
(2015) 07 CAL CK 0079
In the Calcutta High Court
Case No : Writ Petition 4005(W) of 2014

Parimal Mistry

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Citation : (2015) 07 CAL CK 0079

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Subrata Mukherjee and Basabi Roychowdhury, for the Appellant

Final Decision : Allowed

Judgement

Ashoke Kumar Dasadhikari, J—The subject matter of challenge in this application is the selection and appointment of private respondent No. 5 Biplab Biswas in the post of Assistant Professor of Drama and Theatre Art, Rabindra Music Dance Drama Department, Sangit Bhavana, Visva Bharati, Santiniketan.

2. Mr. Mukherjee, learned counsel appearing for the petitioner submits that the petitioner was an aspiring candidate in the selection process for the post of Assistant Professor of Drama and Theatre Art of Rabindra Music Dance Drama Department, Sangit Bhavana, Visva Bharati, Santiniketan. The post was reserved for Scheduled Caste candidates. For selection of the post, Visva Bharati published an advertisement No. 05/2012. The essential qualification for the post was:--

"(i) Good academic record 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 the relevant subject or an equivalent degree from an Indian/Foreign University.

(ii) Besides fulfilling the above qualifications, candidates must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR, or similar test accredited by the UGC. However, candidates who are or have been awarded Ph.D. degree in accordance with the University Grants Commission shall be

exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

(iii) Without prejudice to the above, NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

OR

(iv) A traditional or professional artist with highly commendable professional achievement in the concerned subject who should be or have :

1. A professional artist with first class degree/diploma from National School of Drama or any other such approved Institution in India or abroad;
2. Five years of regular acclaimed performance in regional/national/international stage with evidence; and
3. Ability to explain the logical reasoning of the subject concerned and adequate knowledge to teach theory with illustrations in said discipline.

"Good academic record" shall mean "securing on an average at least 55% marks in all examinations taken together prior to Master's degree viz. Secondary Class & Higher Secondary (10+2) or equivalent and Honours degree stage. However, 55% marks at Master's degree level is mandatory as per UGC norms".

3. Mr. Mukherjee submits his client was having qualification under (iv) and he was eligible to compete. Mr. Mukherjee submits that the private respondent who was selected and given employment do not have requisite qualification in the relevant subject i.e. "Drama and Theatre Art" and therefore, private respondent No. 5 was not an eligible candidate not having requisite qualification in "Drama and Theatre Art" which is basically a performing art. Mr. Mukherjee submits respondent No. 5 did not furnish correct details about his qualification. According to him, private respondent No. 5 passed B.A. Honours with second class in Bengali. He has also passed M.A. second class from Kalyani University in Bengali. Mr. Mukherjee drew attention of this court on the application made by the private respondent No. 5 wherein he wrote M.A. Bengali "Drama Special", which is totally incorrect. He submits this particular specification is not correct. Mr. Mukherjee drew attention of this court about his client's application seeking information under Right to Information Act, 2005 wherein petitioner wrote to the Deputy Registrar and State Public Information Officer of Kalyani University whether they have any "Drama Department" in the university. In reply, the Deputy Registrar answered that there is no "special Drama Department" in Kalyani University. Against a query "in respect of which subject private respondent obtained Ph.D degree", the answer by the University authorities was "Bengali" and that too Ph.D was granted only on 24th May 2012 which is much later than the date of interview held by the University. Mr. Mukherjee submits that details furnished in the application form of private respondent is totally

incorrect. He got M.A. second class in "Bengali" and he obtained Ph.D in "Bengali" but he has written "drama". Mr. Mukherjee submits that the concerned candidate did not give proper information about his qualification deliberately and intentionally.

4. Mr. Mukherjee drew attention about the University notification wherein it was mentioned in case the offer of appointment is based on application made on the papers/documents/statements made or submitted by the concerned candidate (private respondent) in this connection, and any of the information/document/statement turned out to be incorrect or false, the appointment is liable to be terminated.

