

(2009) 02 SC CK 0141

In the Supreme Court Of India

Case No : Civil Appeal No. 1130 of 2009 (Arising out of SLP (C) No. 17481 of 2006) and Civil Appeal No. 1131 of 2009 (Arising out of SLP (C) No. 6718 of 2007)

Mohd. Sohrab Khan

APPELLANT

Vs

Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Aligarh Muslim University Act, 1920 — Section 28(1)

Citation : (2009) 4 AWC 3843 Supp : (2009) 2 JT 666 : (2009) 5 MLJ 301 : (2009) 3 SCALE 638 : (2009) 4 SCC 555 : (2009) 1 SCC(L&S) 917 : (2009) 2 SCR 907 : (2010) 1 SLJ 156 : (2009) 1 UPLBEC 769

Hon'ble Judges : S. B. Sinha, J;Mukundakam Sharma, J

Bench : Division Bench

Advocate : S. Balakrishnan, Subramonium Prasad, V.B. Gugnani, Ishrat Ali Khan and S.N. Jha, for the Appellant; Anish Dayal, Anitha Shenoy, Vipin Bihari and Vishal Arun, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. The present appeals are directed against the judgment and order dated 3.7.2006 passed by the Division Bench of the High Court of Allahabad. By the common judgment and order, we propose to dispose of both the said appeals.

3. The High Court by the said order allowed the Writ Petition filed by Mohd. Sohrab Khan and set aside the Office Memo dated 20.05.2004 issued by the University regarding appointment of Merajuddin Ahmed, as a Lecturer in Chemistry in University Polytechnic, Aligarh Muslim University, Aligarh.

4. Mohd. Sohrab Khan filed the said Writ Petition challenging the aforesaid appointment and also seeking for a direction that he be appointed to the said post on the basis of his selection by the Selection Committee. Since by the said judgment and order the High Court set aside the appointment of the appellant

Merajuddin Ahmed but, however, as High Court did not grant a direction as sought for by Mohd. Sohrab Khan, therefore, two appeals came to be filed in this Court on which we have heard the counsel appearing for the parties. We have also heard the learned Counsel appearing for the Aligarh Muslim University. In order to deal with the contentions raised in both the appeals, it would be necessary to deal herein with some of the relevant facts leading to the filing of the writ petition.

5. Aligarh Muslim University issued an advertisement through Advertisement No. 2 of 2004 dated 6.2.2004 whereby it called for applications for filling up about 79 posts in the University. One of the said posts which was advertised was the post of Lecturer in Chemistry in University Polytechnic, Aligarh Muslim University. Qualification that was laid down by the University as essential qualification was a First Class Masters' Degree in the appropriate branch of teaching post in Humanities and Sciences. Both Mohd. Sohrab Khan as also Merajuddin Ahmad submitted their applications to be considered as against the aforesaid post which was advertised namely Lecturer in Chemistry. Mohd. Sohrab Khan had a First Class Masters' Degree in Chemistry (Pure) whereas Merajuddin Ahmad was holding a First Class Masters Degree in Industrial Chemistry.

The University Authority, however, called both of them for the interview. The Selection Committee which was constituted for the purpose of selecting the suitable candidate selected Merajuddin Ahmad on the ground that he would be more suitable to the aforesaid post as he holds a Masters Degree in Industrial Chemistry which according to them would be best suited to teach the particular subject for the University Polytechnic, Aligarh Muslim University. The University Authority accepted the aforesaid recommendation of the Selection Committee and issued an order of appointment in favour of Merajuddin Ahmad.

6. Mohd. Sohrab Khan, being aggrieved by the aforesaid order passed by the Aligarh Muslim University filed a writ petition in the High Court of Allahabad.

