
(2014) 07 DEL CK 0035

In the Delhi High Court

Case No : WP(C) No. 5162/2013, CM Nos. 11608/2013, 14915/2013, 14916/2013 and 14917/2013

Veena Gaur

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 212 DLT 695 : (2014) 3 ESC 1484

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Ankit Jain, Advocate for the Appellant; Mohinder J.S. Rupal, Barun Kumar Sinha, Pratibha Sinha, Aayush Raj and Kameshwar Singh, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.—The four petitioners, before me are aggrieved by the fact that even though they are eligible and had worked as Assistant Professors in the Department of Buddhists Studies for several years; albeit on ad-hoc basis, they were not considered for appointment to the said post against an advertisement issued in that behalf.

1.1. The sole ground on which the petitioners were denied an interview call pursuant to the advertisement dated 11.01.2012 taken out by respondent no. 1 (in short the University of Delhi) for the post of Assistant Professor was that, they did not secure 50% marks at the graduation level.

1.2. Undeniably, the petitioners have secured higher qualifications including a Ph.D in Buddhist Studies, which is the Department qua which they had made their applications. The fact that petitioners had worked in an ad-hoc capacity in the post of Assistant Professors, according to them, under the extant rules, gave them a right of preference while short-listing candidates for the interview which, rule was ignored. The respondents, quite obviously, have taken the stand that

the challenge laid to their actions is not sustainable. Whether, the petitioners, are able to sustain their challenge or not, will be examined, as I go along with my discussion.

1.3. Pertinently, the challenge to the University of Delhi's action is laid on several counts. Before I venture forth qua the grounds of challenge, let me briefly, spell out the broad facts, to the extent necessary, to appreciate the issues, raised in the instant writ petition:-

2. First and foremost, let me touch upon the qualifications of each of the petitioners to the extent they are relevant, as the curriculum vitae, appended to the writ petition otherwise is, quite exhaustive.

Brief Resume of Qualifications acquired by Petitioners

2.1. Petitioner no. 1 is a Ph.D in Buddhist Studies, the title of her Ph.D was "Buddhist Doctrine in Sanskrit Mahakavyas (till 400 A.D.)". She passed her M.Phil in Buddhist Studies in first division, and also acquired a Masters degree in Sanskrit in first division. There are other qualifications, which I am not touching upon, for the moment. Though it may be relevant to note that she has successfully completed a certificate and a diploma course in Tibetan in first division, and also diploma in Pali in first division. Except for her Masters in Sanskrit, which she acquired from Aligarh Muslim University, all other qualifications were acquired from the University of Delhi. There are several articles and publications to her credit as well. In so far as experience goes, she has total teaching and research experience of 26 years. She has spent years in taking M.A. classes, and certificate and diploma courses in the very same department, to which she applied for a regular appointment.

2.2. Petitioner no. 2 has also secured a Ph.D in Buddhist Studies. He has in addition qualified the University Grants Commission (in short UGC) National Eligibility Test (in shot NET) exam. He has completed his Masters in Buddhist Studies as well Sociology besides having acquired an M.Phil in Buddhist Studies, in first division. He taught as a Guest Lecturer in the Department of Buddhist Studies of University of Delhi between 2009 and January, 2012. From 05.01.2012 to 22.05.2013, he taught in the same department as an Assistant Professor, though on ad-hoc basis. He has to his credit several academic publications, as well. The Masters in Buddhist Studies, M Phil and Ph.D have been obtained from the University of Delhi.

2.3. Petitioner no. 3, is also a Ph.D in Buddhist Studies. He has also acquired an M.Phil in Buddhist Studies. Both degrees have been obtained from University of Delhi. Besides this, the petitioner has a Masters in Prakrit language and literature. Both in M.Phil and M.A., he has secured a first division. Like the other two petitioners, he has a number of publications to his credit.