5. Mr. Mukherjee submits that the University authorities who were supposed to know and/or received the true copy of credentials, knowing fully well about furnishing incorrect particulars about the private respondent's qualification did not take any step rather they have appointed private respondent as Assistant Professor of Drama & Theatre Art. Mr. Mukherjee submits that the University authorities did not take any chance on the day of holding interview. They have issued appointment letter to the private respondent most illegally and unfairly on the date of interview.

6. Mr. Mukherjee submits in the instant case the relevant subject for being appointed as Professor of "Drama and Theatre Art" would be (i) "Drama" and the other is "Theatre Art". Mr. Mukherjee submits that it is not only the theoretical reading but a major part of the subject is practical. Mr. Mukherjee submits that drama is a performing art. Theatre is also a performing art. He submits that if the brochure of Department of Drama, Rabindra Bharati University is looked into, it would be evident that theatre being a fusion of all the arts, the Department of Drama encompasses the most massive syllabus-content in the University. The syllabus is structured so that the students may receive a basic training in all the aspect of theatre work including Acting and Mime at the Pre-Degree level. The undergraduate level gives more in-depth knowledge in the same subjects, but with a broadening of perspective : acquainting the students with Western and Eastern global theatre and introducing the art of Direction. At the post graduate level the students go for specialization in one of the following groups :

"A. Acting

B. Script Writing

C. Stage Direction

D. Theatre and Videography

E. Production Design."

7. Mr. Mukherjee also drew attention of this Court that in M.A. (2 years) course, 1st year and 2nd year all the aforementioned Groups A, B, C, D & E are taught. Mr. Mukherjee submits that one is to understand the meaning of the word

"Drama" and "Theatre Art" Mr. Mukherjee submits that reputed University which is imparting education "Drama" in Master Degree level have prepared the syllabus including acting, script writing, stage direction, theatre and videography, production design. Mr. Mukherjee submits the private respondent have no knowledge on those practical subjects. He submits Kalyani University's mark sheet as referred by the learned counsel for the private respondent does not show that any of the aforementioned subjects are in the syllabus.

8. Mr. Mukherjee submits that although one may say drama is literature written for performance but drama comes closest to virtual transcription of speech and all the literary forms, drama is the one in which the author/dramatists almost never speaks directly to the audience/reader. Mr. Mukherjee submits the dramatists create characters as vehicles for their thoughts or values, as in some works of George Bernard Shaw. But in the instant case, the private respondent is neither a dramatist nor have any knowledge on "Theatre Art" which is the essential qualification required as per advertisement of the University.

9. According to Mr. Mukherjee, reading drama include dramatic performance which would add several additional elements. Putting on a play involves not only actors, but also a set designer, a costume designer and a director. The director controls the action. The set and costume designer contribute to creating a visual representation of the setting. Reading drama also consists of the spoken word, language plays a role in drama insofar as the language of the characters offers clues to their backgrounds, feelings, and personalities, and to changes in feeling throughout the play and various other things. He submitted it is basically a performing art with all practical knowledge but the private respondent in fact have no knowledge on the same.

10. Mr. Mukherjee then submitted that scheduled caste certificate was issued by the authority on 16th October 2001 and the same was submitted on 25th January 2014 whereas interview was held on 18th January 2014. Mr. Mukherjee submits that both University authorities and the private respondent have used their affidavit and the University authorities stated in their opposition that the private respondent in his application wrote M.A. in Bengali with specialization in Drama which according to the University the private respondent had three papers of drama viz. paper VI- Drama, Essay and Short Stories, Paper VIII- Nineteenth and Twentieth Century Bengali Drama and Paper IX- Dramatology and History of the stage. The University stated that private respondent obtained Ph.D degree on May 24, 2012 on the thesis "Unobingsha Satabdir Bangla Samajik Natake Sanglaper Baichitra". It was emphasized by them that these are all study of drama and is a part of study of literature and according to the University even if this subject is studied by the private respondent is a part of study of literature but he has studied literature with specialization with Dramatology, History of Stage and modern Bengali Drama is proper qualification for being selected to the post of Assistant Professor of "Drama and Theatre Art".

