

(2011) 01 SHI CK 0109
In the High Court Of Himachal Pradesh
Case No : CWP No. 6479 of 2011-G

Surender Sharma, Ajay Kumar Attri and Vishal Sood	APPELLANT
Vs	
Himachal Pradesh University	RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Himachal Pradesh University Act, 1970 — Section 34
Himachal Pradesh University First Ordinance, 1973 — Ordinance 35.11, Ordinance 35.7

Citation : (2011) 01 SHI CK 0109

Hon'ble Judges : Kurian Joseph, C.J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Respondent-University issued an advertisement bearing No. 3/2006 for filling up vacant posts in Post Graduate Centre, H.P. University and ICDEOL, H.P. University. Thereafter second advertisement bearing No. 2/2008 was issued. The last date of receipt of application was 15.1.2009. It was issued on 11.12.2008. However, no action was taken on advertisement No. 3 of 2006 and advertisement No. 2 of 2008.

2. Thereafter, third advertisement bearing No. 1/2010 was issued on 9.4.2010. The last date of receipt of applications was 12.5.2010. According to advertisement dated 9.4.2010, one post of Assistant Professor in the subject of Education was to be filled up in Post Graduate Centre, H.P. University, Shimla and seven posts of Assistant Professors were to be filled up in ICDEOL in the subject of Education. The addendum was issued by the respondent-University on 9.7.2010 on the basis of new guidelines issued by the University Grants Commission on 28.6.2010. The interviews were held on 23/24.9.2010 in sequel to advertisement No. 1/2010. Petitioners and similarly situate persons, after screening, were interviewed by the duly constituted Selection Committee. The appointments were not made. Respondent-University on its own wisdom without

completing selection process pursuant to advertisement No. 1/2010, issued another advertisement No. 3/2010 on 17.11.2010. The posts remained the same. The last date of receipt of applications was 20.12.2010. Respondent-University on its own wisdom again issued 5th advertisement bearing No. 3 of 2011 for filling up the posts. The last date of receipt of applications was 25.11.2011.

3. Mr. Ajay Mohan Goel, Advocate, appearing on behalf of the petitioners, has strenuously argued that once the process has been commenced vide advertisement No. 1/2010, which led to interviews of the petitioners, respondent-University was bound to appoint the petitioners and similarly situate persons, whose names have been recommended by the Selection Committee, strictly as per the Himachal Pradesh University Act, 1970, Statute and the Ordinances framed thereunder. He then argued that the issuance of repeated advertisements by the respondent-University is arbitrary and unreasonable.

4. Mr. B.C. Negi has vehemently argued that it is for the University to fill up or not to fill up the posts. He then argued that the Executive Council of the University has taken a decision that the posts which are not filled up within one year should be re-advertised.

5. We have heard the learned counsel for the parties and have perused the pleadings carefully.

6. Section 34 of the Himachal Pradesh University Act, 1970 (hereinafter referred to as "Act" for convenience sake) provides that there shall be Selection Committees for the appointment of teachers and other employees of the University. The constitution, powers and functions of the Selection Committees and the procedures to be followed in making appointments shall be such as may be prescribed by the Statutes. Statute 17 of the First Statutes of the Himachal Pradesh University provides that there shall be a Selection Committee for making recommendations to the Executive Council for appointment to the posts of Professors, Readers, Lecturers etc. and every Selection Committee shall consist of the Vice-Chancellor who will be the Chairman and in addition the Selection Committee for making recommendations for appointment to a post specified in column 1 of the Table shall have as its members the persons specified in the corresponding entry in Column 2 of the said Table. According to the First Ordinances of respondent-University, teachers of the University are included in category "A". Ordinance 35.7 provides that the competent authority for appointment, suspension, removal from office, fixing of salary, control, or any other kind of matter of categories "A" and "B" shall be the Executive Council. Ordinance 35.11 provides that the appointment of all categories of employees shall be made by the competent authority referred to in Ordinance 35.7 on the recommendation of Selection Committees appointed by the competent authority. The posts are required to be advertised belonging to categories "A" or "B" three weeks in advance, in at least one leading daily newspaper. In the case of recruitment to posts in categories "A" and "B" the applications are required to be

screened by the Vice-Chancellor or by a person or persons nominated by him in order to prepare a list of suitable candidates for consideration by the Selection Committee. According to Ordinance 35.11 all the decisions of the Selection Committee shall be by majority of votes and if the Selection Committee is of the opinion that none of the candidate is suitable, the post is to be re-advertised and in the case of appointments to posts in category "A" the Vice-Chancellor is required to be requested to suggest some other names. The Selection Committee is required to draw up a panel of the names of the selected candidates in order of merit. Such panel shall remain in force for a period of one year and appointments shall be made out of the panel strictly in order of merit. This is the scheme under which the teachers of the respondent-University are to be appointed.

