

(1992) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3741 of 1986

R.S. Sharma

APPELLANT

Vs

M.P. Uchcha Siksha Anudan Ayog and Another

RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 2
Madhya Pradesh Uchcha Shiksha Anudan Ayog (Nirsan) Adhiniyam, 1994 — Section 13(2)

Citation : (1992) 2 MPJR 216 : (1992) 37 MPLJ 982 : (1992) MPLJ 982

Hon'ble Judges : M.V. Tamasker, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : V.S. Shrotri, for the Appellant; S.L. Saxena and R.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The petitioner is working as Lecturer in Nav-Yug College at Jabalpur. The College is an "institution" governed by the provisions of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (in short "the Adhiniyam"). The recruitment to the institutions receiving grant-in-aid from respondent No. 1 M. P. Uchcha Shiksha Anudan Ayog (in short "the Ayog") is regulated by recruitment rules named as the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979.

The petitioner is aggrieved by two communications dated 7-8-1985 (Annexure-F) and dated 4-3-1986 (Annexure-J) of the respondent Ayog whereby the Principal of the College has been informed that the selection and appointment of the petitioner as Lecturer in the College have not been recognized by the Ayog. The result of the impugned communications is that the grant-in-aid for payment of

salary of the post of the Lecturer to the petitioner is not being released by the Ayog and he is being paid fixed salary from the funds of the institution.

Learned counsel appearing for the petitioner has assailed the action of the Ayog mainly on two grounds. Firstly, it is contended that the stand of the Ayog, as contained in the impugned communications and in its return submitted in reply to this petition that the petitioner does not possess the minimum required qualifications laid down in the Recruitment Rules, is baseless. The learned counsel invited attention of this Court to the petitioner's bio-data and his educational qualifications, which have been mentioned against Entry No. 13 in the chart (Annexure R-1) filed with the return. The submission on behalf of the petitioner is that the petitioner has more than 50% of marks throughout from higher secondary level upto M.Com. and being engaged in research work at the time of consideration of his case for appointment to the post, he could not have been termed by the Ayog as a candidate ineligible for being selected on the post by the selection committee. The argument is that so far as his claim of research experience is concerned, that was exclusively a subject matter within the power of the selection committee and one of the nominees of the Ayog being ex-officio member of the selection committee under the rules, it is not open to the Ayog to treat the petitioner lacking in one of the minimum prescribed qualifications of research experience. It is not in dispute that the petitioner had registered himself for research work for award of Ph.D. degree with Rani Durgawati Vishwavidyalaya, Jabalpur. It is also not in dispute that the petitioner had registered himself for the Ph.D. degree in Commerce under the guidance of late Prof. S. C. Diwakar with effect from 3-12-1979, but he could not complete the research work on the topic he had selected because of the serious illness of his guide, who ultimately died of cancer. There was also non-availability of sufficient material on the topic of his research work. The petitioner, later registered himself with the University for the Ph.D. degree with a new topic of research.

The learned counsel appearing on behalf of the Ayog placed reliance on a letter dated 1-4-1987 (Ann. R-2) sent by the University to the Ayog, informing that the petitioner had not in due time submitted the progress report of his research work on the topic he had selected in the year 1979 and had later registered himself for doing research on a different topic with effect from 17-10-1986. The argument on behalf of the Ayog is that the petitioner can claim no research experience and on that score he lacked one of the minimum qualifications prescribed in the Recruitment Rules.

At the out-set we may state that the learned counsel for the petitioner is right in submitting that whether a particular academic attainment claimed by a candidate constitutes research experience within the meaning of the prescribed qualifications, is a matter to be solely assessed and judged by the selection committee and the Court cannot substitute its own opinion for that of the selection committee, obviously because the Court is ill-equipped for the job. The Court cannot substitute itself for the selection committee in that regard and the

opinion of the selection committee is final in the matter.