2.4. Petitioner no. 4, is also a Ph.D in Buddhist Studies. He has secured a first division in M.Phil and M.A., both of which are in Buddhist Studies. All three

qualifications have been acquired from University of Delhi. He taught in the Department of Buddhist Studies of University of Delhi as an ad-hoc Assistant Professor between 30.07.2009 and 22.05.2013. Prior to this, he had taught history in the School of Correspondence, University of Delhi, as a Guest Lecturer between 2004-2005 and taught the same subject in Jat College, M.D. University, Rohtak in the same capacity between 2000-2001.

2.5. What is required to be noted and, which is, at the heart of the defence set up by the respondents, in particular, the University of Delhi, is that, despite the petitioners having acquired several qualifications, they appear to have encountered a glitch in the early stages of their career in as much as none of them secured a second division at the graduation level which, in a sense, is their nemesis in as far as consideration for the posts in issue are concerned.

Facts Leading To Institution of The Petition

3. The University of Delhi on 11.01.2012, took out an advertisement for, filling up 50 posts of Assistant Professors in the pay scale of Rs. 15,600-39,100, in its various departments. One such department, was the Department of Buddhist Studies. Qua this department, 9 posts were advertised. Out of which, 5 were in the unreserved category, 2 in the OBC category, while 1 each, in the SC and ST category. In this petition, we are only concerned with the post advertised in the unreserved and OBC category. In this behalf, it is noted that Petitioner nos. 1 and 2 had applied under the unreserved category, while petitioner nos. 3 and 4 had applied in the OBC category.

3.1. Apparently, on 30.04.2013, the Screening Committee of the University of Delhi comprising of Professor H.S. Prasad, Dean of Faculty of Arts, Professor Bhikshu Satyapal, Head of Department of Buddhist Studies and Dr. H.P.S. Gangnegi, nominee of the Vice-Chancellor, scrutinized applications for the incumbent posts, and thereafter, recommended persons, who were to be called for the interview. The criteria which this Committee fixed evidently, for unreserved and OBC category candidates, was as follows:-

UR First division at either Graduation or Post Graduation level + Ph.D + NET provided candidate have minimum 55% at PG level.

OBC 55% at Post Graduation level + Ph.D/NET

3.2. Unfortunately, Professor H.S. Prasad expired and, consequently, the Screening Committee was reconstituted with the inclusion of Professor Ashok Vohra, who took over as a Dean of the Faculty of Arts. A meeting for this purpose was held on 15.05.2013, where for the first time, a criteria was introduced which required the applicant to obtain 50% at the graduation level and 60% at the Masters level with a Ph.D. In case a candidate did not possess a Ph.D., he had to, in the alternative, qualify the NET exam.

3.3. Quite interestingly, of the members of the reconstituted Screening Committee comprised two members i.e., Professor Bhikshu Satyapal and Dr.

H.P.S. Gangnegi, were also part of the Committee, which was instrumental in the petitioners being appointed on an ad-hoc basis, in the first instance.

3.4. Notably, none of these averments are traversed by the University of Delhi in its counter affidavit filed.

3.5. The Screening Committee based on the criteria referred to above shortlisted for interview, 77 candidates in the unreserved category and 29 candidates in the OBC category. Though, we are not concerned with SC and ST category in this case, for the sake of record, it may be noted that for SC category, 62 candidates and for ST category, 29 candidates were short-listed. The petitioners, were amongst those, who were not called for the interview as per the short-listing criteria introduced by the re-constituted Screening Committee.

3.6. It may be relevant to note that one of the members of the reconstituted Screening Committee i.e., one Professor K.T.S. Sarao though part of the Committee could not take part either in fixing of criteria or in the exercise of short-listing as he was on sabbatical leave. Professor K.T.S. Sarao though after becoming aware of the criteria fixed, and the fact that, petitioners had been left out, vide a letter dated 28.06.2013 addressed to the Vice-Chancellor, University of Delhi expressed his dismay. As a matter of fact, in the said communication, he indicated that the Committee had recommended a desirable qualification for the post of Assistant Professors which, inter alia required that the candidates should possess the equivalent of at least diploma from University of Delhi in Pali/Sanskrit as well as Tibetan/Chinese language and should be able to demonstrate evidence of capability to consult original source material in these languages.

