

(1991) 06 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1677 of 1990

R. Dilip Kumar and Others

APPELLANT

Vs

The Vice Chancellor, Osmania University and Others

RESPONDENT

Date of Decision : 25-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Osmania University Act, 1959 — Section 21, 38, 6

Citation : (1991) 2 ALT 484

Hon'ble Judges : Upendralal Waghray, J

Bench : Single Bench

Advocate : K. Lakshmi Narasimha, for the Appellant; H.S. Gururaja Rao, Standing Council for Respondents Nos. 1, 5, 6 and 7, G. Mohan Rao and G. Raghu Ram, for Respondent Nos. 8 to 13, for the Respondent

Judgement

Upendralal Waghray, J.—The three petitioners have approached this court questioning the appointment of respondents 8 to 13 as Lecturers in the Law Colleges of the Osmania University. The 1st respondent is the Vice-Chancellor and the 2nd respondent is the Registrar of the Osmania University. The Vice-Chancellor is also impleaded eo nomine as 5th respondent. 3rd respondent is the Principal Secretary to the Govt. of Andhra Pradesh, Education Department. 4th respondent is the Secretary, University Grants Commission and respondents 6 and 7 are the Principals of University College of Law and Post-graduate College of Law respectively. The writ petition has been presented on 7-2-1990 and appointments were made some time in the first week of December, 1989 pursuant to the Interview held on 13-11-1989.

2. It is useful to notice some relevant facts before examining the controversies raised. The Osmania University is governed by the Osmania University Act of 1959 (hereinafter called the Act.) It had issued advertisement No. 2/88 dated 11-2-1988 for recruitment to the posts of various members of the teaching staff including one post of Lecturer in Law. No further steps appear to have been taken pursuant to the said advertisement and that another advertisement No.

3/89 dated 6-7-1989 was issued for the purpose of recruitment of various posts of the teaching (SIC) this includes 6 posts of Lecturers in Law and it is useful to (SIC) relevant portion, which reads as follows:

"Post No. 20--Lecturer in Law (VII Plan):

At least a high Second Class Master Degree in Law with not less than 55% marks in the aggregate of an Indian University or an examination recognised as equivalent thereto from any other recognised University.

Specializations :

1. Constitutional Law .. One post 2. International Law .. One post 3. Mercantile Law .. One post 4. Labour Law .. One post 5. Crimes and Torts .. One post 6. General (other things being equal, preference will be given to Crimes & Torts) .. One post."

The Interview pursuant to the said advertisement was held on 13-11-1989 by a Committee consisting of the following :

- "1. Prof. T. Navaneetha Rao, Vice-Chancellor, O.U. (Chairman)
2. Prof. K. Ramaiah, J.N.T.U., Hyderabad (Nominee of the U.O.C.
3. Prof. V.B. Couninho, University of Bangalore, Bangalore (Expert Member)
4. Prot. B. Sivaramayya, University of Delhi, (Expert Member)
5. Prof. C.J. Samuel, University of Poona, Poona. (Expert Member)
6. Prof. P. Seshadri, Chairman, Board of Studies, O.U.
7. Prof. K. Srinivasa Rao, Head of Department of Law, O.U."

Out of 74 candidates who were summoned for the Interview 20 failed to appear. The petitioners and respondents 8 to 13 have appeared. An award list was prepared at the time of the Interview which has been placed before the court, according to which, respondents 8 to 13 have been selected on that very day and they were appointed sometime in first week of December, 1989.

3. A counter-affidavit sworn to on 22-1-1991 by Registrar of the Osmania University has been filed. A counter-affidavit sworn to on 4-4-1991 has been filed on behalf of respondents 8 to 13. The petitioners have, with the leave of the court, filed an additional affidavit sworn to on 28-3-1991 to which an additional counter-affidavit sworn to on 3-4-1991 by the Registrar of the Osmania University has been filed.

4. The petitioners were already working as Part-time Lecturers and they have raised several contentions challenging the selection of the respondents 8 to 13. One of these particularly in paragraph 14 (2) and 14(3) contains allegations of mala fides against the Vice-Chancellor i.e. 5th respondent. This has been denied and at the hearing the counsel for the petitioners did not press the same. To say

the least the said allegations have been made recklessly and as they have not been pressed at the hearing, I do not propose to take any action against the deponent for such allegations.

5. The other contentions raised on behalf of the petitioner are as follows :

(1) Section 6 of the Osmania University Act contemplates appointments only by merit and, therefore, there is no scope for making reservations for Scheduled Castes and Backward class candidates to the posts in the University. In this case, out of 6 posts 5 have been given to candidates belonging to reserved categories which shows that the appointment is also arbitrary.