The only argument advanced on behalf of the Ayog, which needs consideration is whether in fact the selection committee has duly assessed and judged the work and achievements of the petitioner as a candidate seeking appointment to hold him as possessing the requisite research experience. For decision on the first point concerning research experience, hotly contested between the parties, it is necessary to examine the relevant provisions prescribing minimum educational qualifications in the Schedule to the Recruitment Rules which is reproduced hereunder : -

A. For Lecturers in Colleges :

(a) A doctor's degree or published research work of an equivalent high standard; and

(b) (i) A 2nd Class Master's Degree in the concerned subject with at least 50% marks (B in the seven point scale) or an equivalent degree of a foreign University; and

N. B. (while taking into account the marks/grade, the marks/grade obtained in the internal assessment, if any shall be excluded.)

(ii) At least 50 per cent marks at the Bachelor's degree examination on the basis of which division is awarded at the degree level by the University.

(iii) At least 50 per cent marks at the Higher Secondary/Intermediate/ Pre-University Examination as case may be.

Having regard to the need for developing interdisciplinary programmes the degree in (a) above may be in relevant subject :

Provided that if the Selection Committee is of the view that the research work of a candidate as evident from his thesis or from his published work is of very high standard it may relax any of the qualifications prescribed in (b) above :

Provided further that if a candidate possessing a Doctor's degree or equivalent research work is not available/or/is not considered suitable, a person possessing the following qualifications may be recruited -

(i) A 2nd Class Master's Degree in the concerned subject with at least 50 per cent marks (B in the seven point scale), and N. B. (While taking into account the marks/grade, obtained in the internal assessment, if any, shall be excluded.)

(ii) 2 years' experience of research work or practical experience in research laboratory, research organisation; and

(iii) At least 50 per cent marks at the Bachelor's degree examination on the basis of which division is awarded at the degree level by the University; and

(iv) At least 50 per cent marks at the Higher Secondary/Intermediate/ Pre-

University Examination, as the case may be

OR

- (i) A Master's Degree with first class or grade "A" in a relevant subject; and
- (ii) At least 50 per cent marks at the Bachelor's degree examination on the basis of which division is awarded at the degree level by the University; and
- (iii) At least 50 per cent marks at the Higher Secondary/Intermediate/ Pre-University Examination, as the case may be :

Provided further that in the case of Categories (B) and (C), a candidate will have to obtain a Doctor's Degree/M.Phil. Degree or have to his credit published research work of equivalent standard within 5 years of appointment failing which he will not earn future increments until he fulfils these requirements.

N. B. - The requirement regarding minimum percentage of marks shall be relaxed upto 50 percent in case of Scheduled Caste/Scheduled Tribes candidates.

On a careful perusal of the above quoted part of the schedule containing minimum prescribed qualifications, it is to be noticed that "Ph.D. degree or published research work of equivalent high standard" is one of the minimum prescribed qualifications. The first proviso permits relaxation of requirement of the minimum percentage of marks from higher secondary level to the post-graduate level, if, in the opinion of the selection committee, the thesis or the published research work of the candidate is of a very high standard. The second proviso permits the selection committee to consider other candidates for appointment, in case there are no candidates possessing doctorate degree or equivalent research work.

Learned counsel for the petitioner has tried to fit in the case of the petitioner in the qualifications prescribed in the second proviso and the sub-clauses mentioned therein. It is to be noticed that in the event of non-availability of a candidate with doctorate degree or equivalent research work, there are three requirements for a candidate to be fulfilled.

- (i) Second Class Master's Degree in the concerned subject with at least 50% marks.
- (ii) Two years" experience of research work or practical experience in research laboratory, research organisation, coupled with.
- (iii) Minimum 50% marks at the higher secondary and graduate levels.

The main controversy between the parties is whether the petitioner can be said to be possessing two years" research experience. Evidently, the petitioner seeks appointment as a lecturer in Commerce faculty and hence there can be no question of possessing any practical experience in any research laboratory. It is also not necessary in every subject to have any experience in any research organisation. The above relevant entry in second proviso to the schedule came

