

(2005) 04 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 23 of 2003

Miss Pragati Kiran Naagar

APPELLANT

Vs

Dr. Hari Singh Gaur University and Others

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10

Citation : (2005) 3 MPHT 134 : (2005) 3 MPLJ 86

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Naman Nagrath, for the Appellant; Avinash Jargar, for the Respondent Nos. 1 and 2, Alok Pathak, Government Advocate for the Respondent No. 3 and Pradeep Sharma, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In this writ petition, the question involved is permissibility of prescribing higher qualification for the purpose of recruitment for the post of Lecturer (Business Management) than the prescribed minimum qualification by All India Council of Technical Education (hereinafter referred to as "AICTE").

Petitioner had applied pursuant to advertisement (P-7) for the post of Lecturer (Business Administration) in Dr. Hari Singh Gour Vishwavidyalaya. Petitioner was not called for interview as she did not possess the qualification mentioned in advertisement (P-7). Petitioner has submitted that the qualifications laid down by AICTE are binding, petitioner fulfills the qualification laid down by AICTE. AICTE is a body of expert technical education constituted under All India Council of Technical Education Act, 1987 (hereinafter referred to as "the Act"). Section 10 of the Act empowers the Council to lay down the norms, staff qualifications, standard of courses. Thus, the precise submission raised by petitioner is that once in exercise of statutory power minimum qualification has been prescribed as

per letter (P-5), dated 15th March, 2000 in revised pay scales and service conditions degree level technical institutions all over India, minimum qualification ought to have been as prescribed by AICTE, the higher qualification could only be insisted as desirable one. Thus, petitioner ought to have been allowed to stake the claim as she possessed minimum qualification prescribed by AICTE. Para 4 of Notification (P-5) has been relied upon which is quoted below :--

"4.0. Qualifications:

(1) The prescribed minimum qualifications and experience requirements for the various teaching posts in Degree Level Technical Institutions are given in Tables (Appendix E-1, 2, 3, 4, 5, 6).

The minimum qualifications and experience requirement for Librarians and Physical Education Instructors are given in Tables (Appendix E-7 and 8) respectively.

For other disciplines such as Hotel Management and Catering Technology, a separate notification on qualifications and experience requirements would be issued."

Appendix to the Table E-3 prescribes qualification for Lecturer to be 1st Class Master's Degree in Business Management/Administration/other relevant management related discipline. Thus, petitioner has submitted that prescription of the higher qualification in advertisement (P-7) as minimum essential qualification for the post of Lecturer (Business Management) is impermissible. Relevant portion of the qualification prescribes for Lecturer (Business Management) is quoted below :--

"Lecturer (Business Management):

(1) Good academic record with at least 50% marks (for SC/ST Candidates) marks or equivalent grade at Master's degree level in relevant subject from an Indian University or an Equivalent degree from a Foreign University).

(2) Candidates, besides fulfilling the above qualifications should have cleared the National Eligibility Test (NET) for Lecturers conducted by U.G.C. or similar test accredited by the U.G.C.

OR

should have submitted their Ph.D. thesis by 31-12-2002 or completed their M.Phil. degree by 31st of December, 1993.

OR

Ph.D. or Fellows of IIMS, ICA, ICWA or Master's Degree plus Professional experience of 2 years."

Petitioner has submitted that she possess 1st Class Degree, thus, she should have been called for interview, the selection process is thus vitiated.

In the return filed by respondent Nos. 1 and 2 it is contended that it is open to University to lay down the eligibility criteria duly taking into consideration the minimum qualification as prescribed by AICTE. University has fixed the minimum qualification as per UGC norms. Apart from Master's degree, a candidate as per UGC mandate must have cleared national eligibility test or the candidates should have submitted their Ph.D. thesis by 31-12-2002 or completed their M.Phil. degree by 31st December, or Ph.D. or fellows of IIMS, ICA, ICWA or Master's Degree plus Professional experience of 2 years. The decision of Coordination Committee of the University in 46th meeting (R-1) dated 16-11-92 has also been relied upon. Higher qualification has been insisted to ensure maintenance of teaching standard in the University. University has acted in the interest of students. Hence, no interference is called for in the academic matter. Petitioner has also filed an application seeking amendment for impleadment of selected candidate Shri Bhagwat.