7. It is evident from the above mentioned Act, Statute and Ordinances framed thereunder that the complete procedure was adopted by the University whereby advertisement No. 1/2010 was issued on 9.4.2010. Petitioners and similarly situate persons submitted their applications and after they were duly screened, they were interviewed by a duly constituted Selection Committee on 23rd and 24th September 2010. In order to ensure whether the Selection Committee has made any recommendations or not, we had asked the respondent-University to produce the entire record. The entire record was produced before us of all the categories, i.e. general and reserve.

8. As far as general category is concerned, four candidates have already been recommended by the Selection Committee in its recommendation made on 23rd and 24th September, 2010. The Selection Committee has recommended the name of Scheduled Caste candidate also for ICDEOL for the post of Assistant Professor. The Selection Committee has not found any candidate suitable either in O.B.C. category or Scheduled Tribe category for ICDEOL. Thus, the Selection Committee has only made recommendations of five candidates, i.e. four general category and one scheduled caste category, particularly since the post lying vacant since quite long has not been abolished.

9. We are of the considered view that once the selection process was commenced on the basis of advertisement and the Selection Committee interviewed the candidates, the appointments were required to be made as per the provisions of the Act, Statute and Ordinances framed thereunder.

10. Mr. B.C. Negi has submitted that the Executive Council has taken a decision to re-advertise the posts if the selection process is not complete within one year. This decision has not been placed on record. Submission of Mr. B.C. Negi is not supported by the Act, Statute and Ordinances framed thereunder.

11. There is a detailed procedure under which the vacant posts are to be advertised, Selection Committees are to be constituted, candidates are to be short listed and for making recommendations under the Act, Statute and Ordinances framed thereunder. Mr. B.C. Negi has failed to draw the attention of

the Court to any of the provisions of the Act, Statute and Ordinances framed thereunder, under which once the process commenced can be scuttled midway. We fail to understand why the respondent-University has been issuing repeated advertisement for filling up the same posts without realizing the difficulties faced by the students of Post-Graduate Centre and ICDEOL. It is also borne out from the recommendations made by the Selection Committee that the recommendations made by the Union Grants Commission on 23.6.2010 were also taken into consideration while recommending the names of the candidates in the interviews held on 23rd and 24th September, 2010. Respondent-University does not enjoin any arbitrary discretion to fill up the posts in question. The decision to fill up or not to fill up the posts is to be based on cogent and convincing reasons. There are no reasons assigned why the posts have been re-advertised repeatedly and the process initiated vide advertisement No. 1/2010 was not completed despite the recommendations made by a duly constituted Selection Committee to the posts of Assistant Professors. The decisions of the respondent-University are required to be taken by it strictly in accordance with the Act, Statute and Ordinances framed thereunder. The decisions of the University must promote larger public interest of the students' community by making endeavour to fill up the teaching posts immediately. In the case in hand, as noticed above, five advertisements have been issued till 2010-2011 without completing the entire selection process. The action of the respondent not to complete the entire selection process, as per advertisement No. 1/2010 dated 9.4.2010, is wholly arbitrary and unreasonable, thus, violative of Articles 14 and 16 of the Constitution of India.

12. It is evident from the plain reading of Ordinance 35.11 that it is only when none of the candidate is found suitable the post is to be re-advertised. In the instant case, the recommendations have already been made, as noticed above. According to these recommendations none of the candidate either from O.B.C. or S.T. category was found suitable.

13. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Respondent-University is directed to place the recommendations of the Selection Committee dated 23rd and 24th September, 2010 before the Executive Council within a period of four weeks from today and thereafter to make appointments. The respondent is further directed to fill up the remaining unfilled posts within a period of three months from today. The recommendations of the Selection Committee produced are returned to Mr. B.C. Negi, learned counsel for the respondent-University in sealed covers for its safe custody. Pending application(s), if any, also stands disposed of. No costs.