11. It was also stated that Ph.D. degree obtained by private respondent was with

the guidance of the Bengali Department of Kalyani University but the subject of research was Bengali Social Drama which is a major field of Dramatic Study in India. It was also stated that private respondent as part of his course work had to study the theory of Drama as well as dramatic practices all over the world.

12. Mr. Singhvi, learned Counsel appearing for the University submits that the private respondent has all requisite qualification to compete and entitled to get appointment in the post of Assistant Professor in "Drama and Theatre Art".

13. Mr. Singhvi submits that the Drama includes Literature, which is definitely a theory paper which is required for the purpose of selecting a candidate.

14. Mr. Singhvi submits that the writ petitioner was not entitled to be appointed since he was second class in Bengali at his Graduate level. He has not written his experience. According to Mr. Singhvi, the petitioner is not at all a suitable candidate for being selected as Professor in "Drama and Theatre Art".

15. Mr. Singhvi submits that the writ petition is not maintainable at the instance of the writ petitioner who himself is not a fit candidate.

16. Mr. Singhvi further submits that in this type of case the Court has limited role to play. According to him, the experts who are all specialised persons in the Selection Committee are the fittest persons to select. Therefore, this Court should not interfere in the selection of private respondent by a Committee having members who were specialised in the subject.

17. Mr. Singhvi submits that as per Dictionary meaning "Drama" means do, act, perform and it is also a composition in the prose or verse adapted to be acted on the stage, in which a story is related by means of dialogue and action and is represented with accompanying gesture, costume and scenery as in real life, a play. He submits Drama also includes the dramatic branch of literature, the dramatic art. He submits the private respondent who has knowledge over the dramatic literature is entitled to be selected and appointed being an eligible candidate. Therefore, this Court should not interfere in the appointment made by the University.

18. Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others, (2010) 127 FLR 888 : (2010) 7 JT 558 : (2010) 7 SCALE 529 : (2010) 8 SCC 372 : (2010) 9 SCR 227 : (2011) 1 SLJ 170 : (2010) 5 SLR 105 : (2010) AIRSCW 5907 : (2010) 6 Supreme 18 paragraph 38 and he submits that the Hon'ble Apex Court have held that in the matter of appointment in the academic field Court generally does not interfere and it was also observed that the High Court should show due regard to the information expressed by the experts constituted selection committee and its recommendation on which Chancellor has acted.

19. Chandrakala Trivedi Vs. State of Rajasthan and Others, (2012) 6 JT 232 : (2012) 1 SCALE 634 : (2012) 3 SCC 129 : (2012) AIRSCW 3237 : (2012) 4 Supreme 1 in support of his contention. The word "equivalent" must be given a reasonable meaning. By using the expression "equivalent" one means that there

are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact.

20. Mr. Singhvi submits therefore the private respondent who has acquired knowledge over theory under no circumstances could be said that he is an ineligible candidate.

21. Mr. Singhvi submits that this Court should not interfere in the appointment given by the University authorities on recommendation of the selection committee.

22. Learned Counsel appearing for the private respondent submits that the statements given in the application of private respondent are all correct. He submits that from the mark-sheet private respondent has a special paper "Bengali Drama", which includes the paper - "Nineteenth and Twentieth century Bengali Drama", dramatology and the "History of the Stage" which is the subject in M.A. part-II examination. Therefore, the private respondent has acquired knowledge in Bengali Drama. According to him, this is sufficient to claim that private respondent has profound knowledge in Drama and Theatre.

23. Learned Counsel submits although Kalyani University's circular reflects that private respondent obtained degree of Master of Arts in the University in the year 2006 and he was placed in the second class in Bengali but in fact he is a specialised person in Drama.

24. Learned Counsel further submits that certificate of Ph.D. course-work reflects that private respondent, a Ph.D. Scholar of the Department of Bengali, Faculty of Arts and Commerce has successfully completed the course-work in the session 2010 to 2011 in Bengali but he is really completed a course of Drama in his Ph.D. course.