3.7. Besides the above, it was suggested by Mr. K.T.S. Sarao that candidates who had been teaching against the vacant post or who had teaching experience of one year or more, and were otherwise eligible should also be short-listed to appear for the interview to be held by the Selection Committee. Professor K.T.S. Sarao thus expressed his disappointment that persons such as the petitioners, who had taught in the Department and were otherwise found suitable at that point in time were not now being given an opportunity to present themselves before the Selection Committee.

3.8. The petitioners themselves alongwith five other similarly placed applicants, who fell in the unreserved category, on their own, addressed a communication dated 02.07.2013 to the Chairman of University Grants Commission (UGC) seeking his intercession in the matter. Since, the petitioners, did not receive any response and the interviews were around the corner, that is, were slated for 09th and 10th July, 2013, they approached this court for the first time by way of a petition under Article 226 of the Constitution. This petition was filed on 08.07.2013 and was numbered as: WP(C) 4270/2013.

3.9. The said petition was however, disposed of, on the very first date, giving liberty to the petitioners to withdraw the petition and approach the court once again with a challenge to the selection criteria. The University of Delhi on its part

was directed to supply the list of subjects in which Masters/Ph.D was considered valid, for the purposes of calling applicants for interview before the Selection Committee.

3.10. Consequently, on 18.07.2013 University of Delhi supplied a list of subjects as directed by the court.

3.11. Evidently, information was also sought through the RTI route with regard to the educational qualification of the short-listed candidates, as also as regards the post and the pay scale of one of the members of the Screening Committee, Dr. H.P.S. Gangnegi. These RTI applications were filed on 24.07.2013.

4. On 06.08.2013, a response was received that Dr. H.P.S. Gangnegi was holding the post of Reader/Associate Professor. This information was obviously sought in the context of the requirement under Resolution 141 dated 06.10.2009, of the Executive Council (EC) of the University of Delhi, which required that the nominee of the Vice Chancellor on the Screening Committee should hold the post of a Professor. It is not in dispute that Dr. H.P.S. Gangnegi was the nominee of the Vice Chancellor on the committee constituted for screening the applications.

4.1. Armed with the aforesaid information, and based on their belief that they were eligible for the advertised posts of Assistant Professors, the petitioners approached this court once again by taking recourse to the instant petition. Interestingly, both, when order dated 09.07.2013 was passed in the first round and when, the instant petition was moved, the Judge who dealt with the matter was the same person. Both, on 09.07.2013 as well on 21.08.2013, when this instant petition was moved for the first time, the University of Delhi which, was the only respondent, at that point in time, was represented by Mr. Rupal. The reason why I have mention this fact, is that, while issuing notice the learned Judge begins by saying that the main relief claimed in the writ petition is the challenge to the selection criteria for appointment to the post of Assistant Professor in Buddhist Studies in the respondent University. University of Delhi and other respondents, who were impleaded as parties, at a later point in time, have made much out of the fact that there is no express prayer made in the writ petition, impugning the short-listing criteria or the criteria provided by the UGC, which is followed for screening the applicants, who had applied for the post of Assistant Professors, though the court while disposing of the earlier writ petition on 09.07.2013, had granted such a liberty. In fact it was suggested by the counsel for the respondents that the liberty was granted only to challenge the selection criteria, and that, having not being done, the writ petition was not maintainable.

4.2. As is noticed from the record, the learned Judge issued notice on 21.08.2013, and granted a stay on appointment, on the very first date, by way of a detailed order and while doing so, did not construe the averments in the writ petition in the manner in which respondent no. 1, i.e., the University of Delhi or other respondents have now sought to portray the same. As a matter of fact, no

such argument, appears to have been raised by the counsel for the University of Delhi on that date.

4.3. Suffice it to say, the University of Delhi, it appears, had filed an appeal, with the Division Bench, which was numbered as: LPA 726/2013. The Division Bench, while issuing notice, vide its order dated 23.10.2013, to the petitioners herein, clarified that the learned Single Judge could hear submissions for vacation/modification of the order dated 21.08.2013. Since, in the order of the Division Bench, the next date of hearing before the Single Judge was erroneously noted as 30.10.2013, the relevant correction was made vide order dated 25.10.2013 on an application being moved in that behalf.

