
(1997) 04 AHC CK 0149
In the Allahabad High Court
Case No : C.M.W.P. No. 1101 of 1988

Smt. Rukma Rawat

APPELLANT

Vs

Chancellor, Garhwal University and Others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 68

Citation : (1997) 04 AHC CK 0149

Hon'ble Judges : K.D. Shahi, J;D.S. Sinha, J

Bench : Division Bench

Advocate : R.N. Bhalla, for the Appellant; V.S. Shukla, L.P. Naithani and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.D. Shahi, J.—By this petition, Petitioner Smt. Rukma Rawat has challenged the order dated 7th January, 1988, passed by the Chancellor, Garhwal University, Lucknow, and has prayed for issue of a writ in the nature of certiorari quashing the impugned order dated 7th January, 1988. The further prayer is to issue a writ in the nature of mandamus commanding the Respondents not to interfere with the Petitioner's functioning as a Lecturer in Sociology, Swami Tirth Constituent College of the Garhwal University, Tehri, in pursuance of her appointment letter dated 8.5.1987.

2. Briefly stated the facts are that an advertisement was got published in a daily newspaper Times of India" dated 23rd January, 1987, inviting applications for appointment of a Lecturer in Sociology in Garhwal University. The qualifications indicated in the said advertisement were in accordance with Statute 11.01 (5), 11.01 (6) and 11.01 (7) Gha of the Garhwal University, a copy whereof is Annexure 4 to the writ petition. A copy of the advertisement has also been annexed as Annexure 5 to the writ petition. The Petitioner applied for the said post along with other candidates. The Petitioner received the call letter and appeared in the interview before the Selection Committee consisting of five

members, namely, (1) Sri S. K. Srivastava, Head of the Department of Sociology, Banaras Hindu University, (2) Professor Sharad Kumar Singh, Head of the Department of Sociology, Kashi Vidyapith, Varanasi, (3) the Vice Chancellor, Garhwal University, Srinagar, (4) Dr. D.P.S. Khanna, Head of the Department of Sociology, Garhwal University and (5) Dr. P. S. Rawat, Principal Swami Rama Tirth Constituent College, Tehri. Incidentally, the last member Dr. P. S. Rawat was the husband of the Petitioner. He did not participate in the proceedings.

3. After the interview was over, the selection committee prepared a select list in which the Petitioner was placed at serial No. 1, Km. Kiran Dhaunidiyal was placed at serial No. 2 and Smt. Jyoti Gairola, Respondent No. 4 was placed at serial No. 3. It was recommended that the Petitioner may be appointed as Lecturer in Sociology. The said recommendation was sent to the Executive Council of Garhwal University. The Garhwal University approved the appointment of the Petitioner as Lecturer in Sociology. She received the appointment letter (Annexure 8 to the writ petition) and Joined as Lecturer in Sociology at Garhwal University on 8.5.1987. Smt. Gairola, Respondent No. 4, filed a petition before the Chancellor u/s 68 of the Universities Act. The Petitioner received the intimation by letter dated 7th September, 1987, to submit her reply to the petition filed by Smt. Jyoti Gairola. She submitted her reply on 5/6.10.1987. She also filed a supplementary reply on 24.9.1987. It was alleged that Smt. Jyoti Gairola did not possess Ph.D. Degree in Sociology at the time of interview, inasmuch as her Ph.D. Degree was declared on 7.5.1987 and as such she could not claim benefit of subsequent qualification. The Petitioner submitted before the Chancellor that she had research experience of four years and she was continuously working for Ph.D. Degree. The duly constituted selection committee looked into the educational qualification and found her suitable for appointment as Lecturer in Sociology. The Petitioner further submitted that in any view of the matter her case stood on higher footing and she was a better qualified candidate than Smt. Jyoti Gairola. The Petitioner got published four papers of Sociology before appearing in the interview, but the Chancellor on incorrect statement of facts given by the Vice Chancellor held that the Petitioner was not a research scholar. Consequently, he set aside the order of appointment of the Petitioner by the order dated 7th January, 1988, a copy whereof is Annexure 18 to the writ petition, and directed that the post shall be readvertised and be filled up in accordance with law.