for interpretation before this Court in the case of Smt. Sudha Trivedi v. State Of M. P. and Ors., Misc. Petition No. 2512 Of 1989 decided on 30-4-1991, the relevant entry was interpreted to mean that the term "research organisation" occurring in the entry does not qualify the opening phrase "two years" research experience", but relates to its second part "practical experience". The entry was thus understood to mean that it is enough for a candidate for the purpose of the relevant entry of the schedule to have two years" research experience, may be that he may not have any practical experience in any research laboratory or research organisation. What, therefore, is to be considered in this case is - whether the petitioner can claim appointment under second proviso of the schedule and can be deemed to be possessed of two years" experience of research. This claim based on two years" research experience is hotly contested between the parties. The arguments of the learned counsel for the Ayog is that mere registration for Ph.D. degree in a University with no concrete work whatsoever, on the topic of research, does not amount to possessing of two years" experience unless some material exists before the selection committee to show that the candidate was actively engaged in research work. For the purpose of this case we do not wish to enter into that controversy as to whether the petitioner had in fact done any work on the topic of his Ph.D. and whether the research work disclosed by him to the selection committee was sufficient to hold him as possessing two years" experience of research work.

The more important question that has been raised on behalf of the Ayog is that the proceedings of the selection committee nowhere reflect that the petitioner"s claim of two years" research experience in terms of clause (ii) of the second proviso to the schedule, was duly considered and adjudged by the selection committee for treating him duly qualified. The argument on behalf of the Ayog is that in fact the second proviso of the schedule could not be resorted to, to select and appoint the petitioner because candidates with Ph.D. degree were available but they were deliberately ignored to favour the petitioner with selection and appointment. The attention of the Court was invited to the Chart Annexure R-I which gives the names of the candidates and their educational bio-data, who were considered by the selection committee for selection and appointment. From the aforesaid chart, it is to be found that there were two candidates Madangopal Beohar at Serial No. 8 and Anil Kumar Sharma at Serial No. 10 with Ph.D. degree to their credit. The candidate Anil Kumar Sharma also fulfils other qualifications prescribed of possessing 50 percent and more marks at all levels from higher secondary to post-graduate. The learned counsel for the Ayog submitted that the second proviso of the schedule could be resorted to by the selection committee for considering non Ph.D. candidates only if there were no Ph.D. candidates available or they were not considered suitable by the selection committee.

After giving careful consideration to the submission made by the parties on the relevant entries of the schedule containing the minimum prescribed qualifications for appointment as lecturer in the College, we are of the opinion that the contention of the Ayog is sound and has to be accepted. The relevant portions of

the recommendations of selection committee have been exhibited as Annexure R-I with the petition. The relevant portion of the minutes of the selection committee reads as under:

"Dated February 10, 1985

Minutes of the Meeting of the Selection Committee held on February 10, 1985 at 12.00 noon in the Vice-Chancellor's Chamber, Pachpedi, Jabalpur for the two posts of Lecturers in Commerce at Nav-Yug Arts and Commerce College, Jabalpur.

MEMBERS PRESENT :

1. Dr. A. Awasthi -Chairman

Shri D. P. Kesharwani - Member, Subject Expert

Dr. R. K. Bharti - -do-

Dr. M. C. Chaubey - Member, Governing Body

Dr. M. C. Choubey - Principal and Secretary

Out of 51 candidates called for interview 18 candidates were present. The Committee examined the merits of the candidates appeared for interview and recommended the names of the following candidates found suitable for appointment as per order of merit, given below -

1. Shri Ratan Singh Sharma

Shri Kripa Shankar Jaiswal

Shri Raj Kumar Verma

Shri Rajesh Kumar Jain

Shri Shyam Sunder Agrawal.

Sd/- Sd/- Sd/- Sd/- Sd/-

CHAIRMAN Member Member Member Member and Secretary "

On the basis of the above recommendations the governing body of the College resolved to appoint the petitioner by resolution contained in Annexure-C, which reads as under : -

"NAV-YUG ARTS AND COMMERCE COLLEGE, JABALPUR

Minutes of the meeting of the Nav-Yug College Governing Body held on the 15th April, 1985 at 6.00 P.M. in the Principal's Chamber.

1. Consideration of the panels submitted by the Selection Committee for Commerce and English.

After detailed deliberations over the panel of 5 candidates in merit - order submitted by the selection committee, constituted by the University for the

selection of two Lecturers in Commerce, it was "resolved that Shri Ratan Singh Sharma and Shri Rajesh Kumar Jain of the Panel be appointed as Lecturer (now Asst. Professors) in Commerce on probation for a year but subject to the concurrence of the Uchcha Shiksha Anudan Ayog, Bhopal to these appointments.