4.4. The learned Single Judge vide his order dated 31.10.2013, noted the fact that the writ petition could not be heard in view of the fact that University of Delhi had not filed its counter affidavit in time which, necessitated further time being granted to the petitioners to file a rejoinder. Furthermore, the learned single Judge having regard to the fact that only four petitioners were involved in the instant action, modified its interim order to the extent that it was confined to four (4) posts in the category in which they had applied, and thus, allowed the University of Delhi to fill up the remaining posts in accordance with law.

4.5. In the interregnum before the Single Judge vide order dated 09.09.2013, respondent nos. 2 to 5 were impleaded as parties to the present petition. By order dated 23.05.2014, respondent nos. 6, 7 and 8 were also impleaded as parties to the present proceedings.

4.6. Upon pleadings in the matter being complete, arguments were heard. Some of the respondents chose to sail along with the counter affidavit filed on behalf of University of Delhi.

Submissions on Behalf of Counsels

5. In the background of the aforesaid, arguments were advanced on behalf of the petitioners, by Mr. Ankit Jain, Advocate, while submissions on behalf of University of Delhi were made by Mr. Rupal. Respondent nos. 2 and 3 were represented by Mr. B.K. Sinha. Mr. Kameshwar Singh advanced arguments on behalf of respondent nos. 4 to 8.

5.1. Mr. Ankit Jain assailed the eligibility criteria introduced by the Screening Committee whereby it was provided that the applicants should have acquired at least 50% marks at the graduation level, on the following short grounds:-

5.2. This was not an eligibility criteria, which was contained in the advertisement dated 11.01.2012.

5.3. The advertisement indicated that the candidate was required to possess qualifications which were prescribed by UGC. The UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff In Universities and Colleges and Measures for the Maintenance of Standards in

Higher Education, 2010 (in short UGC Regulations 2010) only prescribed that the candidate should have a minimum of 55% marks at the Masters level in the "relevant" subject. There is no requirement of a candidate having to secure 50% marks at graduation level.

5.4. The Screening Committee by adding an additional eligibility criteria which was not prescribed by the Selection Committee had acted contrary to the dictate of the Division Bench judgment dated 25.09.2009, passed in a batch of petitions, the lead case being: LPA 354/2009, titled: Dr. Rama Kant and Anr. Vs. University of Delhi and Anr.

5.5. The judgment of the Division Bench in Dr. Rama Kant's case clearly stipulated that if, an eligibility condition was provided, in the advertisement or in the statute, the Screening Committee was required to follow the same, and thus, could not stipulate any other additional criteria even if, it was more fair and objective.

5.6. The petitioners were, even otherwise eligible for consideration in terms of EC Resolution No. 297 dated 27.01.1998. A perusal of the said resolution would show that the criteria stipulated therein is for the purposes of screening applications for the post of Assistant Professors in various departments. As per the criteria stipulated therein, the petitioners would fall in Category 1, under 5th and 6th preference. The said criteria permits candidate to be considered for selection if they possess more than 55% marks at the Masters level in addition to a Ph.D or a NET qualification de hors the fact that he or she did not possess first or second division at the graduation level.

5.7. Furthermore, Note 7 of EC Resolution No. 297 specifically provides that persons who had worked as Lecturers (now Assistant Professors), in college/ department of the University of Delhi, for a period of 6 months or more, are to be given preference over others in the same category while screening candidates for interview. The Screening Committee had acted contrary to the provisions of Note 7.

5.8. The Screening Committee had also failed to call the requisite number of candidates, which was 45, in the OBC category, in terms of Resolution no. 297. As per the provisions of the said Resolution, normally the University of Delhi was required to call not more than 30 candidates if an interview was being held for one post and for each additional post, it was required to call another 15 candidates subject to a maximum of 75 candidates. The Screening Committee had short-listed only 29 candidates whereas, as per the norms stipulated, it had to call 45 candidates.

