

(2018) 04 MP CK 0161

In the Madhya Pradesh High Court

Case No : WP No. 2722, 2830, 2916, 2919, 3344, 3862, 3903, 3915, 3991, 4009, 4585, 4820, 488, 2904, 3724, 3649, 1765, 1765, 3313, 3268, 1128, 5359, 1822, 1822, 5549, 5254, 5224, 5595, 5729, 5085, 5868 OF 2018 (S)

Niharika Shukla And Anr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:

Constitution of India — Article 136

Citation : (2018) 04 MP CK 0161

Hon'ble Judges : HEMANT GUPTA,CJ;VIJAY KUMAR SHUKLA, J

Bench : Division Bench

Advocate : Swapnil Ganguly, Brindavan Tiwari, Utkarsh Agrawal, Parag Tiwari, Satya Prakash Mishra, Gaurav Tiwari, Dharmendra Soni, Kashi Ram Patel, Kabeer Paul, Pranay Gupta

Final Decision : Dismissed

Judgement

No.,Subject,Allied Subjects,,,

1,Botany,"Micro Biology

Bio Technology

Bio Science

Environmental Science

Forestry

Bio Chemistry

Bio Informatic Science

Genetics",,,

Â

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***",,,,,

15.,Sanskrit,1. Yoga,,,

Name of the Department,"N a m e of

Service","N a m e of

Post","Minimum

age of

limit","Upper

age of

limit","Educational qualifications

prescribed

(1),(2),(3),(4),(5),(6)

Â

Â ***",,,,,

Department

ofÂ

Â

Higher

Education","Madhya

Pradesh

Educational

(Gazetted)

Service

Scheme","(ii) Asst.

Professor",21 years,"30

years","(a)Â

Â

Educational

Qualification

Prescribed

by

University

Grant

Commission from time to

time at the Post Graduate

level there should be atleast

55% marks provided for the

Scheduled Casts and

Scheduled Tribes

Candidates the percentage

of marks shall be 50%.

***" ,,,,,

to the Advertisement No.01 in the year 2016.

6. In respect of the first question, the argument of the learned counsel for the petitioners is not tenable for the reason that the counsel for the petitioners failed to" ,,,,,

take into consideration the substituted condition in Schedule-III contemplating the educational qualification as prescribed by the University Grants Commission from ,,,,,

time to time at the Postgraduate level. Since the statutory Rules contemplate the educational qualification for appointment as Assistant Professor to be as ,,,,,

prescribed by the University Grants Commission, therefore, there is no contradiction between the UGC Regulations and/or statutory Rules framed. Thus, the" ,,,,,

said argument is not valid because as per the statutory Rules; the qualification for recruitment is as per the 2009 Regulations. ,,,,,

7. In respect of the second question, the argument of the learned counsel for the petitioners is based upon Clause 4.4.1 of the UGC Regulations on Minimum",,,,,

Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher,,,,,

Education, 2010 (for short "the UGC Regulations, 2010"). The relevant clause reads as under:-",,,,,

4.4.0 Assistant Professor,,,,,

4.4.1 Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication",,,,,

i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is,,,,,

followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.",,,,,

The argument of the learned counsel for the petitioners is based upon the Clarifications on frequently asked questions on UGC Regulations 2010, bearing No. F-",,,,,

17-6/2013 (PS/Misc.) issued in September, 2015 particularly Query No.4, which reads as under:-",,,,,

8. The learned counsel for the petitioners refers to Advertisement No.01/Exam/2014 dated 09.07.2014 wherein the allied subjects were considered to be part of,,,,,

the relevant subjects as eligibility condition for appointment to the post of Assistant Professor on the basis of the Notification of the State Government bearing No.,,,,,,

F 1-118/2012/38-1 dated 19.05.2014, as amended vide order of even number dated 02.07.2014. In a subsequent Advertisement No.01 of 2016 dated 19.02.2016,",,,,,

the State Government has issued a Notification that the relevant subjects would mean the basic subjects excluding the allied subjects. Vide Notification,,,,,

No.1118/2012/38-1 issued on 28.11.2017 it has been clarified that the relevant subjects will include the allied subjects as mentioned in the Notification, which is",,,,,

published in the advertisement as well.,,,,,,

9. The argument of the learned counsel for the petitioners is that the relevant subject has to be determined by the concerned University/ Appointing