(2) The selection has been arbitrary as it was based only on an Interview without any guide-lines, which completed in a single day.

(3) Respondents 8 and 12 were not eligible to be considered, as they had acquired the requisite qualification, namely, LL.M Degree only by the time of the interview.

(4) Respondent No. 13 is not eligible as he did not possess the requisite 55 percent of marks in the LL.M Degree as required by the rules.

(5) Respondents 9 and 13 are having LL.M Jurisprudence and, therefore, not eligible for other subjects as indicated in the advertisement.

(6) Respondents 8 to 13 have neither appeared nor passed NET examination which is a pre-requisite for being appointed as lecturer in accordance with the guidelines of the Government of India, accepted by the State Government and also the University.

6. As noticed earlier, the writ petition is opposed by the respondents and it is also submitted that the court may not interfere for several reasons urged by them.

7. Contention No. 1: --It is useful to extract the relevant portion of Section 6 of the Act:

"6. University open to all persons :--No person shall be excluded from holding any office in the University or from membership of any of the authorities of the University or from admission to any degree, diploma or other distinction or course of study, on grounds only of religion, race, caste, sex, place of birth or any of them, and it shall not adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or student or to hold any office therein or to qualify for any degree, diploma or other distinction or to enjoy or exercise any of the privileges of the University.

provided as follows :--

(1) x x x x x (2) x x x x x (3) x x x x x

The University has placed reliance on Section 38 of the Act which is contained in

Chapter VII under the Heading: "Appointment of teachers etc.,"

"38. Conditions of service :--(1) Save as otherwise provided every salaried officer and teacher of the University shall be appointed under a written contract, and the conditions of service relating to them, shall as far as possible, be uniform except in respect of salaries payable to them.

(2) The contract shall be lodged with the Registrar and a copy thereof shall be furnished to the officer or teacher concerned."

It is also pointed out that u/s 21 (5) (iii) of Act, the Executive Council has to define conditions of service of the teachers of the University. It is further pointed out on behalf of the University that the University Syndicate in its 55th Meeting held on 16-8-1977 has adopted the procedure laid down in the letter of the Government dated 16-12-1976 in the context of reservation of Scheduled Castes, Scheduled Tribes and Backward Classes for the post of Lecturers. This is evident from a copy of the orders of the Osmania University dated 5-11-1977. The Syndicate in its 317th meeting held on 5-2-1983 resolved that the Government Instructions contained in G.Os referred to therein with regard to reservation and roster system in the appointments for Lecturers and Readers are approved for implementation in the University.

8. It is the case of the University counsel that, first part of Section 6 applies only to the persons holding an office in the University and not to teachers for whom a separate provision is made in Chapter VII Section 38 and powers conferred by Section 21 of the Act to frame their service conditions. It is pointed out by him that the principle of reservation has been followed by this University and the other Universities in the State since about 1976-77 and there was nothing illegal in following the said scheme for the present recruitment.

9. The petitioner's counsel has, however, raised a further contention that, assuming that the principle of reservation could be followed the system followed for selection in this case by which five posts out of six have gone to the candidates belonging to the reserved category and non-mention of the reservation of a post in the advertisement is arbitrary. The award list prepared by the Selection Committee produced by the University Counsel at the hearing (a copy of which is also made a part of the record) and the explanation given as to how five persons out of six have been appointed from the reserved category has been taken into consideration by me.

10. The provisions of Section 6 of the Act, prima facie negate against any reservation but the fact remains that in view of Section 38 of the Act and the decisions taken by the Government and the University, the principle of reservation is being followed since over a decade. In view of this I am not inclined to find fault with the present action of the University. But, it will be appropriate that a suitable provision is made enabling principle of reservation to be applied as well as the method of its implementation for various posts. The grievance about the applicability of roster system without indicating the posts

