

(2013) 09 MP CK 0108
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3241 of 2013

Manish Karwade

APPELLANT

Vs

Raja Man Singh Tomar Music and Arts University and Another

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Raja Man Singh Tomar Sangit Evam Kala Vishwavidyalaya Adhiniyam, 2009 — Section 33(5)

Citation : (2013) 5 MPHT 149 : (2014) 1 MPLJ 116

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anil Sharma in WP No. 3241/2013 and Mr. Kumar Gaurav Sharma in WP No. 6291/2013, for the Appellant; Tapan Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Since the matters are similar in nature, on the joint request of the parties matters are finally heard and decided by this common order.

Facts are taken from WP. No. 3241/2013.

The respondent university is established under the Raja Man Singh Tomar Sangit Evam Kala Vishwavidyalaya Adhiniyam, 2009 (hereinafter called as Adhiniyam). The petitioner possess the qualification of Bachelor of Music (Tabla). He completed his post graduation in Tabla subject in the year 1991. The petitioner qualified the National Eligibility Test (NET) conducted by UGC on three occasions. The petitioner is getting scholarship from the Ministry of Human Resource Development. Pursuant to advertisement (Annexure P/12) dated 14.12.2011, petitioner submitted his candidature for the post of Assistant Professor (Table). All the posts advertised by Annexure P/12 are for unreserved category. Along with said advertisement the eligibility conditions were also prescribed. The petitioner along with other candidates was subjected to interview.

2. Shri Anil Sharma Advocate for the petitioner by placing reliance on Annexure

P/15 (minutes of the meeting of Executive Council) submits that recommendations of the selection committee for the post in question was produced before the Executive Council. The Executive Council opined that two members have stated that experts of Tabla and Sitar have given similar marking. Certain candidates have given maximum marks where as their academic record is inferior in comparison to certain candidates. Objection of the said members was that more meritorious candidates were subjected to discrimination. The Vice Chancellor present in the meeting in the capacity of Chairman disagreed with the said objection of two members. However, after detailed discussion, the opinion was formed that on this aspect guidance be sought from the Chancellor. Resultantly, by letter Annexure R/1 dated 30.07.2013 the guidance was sought for by the Vice Chancellor. In turn, by letter dated 13.08.2012 Office of Chancellor informed that as per section 33(5) of the Adhinyam the final decision is to be taken by the Executive Council and therefore, the matter be decided by the university at appropriate forum.

3. The case of the petitioner is that once recommendations are made, the Executive Council is under a statutory obligation to appoint the persons in order of merit. Shri Anil Sharma submits that the advertisement was issued to fill up seven posts of Assistant Professor in different subjects. He submitted that except the post of Tabla and Sitar, all the posts have already been filled up on the basis of recommendations. He submits that as per section 33(5), the respondents decision Annexure P/1 is bad in law. By criticizing the decision No. 5 of the Executive Council (page 13) it is contended that it was not open to the executive council to cancel the recommendations of the posts in question and re-advertise the same. He submits that writ of mandamus be issued to Executive Council to accept the recommendations as such in order of merit.

4. Shri Kumar Gaurav Sharma, learned counsel for the petitioner in WP No. 6291/13 submits that only difference in these writ petitions is that the petitioner submitted his candidature for the post of Assistant Professor (Sitar) whereas in WP No. 3241/13 it is for the post of Assistant Professor (Tabla). He submits that other things are exactly similar.

5. Shri Tapan Trivedi, learned counsel for the respondents submits that mere recommendations does not create any right in favour of the petitioner. He submits that recommendations were not accepted and they are reasonable and justifiable ground for the same. He submits that there is no legal flaw in the action of the respondents.

6. I have heard learned counsel for the parties and perused the record.

7. Perusal of initial minutes of Executive Counsel (page 46) dated 12.05.2012 shows that there was a difference of opinion with regard to acceptance of recommendation of the selection committee. On the basis of this difference of opinion, guidance was sought for from the Chancellor. After receiving communication dated 13th August, 2012 from the office of Chancellor, another

meeting of Executive Counsel was convened on 2nd February, 2013. On perusal of minutes of this meeting (page 13) it is clear that a unanimous decision was taken by the members of the executive counsel which reads as under:-

8. The singular question is whether this decision is bad in law? Before dealing with this aspect it is profitable to quote section 33 of the Adhiniyam (page 31)

33. Appointment to the teaching posts in the University- (1) No person shall be appointed-

(i) as a Professor, Reader or Lecturer; or (ii) to any other teaching post of the University paid by the University; except on the recommendation of a selection committee constituted in accordance with sub-section (2);

Provided that if appointment to any of the teaching posts aforesaid is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the department or institution maintained by the University the Executive Council may take such appointment without obtaining the recommendation of the committee of selection constituted under subsection (2) but the person so appointed, shall not be retained on the same post for a period exceeding six months or appointed to another post in the service of University except on the recommendation of the said selection committee.