4. Shri P. Gairola husband of Smt. Jyoti Gairola filed a counter-affidavit on her behalf and refuting the allegations made in the writ petition. On behalf of Respondent No. 1, the Chancellor, Garhwal University, one Sri Naveen Chandra filed counter-affidavit and alleged that the minimum qualification for the post of Lecturer in Sociology is Ph.D. Degree and the Petitioner did not possess the said degree. She had not acquired research experience and there was no finding of the selection committee that the Petitioner was being granted relaxation of the said degree. Thus, the Petitioner was not qualified for the said post. It was further alleged that the Vice Chancellor, Garhwal University, Respondent No. 4,

informed the Chancellor that the selection committee did not grant relaxation in respect of minimum qualification for the said post. The letter of the Vice Chancellor dated 16/17.11.1987 has been filed as Annexure CA1 to the counter-affidavit. It was further reiterated that the selection committee did not disclose whether or not it applied its mind to this aspect of the matter and granted relaxation in respect of any other candidate. There is no finding much less positive finding of the selection committee and in its absence it cannot be presumed that the selection committee considered the matter of relaxation of minimum qualification while recommending the name of the Petitioner for the aforesaid post.

5. On behalf of Respondent No. 2, the Vice Chancellor, Garhwal University. Sri Lalit Mohan filed counter-affidavit and in paragraph 15 whereof it was alleged that although the academic record of Smt. Rukma Rawat was better than Smt. Jyoti Gairola, but the requirement of holding Ph. D. Degree/research work of two years was not relaxed by the selection committee. Copy of the proceedings of the selection committee is Annexure CA4 to the counter-affidavit.

6. The name of Respondent No. 3, Dr. P. S. Rawat, husband of the Petitioner has since been deleted from the array of the Respondents.

7. We have heard Sri. R. N. Bhalla, learned Counsel appearing for the Petitioner and Sri. L.P. Naithani, learned Counsel appearing for the Garhwal University, Respondent No. 2, at length. It was admitted by both the parties that the Petitioner did not possess the requisite qualification on the date of the interview. It was also admitted that other candidates including Smt. Jyoti Gairola also did not possess the minimum qualification on the date of interview. It was further admitted that the Petitioner had got better qualification than that of Smt. Jyoti Gairola at the time of the interview. The moot question in the present case is whether the Selection Committee has relaxed the minimum qualification viz., Ph. D. Degree, at the time of interview.

8. The statute of the Garhwal University in respect of the qualification of a Lecturer reads as under:

11.01(1) In the case of the Faculty of Arts (except the Departments of Music and Drawing and Painting) and the Faculties of Commerce and Science following shall be the minimum qualifications for the post of a Lecturer in the University, namely:

(a) a doctorate degree or research work of an equally high standard in a relevant subject; and

(b) consistently good academic record with first or high second class Masters Degree, or an equivalent degree of a foreign University in a relevant subject.

(2) ...

(3) ...

(4) ...

(5) If the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in Subclause (b) of Clause (1), or Sub-clause (b) of Clause (3), as the case may be.

9. The advertisement (Annexure 5 to the writ petition) which was made in accordance with the Statute as under:

A doctorate degree or research work of an equally high standard in a relevant subject and (ii) consistently good academic record with first or high second class Master's degree or an equivalent degree of Indian/Foreign University in relevant subject. A candidate having obtained either in average of 55% marks in the two examinations prior to Master's degree that is to say Intermediate and Bachelor's degree examinations (irrespective of the marks obtained in any of the two examinations) or 50% marks in each of the examinations separately is said to have good academic record. (iii) if the selection committee is of the view that the research work of a candidate as evident either from his published work is of very high standard it may relax any of the qualifications prescribed in Clause (i).