Similarly after deliberations over the panel of two candidates in merit order, submitted by the Selection Committee constituted by the University for the Selection of a Lecturer in English, it was "resolved that Ku. Varsha Singh of the panel be appointed as Lecturer (now Asstt. Professor) in English on probation for a year but subject to the concurrence of the Uchcha Shiksha Anudan Ayog, Bhopal to this appointment."

The minutes of the proceedings of the selection committee do not at all reflect that the selection committee considered the candidature of the petitioner as a holder of two years" research experience as laid down in sub-clause (ii) of the second proviso. The minutes also do not disclose that the selection committee considered the Ph.D. candidates who were available, and found them not suitable for the appointment. The argument of the learned counsel for the petitioner on the contents of the minutes of the selection committee is that the selection committee is not required to state the reasons for selection or rejection of particular candidates. In our opinion, the committee constituted for making selection of teachers or lecturers is not required to state reasons for selection or non-selection of candidates, but it is necessary that its proceedings should disclose due application of mind. The minutes of the selection committee do not disclose that its members were alive to the requirement of the rule in the schedule that if Ph.D. candidates are available, they can be rejected only if found unsuitable and non-Ph.D. could be considered only in such eventuality. The proceedings of the selection committee should have also disclosed from its minutes that the committee was conscious of the requirement of the rule that although a candidate does not possess degree or research work of equivalent standard, he must at least possess two years" "research experience". The proceedings of the selection committee in placing the petitioner at the top of the select list did not at all mention that in the opinion of the selection committee, the petitioner"s work after registration for Ph.D. was of a nature which could be considered as fulfilling the minimum prescribed qualifications of his possessing "two years" research experience".

Learned counsel for the Ayog is right in submitting that mere registration for Ph.D. does not amount to research experience unless the candidate is able to place some material before the selection committee to show that he was actively engaged in doing research on the topic selected by him. This requirement of putting on record the relevant statement of facts disclosing due application of mind with due advertence to the rules, in the matter of selection of candidate, is different from stating reasons for selection or non-selection of candidates. The selection proceedings on record (relevant contents of which are quoted above) do not disclose any application of mind on the part of the members of the

selection committee in rejecting the candidates who were holders of Ph.D. degree, on the ground of their unsuitability and selecting the petitioner by assigning him position at the top of the select list. Such a requirement on the part of the selection committee do reflect from its proceedings due application of mind can be read as an implied requirement from the contents of the rule in the schedule itself. In this respect it may be noticed that under the first proviso of the schedule, the selection committee has to form an opinion that the research work of a candidate from his thesis or published work, is of such a high standard as to justify relaxation of other minimum prescribed qualifications with regard to percentage of marks from High Secondary to Post-Graduate levels. The intendment of the first proviso to the schedule, therefore, is that the selection committee should record or disclose its view on the above aspect. Similarly, for the purpose of second proviso, which is under consideration before us, it appears incumbent on the selection committee to disclose from the minutes of its proceedings that the candidates with Ph.D. degree are not found suitable and, therefore, other candidates with no Ph.D. degree were considered. Similarly, for the purpose of sub-clause (i) under second proviso, the selection committee has to disclose from its minutes due application of mind that the research work placed before it was found to be sufficient to hold the candidate eligible for the post.

In our opinion, therefore, the selection and appointment of the petitioner is vitiated because of non-application of mind on the part of the members of the selection committee in rejecting the candidates with Ph.D. degrees and in placing the petitioner at the top of the select list without considering whether he could be held to have possessed two years' research experience on the basis of the information and material furnished to the selection committee. The argument of the learned counsel for the petitioner cannot, therefore, be accepted that the minutes of the proceedings of the selection committee are not required to disclose the relevant facts in the matter of selection or non-selection of the candidates considered by it.