which were reserved in the advertisement, certainly gives scope for complaints of arbitrariness. According to the University, the roaster system is followed for a group of subjects and a particular post is treated as reserved post at the time of appointment. There may be difficulties in implementing the reservation system but it will be appropriate if this is done in a rational manner which is also apparent and open to scrutiny by the candidates. This will avoid unnecessary litigation. The roaster system should be applied to the vacancy and not at the time of appointment. This can be indicated in the advertisement as is done by all other authorities. Similarly, if the award list finalised by the Selection Committee is published at least on the Notice-Board of the University immediately or as soon as possible, much of the heart-burning and speculation leading to filing of false affidavits can be avoided. Our country faces an acute unemployment problem including for postgraduate candidates. To avoid frustration and suspicion whether well-founded or imaginary it is appropriate that the award list is published, so that the candidates know the methods of selection and how they have been evaluated. I would not like to go into subsidiary questions raised regarding award of marks for qualifications and teaching experience as it is explained by the University counsel that paragraph 1 in the award list regarding qualifications does not fit in for selection of Lecturers in Law holding LL.M qualification, but he has explained that the marks given for qualification are on a rational basis similar to those mentioned in paragraph 1 of the award list. It is pointed out that for candidates who had passed B.A., in First Division and M.A. in Second Division, 16 marks were allotted and for (SIC) who had passed both M.A. and B.A., in Second Division only 14 marks were allotted. There is no allegation of malafides against the Selection Committee. I am satisfied that the marks allotted for qualification in the award list are on a rational basis. The claim of petitioners for the award of marks for teaching experience for Part-time lecturers is not supported by any rule or precedent. The reliance placed by the petitioners on the decision reported in *Dr. Razia Siddiqui v. Osmania University*, 1990(3) ALT 112 (para 2) does not help them as it does not show that the University accepted that Part-time Lecturers are eligible for award of marks for teaching experience. Apparently, the office prepares the relevant data on the basis of which these marks are allotted. It is appropriate that a better control and supervision is exercised over the preparation of this data, which will be crucial for the result of the selection. The Selection Committee, apparently, goes by the particulars prepared by the office. I am mentioning this because the particulars given about qualification and reservation will also lead to controversies. It is pointed out by the counsel for the university that four candidates belonging to Backward class category have been appointed because two of them came on their merit and, therefore, they were not treated as against reserved posts. It is explained that only one Scheduled Caste candidate was appointed and two Backward class candidates were appointed against the reserved vacancies, according to the method explained earlier that is treating the date of appointment as relevant. It is explained that the appointment to reserved category was not in excess of 50 percent. The absence of any indication in the advertisement that any post was

meant for a reserved candidate and the manner of maintaining and following of roster justifies the complaints of the petitioners that everyone was in the dark till the explanation was given at the hearing. It is better that at least before selection candidates know the particulars of reserved posts and whether they should apply or not.

11. Contention No. 2:--The award list placed before the court shows that, out of 100 marks-25 were given on the basis of the qualification, 25 on the basis of experience (15 for teaching and 10 for research) and 50 for the performance in the Interview. The criteria for awarding marks for qualification and teaching experience are also indicated in the award list, subject to the modification explained under point No. 1. In this case the selection is not based only on the Interview. The selection committee has set apart 50 per cent of marks for evaluation at the interview. The Selection Committee consists of Experts. According to the petitioners, over 50 candidates were interviewed in about four hours in a single day and each candidate was given hardly a few minutes. It will be appropriate that the University either reduces the marks for the interview or allots some more time for evaluation by interview to avoid such grievances particularly when the candidates to be selected are post-graduates.

12. Contention No. 3:--It is not disputed that respondents 8 to 12 were not eligible either on the date of advertisement or on the date when they filed their applications. The advertisement does not indicate that a student who has appeared at the LL.M. examination can also apply. It is urged by the counsel for the petitioners that their applications ought to have been rejected and they should not have been called for interview. It is also pointed out that the results in which they passed LL.M. had been declared only a few weeks before the date of interview and the interview was postponed only to help them. On behalf of the University it is stated that as representations were received from some students who had already appeared for LL.M. examination that they should also be considered, the University had decided to consider the case of such of those candidates who passed the examination before interview. It is also contended that the result will date back to the date of examination. The advertisement does not speak of any cut-off date for eligibility by qualification or that candidates who have appeared in the examination can apply. If such concession is given to petitioners it will be arbitrary and discriminatory because many others who might have passed later in other subjects did not apply. It is not clear whether this decision was known to all such LL.M. Students. It is not proper to deviate from the criteria in the advertisement. The respondents 8 to 12 were not eligible and could not have therefore, applied in response to the advertisement. It is not necessary to refer to several cases cited by the counsel for the petitioners that respondents 8 and 12 did not fulfil the requirements of the notification and were, therefore, not eligible. The counsel for the respondents have cited some cases which are not directly on the point. The theory that the result will date back to the date of examination may be invoked by virtue of statutory rules in the case of examinations meant for Government servants. No such rules are referred to

nor is there such a provision made in the advertisement. The action of the respondents in entertaining applications from the candidates viz., respondents 8 to 12 who had appeared for LL.M. cannot be justified as they were not eligible.