7. The Division Bench of the High Court of Allahabad heard the aforesaid Writ Petition and by a judgment and order dated 3.7.2006 allowed the aforesaid writ petition holding that the aforesaid appointment of Merajuddin Ahmad to the said post is not legal as he did not possess the minimum qualification. The High Court consequently set aside the order of appointment with a direction to the respondent-University to initiate fresh selection process for the aforesaid post giving liberty to the University to reconsider the essential qualification for the post, in question. The High Court while coming to the aforesaid conclusion clearly recorded that the University award degrees separately in both subjects Chemistry as well as Industrial Chemistry and that both the subjects are distinct and separate.

By referring to the course structure of Graduate and Post Graduate classes in Chemistry and Industrial Chemistry, the High Court came to the conclusion that the courses of the aforesaid two subjects are quite different and distinct and in

the light of the aforesaid findings, it also recorded that degree of M.Sc. in Industrial Chemistry cannot be equated with the degree of M.Sc. in Chemistry.

The High Court referred to the decision of this Court in Dr. Bhanu Prasad Panda Vs. The Chancellor, Sambalpur University and Others, for coming to the conclusion that the eligibility qualifications cannot be ignored. The High Court of Allahabad held that the facts of the present case are similar to that of the abovementioned case wherein there was an advertisement for the post of Lecturer in Political Science and it was held that the person having degree in Public Administration cannot be appointed.

8. The contention that is raised on behalf of Merajuddin Ahmad is that the selection committee being constituted of experts on the subjects was the only competent authority to decide that the person holding Masters Degree in Industrial Chemistry is best suited for teaching the subject for which advertisement was issued and the High Court acted illegally and without jurisdiction in interfering with the aforesaid opinion of the experts by substituting its own decision. It was also submitted that the Masters Degree in Industrial Chemistry is as good as Masters Degree in Chemistry for the post for which the advertisement was issued and that a person having Masters Degree in Industrial Chemistry was better suited for teaching the said subject. Learned Counsel also invited our attention to the course contents which the teacher appointed to the said post was required to teach. Relying on the same, he submitted that a candidate having Masters Degree in Industrial Chemistry would have been better suited to teach the said subjects constituting the course contents.

9. Learned Counsel appearing for Mohd. Sohrab refuted the aforesaid submissions and contended that for teaching Chemistry to Diploma students only the basic knowledge of Chemistry is required and therefore a person holding a Masters Degree in pure Chemistry is better suited to teach the said subject. It was also submitted by him that Masters Degree in Industrial Chemistry is quite distinct and separate from pure Chemistry which is a separate subject altogether and therefore recommendation made by the Selection Committee and the appointment made by the University was against the requirements and norms laid down in the advertisement issued by the University and therefore the same was rightly set aside by the High Court.

Learned Counsel also submitted that since Mohd. Sohrab Khan was placed at serial No. 2 and the appointment of Merajuddin Ahmad was found to be illegal and therefore non est and nullity, Mohd. Sohrab Khan who was placed at serial No. 2 could have directly been appointed. It was submitted that as the same has not been done the second part of the judgment of the High Court be set aside and a direction by this Court to appoint Mohd. Sohrab Khan on the said post be issued.

10. According to the advertisement issued by the University, post in Chemistry had fallen vacant and in order to fill up the said post, applications were invited.

In the advertisement it is clearly stated that what is advertised is a post of lecturer in Chemistry. Therefore, it would be necessarily assumed that candidates possessing a Masters Degree in pure Chemistry should submit their application as against the aforesaid post.

11. We have gone through the aforesaid advertisement which was issued for filling up various posts and on scrutiny, we find that whenever and wherever the University desired to fill up a post at variance with the main subject, it is specifically notified and indicated in the said advertisement. For example, advertisement which find place at Serial No. 59 was for filling up the post of Lecturer in Civil Engineering (Environmental Engg.) for University Polytechnic for which qualification which was necessary and essential was mentioned as First Class Bachelor's Degree in Environmental / Civil Chemical / Petroleum / Biochemical Engineering/ Architecture.

12. Many more posts advertised in the said advertisement specifically indicate that whenever the University desired to have a post filled up in a particular branch of the Humanities and Science Department, it specifically indicated as such in the said advertisement. If it was necessary for the University to fill up the post from the stream of Industrial Chemistry, it would have so indicated in the advertisement itself for in subsequent years, we find specific advertisement has been issued by the same University for filling up the post of Lecturer in Industrial Chemistry by issuing an advertisement specifically in that regard.

