
(2002) 02 DEL CK 0123
In the Delhi High Court
Case No : L.P.A. No. 553 of 1999

Sh. P.N. Raju

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Citation : (2002) 02 DEL CK 0123

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Anusuya Salwan, for the Appellant; Jayant Bhushan, for respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This LPA is directed against the order of the learned single Judge dated 16th March, 1999. The facts giving rise to the appeal are as follows:-

2. The appellant as well as the respondent No. 4 applied for the post of Assistant Professor (Pharmacy) in the college of Pharmacy, Department and Training of Technical Education, Government of National Capital Territory of Delhi in the pay scale of Rs. 8000-13500. The post was advertised by the UPSC on 25th July, 1998 and the closing date for receiving the applications was 13th August, 1998. The UPSC prescribed the following educational qualification and experience for the post:-

ONE ASSISTANT PROFESSOR (PHARMACY) PHARMACY PHARMACOGNOSY IN COLLEGE OF PHARMACY, DEPARTMENT OF TRAINING & TECHNICAL EDUCATION, GOVERNMENT OF NCT OF DELHI.

QUALIFICATION:

Essential:

1.A: EDUCATIONAL: Master's Degree in Pharmacognosy after obtaining a 1st Class Basic Degree in Pharmacognosy from a recognised University of equivalent.

B.: EXPERIENCE: Eight years" teaching experience as Lecturer at Degree level.

II.A: EDUCATIONAL: Master"s Degree in Pharmacognosy after obtaining 1st Class basic Degree in Pharmacognosy followed by a Doctorate Degree from a recognised University or equivalent published work of High Standard in Pharmacognosy.

B.EXPERIENCE: FIVE Years" experience in teaching at degree level/industry/ research.

NOTE: Candidates from Industry/Profession equivalent to Ph.D/Master"s Degree would also be eligible. DUTIES: To conduct theory and practical classes at Post Graduate and Degree level in the field of Pharmacy specially in the subject of Pharmacognosy. HQ: Delhi."

3. It is not disputed that while the appellant has a Masters Degree, the respondent N. 4 has a Doctorate in pharmacognosy from Jamia Hamdard University. It is contended on behalf of the appellant that respondent No. 4 does not have the requisite experience for the job. On the contrary, the stand of the UPSC, as effected from the counter-affidavit, is that respondent No. 4 not only has the requisite educational qualification, being a Ph.D. in Pharmacognosy, but is also possessed of five years teaching and research experience as per the following details:-

Existing designation (as given by Review Committee Pity scale (as suggested By Review Committee) (Rs.) Revised designation Pay Scale Qualification

Library Semi-Professional Grade I 1320-2040 By promotion

Library and Information 1400-2600 Library & Information Assistant 1600-2660 50% by DR of Graduates

Assistant With B.Lib. 50% by promotion

Senior Library and Information Assistant 1640-2900 Senior Library and Information Assistant 1640-2900 By Promotion

Asstt. Library & Information Officer 2000-3500 Asstt. Lib & Information Officer 2000-3500 50% by DR of PG + B.Lib or B.A. with M. Lib. 50% by promotion

Lib. & Information Officer Grade II 2200-4000 2200-4000

Library &Information. Officer 3000-4500 Lib. & Information Officer Grade I 3000-4500 Promotion

Senior Library & Information Officer 3700-5000 Library & Information Officer 3700-5000 Promotion

Principal Lib. And information Officer/Director 4500-5700 Principal Library & Information Officer 4500-5700 Promotion

5900-6700 Director 5900-6700

7300-7600 Director-General 7300-7600

4. As is clear from the above, the respondent No. 4 has the requisite five years teaching and research experience. It may be noted that in so far as her research experience, on which reliance is placed by the UPSC, is concerned is based on a certificate of work experience issued by Jamia Hamdard University dated 12th February, 1999 in her favor. This certificate reads as follows:-

"TO WHOM IT MAY CONCERN

This is to certify that Ms. Nirmal Sharma had worked as Senior Research Fellow under UGC award of Research Fellowship in Engineering and Technology in the Department of Pharmacognosy and Phyto-chemistry of Jamia Hamdard w.e.f. 01.06.1990 (F.N.) to 19.10.1993 (A.N.)"

5. Learned counsel appearing for the appellant submitted that the research experience was attained by the respondent No. 4 while studying for her Ph.D. and this research experience cannot be included in the experience which was required for the post in question. In support of his submission, learned counsel for the appellant referred us to the letter of the UGC dated 24th September, 1999. The letter reads as follows:-

"Dr. D.K. Majumdar,
Head, Department of Pharmacy,
University of Delhi,
Delhi 110 007.

Sub: JRF in Engineering & Technology-reg.

Sir,

With reference to Sh. P.N. Raju's letter dated 6.9.99 duly endorsed by you on the above subject, I am to clarify the following:-

1. The objective of this scheme is to provide an opportunity to Research Scholars to undertake advanced study and research in Engg. & Technology & Agri. Engg. leading to Ph.D. This cannot be claimed as research experience in addition to Ph.D. claim as educational qualification.