25. Learned Counsel submits that one has to look into the syllabus of the University for which selection was made. He referred syllabus to Biswa Bharati.

26. Learned Counsel submits the selection is for the purpose of teaching Drama and Theatre Art is really based on Literature and the private respondent has knowledge on it.

27. Learned Counsel submits that he has satisfied all requisite qualification required for being selected and appointed as Assistant Professor in "Drama and Theatre Art".

28. Learned Counsel submits that this Court should not interfere in the selection process since this selection process was conducted by specialised persons who are experts in the field. Therefore, the writ petition is to be rejected by this Court. He also reiterated and recited the judgements cited by Mr. Singhvi.

29. Learned Counsel submits that his client is an eligible candidate. He has all qualities and qualifications to be employed as an Assistant Professor in the

relevant subject. According to him, this writ petition is of no merit and the writ petition should be dismissed.

30. Learned Counsel appearing for the respective parties were heard at length. The main question which is raised in this application whether the respondent No. 5 who is appointed as Assistant Professor in "Drama and Theatre Art" is an eligible candidate having essential qualification and whether selection was made following the advertisement published.

31. For being appointed as Assistant Professor of "Drama and Theatre Art" Visva Bharati has prescribed the required qualification which was published in its advertisement No. 05/2012. The required qualifications are as follows:--

"Essential Qualification for post Sl. No. 9

i. Good academic record *with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at least Master's Degree level, in the relevant subject or an equivalent degree from an Indian/Foreign University.

ii. Besides fulfilling the above qualifications, candidates must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR, or similar test accredited by the UGC. However, candidates, who are, or have been awarded Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

iii. Without prejudice to the above, NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

OR

iv) A traditional and a professional artist with highly commendable professional achievement in the concerned subject, who should be or have :

1. A professional artist with first class degree/diploma from National School of Drama or any other such approved Institution in India or abroad;

2. Five years of regular acclaimed performance in regional/national/international stage with evidence; and

3. Ability to explain the logical reasoning of the subject concerned and adequate knowledge to teach theory with illustrations in said discipline.

? "Good academic record" shall mean "securing on an average at least 55% marks in all examinations taken together prior to Master's degree viz. Secondary Class & Higher Secondary (10+2) or equivalent and Honours degree stage. However, 55% marks at Master's degree level is mandatory as per UGC norms".

32. A plain reading of the eligibility criteria would show that for being selected as Assistant Professor in "Drama and Theatre Art" one should have good academic record with atleast 55% (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level, in the relevant subject or an equivalent degree from an Indian/Foreign University. Besides fulfilling the above qualifications, candidates must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC. However, candidates, who are, or have been awarded Ph.D. Degree in accordance with the University Grants Commission shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET. Now the entire basis of argument advanced by the learned Counsel for the petitioner is that Master's Degree in the relevant subject means Master's Degree in Drama and Theatre Art. It would be without any doubt or dispute the subject is "Drama and Theatre Art". Now the question arises whether the private respondent who was selected and given appointment has requisite qualification in the relevant subject or not. If the petitioner do not have required qualification in the relevant subject then he would be ousted from the zone of consideration. Therefore, for deciding the case one has to know what do the subject "Drama and Theatre Art" really mean. It would be very much relevant in this regard to refer a brochure published by Department of Drama, Rabindra Bharati University which really narrate what the Drama or Department of Drama encompasses.

" II Academic Programmes

Theatre being a fusion of all the arts, the Department of Drama encompasses the most massive syllabus-content in the University. The syllabus is structured so that the students may receive a basic training in all the aspect of theatre work including Acting and Mime at the Pre-Degree level. The more advanced arts such as Direction and Playwriting are not introduced here. The Undergraduate level gives more in-depth knowledge in the same subjects, but with a broadening of perspective : acquainting the students with Western and Eastern global theatre and introducing the art of Direction. At the P.G. level the students go for specializations in one of the following Groups :

- A. Acting
- B. Script Writing
- C. Stage Direction
- D. Theatre and Videography
- E. Production Design

The Syllabus is structured throughout with a 60% - 40% bias in favour of praxis and External Examiners are engaged for assessing the Practical Exams. The Syllabus-content of the courses taught is given below but attention is being drawn to fact that it is under constant supervision and revision by the Departmental Board of Studies, leading to frequent updating through alterations

and readjustments of stress. This is due to the dynamic nature of the subject taught."

