

(2016) 01 CAL CK 0082
In the Calcutta High Court
Case No : W.P. No. 11293 (W) of 2005

Sk. Alaul Hoque Mondal

APPELLANT

Vs

Viswa Bharati University and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

University Grants Commission Act, 1956 — Section 20, Section 26

Citation : (2016) LIC 691 : (2016) 4 WBLR 285

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : B.B. Sarkar, Iti Dutta, Ratna Dasgupta and P. Jain, for the Appellant;
Partha Sarathi Bose and Sankar Kumar Samanta, for the Respondent

Final Decision : Allowed

Judgement

Shivakant Prasad, J.—1. The writ petitioner holding an equivalent post of Assistant Registrar in Viswa Bharati University since 1st November, 1998 applied for the post of Deputy Registrar on 12.7.2004 pursuant to an advertisement dated 13th June, 2004 published on behalf of the respondent No. 1/Viswa Bharati University in daily newspaper "The Statesman" for a number of posts including the post of Deputy Registrar, being two in number which clearly stipulated that the eligibility criteria for the said post of Deputy Registrar was a post-graduate degree with 55% marks and either a five years experience as a lecturer in a college with experience in educational-administrative or comparable experience in research establishment and/or institution of higher education, or five years administrative experience as Assistant Registrar or an equivalent post in the scale of pay of Rs. 8000-275-13500/-. The said advertisement also stated that age of the applicants for the designated posts should be "ordinarily" below 40 years and that condition was not applicable for those applying for promotion from within the University system and was not a condition precedent for purposes of the application in any case. It is contended that the said advertisement was in pursuance of a notification issued by the University Grants

Commission dated 24th December, 1998 which generally allowed the provision of relaxation of the above mentioned conditions only with prior approval of the University Grants Commission and that the minimum academic requirement of 55 % marks at the master's level should not be insisted upon for those holding the post of Deputy Registrar amongst others, being existing incumbents who are already in the University system.

2. It is further contended on behalf of the petitioner that the respondents have appointed Sri Prasanta Chowdhury who ranked first in one of the position of Deputy Registrar who was to retire in the year 2007 whereas the petitioner had ranked second in the application process.

3. According to the petitioner, instead of appointing him, the respondents' authority placed Sri Prasanta Chowdhury additional charge of the second post of Deputy Registrar in addition to his own duty as Deputy Registrar by office orders dated 28th February, 2005 and 10th April, 2005.

4. The petitioner made representation through proper channel dated 11th March, 2005 protesting the actions of the respondents and demanding justice as he was apprehensive that some other person may be appointed to the said post of Deputy Registrar in future depriving the petitioner, even though the petitioner had ranked second position for the said post and he had a legal right and legitimate expectation for the appointment to the said post. But of no effect.

5. Ergo, the petitioner on being aggrieved preferred the instant writ on the grounds, inter-alia, that respondents have violated the principles of natural justice by extraneous consideration, bias and mala fide for not having appointed the petitioner to the post of Deputy Registrar on promotion. Accordingly, the writ petitioner prayed for writ in the nature of mandamus restraining the respondents from allowing any other person to carry out the functions of the vacant post of Deputy Registrar in the University and/or to appoint any other person to the said post of Deputy Registrar.

6. Per contra, to counter the case of the writ petitioner, learned Counsel for the respondents has submitted at the outset that the petitioner has suppressed the materials facts distorting the actual facts inasmuch as a vital document being a communication of University Grants Commission to the Vice Chancellor vide its letter dated 27th November, 2001, which was written in continuation to the UGC notification dated 24.12.1998 and regulation dated 04.4.2000 regarding revision of pay scale and minimum qualification of teacher which has not been annexed with the writ petition. It is further pointed out that University Grants Commission is a necessary party who has not been made party to the instant petition.

7. It is also contended that the petitioner does not fulfil the criteria laid down in the communication dated 27th February, 2001 of the University Grants Commission to the respondent No. 2 which was in continuation of UGC notification dated 24.12.1998 pursuant to which the said advertisement was published.

8. Learned Counsel for the respondents further submitted that the said notification clearly spells out the minimum academic requirement of 55% marks advertised for master's level should not be insisted upon for those holding the post of Deputy Registrar amongst others being incumbents who are already in the University system, yet the said communication dated 27th November, 2001 made it quite clear that the minimum requirement in the case of existing incumbents who are already in the University system shall be at least 50% marks in the master's level.