2. The Senior Research Fellowship under the scheme after completing 2 years of Junior Research Fellowship is merely a financial assistance to do research leading to Ph.D. It is not an appointment towards employment. Research Fellows with the consent of the Guide/Head of the department may assist the university/institution in its teaching programmes if called up to do so.

Yours faithfully, Sd/- (SURJIT SINGH) UNDER SECRETARY"

6. The appellant also relied upon another letter of the UGC dated 22nd September, 1999. This letter states as follows:-

"Sh. P.N. RaJ.

B-2, College of Pharmacy,

Campus,

Pushp Vihar,

Sector III,

New Delhi-110 017.

Subject: Research fellowship - tenure - Regarding.

Sir,

I am directed to refer to your letter dated 27.8.99 on the subject cited above and to inform that the UGC has stipulated five years of experience of teaching and/or research, excluding the period spent on obtaining the research degree for the appointment of a candidate to the post of Reader (direct recruitment).

Yours faithfully, Sd/- (Jaswant Kaur) Section Officer"

7. According to the aforesaid letters, it appears that the UGC does not consider the research experience obtained by a candidate while studying for Ph.D. as research experience which is required for the post in question. A reference to the letters of the UGC is misplaced as the advertisement for the post was taken out by the UPSC. Therefore, primacy must be given to its understanding of the criteria. The requirement of research experience laid down in the advertisement has not been confined to the experience gained only after obtaining the Ph.D. degree. If the UPSC considers that the research experience obtained by the respondent No. 4 while studying for Ph.D. can count towards experience required for the job, we can not substitute our judgment for that of the UPSC and come to a contrary finding that the respondent NO. 4 did not have the requisite experience. Accordingly, the submission of the learned counsel for the appellant that the respondent No. 4 did not have the requisite experience is hereby rejected.

8. We also find from a comparison of the qualification of the appellant and that of the respondent No. 4, that while respondent No. 4 has a Ph.D. degree and several research publications to her credit, which fact has been placed on record, the appellant has only a master's degree in the subject. Assuming for the sake of argument that the respondent No. 4 did not have the requisite teaching and research experience and she had submitted the aforesaid experience certificate from Jamia Hamdard after the closing date for receiving the applications, still her selection cannot be assailed as the UPSC has the power to relax the qualifications in case of candidates who are otherwise well qualified.

9. For all these reasons the appeal on merits deserves to be rejected. That apart, the appeal has been filed after a delay of more than 229 days.

10. It may be noted that the appellant had filed the writ petition (hereinafter referred to as "the first writ petition") from which the instant LPA has arisen, sometimes in March 1999. This first writ petition came to be dismissed by the learned single Judge on 16th March, 1999 in limine by means of an oral order. While the learned counsel for the appellant claims that the first writ petition was dismissed as being premature, we find from a reading of the impugned oral order of the learned Single Judge that it was disposed of on merits. The order of the learned single Judge reads as under:-

"16.03.99

Present: Mr. Rajinder Singh for the petitioner.

CW 1495/99:

The petitioner applied pursuant to the advertisement made by the Union Public Service Commission for being considered for the post of Assistant Professor. The petitioner admits that he was interviewed and his case was considered. His grievance is that the Union Public Service Commission had selected the 4th respondent Dr. Mrs. Nirmal Sharma and according to the petitioner though she holds Ph.D. degree she is not fully qualified as per the terms mentioned in the advertisement.

The Union Public Service Commission had considered the case of the petitioner and also the case of the 4th respondent. The petitioner does not hold Ph.D. degree. When the case of the petitioner had been considered and the Union Public Service Commission had selected the 4th respondent who holds Ph.D. degree, the petitioner cannot seek to challenge selection made by the Union Public Service Commission.

I have gone through the petition and I am not able to persuade myself on the averments made in the writ petition to admit the writ petition.

Accordingly, the writ petition stands dismissed.

Sd/-

March 16, 1999 Judge."

11. In case the appellant felt aggrieved of the above order of the learned Single Judge he should have filed an appeal immediately or at least within the period of limitation. The appellant, however, did not adopt that course of action and filed a second writ petition on 22nd March, 1999 challenging the selection of respondent No. 4 by the UPSC. It has been pointed out by the learned counsel for the UPSC that in the counter affidavit to the second writ petition it had been specifically brought out that the writ petition was dismissed on merits and even the above order dismissing the writ petition was reproduced in the counter-affidavit itself. Learned counsel for the appellant was not able to controvert the aforesaid factual position in view of the counter-affidavit of the respondent-UPSC, a copy of which has been placed on record. In view of the fact that the counter affidavit

mentioned the dismissal of the writ petition on merits there should not have been any doubt left in the mind of the appellant that the first writ petition was not dismissed on the ground of the same being premature. The counter affidavit was filed by the U.P.S.C. sometime in August 1999. Even then the appellant delayed the filing of the appeal against the order passed by the learned Single Judge in the first writ petition. The appellant withdrew the second writ petition only on 16th November, 1999 and filed the instant appeal on 1st December, 1999. We find that there was no justification for the delay which was occasioned in the filing of the instant letters patent appeal. The appeal is hopelessly barred by time and we do not find any ground to condone the delay. Accordingly the appeal fails and is hereby dismissed.