5.9. The University of Delhi had called candidates for interview who had acquired their Masters and/or Ph.Ds" in subjects which were unrelated with Buddhist Studies. In this regard, reference was made to a candidate who had acquired his Masters in Mathematics, and another candidate, who had completed his Ph.D, in "Lalu Prasad Yadav Ki Samajik Chetana". The details of such short-listed

candidates are provided in Ground F of the writ petition. This point was sought to be buttressed by adverting to the fact that courses which had been taken as valid for M.A. and Ph.D/NET (as per the list supplied by the University of Delhi) were as diverse as Political Science, Sociology and Linguistics.

5.10. Some of the candidates who have been selected, such as, Sh. Pappu Kumar (respondent no. 7) and Mr. Animesh Prakash (respondent no. 8) possess qualifications which were far less significant than those, which were possessed by the petitioners. It was submitted that while, the petitioners, had done their Ph.Ds and M.Phil, the said respondents had neither qualification. It may, however, be noted that both of these respondents had cleared the NET, which was an alternative to a Ph.D, as per the extant regulations.

6. The constitution of the Screening Committee was contrary to EC Resolution No. 141 dated 06.10.2009 which required that the nominee of the Vice Chancellor should be holding a post of a Professor. Dr. H.P.S. Gangnegi, who was the nominee of the Vice Chancellor, was holding a lower post, which is that of a Reader/Associate Professor.

6.1. In carrying out the selection of candidates, the provisions of UGC Regulation 2010 were disregarded in as much as candidates were not selected on the basis of their Academic Performance Indicators (API). The University of Delhi was required to conduct this exercise at the time when it held interviews.

6.2. The petitioners also made grievance of the fact that respondent no. 1 had attempted to mislead the court by claiming that the appointment letters were physically handed over on 21.8.2013. It is the case of the petitioners that the official respondents had attempted to falsify the record as the letters would show that they were sent by air mail/registered post. The petitioners state that the writ petition was filed on 17.08.2013 after serving an advance copy on University of Delhi; a fact which made the said respondent aware of the proceedings. It is stated that the petition was listed before this court on 19.08.2013 when it could not be taken up as the court did not convene on that date and consequently, the matter was posted for hearing on 21.08.2013 as 20.08.2013 was a court holiday. On 21.08.2013, the counsel for University of Delhi did not inform the court that appointment letters had already been handed over to the private respondents. It is thus, the petitioners' contention that what was sought to be portrayed thereafter by University of Delhi; which is that, appointment letters were physically handed over to the private respondents by hand at about 10.20 a.m., on 21.08.2013, was not correct.

7. As against this, Mr. Rupal, who argued on behalf of University of Delhi submitted that Note 4 of the advertisement made it clear that merely because a candidate fulfilled the minimum qualification or eligibility criteria did not entitle him to be considered or be called for the interview. In support of this submission, he relied upon the judgment of the Supreme Court in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, .

7.1. It was his contention that the Screening Committee was entitled to fix the eligibility criteria for short-listing, which was clearly stipulated in Note 5 to the advertisement. He submitted that Note 5 had to be read with Note 9 which, required that qualifications applicable will be those as stipulated by UGC Regulations. The learned counsel submitted that clause 4.4.1 of UGC Regulations 2010 required the candidate to have a good academic record as defined by the concerned University with at least 55% marks at the Masters degree level in the relevant subject from an Indian University or an equivalent degree or an accredited foreign University. The learned counsel submitted that provision for "good academic record" in the said regulation would empower the University to stipulate that the candidates should have secured at least 50% marks at the graduation level for the applicants to be called for the interview to be held by the Selection Committee.

7.2. It was submitted by the learned counsel that a Masters degree with a minimum of 55% marks in the "relevant subject" as stipulated in clause 4.4.1 of the UGC Regulations 2010 did not mean a degree in the concerned subject. It was his submissions that the petitioners had been shifting their stand as to what they meant by relevant subject. In support of his submission, in this behalf, he relied upon the judgment of the Supreme Court dated 16.04.1993, passed in Civil Appeal Nos. 1876-77/1993, titled: Dinesh Chandra Varshney and Ors. Vs. University of Delhi and Ors.