13. Contention No. 4 :--This contention is also based on undisputed facts and discloses an unhappy situation regarding screening of applications by the University. Respondent No. 13 did not get the requisite 55 percent marks in the LL.M. examination in his first attempt. He, however, appeared again to improve his percentage. The relevant rules of the University applicable for such an attempt to improve the percentage requires the candidate to appear for all the subjects for that particular year. But the 13th respondent appeared only for one subject and choose to remain absent in the other subjects. The marks obtained by him in this only subject was taken into account by substituting the lower marks in the same subject for which he had appeared in the full examination. Such a course obviously gives an advantage to a candidate and that is the reason why the rules insist that, if a candidate wishes to improve his percentage he should appear for all the subjects. It is explained on behalf of the University that, because of a mistake committed in the office of the Controller of Examinations in issuing the memo of marks showing the requisite percentage, he was treated as an eligible candidate. Clearly the 13th respondent was not entitled to have his marks revised according to the rules for improving the percentage and if the marks obtained by him in the full examination are taken into account he will not be eligible. There is no rule of the University permitting counting of marks of one subject for improving the percentage by a candidate. Any defaults by the Department of the University cannot make a candidate eligible.

14. Contention No. 5 :-- According to the petitioners the advertisement No. 3/1989, the relevant portion of which is extracted earlier, indicates that the recruitment was for separate posts of Lecturers in the Specialities mentioned therein. According to them, respondents 9 and 13 have obtained LL.M. Degree with Jurisprudence as their specialisation and were, therefore, not eligible for appointment to the post in the other specialities mentioned in the advertisement. The petitioners also relied upon paragraph 10 of Appendix-I to the letter dated 22-7-1988 of the Government of India, Ministry of Human Resources Development (Department of Education) New Delhi, according to which the pay scale of the teaching staff in the Universities was revised. The said paragraph 10 reads as follows :

"The minimum qualification required for appointment to the posts of Lecturers, Readers and Professors will be those prescribed by the UGC from time to time. Generally, the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master's degree in the relevant subject with at least 55% marks or its equivalent grade, and good academic record."

It is not in dispute that the revision of pay scales has been done after the

scheme in the said letter of the Government of India was accepted by the State Government and the University. The contention of the petitioners is that the requirement of Master's degree in the relevant subject would indicate that the candidate must have obtained his LL.M. in the particular specialities indicated in the advertisement. The case of the University is that in the case of recruitment of Lecturers in Law there is no such insistence of specialisation and the minimum eligibility is being taken as the Second Class degree in LL.M. with 55% of marks. But, then what is the purpose of mentioning specialities in the advertisement? Apparently, this was the beginning to make specialisation at the LL.M. stage as in the case of other profession like medicine. But in the background of the earlier practice and in the absence of a statutory provision it cannot be said that LL.M. candidates who have completed their course in other specialities are not eligible though the advertisement in way indicates this. The award list and selection also indicates that there was no separate selection for the post for any specific subject.

15. Contention No. 6:--The Government of India, Ministry of Human Resources Development (Department of Education) New Delhi, after consulting the UGC in its letter dated 22-7-1988 together with its Appendix-I, have evolved a scheme for revision of scales of pay of the teaching staff in the Universities. This letter of the Government of India was communicated to the Vice-Chancellors by the University Grants Commission by its letter dated 16-8-88. The State Government also by G.O.Ms. No. 520 Education dated 15-12-1988 accepted the scheme in the manner mentioned in the said G.O. Thereafter, the Executive, Council of the University at its 13th Meeting held on 11-1-1989 decided to adopt the aforesaid G.O. of the State Government. We are not concerned with the options etc., in the scheme which are applicable to only those who are already in service. The advertisement No. 3/1989 pursuant to which the selections and appointments have been made was issued only on 6-7-1989 i.e. after the Executive Council had adopted the State Government's G.O. According to the petitioners Para 11 of the Appendix to the letter of the Government of India referred to above requires a candidate for the post of Lecturer to have passed an eligibility test, in addition to the minimum academic qualification prescribed for a lecturer. Para 11 of the Appendix to the letter of the Government of India reads as follows :

"11. Only those candidates who, besides fulfilling the minimum academic qualifications prescribed for the post of Lecturer, have qualified in a comprehensive test, to be specially conducted for the purpose, will be eligible for appointment as Lecturers. The detailed scheme for conducting the test including its design, the agencies to be employed in the conduct of tests, content, administration etc., will be worked out by the UGC, keeping in view the requirements of the media of instruction followed by the different State Universities/Colleges and other relevant considerations".