Authority,,,,,

with the help of subject experts in the concerned related field as per the UGC Regulations, 2010. It is contended that the allied subjects have been included as part" ,,,,,

of the relevant subject without any opinion of the experts.,,,,,

10. We do not find any merit in the argument raised. The Notification No. F-17-6/2013 (PS/Misc.) issued in September, 2015 is the only exception excluding the" ,,,,,

allied subjects else the allied subjects were always included in the relevant subjects. A list of Notifications of the allied subjects shows that it is result of application ,,,,,

of mind. It is not a case where the Mathematics has been treated to be an allied subject of Botany. It may be mentioned that there is no post advertised for the ,,,,,

allied subjects, therefore, the candidates who are qualified in the allied subjects cannot be disqualified for appearing in the basic subjects. A perusal of the" ,,,,,

advertisement shows that in the subject of Botany, the subjects such as Microbiology, Biotechnology, Bio Science, Environmental Science, Forestry, Biochemistry," ,,,,,

Bio Informatic Science and Genetics are to be treated allied subjects. All such subjects have the origin from the subject of Botany. Such subjects are subjects of ,,,,,

higher learning, may be at M.Sc., M.Phil. or for Ph.D. level. Still further, the answer of query is a clarification to understand the regulations but they are not the" ,,,,,

regulations. The relevance of subject as per the clarification is required to be decided by the Appointing Authority. The Appointing Authority, the State" ,,,,,

Government vide Notification dated 28.11.2017 has classified the allied subjects with the main subjects in respect of the educational qualifications. By such ,,,,,

process, the area of selection is enlarged which serves the public purpose. Still further, the note in the advertisement is that even though the candidate is a degree" ,,,,,

holder in the allied subject, but the test would be in the main subject. Therefore, all the candidates are required to appear in the same test in the relevant subjects." ,,,,,

Therefore, it is level playing field for all the candidates even if the candidate has obtained degree in the allied subject." ,,,,,

11. With the exception of Notification issued in the year 2015, the State Government has grouped the allied subjects as part of the relevant subjects. There is no",,,,,

reason to question the wisdom of the State Government in grouping the allied subjects with the relevant subjects as none of the subjects could be pointed out to be,,,,,

unconcerned or unrelated with the relevant subjects. Still further, the State Government as an employer is in better position to judge the suitability of a candidate",,,,,

for appointment. It is a decision of the employer to recruit candidates, which the employer considers appropriate. Therefore, we do not find that the allied subjects,",,,,,

as notified by the State Government, violate the UGC Regulations of educational qualification.",,,,,

12. In respect of the third set of cases, the grievance is that the posts of Assistant Professor in certain subjects have not been advertised though they were",,,,,

advertised in Advertisement No.01 of 2016 dated 19.02.2016. We have heard the learned counsel for the parties and find no merit in the said argument as well.,,,,,,

Whether a post should be advertised or not is to be considered by the employer. The advertisement issued in the year 2016 was withdrawn; therefore, the posts",,,,,

advertised in the said advertisement are not necessarily to be advertised in the subsequent advertisement. It is the decision of the employer to fill the posts. The,,,,,

Supreme Court in its judgment reported as (1985) 1 SCC 122 (Jatinder Kumar and others vs. State of Punjab and others) has held as under:-,,,,,

â??12.â?|. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of,,,,,

recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view,,,,,

by the two earlier decisions of this Court in A.N. D'Silva v. Union of India (AIR 1962 SC 1130) and State of Haryana v. Subash Chander Marwaha & others,,,,,

[(1974) 3 SCC 220]. The contention of Mr. Anthony to the contrary cannot be accepted.â?',",,,,,

13. In a yet another decision reported as (2016) 6 SCC 532 (Kulwinder Pal Singh and another vs. State of Punjab and others), the Supreme Court held as under:-",,,,,

17. The learned counsel for the appellants submitted that the appellants have been pursuing the matter for about eight years and even today there are,,,,,

vacancies in Punjab Judicial Service and thus prayed that direction be issued to the respondents to consider the case of the appellants as against the existing,,,,,

vacancies. This contention does not merit acceptance. Appointment to an additional post or to existing vacancies would deprive candidates who were not eligible,,,,,

for appointment to the post on the date of submission of the applications mentioned in the advertisement but became eligible for appointment thereafter. After,,,,,

referring to Rakhi Ray vs. High Court of Delhi [(2010) 2 SCC 637], State of Orissa vs. Rajkishore Nanda [(2010) 6 SCC 777] and other decisions, High Court",,,,,

rightly held that the candidates much more than the vacancies advertised have already been permitted to join and thus the appellants cannot claim any legal right in,,,,,

respect of the posts of reserved category remaining unfilled. The impugned judgment (Kulwinder Pal Singh vs. State of Punjab, 2012 SCC Online P&H 2975) does",,,,,

not suffer from any infirmity warranting interference in exercise of our jurisdiction under Article 136 of the Constitution of India.Â",,,,,