The second point urged on behalf of the petitioner is that the Ayog has no power under the rules to approve or disapprove the appointment of a lecturer in the educational institution and has no right to withhold grant for payment of salary of such a teacher who is appointed, in accordance with the provisions of the Act and the Rules. Our attention was invited to the provisions of the Act and the Recruitment Rules and attempt was made to point out that excepting sending a nominee as an ex-officio member on the selection committee for recruitment of teachers in aided-institutions, the Ayog has no other power or function in the matter of recruitment.

Learned counsel appearing for the Ayog placed reliance on Section 2(e) read with 2(i) of the Adhiniyam in which the terms "Institution" and "teacher" have been defined. Placing special emphasis on the definition of "teacher" u/s 2(i) the argument is that a person does not become a "teacher" to be governed by the

provisions of the Act, unless there is prior approval to his appointment by the authority specified by the State Government. It is pointed out that by a notification issued in terms of Section 2(b) and (i) of the Adhiniyam, the Ayog has been specified as the competent authority for State-aided colleges. Attention of the Court is also invited to the provisions of M. P. Uchcha Shiksha Anudan Ayog Adhiniyam and particularly Section 13(2)(m) and (o) which, among others, prescribe one of the essential functions of the Ayog to maintain standards in higher education by giving grants to educational institutions. Learned counsel for the Ayog also made a reference to the Revised Grant-in-Aid Rules for non-governmental educational institutions in Madhya Pradesh framed on 21-2-1979. Rule 4 of the Grant-in-Aid Rules reads as under :-

"Rule 4. General conditions. - Taking into account the requirement and availability of funds, grants under these rules will be given, to non-Governmental institutions which impart sound and secular instruction. Such grants will be subject to the conditions specified in these rules and also subject to further conditions as may be specified by the State Government from time-to time."

On the basis of the above provisions of the Adhiniyam and the M. P. Uchcha Shiksha Anudan Ayog Adhiniyam and the Revised Grant-in-Aid Rules, the submission on behalf of the Ayog is that since the Ayog makes financial grant for payment of salary to the teachers in aided institutions, it has functions and powers under the aforesaid two enactments and the Grant-in-Aid Rules to recognise or refuse to recognise appointment of teacher to an institution.

On the second question raised before us by the parties, it is enough for us to say that the provisions of the Act and the Recruitment Rules do not constitute the Ayog as a body having power to approve or disapprove the appointment made by an educational institution. The power, if any, by the Ayog, in the matter is derived from the Grant-in-Aid Rules and the executive instructions that may have been issued by the State Government thereunder from time to time. The Ayog is an institution which releases financial grants of the State, to the institutions and, therefore, for releasing the grant or withholding it, it has power and function under the Uchcha Shiksha Anudan Ayog Adhiniyam and the Grant-in-Aid Rules, to recognize an appointment or to refuse to recognize the same. The Ayog, therefore, has only for the above limited purpose; power to release or withhold the financial grant to an institution. The Ayog can claim no power to annul an appointment made by the institution.

The learned counsel for the Ayog is right in submitting that the impugned communications issued by the Ayog refusing to recognize the appointment should be understood in the right perspective to mean that for the purpose of releasing grants for payment of salary to the petitioner, the Ayog has not held the appointment of the petitioner as duly made in accordance with the Rules, so as to entitle the institution to receive the grant for the same. The Ayog has, by the impugned communication neither annulled the appointment of the petitioner

nor is compelling the institution to discontinue his services. All that the Ayog has informed to the institution by the impugned communications is that for the purpose of financial grant, the appointment of the petitioner being contrary to rules, will not be recognised.

An attempt was also made by the learned counsel for the Ayog to support the action of the Ayog in the matter of disapproving the appointment of the petitioner, stating that the advertisement issued for the post itself was not in accordance with the Recruitment Rules and the qualifications prescribed in the schedule thereunder. The argument is that because of the defective advertisement, many candidates who could have been considered in competition to the petitioner were deprived of seeking appointment. In our opinion, it is not necessary for us to decide this point urged on behalf of the Ayog, in view of our decision on the first two questions raised before us.

Consequently the petition has no force and is hereby dismissed, but without any order as to costs. The security amount, if deposited, be refunded to the petitioner.