The State Government while adopting the scheme have also accepted the principle of additional eligibility requirement of passing the qualifying

examination as is evident from Paragraphs 2 and 3 of the Appendix to the said G.O. of the State Government. According to the petitioners the respondents have not passed the said qualifying examination, either held by the UGC or by any agency of the State Government and were, therefore, not eligible to be appointed.

16. The case of the University is that by the time of the advertisement or interview for selection no such examination was held either by the UGC or by any agency of the State Government. The first examination by the UGC was notified to be held on 24-12-1989 by the publication in the newspapers in October, 1989. According to the University the State Government had not yet decided the modalities of the examination and it was not appropriate to keep the posts vacant till such qualifying examinations are held and the candidates pass in them. It is stated that in the qualifying examination which was held in December, 1989 only one candidate had qualified for the post of Lecturer in Law. It was pleaded that in this background a decision was taken in the Conference of the Vice-Chancellors to fill up the existing vacancies by following the previous practice that is, not insisting on the qualifying test. It is also contended on behalf of the University that not passing the qualifying test at the most will amount to denying the higher pay scale to these Lecturers. I am not able to agree with the second contention of the counsel for the University. All the persons appointed as Lecturers in the University form one class and any discrimination in the pay scale as suggested would be discriminatory and arbitrary. Apparently the UGC felt that selection process and awarding of marks in degree and post-graduate examinations adopted by hundreds of Universities spread over all the country were not uniform or satisfactory, and therefore the requirement of qualifying examination has been evolved. Only on this condition the pay scales of the teaching staff have been revised to levels which are definitely much higher than meant for similar posts to which the earlier pay scales were being given and this is only an attempt to achieve academic excellence. The University having accepted the revision of pay scales and the State Government also having accepted the scheme cannot be permitted to say that they will have a separate class of Lecturers who need not pass the qualifying test. It is expected that the State Government also evolves a suitable qualifying test as contemplated by provisions of Paras 2 and 3 of the Appendix to the G.O. as early as possible to avoid delay in appointments to the posts in the various Colleges. Any delay on the part of the authorities in holding such examination cannot justify appointment of persons not having passed the qualifying test being appointed to the posts of Lecturers carrying higher scales of pay. This requirement can be relaxed only with consent of UGC and Government of India. It may be open for the authorities in case of urgent need for any appointment to make a conditional appointment requiring passing of the test within a specified time.

17. The Courts are generally slow in interfering with the action of the academic bodies like Universities. But the facts of this case show how the authorities of the University have allowed ineligible persons to be considered and selected and

ignored the requirement of eligibility test which is a progressive measure introduced in the scheme of the UGC while revising the pay scales. It is doubtful whether such deficiencies will come to light if a general theory that the courts should not interfere in the actions of the Universities is to be accepted.

18. Now coming to the relief to be granted in the writ petition, some further facts have to be taken into consideration. The petitioners have themselves not qualified in the examination contemplated by the UGC scheme. It is not known if sufficient number of candidates who passed the NET are available, and there is no allegation of malafides against the Selection Committee and the award list shows that the petitioners' rankings are lower than those of the respondents. They have made reckless allegations against the Vice-Chancellor without verifying the facts and respondents 9 to 13 have given up posts held by them earlier Respondent No. 8 was studying M. Phil/Ph. D course. The setting aside of the appointments of respondents 9 to 13 will render them without job. It may not be easy for them to secure alternative employment at this stage. Taking these circumstances into consideration I do not consider it appropriate to set aside the appointments of respondents 9 to 13 in the exercise of the jurisdiction under Article 226 of the Constitution of India. But this does not apply to respondent No. 8. However, any such appointment should be made conditional upon the candidate passing the NET examination within specified time. The respondent No. 13 should, in addition, be asked to obtain the requisite percentage in LL.M. examination within a specified time.

19. Before parting with the case it has to be said that the manner in which the selection and appointment is made leaves one with an uneasy feeling. We do not know whether this is the general method for selection and appointment to the several other posts mentioned in the advertisement. During the pendency of the writ petition the petitioners have made a grievance that because of their filing this writ petition, the Part-time Lectureship held by them were also not renewed. The said controversy is not the subject matter of this writ petition but it is expected that the University will not be vindictive or punish the petitioners for this. In fact, The present writ petition has brought to light some of the deficiencies which ought to be set right. The writ petition is, therefore, allowed only to the extent of setting aside the appointment of respondent No. 8 and is dismissed in other respects. No costs.