(2) The members of Selection Committee shall be-

(i) the Vice-Chancellor - Chairman.

(ii) one expert to be nominated by the Visitor from a panel, submitted by the Academic Council of three experts in the subject, not connected with the University in any manner whatsoever,

(iii) three subject experts not connected with the University in any manner whatsoever to be nominated by the Visitor:

Provided that at least one of three experts shall be nominated from category of Scheduled Castes, Scheduled Tribes or Other Backward Classes, and in case of non-availability of an expert from these categories, one Administrative Officer not below the rank of Commissioner, who belongs to reserved categories, shall be nominated.

(3) Three members of the Selection Committee shall form a quorum.

(4) The Committee shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts, arranged in order of merit:

Provided that no recommendation shall be made unless at least two experts nominated under clause (ii) and (iii) of sub-section (2) are present in the meeting in which such recommendation is to be decided upon.

(5) Out of the names so recommended under subsection (4), the Executive Council shall appoint persons in order of merit.

9. A bare perusal of scheme of this section shows that a selection committee needs to be constituted for the purpose of selection. The committee will recommend the names of the persons, which in the opinion of committee, are suitable and arrange them in order of merit. The Executive Council, in turn, needs to appoint the persons from the names which were recommended in order of merit. The contention of learned counsel for the petitioner is that once recommendation are made, the Executive Council has no option, but to appoint the person in order of merit. In the present case, it is clear from the minutes dated 12.05.2012 of Executive Council that there was a difference of opinion amongst the members of Executive Council. They raised objections about the expert marking in the subjects of Tabla and Sitar. The learned Vice Chancellor, who was the Chairman of the Selection Committee, initially opined that two candidates performed very well and academic record has not of much importance. However, when the Chancellor office permitted them to take a decision, a unanimous decision was taken by the members of the Council that it is clear that better meritorious candidates were subjected to Discrimination. On the strength this decision, the selection process was cancelled and decision of readvertising the posts was taken.

10. This is settled in law that the recommendation of Departmental Promotion Committee and Selection Committee etc. are only recommendatory in nature. The appointing authority is under no legal obligation to appoint the persons on the basis of recommendations. See: Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc., A microscopic reading of section 33(5) shows that in the event appointment is to be made, the Executive Counsel needs to appoint the person in order of merit on the basis of recommendations. In my opinion, sub-section 5, aforesaid, does not prescribe that if recommendation is made, the Executive Council is bound to issue the appointment order. As per this provision, in the event recommendations are made and Executive Council deems it proper to appoint the person, such appointment must be in order of merit.

11. Putting it differently, there is no statutory mandate in subsection 5 which compels the Executive Council to appoint the person. Any other interpretation will lead to the conclusion that the recommendation of Selection Committee is final, in that situation, it no more remains recommendation and takes effect of a final decision. Recommendation may result into acceptance and rejectance both. If recommendation is placed before another forum (Executive Council in this case) needless to mention that the said council has inherent power to accept or reject the said recommendation. If the intention of the legislature was that the recommendation of selection committee is final and need to be mandatorily accepted by the Executive Council, then there was no need to use the word "recommendation" and in that event, there was no need to create two forums in sub-section (4) and sub-section (5) of Section 33, of selection committee to recommend and Executive Council to appoint. Thus, the only mandate of subsection (5) is that in the event of decision of appointment by Council it has to be made in order of merit based on the recommendation of the committee.

12. The Executive Council has taken a unanimous decision vide Annexure P/1 which is justiciable and cannot be said to be arbitrary or capricious in nature. If the expert committee unanimously decided that the marking of expert was defective and results into discrimination, I find no reason to disturb such finding. No malafide are attributed nor any statutory violation in decision making process is pointed out. The scope of interference in selection proceedings is limited. On the basis of aforesaid analysis, I find no infirmity in the decision impugned and therefore, no interference is warranted. Petitions are dismissed. No Costs.