7.3. Mr. Rupal argued that the judgment of the Division Bench in Dr. Rama Kant's case was not applicable to the facts of this case and that in fact observations made in paragraphs 21 and 27 of that judgment were "per incuriam".

7.4. I may only note that while Mr. Rupal in his oral submissions made in court only sought to distinguish the judgment in Dr. Rama Kant's case on facts, there was no argument advanced that the said judgment was per incuriam. The argument is sought to be advanced for the first time, in the written submission filed on behalf of the University of Delhi. According to the learned counsel, the law in this behalf is well settled and in this context reliance is placed on following judgments of the Supreme Court:- B. Ramakichenin @ Balagandhi Vs. Union of India (UOI) and Others, and Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, . It may only be noted that the Division Bench in Dr. Rama Kant's case has followed the ratio laid down by the Supreme Court in the case of B. Ramakitchenin.

7.5. It was next contended by Mr. Rupal that there is no challenge either to Note 5 of the advertisement which empowered the Screening Committee to shortlist candidates or to the EC Resolution 141, dated 06.10.2009, which provided the shortlisting criteria.

7.6. In the written submissions, a proposition has been put forth that since the EC of the University of Delhi was entitled to carry out the selection process

(which by logical corollary as I understand from the written submissions filed, according to the counsel, conferred all powers and duties which are incidental and necessary for carrying out the selection process); the Screening Committee, in prescribing the impugned eligibility criteria acted in accordance with law. In support of this submission, reliance is placed on the judgment of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

7.7. Mr. Rupal contended that the categorization chart for screening purposes, which is part of EC Resolution No. 297 dated 27.01.1998 contained anomalies, and therefore, the chart should be read in a manner that each row against the given category should be read as a separate category and not as a "preference", under a given category. Arguments were advanced to demonstrate the errors in the chart which, admittedly is a chart prepared by the University of Delhi under EC Resolution no. 297 dated 27.01.1998. To buttress this argument, counsel for the petitioner sought to take support from assertions made in paragraph 37 of the writ petition. In support of this submission, the following judgments were relied upon:-

Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, ; Dr. Sudhir Kumar Singh Vs. State of Bihar AIR 2008 SC 595; and judgment dated 30.01.2012 passed in WP(C) 5163/2010, titled Twinkle Wadhwa Vs. University of Delhi & Ors.

7.8. The contention appears to be that the court must lean in favour of an interpretation, which is reasonable and discard a literal interpretation which does not fit the situation or, causes undue hardship, inconvenience or leads to an anomaly.

7.9. In so far as failure to call the requisite numbers of candidates in terms of Note 1 of the chart stipulating procedure for screening applications for Assistant Professors was concerned, it was the contention of Mr. Rupal that, the said note, only stipulated the maximum numbers of candidates who had to be called and not the minimum as sought to be argued by the petitioners.

8. The learned counsel submitted that the Screening Committee had not put in place an additional eligibility criteria. All that the Screening Committee had done was to put in place a filtration process so that the best candidates could be picked up for the interview from amongst the eligible candidates.

8.1. Qua the contention that Dr. H.P.S. Gangnagi could not have been nominated by the Vice Chancellor for the purposes of constituting a Screening Committee, Mr. Rupal submitted that since the Department of Buddhist Studies did not have in place, another Professor, as of necessity, the said person was nominated by the Vice Chancellor as his representative on the Screening Committee. Mr. Rupal invoked the doctrine of necessity in that behalf. Reliance was placed on the judgment of the Supreme Court in the case of Lalit Kumar Modi Vs. Board of Control for Cricket in India and Others, .

8.2. Mr. Rupal submitted that though a representation to the UGC with regard to non consideration of their candidature for the post of Assistant Professors was made by 9 candidates, the present writ petition was filed by only 4 candidates. In the written submissions he also took umbrage to the fact that the UGC had not been impleaded as a party.

8.3. It was further submitted that the petitioners had tried to widen the scope of the writ petition by adding new grounds pertaining to API, which were articulated for the first time in the rejoinder. The learned counsel further contended that the aspersions cast on the University of Delhi, with regard to issuance of appointment letters, were unwarranted and that the sequence of events had been put down in that behalf in the additional affidavit filed on 14.03.2014.