33. In M.A. course (II years course) of these groups A, B, C, D, E above are taught and the students of the University are granted M.A. in postgraduate level required to go through all the items i.e. acting, script writing, stage direction, theater and videography, production design. But the mark-sheet annexed and referred by the candidate's Counsel do not show any of these items were in the subject.

34. From the prospectus, 2007 of National School of Drama it appears that there are classes for Modern Indian Drama, Western Drama, Voice and Speech, Yoga, Mime and Movement, Theatre Music, Acting and Improvisation, Theatre Architecture, Scenic Design, Costume Design, Stage Lighting, Makeup, Production Process, etc. are in their syllabus. First Semester includes Acting, Movement, Voice, Speech and Music, Improvisation and Acting then Theatre Techniques and Design, Theatre History and Aesthetics. In Second Semester, Acting which includes basic text and speech analysis, Scene work and rehearsing modern realistic texts, theatre techniques and design, history of theatre architecture, theatre history and aesthetic which includes modern Indian drama, the study of regional theatre, world drama etc. Second year Third Semester includes acting or theatre techniques and design, theatre history and aesthetics. In theatre history oral myths, Epics, Natyashastra, Poetics, Greek and Sanskrit texts is the course to be studied. Thereafter acting for acting specialisation, acting in classical Indian drama will include study of religious roots of the form, stylized gestures, movement, dance and purvarang (live music played before a performance) etc. Fourth Semester - Theory history and aesthetics, acting etc. Third year syllabus is planned to give the students advanced training in Acting or Theatre Techniques and Design through a series of workshop conducted by eminent theatre personalities, the work-shop might include advance work with mask and gag routines, puppetry, computer application in theatre, realistic acting and detailed work on the objectives and handling of props. Different work-shops are held in advance courses in light design, scenic design and projects on designing auditoria and lighting for different kind of spaces will be conducted. It includes film appreciation courses and a workshop on the connection between theatre and media might etc.

35. It is also evident from the syllabus for B. Mus. (Honours) course, which is 3-years course under Viswa Bharati (Shantiniketan) for Drama and Theatre Arts, that the First Semester includes practical course of Voice and Elocution, Theory of Drama and Dramaturgy (Oriental and Western), Play Making and Script Writing. Second Semester includes practical course of Body Preparation, Mime, Emotion and Expression, Improvisation in theoretical course of History of Western Theatre with reference to stage and drama. Third Semester includes practical course of Make-up and Costume and practical course of Acting : Verse (Tagore and Non-Tagore). Fourth Semester includes practical course of Acting :

Non-Verse (Tagore and Non-Tagore) and practical course of Scenography. Fifth Semester includes practical course of Acting in Different Media, then practical course of Stage - Lighting, Sound and Background Music etc. Therefore, this syllabus produced by the private respondent's Counsel indicate what really the relevant subject is required to be passed for being appointed as Assistant Professor of "Drama and Theatre Arts". Thus it would be very easy to understand what is the relevant subject for which the University authorities invited applications.

36. It is true the University has its Experts. In normal course the Court is not required to interfere in the periphery or in the domain of the Experts who are specialised in their field but in a case like the present where the eligibility criteria whether fulfilled or not by the candidate is in question and further a question about his qualification is raised the Court would definitely interfere and see whether all eligible candidates were allowed to contest and proper assessment was made on the basis of their credentials and/or certificates obtained by them. Even if the selection committee is constituted by specialised persons, the selection committee is obliged to hold selection process in free and fair manner and to select candidate from amongst the candidates who are eligible in terms of advertisement otherwise the Court would have its jurisdiction to interfere in such selection.