13. There is no doubt with regard to the fact that it is the University Authority who knows best as to what is their requirement. Aligarh Muslim University was founded by Central Act called the Aligarh Muslim University Act. It also has a statute made u/s 28(1) of the said Act. Statute 22 of the University deals with the Boards of Studies. One of the functions of the said Board of Studies is to recommend to the Faculty in the manner prescribed in the ordinances, the field of study of each post at the time of its creation.

14. Statute 21 on the other hand deals with the powers and functions of the Faculties. The aforesaid recommendation of the Board of Studies is to be decided by the Faculties at Statute 21 of the University and therefore, it is confirmed by the Academic Council under Statute 19 of the University, and therefore it is to be approved by the Executive Council under Statute 17(2)(1) of the University. After such a repeated multi-tier exercise, the essential qualification is earmarked for a particular post and then it is advertised. It is also established from the records and there is no dispute with regard to the fact that pure Chemistry and Industrial Chemistry are two different and separate subjects.

15. Learned Counsel appearing for Merajuddin Ahmad strongly relied upon the course contents. A bare look at the same would indicate that what is dealt therein is not Industrial Chemistry but Engineering Chemistry. We are not informed as to whether Engineering Chemistry is considered to be at par with Industrial Chemistry.

16. Learned Counsel appearing for the University on our enquiry fairly stated before us that the aforesaid post which was advertised to be filled up in the aforesaid manner is at present vacant and the same is being manned by appointing a Guest Lecturer who holds a Masters Degree in pure Chemistry.

17. If the requirement was to have a person having Masters Degree in Industrial Chemistry, then in that event the post would have been manned through a Guest Lecturer from the Industrial Chemistry stream. Therefore, it cannot be accepted that the person holding a Masters Degree in Industrial Chemistry would be better suited for appointment as against the said post.

18. The post advertised was meant for a person belonging to the pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Masters Degree in Industrial Chemistry should only apply or that a person holding such a degree could also apply alongwith other persons. It was not so mentioned in the advertisement and therefore, except for Merajuddin Ahmad, no other degree holder in Industrial Chemistry had applied for becoming a candidate as against the aforesaid post.

19. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

20. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer Chemistry, for pure Chemistry and Industrial Chemistry are two different subjects.

21. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Masters Degree holder in the said subject would also be suitable for being considered.

There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post. The Selection Committee during the stage of selection, which is midway could not have changed the essential

qualification laid down in the advertisement and at that stage held that a Masters Degree Holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to pure Chemistry stream.

22. In *Secretary, A.P. Public Service Commission Vs. B. Swapna and Others*, it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding qualification for appointment, if amended, during continuation of the process of selection do not affect the same. Further at para 15 it was held that the power to relax the eligibility condition, if any, to the selection must be clearly spelt out and cannot be otherwise exercised. The said observations are extracted herein below:

14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned Counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. See *P. Mahendran and others Vs. State of Karnataka and others*, and *Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others*, .

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

In Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, , at para 34 it was held by this Court the Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In the said case reference was made to the decision in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , wherein at para 44 it was observed:

By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

23. After analysing the present issue in the light of the abovesaid legal proposition laid down by this Court we hold that the High Court was justified in rejecting the candidature of Merajuddin Ahmad as against the said post which was advertised for pure Chemistry stream. However, with the appointment of Merajuddin Ahmad to the said post, the list recommended by the Selection Committee and approved by the other competent authority has lapsed. We, therefore, uphold the order passed by the High Court giving liberty to the University to lay down the qualification necessary for filling up the aforesaid post. The University shall now advertise the said post by laying down exact essential qualification indicating the particular subject and subjects- stream which is required to be possessed for making an application to fill up the said post and therefore proceed to appoint a Lecturer suitable for the aforesaid post.

24. In terms of the above said both the appeals are disposed of.