, this writ petition was filed questioning the authority of the respondent-University in entertaining the application of the 3rd respondent. The petitioner contends that the 3rd respondent did not possess one of the essential qualifications that is prescribed for the post of Professor (i.e., Ph.D. degree) either at the time of submission of application by him or at least at the time of interview and that, therefore, he was not at all eligible to be called for interview. It is further contended that even though no relaxation is permitted in respect of educational qualifications, the respondent-University have shown undue favour towards the third respondent by ignoring its own Instructions that were issued along with the Notification.

4. On the other hand, it is mainly contended on behalf of the 1st respondent that since a mention was made in the application form of the 3rd respondent that he had already submitted his Thesis in December, 1993 and was awaiting for the conferment of Ph.D. degree shortly, the Screening Committee thought it fit to allow the 3rd respondent also for the interview subject to production of Ph.D. degree or its equivalent. It is further contended that previously also there were instances where candidates who had submitted their Thesis and were awaiting for conferment of Ph.D. degrees by the date of applications were permitted to appear for the interview and that in the case of the 3rd respondent also the very

same practice has been adopted. It is, therefore, contended that no undue favour as contended by the petitioner was shown towards 3rd respondent. The 3rd respondent contends that as per the "Note" which is printed underneath the qualifications that are prescribed for the post of Professors, he is fully eligible to apply for the said post and that the contention of the petitioner is ill-founded and is raised only with evil intentions.

5. In the light of the above rival contentions, the only point that is to be considered is whether the 3rd respondent was eligible as on the date of notification to apply for the post of Professor.

6. The qualifications prescribed for the post of Professor in Computer Science & Engineering are as follows:

"(a) a Ph.D. with I Class Degree at the Bachelor's or Master's level in Engineering/Technology.

(b) 10 years experience in Teaching/Industry/Research out of which 5 years must be at the level of Asst. Professor or equivalent.

Note: Candidates from Industry/Profession with recognised professional work of high standard recognised at National/International level equivalent to Doctorate would also be eligible."

While so, the 3rd respondent possessed M.Tech. degree. He obtained M. Phil, degree in Computer method in the year 1981. He was also having 14 years of teaching experience as on the date of notification. Insofar as the other essential requirement of possessing Ph.D. degree is concerned, the 3rd respondent mentioned in his application form that he had sent his Ph.D. Thesis to the University of Roorkee, but by the time of submission of application form for the post of Professor the Ph.D. degree was not awarded to him. He could not produce the degree even on the date of interview also. The said fact is apparent from the provisional certificate issued by the University of Roorkee later on i.e., on 23-9-1994. Therefore, it is clear that by the date of application, the 3rd respondent did not possess the Ph.D. degree. He could not possess it even as on the date of interview. The 1st respondent seeks to support its action in permitting the 3rd respondent to the interview by saying that since the 3rd respondent had already submitted his Ph.D. thesis and was awaiting for the conferment of Ph.D. degree any time, he was permitted to appear for the interview. It was further submitted that such a practice was in existence even earlier also and that the University had committed no illegality in allowing the 3rd respondent. But, in my opinion, the 1st respondent cannot resort to such a practice when the University itself had in clear terms stipulated in the Instructions to Candidates for Appointment at Para 6 (which is printed along with the notification) that the "candidates should satisfy themselves that they are eligible to apply before filling up the application form on paying the application fee and that the conditions prescribed cannot be relaxed". Having stipulated such a condition to the candidate, neither the candidate can ask for relaxation of any

of the conditions with regard to qualifications nor can the University suo motu relax the same on its own. Any such attempt by the University ignoring its own Instructions is nothing but a sheer mockery of its own rules. In other words, it would amount to mala fide exercise of powers by the University so as to do undue favours towards 3rd respondent. Even otherwise also, it is not an undeniable fact that a candidate aspiring job is first of all duty bound to satisfy the employer with regard to his qualifications. If he does not possess any of the qualifications that are stipulated by the employer, the employer would naturally reject his application at the threshold itself. In this case, even though the 3rd respondent did not possess one of the essential qualifications of Ph.D. degree as on the date of application, the respondents instead of rejecting his application, have permitted him to appear for the interview by completely ignoring Condition No. 6 in the "Instructions to Candidates for Appointment". The explanation offered by the University in this regard that it had simply followed the procedure which the University had been adopting in such cases in the previous years, is not convincing. Law does not permit perpetration of an act which is prohibited or which is proved to be an illegal one. So when once the University is found to have been acted illegally in allowing a candidate to the interview even though that candidate does not possess the essential qualification, the University cannot be permitted to contend that it had simply followed the earlier practice which itself is found to be irregular and illegal. For these reasons, I am of the view that the respondent-University was in error in permitting the 3rd respondent to appear for the interview. For this view, I am fortified by a decision of the Supreme Court reported in *Municipal Corporation of Greater Bombay and others Vs. Dr. Sushil V. Patkar and others*, .

7. Though the 3rd respondent seeks to take shelter under the "Note" that is printed underneath the two qualifications which are prescribed for the post of Professor, the same, in my opinion, will not come to his rescue in any way. The said Note is applicable only to persons of great eminence and to those who have got excellent record to their credit at National/International levels in the field in which they are working. It is applicable for those who have won laurels for their dedicated work and achievements in the field. While so, neither the 3rd respondent nor the University claim that the 3rd respondent was of such an eminent personality so as to bring him under "Note". Therefore, I am of the firm view that the said Note is not applicable to the 3rd respondent. Lastly, I have perused the Award List produced before this Court by the learned Standing Counsel in a sealed cover, which contains the total marks that are awarded by the Selection Committee in the interview to each of the candidate. But unfortunately, nothing is placed before me to know as to on what basis the Selection Committee had awarded marks to each of the candidate. When there is specific allegation by the petitioner against the selection of the candidate, it would have been fair on the part of the University to place the entire record relating to the selection before this Court. But it was not done. The Award List, however, shows that the 3rd respondent was the successful candidate and he

was accordingly recommended for appointment. The manner in which the 3rd respondent's application was processed and the selection was done gives rise to a doubt in the mind of the Court that every thing was not well in this case. For all these reasons, I am of the view that the 3rd respondent was not eligible to apply for the post of Professor in Computer Science and Engineering as he did not possess one of the requisite qualifications of Ph.D. either by the date of submission of application by him or at least by date of interview. Therefore, the 1st respondent-University was in error in entertaining his application.

8. In the result, the writ petition is allowed and the 1st respondent-University is directed to ignore the application of the 3rd respondent herein submitted on 17-5-1994 for the post of Professor in Computer Science & Engineering and-process the selections accordingly.