37. In this regard, it would be very relevant to refer the dictionary meaning of the word "Drama" which was shown by Mr. Singhvi. The word "Drama" means do, act, perform, prose or verse, adapted to be acted on the stage, in which a story is related by means of dialogue and action, and is represented with accompanying gesture, costume, and scenery, as in real life; a play. With the dramatic branch of literature; the dramatic art, a series of actions or course of events having dramatic unity, and leading to a final catastrophe. Therefore, there is no doubt that Drama and Theatre Act is no doubt a performing art of which a part may be prose or poetry or literature.

38. However, the certificate disclosed by the private respondent shows that he has obtained Bengali Honours from Kalyani Mahavidyalaya with combination with English and Economics, Master's Degree in Bengali from University of Kalyani, Ph.D. Degree on Bengali from University of Kalyani.

39. It would be relevant to point out that the respondent No. 5 passed M.A. Part-I examination in Bengali with combination History of Literature - Ancient and Medieval Age, History of Modern Bengali Literature, Bengali Philology, Ancient and Medieval Bengal Poetry, Modern Bengali Poetry : Rabindra Literature, Modern Bengali Poetry (post Rabindranath) and Modern Bengali Novels, Essays and Culture. He passed M.A. in Bengali, Part-II examination in Drama, Essay and Short Stories, Comparative Literature, Indian and Western Poetics, Bengali Drama, Nineteenth and Twentieth Century Bengali Drama for 100 marks, Dramatology and the History of the Stage. These are all theoretical subjects. There is no touch, no relation with the practical, which is required to fulfill the

eligibility criteria. Since "Drama and Theatre Art" is really a performing art although a part of it includes prose and verse but the subject taught by the Kalyani University is not really a full course of Drama and Theatre Art. Different publication of National School of Drama and other Universities including Viswa Bharati clearly indicate what really the subject "Drama and Theatre Art" is. The other important aspect of this matter is that on an R.T.I. query University of Kalyani informed that they have no Drama department. The certificate of Ph.D. which is annexed in the pleadings also shows that he has Ph.D. Degree in Bengali. Therefore, this Court is fully satisfied that the private respondent, who was appointed on the date of interview without even scrutinising his papers, is not at all eligible person to compete. When Viswa Bharati has its own syllabus on Drama and Theatre Art and they have selected Assistant Professor of Drama and Theatre Art they ought to have verified the credentials of respondent No. 5 correctly before inviting him to take part in the selection process. I find that the University did not follow their own standard and requirement of essential qualification which they have prescribed in their advertisement.

40. In my considered opinion the selection is also totally bad. The Selection Committee did not apply their mind. Even if it is accepted that they are experts but they did not apply their expertise at the time of selection, they did not verify the qualification certificates and the courses studies the respondent No. 5 undergone. The entire selection process is, thus, vitiated. It is also not known why selection committee has not careful about essential qualification prescribed by University. University did not also disclose any records showing all assessments if at all made by them against the respective candidates. There is nothing on record to show that selection was made in free and fair manner. The judgements cited by Mr. Singhvi is of no relevance specially when the question arose whether the candidate who was appointed was an eligible candidate to complete and the entire selection process is vitiated.

41. The University authorities are really responsible for such mischief. For someone's special interest they have given appointment to an ineligible candidate without even verifying copy of Scheduled Caste certificate, although the post is reserved for Scheduled Caste candidate. The caste certificate was issued by the Sub-Divisional Officer on Mahalaya, which is the scheduled Holiday and there are other irregularities also. However, this Court is not inclined to go into it. It is not understood why so much urgency was there to engage this person on the very same date when the interview was called. Therefore, the selection and appointment of respondent No. 5 is bad and illegal and as such set aside.

42. The University authorities are directed to publish the vacancies afresh inviting applications from the eligible candidates and to select the proper person.

43. The writ petition is, thus, allowed. There would be no order as to costs.

44. The prayer for stay made by both the learned Counsel appearing for the

University and the private respondent is refused.