14. In respect of the fourth argument that the State is not sure as to how many vacancies are available in each subject and how many are occupied by the,,,,,

reserved categories, therefore, it is reasonably believed that more than 50% vacancies are being filled up from amongst the candidates from the reserved",,,,,

categories. It is contended that in the affidavit filed on behalf of the State Government in the year 2011 by one Shri C.B. Padwar, Deputy Secretary, Department",,,,,

of Higher Education, Bhopal in W.P. No.9739/2009 (Bhawani Singh vs. State of M.P. and others) (Annexure RJ/2 to W.P. No.9739/2009), the State has disclosed",,,,,

6166 posts of Assistant Professor out of which 3196 posts are occupied by general category candidates as against 3083 posts. Thus, it was asserted that general",,,,,

category candidates are in excess of their quota. It is pointed out that the Rules provide for 7426 posts of Assistant Professor but such posts include the posts," ,,,,,

which were in existence in the State of Madhya Pradesh prior to creation of separate State of Chhattisgarh. It is pointed out that pursuant to amendment made in ,,,,,

the year 2015, the total numbers of posts of Assistant Professor were shown as 7348 as per the Notification dated 27.08.2015 [Annexure RJ/3 to W.P." ,,,,,

No.9739/2009 (supra)]. Therefore, the State is not sure of the number of posts and the posts which are vacant as with each advertisement issued, the numbers of" ,,,,,

vacant posts are at variance. Learned counsel for the petitioners have placed reliance upon a Division Bench decision of Allahabad High Court reported as (2017),,,,,

7 ADJ 738 (Vivekanand Tiwari vs. Union of India) rendered in Civil Misc. Writ Appeal No.43260/2016 decided on 07.04.2017 [Annexure RJ-6 to W.P.,,,,,

No.9739/2009 (supra)] wherein it was held that the object behind the impugned Constitutional amendments is to confer discretion on the State to make reservations ,,,,,

for SCs/STs in promotion subject to the circumstances and the constitutional limitations indicated in the decision. The Court went on to remind and request the ,,,,,

UGC to examine all aspects and submit its recommendations to the Ministry of Human Resource Development for its consideration and appropriate decision. The ,,,,,

matter travelled upto the Supreme Court and vide order dated 21.07.2017 passed in SLP (C) No.16515/2017 (Dr. Lal Chand Prasad and another vs. Union of ,,,,,

India and others), the Supreme Court dismissed the petition. After dismissal of the SLP against the said order, the UGC has issued a circular on 5th March, 2018" ,,,,,

that the posts of Assistant Professors have to be subjectwise. Thus, it is argued that the advertisement issued on 12.12.2017 is not in consonance with the" ,,,,,

amended Regulations issued on 05.03.2018. ,,,,,

15. We do not find any merit in the said argument raised. It is not in dispute that not more than 50% of the posts can be filled by the reserved category candidates ,,,,,

but such question of limit of 50% will arise only at the time of appointment and not at the time of advertisement as the advertisement is only to find a suitable,,,,,

candidate for appointment but to give effect to the Regulations as amended by the UGC. Still further, if a post has not been advertised though vacant, it will not" ,,,,,

confer any right in any candidate that such posts should be advertised.,,,,,

16. But, to provide a transparent and fair recruitment process, the State Government is directed to put on its website the number of posts of each subject and the" ,,,,,

posts which are to be filled in each category within one month so that all the candidates are aware of the vacant posts, against which they are competing for" ,,,,,

appointment. But, non-advertisement of any vacant post does not confer any right with any aspiring candidate to seek inclusion of such posts in the recruitment" ,,,,,

process. However, at this stage the number of posts advertised cannot be interfered with only on the ground that the posts of reserved categories have been" ,,,,,

advertised in excess of 50% limit. We do not find any merit in the said argument.,,,,,

17. Another argument of the learned counsel for the petitioners is that the Supreme Court has ordered that the candidates, who applied in response to" ,,,,,

advertisement in the year 2016, will not be declared ineligible on account of age. We do not find that the candidates are entitled to any further relaxation inasmuch" ,,,,,

as, as per the corrigendum issued on 12.04.2018 maximum age for recruitment is 44 years as on 01.01.2018 whereas the candidates of the reserved category will" ,,,,,

be entitled to relaxation over and above the said age. We find that whether a candidate is entitled to relaxation in age is a policy decision. We find that no further,,,,,

relaxation in age is contemplated or warranted since maximum age is reasonably high.,,,,,

18. In view of the above, we do not find any merit in the present bunch of writ petitions and accordingly, the same are dismissed." ,,,,,