If a candidate possessing a qualification prescribed in (i) above is not available or is not considered suitable person possessing a consistently good academic record and two years research experience may be appointed on the condition that he will attain the prescribed qualification (namely Doctorate) within a period of Five years from the date of his appointment. Failing which he shall not be able to earn further increments until he fulfils the requirements.

10. From a bare reading of the Statute as well as the relevant advertisement (Annexure 5 to the petition), it is clear that (i) the minimum qualification is doctorate degree or research work of an equally high standard in the relevant subject and (ii) consistently good academic record. There is a relaxation clause which envisages that if the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in Sub-clause (a) or (b) of Clause (1) of Statute 11.01. Thus, the Selection Committee may relax the prescribed qualifications of a doctorate degree or research work if it is of the opinion that the research work is of very high standard.

11. In this particular case, the Petitioner did not possess the doctorate degree on the date of interview and still she was selected for the post of Lecturer in Sociology, but the Chancellor cancelled her selection. We are not concerned here whether the selection committee was justified in selecting the Petitioner. We are concerned only with the findings of the Chancellor and the order passed by him which is impugned in the instant writ petition. Admittedly, the Petitioner did not possess Ph. D. Degree on the date of interview and the proceedings of the selection committee do not speak of relaxation of the qualification as contained in Clause (i) of the advertisement. In one line recommendation the selection

committee prepared the panel with the following words:

Panel of names of candidates found suitable for appointment is as below in order of merit:

(i) Smt. Rukma Rawat,

(ii) Km. Kiran Dhaundhiyal,

(iii) Smt. Jyoti Gairola.

12. There is absolutely no finding that the requisite qualification of any of the three candidates has been relaxed. There Is also no finding that the research work of any of the candidates is of very high standard.

13. It was argued by the learned Counsel for the Petitioner that since the selection of the Petitioner was made and she was given appointment, it shall be deemed that her minimum qualification was relaxed. In our view, there cannot be a case of deemed or presumed relaxation. The Statute specifically provides that there should be a finding that the work of the candidate concerned is of very high standard. No such finding has been recorded by the selection committee in respect of the Petitioner. Any thing can be presumed to be of a normal standard, but unless there is a finding it cannot be presumed to be below standard or high standard and in this case, there was absolutely no finding recorded by the selection committee.

14. Our attention was drawn to the letter of Sri Sharad Kumar Singh (S. K. Singh) one of the members of the selection committee dated 16th January, 1988 (Annexure 19 to the writ petition) addressed to Smt. Rukma Rawat, the Petitioner. wherein he has mentioned that the Petitioner has been selected as Lecturer in Sociology by relaxing the requisite qualification. Shri Singh further wrote that "I think by mistake the relaxation was not recorded in the recommendations of the selection committee".

15. Similarly, our attention was also drawn to the personal letter of the Vice Chancellor, Professor H. H. A. Baurai, dated 5th February, 1988 addressed to the Petitioner in reply to her letter dated 26th January, 1988, wherein Sri Baurai informed the Petitioner that regarding relaxation of her qualification, his contention was only that since there was no recording of the word "relaxation", hence it was not given. He, however, agreed that the performance of the Petitioner was best and she was the best candidate among all the candidates.

16. Firstly, these two letters cannot be read as letter of relaxation. Secondly, the members of the selection committee ceased to be members and became functus officio by the time these letters were written. They have got no business to write personal letters subsequently to the candidates. The question was not of subjective satisfaction of the members of the selection committee but it has got to be recorded in the proceedings of the selection committee. These letters are only private communications to the Petitioner and have no bearing on the