9. It would appear from the application form for employment applied by the petitioner, as depicted from annexure P-4 that the petitioner Sk. Alaul Hoque Mondal applied for the post of Deputy Registrar and equivalent post and his educational qualification in Master of Arts (Pol. Science) was disclosed by the petitioner was 43% marks obtained in percentage by the petitioner from University of Burdwan whereas as per University Grants Commission communication vide No. F. 1-13/99 (PS) Pt. File dated 27th November, 2001 addressed to Vice Chancellor of Viswa Bharati, Santiniketan annexure R/1 depicts that UGC in continuation of its notification dated 24.12.1998 and Regulation No. F.3-1/2000 (PS) dated 04.4.2000 regarding revision of pay scale and minimum qualification of teacher it was informed that the minimum requirement of 55% marks at master's level shall not be insisted upon for Principals, Professor, Readers, Registrars, Deputy Registrars, Librarians, Deputy Librarian, Directors of Physical Education, Deputy Director of Physical Education for the existing incumbents who are already in the University system. However, it is well depicted therefrom that the minimum requirement in their case shall be at least 50% of marks in master's level. Since the writ petitioner had obtained 43% marks in M.A., he was not considered for promotion to the post of Deputy Registrar.

10. It would appear from communication to Vice Chancellor, Viswa Bharati, Santiniketan dated 27th November, 2001 that minimum requirement of 55% marks at master's level shall not be insisted upon for Principals, Professor, Readers, Registrars, Deputy Registrars, Librarians, Deputy Librarian, Directors of Physical Education, Deputy Director of Physical Education for the existing incumbents who are already in the University system. But the minimum requirement in their case shall be at least 50% of marks, therefore, the submission made on behalf of the petitioner that he has/had reasonable and legitimate expectation to be appointed to the said post in accordance with the advertisement of the respondents cannot be considered.

11. Case of P. Suseela and Ors. v. University Grant Commission and Anrs., Reported in , (2015) 8 SC cases 129 has been pressed in service which relates to Directions dated 12.11.2008 and 30.3.2010 issued by Central Government inter alia prescribing NET/SLET/SET as eligibility criteria for appointment to teaching positions of Lecturer/Asstt. Professor in Universities/Colleges/Institutions and policy directions relating to national purposes inasmuch as it was felt that a

common uniform nationwide test should be a minimum eligibility condition for appointment of Lecturer/Asstt. Professors in higher educational institutions, since M. Phil/PhD degrees granted by different universities had different standards of excellence--Hence, 2009/2010 UGC Regulations made under Section 26 of UGC Act prescribing NET/SLET/SET as minimum eligibility condition for appointment of Lecturer/Asstt. Professors in higher educational institutions wherein conformity with direction issued by Central Government under Section 20 of UGC Act and thus, valid.

12. The case in hand, though distinguishable from the facts and circumstances of the above cited case, nevertheless, the principle that right to be considered for appointment is always subject to minimum eligibility condition and right to be considered for appointment is not a vested right and the doctrine of legitimate expectation must always yield larger public interest.

13. The learned Counsel for the respondents has also referred to a case of Madras Institute of Development Studies and Anr. v. Dr. K. Shivasubramonium and other, reported in , AIR 2015 SC 3643 in support of his case. This related to a decision of Academic Authorities about suitability of a candidate to be appointed as Associate Professor in a research institute. It was held that such decision of Academic Authorities about suitability of a candidate cannot normally be examined by High Court under its writ jurisdiction.

14. Having given an anxious consideration to the facts and circumstances of the case as discussed above, I am of the opinion and accordingly hold that the writ petitioner although had applied for the post of Deputy Registrar as existing incumbent in the system on the understanding that he had already worked in the University as Asstt. Registrar for five years or more and further that there was a clause for relaxation of recruitment of academic qualification in Master's level, he participated in the selection process, nevertheless, by taking part in the process of selection he cannot be said to have a legal right to be considered for the post of Deputy Registrar as his case was not considered because he could not satisfy the requirement of minimum qualification of 50% in Master's level.

15. Therefore, he cannot be said to have a reasonable legitimate expectation to be considered for the said post in accordance with the advertisement of the respondents.

16. Accordingly, the writ petition is dismissed, however, without any order as to costs. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.