

(2012) 09 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5754 of 2011 (O and M)

Ms. Jyoti Kalyani

APPELLANT

Vs

Punjab Agricultural University and Another

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Citation : (2013) 1 SCT 372

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : N.R. Dahia, for the Appellant; H.N.S. Gill, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner, who was a candidate for selection to the post of Assistant Professor in Computer Science, has approached this court raising a grievance that she was more meritorious than the selected candidate but was not selected. Learned counsel for the petitioner submitted that the petitioner, being fully qualified, applied for the post of Assistant Professor in Computer Science, for which two posts were advertised by the respondent-University vide advertisement No. 3/2010. Only three candidates appeared for interview, out of which one was male and two were females. One male candidate has been selected, whereas both the female candidates have not been selected on account of biasness. In fact, the petitioner was more meritorious than the selected candidate. Even though in the merit list prepared by the Selection Committee, the petitioner is shown at Sr. No. 2, but still was not given appointment even though there were two posts. In the Selection Committee, one of the members was Director Principal of a private Engineering College, whereas two were from Thapar Institute of Engineering and Technology, Patiala. Though the selection was being made in Punjab Agricultural University, but still the Selection Committee was not constituted of the members serving in government institutions only. There was no lady member in the Selection Committee, even though some of the candidates were females. There is no reason given in the

recommendations made by the Selection Committee as to why candidature of the petitioner has been rejected. The petitioner had passed her Matriculation examination in first division with distinction. She secured good marks in her M.Sc. Examination and got degree of MCA in first division with distinction in the year 2004. Immediately thereafter, she passed National Eligibility Test for Lecturership conducted by University Grants Commission in June, 2005 in the subject of Computer Science and Application. Thereafter, she had been serving in different capacities in Guru Nanak Dev University, Amritsar since October, 2005. She had a publication titled as "Analysis of Virus Algorithms" in an international journal. The qualifications and experience of the selected candidate were not matching with the petitioner, but still he was selected and the petitioner was left out.

2. On the other hand, learned counsel for the respondents submitted that in response to the advertisement issued, 19 applications were received. Only 12 were found eligible and three appeared for interview. Out of three candidates, who appeared for interview, only one Anuj Kumar was recommended for appointment. Fair criteria was adopted for selection, where 85 marks out of 100 were meant for qualifications and experience and only 15 marks were for interview. It is also alleged that the selected candidate had cleared his NET examination from University Grants Commission. Rather, in addition to NET examination, he had also cleared NET examination conducted by Agricultural Scientists Recruitment Board, New Delhi. He further submitted that the petitioner has challenged the process of selection after she had participated therein, which cannot be permitted. In support, reliance was placed upon *Gireesh Kumar and others v. Government of India and others*, 2008(1) S.C.T. 813; 2008(3) SLR 814 and *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, Even selection does not confer any right of appointment. Though in the present case, the petitioner has not been selected, it is wrong to allege that any discrimination was made against female candidates. All three candidates were considered by the Selection Committee and it is per chance that only one candidate was recommended and he was male. He further submitted that even the selected candidate, who initially joined, had resigned and the post has been advertised again. In response to that advertisement, even the petitioner has applied.

2A. In response to the submissions made by learned counsel for the respondents, learned counsel for the petitioner submitted that once the petitioner was second in the merit list, she should have been given appointment as there was no bench mark fixed as such for selection and two posts had been advertised.

3. Heard learned counsel for the parties and perused the paper book.

4. The facts, which are not in dispute, are that two posts of Assistant Professor in Computer Science were advertised by the respondent-University. Only three candidates appeared for interview, out of which the petitioner was one. One Anuj Kumar was recommended for appointment, whereas the petitioner, though in the

list of candidates interviewed, was placed at Sr. No. 2, but was not recommended. The grievance of the petitioner is that she should have been recommended once she was placed at Sr. No. 2. The Selection Committee in its recommendations while recommending the name of Anuj Kumar for appointment as Assistant Professor mentioned that no other candidate was found upto the mark. Once there were only three candidates, their inter-se merit had to be considered by the Selection Committee and in terms of the marks obtained by them on the basis of their educational qualifications and experience including the marks in interview, the merit list had to be prepared.

5. The issue is as to whether this court can consider the inter-se merit of the candidates and further direct the respondents to appoint the petitioner when she had not been recommended by the Selection Committee. It has been consistently opined by Hon"ble the Supreme Court that comparative merits of the candidates cannot be assessed by the court to substitute its own opinion as against the opinion recorded by the Selection Committee, hence to claim that the petitioner being meritorious, as compared to the selected, candidate should have been selected cannot be gone into by this court. In the present case, the name of the petitioner is not even in the select list. Even if the name of the candidate is mentioned in the select list, still he/she does not have a right of appointment as mere selection does not create any indefeasible right to appointment unless it is alleged and proved that any person junior in merit has been given appointment. Reference can be made to State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc., Baitarani Gramiya Bank Vs. Pallab Kumar and Others, ; Shri Ajay Appan and Others Vs. Indraprastha Power Generation Corporation Co. Ltd., and Balakrushna Behera and Another Vs. Satya Prakash Dash,

6. Even the contention raised by learned counsel for the petitioner regarding constitution of the Selection Committee and non-inclusion of a lady member therein is also totally misconceived for the reason that no rules or regulations have been cited in support of the argument, in terms of which no member of a Selection Committee could be from a private institution or that it was mandatory to have a lady member in the Selection Committee. For the reasons mentioned above, I do not find any merit in the present petition. Accordingly, the same is dismissed.