8.4. Lastly, it was contended that this court had a very limited scope for judicial review in the fashioning the appropriate method of selection of candidates which, according to Mr. Rupal, should be best left to the University of Delhi. In support of this submission, reliance was placed on the judgment of the Supreme Court in the case of Lila Dhar Vs. State of Rajasthan and Others, .

9. On behalf of the private respondents, Mr. Sinha and Mr. Kameshwar Singh largely argued in line with what was stated by Mr. Rupal on behalf of the University of Delhi.

9.1. Mr. Sinha, in particular, emphasized that since selection criteria had not been challenged, the writ petition was not maintainable.

9.2. Mr. Kameshwar Singh on his part emphasized the fact that the shortlisting criteria was provided in Clause 4 of Ordinance 19, and that, the said provision empowered the Screening Committee to restrict the number of candidates called for interview to a reasonable number based on qualifications and experience higher than the minimum prescribed.

9.3. It was thus the contention of the learned counsel for the private respondents that the stipulation that applicants should have a minimum of 50% marks at the graduation level was not only reasonable but was a condition which, the Screening Committee was empowered to stipulate for the purposes of pruning the number of candidates which were to be called for interview by the Selection Committee.

Reasons

10. Having heard the learned counsel for the parties and perused the record, what clearly emerges is as follows:-

10.1. The petitioners had worked as Assistant Professors in the Department of Buddhist Studies of the University of Delhi till 22.05.2013. The period for which they worked as Assistant Professors; albeit on ad-hoc basis varies as has been indicated by me above. The fact, however, remains that while the period varies they have all been associated in one capacity or the other with the Department

of Buddhist Studies.

10.2. With the issuance of the advertisement dated 11.01.2012, the petitioners had hoped that they would be called, at least, for the interview. This hope was, however, belied as the re-constituted Screening Committee changed the criteria which, inter alia, required the applicants to possess, at least, a second division (i.e., 50% marks) at the graduation level. There is no denial though, by any of the respondents that the petitioners hold Ph.Ds in Buddhist Studies, and that, at the Masters level, each one of them have acquired more than the minimum stipulated marks, which is 55%. Therefore, the question which squarely arises for consideration de hors the long drawn out explanation given by the respondents in defence of their action is that, could the Screening Committee have put in place such a criteria. For this purpose, one would have to look at what was provided in the first instance in the advertisement and the statutory rules framed in that regard by the University of Delhi. The stipulations contained in the advertisement attain significance. Since, arguments have also been advanced with respect to Notes referred to in the advertisement, the same are extracted hereinbelow:-

1. Candidates must possess the qualifications as prescribed by the UGC for respective posts. All the above posts carry UGC pay scales plus admissible allowances. Application forms and details regarding prescribed qualifications and eligibility conditions can be obtained from Room No. 205, New Administrative Block, University of Delhi, Delhi-110 007 either personally on any working day, or by sending a self-addressed envelope. The same is also available at the University Website www.du.ac.in.
2. The number of Posts may vary with in the categories.
3. It will be open to the University to consider names of suitable candidates who might not have applied.
4. Merely fulfilling the minimum qualification or the eligibility criteria does not entitle a candidate to be necessarily considered or called for the interview.
5. The applications received may be screened for short listing and recommending the candidates to be called for interview on the basis of the criteria to be fixed by the duly constituted screening committee.
6. University reserves the right not to fill up any of the vacancies advertised, if the circumstances so warrant.
7. Relaxation, if any, may be made in exceptional cases on the recommendations of the Selection Committee.
8. Separate application is required for each post.
9. Qualifications are applicable as stipulated under the UGC regulations from time to time.

10. The above posts are being advertised keeping in view the broad areas of specialization in the subjects. However, the Department concerned may have specific requirements of specialization.

11. Completed applications in the prescribed form may be sent to the Registrar, University of Delhi, Delhi-110 007, latest by 21st February, 2012...