proceedings of the selection committee. As a matter of fact, these members exceeded their authorities by writing letters to the Petitioner after the selection proceedings had come to an end in order to justify the selection of the Petitioner. They had not satisfied the requirements of the Act or the Statute. Even otherwise also, the Vice Chancellor was of the view that the matter of relaxation of minimum qualification of the Petitioner should have been recorded in the proceedings of the selection committee and that is why he mentioned this fact specifically in the report submitted to the Chancellor. This is clear from the counter-affidavit of Sri Lalit Mohan. The Chancellor has also specifically mentioned in his order that the Garhwal University in its comments dated 16/17.11.1987 mentioned that the selected candidate Smt. Rukma Rawat was not enrolled for Ph. D. Degree and that the selection committee did not relax the minimum qualification prescribed for the said post. This reply of the University has been sent under the signature of the Vice Chancellor. Sri. H. H. A. Baurai. Thus, in his comments, the Vice Chancellor has specifically admitted that the requisite qualification of the Petitioner was not relaxed by the selection committee. His subsequent letter dated 5.2.1988 addressed to the Petitioner in that context is very ambiguous and cannot be read to be a letter showing relaxation.

17. The net result is that there was nothing in writing in the proceedings of the selection committee that the minimum qualification of the Petitioner had been relaxed or her research work was of high standard. In our opinion, there cannot be deemed or presumed relaxation. If the Act or Statute requires any act to be done, it must be done in the manner prescribed under the Act or the Statute. Its omission will not lead to a presumption that it had been done. To the contrary, it may lead to the presumption that the act required to be done has not been done.

18. Our attention was drawn to a Division Bench decision rendered in the case of Smt. Rekha Joshi v. Dr. Radhey Shyam and Ors. 1984 UPLBEC 706. This decision is of no help to the Petitioner rather it is against the Petitioner. The candidate in the aforesaid case did not possess the requisite qualifications as required by the Statute. The selection committee relaxed the qualification but did not use the expression "very high standard". The selection committee in that case recorded the finding of relaxation but did not give detailed reasons and the relaxation granted by the selection committee was challenged before the Court on the ground that the reasons of granting relaxation had not been recorded. The Court held that the selection committee was not writing a judgment instead, it was submitting its recommendations to the Executive Council. The Statutes do not require any reason for granting relaxation in respect of requisite qualification by the selection committee. But even if the reasons are necessary to be recorded, the selection committee had recorded reasons in granting relaxation vide Para 9 of the judgment. But in the present case, the relaxation has not at all been granted by the selection committee.

19. Learned Counsel for the Petitioner submitted that relaxation shall be

presumed to have been granted by the selection committee in the case of the Petitioner, inasmuch as the Petitioner was appointed as Lecturer in Sociology on the recommendation of the selection committee.

20. This Court is not inclined to scrutinise the selection but to see whether the order of the Chancellor is justified in the facts and circumstances enumerated above. No perversity in the finding of the Chancellor could be pointed out by the learned Counsel appearing for the Petitioner rather the Chancellor was fully Justified in recording a finding that the requisite qualification has not been relaxed by the selection committee. Thus, the order passed by the Chancellor does not suffer from any legal Infirmary.

21. In view of what has been discussed above, the writ petition must fall because the finding of the Chancellor is perfectly correct and Justified.

22. As a last resort, it was argued by the learned Counsel for the Petitioner that since the Petitioner was given appointment to the post of Lecturer in Sociology and she has been continuing in service on the basis of stay order dated 20.1.1988 granted by this Court, the dismissal of the writ petition may be harsh and may ruin the career of the Petitioner.

23. The duty of the Court is to administer the law. If any particular Act, Statute or Provision of law is harsh, it is up to the Legislature to look into it. In any case, mandatory provisions of law cannot be brushed aside to give moral justice to any particular party. Even otherwise, the Petitioner is the author of her own destiny. It is said that the Petitioner has obtained her Ph. D. Degree. The Chancellor has not recorded any finding that no selection to the post of Lecturer in Sociology shall be made at all rather he has kept the selection open and only directed the University to readvertise the post and to make fresh selection. Had the Petitioner not filed this petition, it was open to her to have got herself selected again by appearing in the interview if she was possessed of the requisite qualification. Merely because the Petitioner has been in service by virtue of the stay order for about nine years, that will not Justify her selection and make her selection valid, which was invalid at its very inception.

24. In the result, the writ petition fails and is accordingly dismissed. The stay order dated 20.1.1988 shall stand discharged. However, there shall be no order as to costs.