Shri Naman Nagrath, learned Counsel appearing for petitioner has submitted that minimum qualification as laid down by AICTE is possessed by petitioner, thus, it was incumbent upon the University to have called her for participation in the process of selection. Mandate of AICTE has been violated, when AICTE has laid down the minimum qualification, person possessing the same ought to have been allowed participation in the process of selection, though it was open to University to give extra marks to the persons possessing higher qualification than laid down as minimum by AICTE. He has submitted that directive of AICTE is binding which stands violated by University by prescribing higher minimum qualification than laid down by AICTE.

Shri Avinash Jargar, learned Counsel appearing for respondent Nos. 1 and 2 has submitted that minimum prescribed qualification by AICTE has not been violated, norms laid down by UGC have been followed. Thus, decision of prescription of higher qualification to ensure the standard of education has been taken by Coordination Committee. Hence, no interference is called for.

AICTE, a body of experts has prescribed the minimum qualification as per Notification (P-5). Prescription of minimum qualification and experience, if any prescribed can not be given a go-bye by University which means that lesser minimum qualification and experience than prescribed by AICTE can not be prescribed by any University. However, it is open to University to prescribe higher qualification than the minimum one prescribed by AICTE. There is no bar in any of the provision of AICTE Act to prescribe higher qualification than the minimum prescribed by AICTE. The norms prescribed by UGC are equally applicable in the case of recruitment in University, University has followed the qualifications laid down by UGC. Coordination Committee as per decision (R-1) had amended Ordinance No. 4 and minimum qualification laid down by UGC has been prescribed by Coordination Committee. Same is in conformity with the prescription of minimum qualification made by AICTE as higher minimum has been prescribed than the minimum laid down by AICTE, it does not violate

minimum prescribed by AICTE. Ordinance has not been questioned in this writ petition nor the decision of Coordination Committee. Thus, I find that action of the University in prescribing higher minimum qualification in advertisement (P-7) is not violative of the directive of AICTE.

In *State of Tamil Nadu and Anr. v. S. V. Bratheep (minor) and Ors.* 2004 AIR SC 1574, the Apex Court has laid down it is open to State Govt. to prescribe higher minimum than prescribed by AICTE. It can not be said to be in any manner adverse to the standards fixed by AICTE or reduce the standard fixed by it. The Apex Court held thus :--

"10. Entry 25 of List III and Entry 66 of List I have to be read together and it can not be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by the AICTE. It is no doubt true that the AICTE prescribed two modes of admission -- One is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the Common Entrance Test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it ? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission only on the basis of the marks obtained in the qualifying examination the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by the AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by the AICTE is inexorable and that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, . It is no doubt true as noticed by this Court in *Adhiyaman's case* AIR 1995 SC 2179 that there may be situations when a larger number of seats may fall vacant on account of the higher standard fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It can not be said that the

prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by series of decisions of this Court including Dr. Preeti Srivastava's case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education."

In view of decision in *State of Tamil Nadu v. S.V. Bratheep* (supra), it is clear that submission raised by Mr. Nagrath can not be accepted as it is open for the academic bodies to insist for higher qualifications than the minimum prescribed by AICTE. I find the application for amendment is rendered redundant and has rightly not been pressed by Mr. N. Nagrath, Advocate for petitioner. In view of above discussion on merits of the case, it is not necessary to implead the incumbent who has been appointed.

Resultantly, I find no merit in the petition, it deserves dismissal, same is hereby dismissed. Parties to bear their own costs as incurred of this petition.