10.3. As is evident from the Notes extracted above, the following clearly emerges:-(i) the candidates were required to possess qualifications, as prescribed by the UGC for the post in issue (see Note 1 and 9); (ii) it was open to the University of Delhi to consider names of candidates who might have not applied (see Note 3); (iii) merely because a candidate fulfilled the minimum qualification or eligibility criteria, it did not entitle him to be considered or be called for the interview (see Note 4); (iv) the applications received may be screened for shortlisting as per the criteria fixed by a duly constituted Screening Committee for the purposes of recommending candidates to be called for the interview (see Note 5).

10.4. Therefore, one would have to look at UGC Regulations 2010 to comprehend the qualifications which are required for the post as well as the shortlisting criteria, which was fixed by the re-constituted Screening Committee.

10.5. Clause 4.4.1 of UGC Regulations 2010 which, reads as under, inter alia, provides that for the post of Assistant Professors in the subjects referred to in the said clause, a candidate must have a "good academic record" as defined by the concerned University with at least 55% marks at the Masters Level in the relevant subject from an Indian University or an equivalent degree from an accredited foreign University.

4.4.0. Assistant Professor

4.4.1 Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in

Universities/Colleges/Institutions.

(iv). NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted..

10.6. It was sought to be contended that keeping in mind the fact that the concerned University could define what was good academic record, the Screening Committee had stipulated the criteria for shortlisting candidates, which required them to possess 50% marks at the graduation level. Reference in this behalf was also made to clause 4 of Ordinance 19, which reads as follows:

4. Shortlisting of applications

a). The prescribed qualification and experience will be minimum, and the mere fact that a candidate possessing the same will not entitle him/her for being called for interview.

b). The University will have the right to restrict the number of candidates to be called for interview, based on the recommendations of the Screening Committee constituted as per the Regulations for this purpose, to a reasonable number on the basis of qualifications and experience higher than the minimum prescribed or by any other condition that it may deem fit.

c). The Scrutiny Committee for applications may evolve criteria for short listing the candidates to be called for the interview as per the UGC Guidelines in consultation with the Vice Chancellor...

10.7. The undisputed fact, however, is that the Executive Council (in short EC) of the University of Delhi had vide Resolution No. 297 dated 27.01.1998 stipulated a procedure for screening applications. The said document is available at page 152 of the paper book. The veracity of this document is not disputed by the counsel for University of Delhi. Though, an attempt has been made to explain the fall out of the same. For the purposes of appreciating its import one would have to necessarily extract the same:-

University of Delhi

Procedure for Screening of applications for the post of Assistant Professor in various departments.

A. 1. Good academic record with at least 55% marks (B in the seven point scale with letter grade O, A, B, C, D, E and F shall be regarded as equivalent 55% wherever the grading system is followed) at the Master's Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited foreign University.

2. N.E.T. qualified or Ph.d Degree in the relevant subject.

B. Categories in order of preference:

1. Normally, not more than 30 candidates should be called for interview for one

post and 15 more for each additional post subject to a maximum of 75.

2. Those who are eligible as per exemptions/relaxation granted by UGC from time to time shall be ranked at the appropriate category on the basis of their record.

3. If a candidate belonging to any particular category has been called for interview, all the candidate with equivalent or higher qualification from the category must be called for interview.

4. If the number of eligible candidates is less than the number prescribed above, all the eligible candidates shall be called for interview.

5. Cases where exemptions/relaxations are to be sought from UGC, will also be placed in the appropriate category on the basis of their academic records.

6. All eligible candidates belonging to SC/ST category of candidates shall be called for interview.

7. A person who has worked as Lecturer in a College/Department in the University for six months or more will be given preference over others for being called for interview within the same category.

(emphasis is mine)

10.8. A combined reading of the aforesaid document would show that while the advertisement dated 11.01.2012 empowered the Screening Committee to fix a shortlisting criteria, there was in the advertisement by itself, no criteria fixed for screening the applications. The EC Resolution No. 297, dated 27.01.1998, though fixed a criteria for screening applications. The said document is extracted hereinabove. The criteria fixed for screening is stipulated therein. The stipulated criteria divided candidates into four categories i.e., Category I to IV. The categories are placed in order of preference. Note 7 of the said document clearly stipulates that if a person had worked as a Lecturer in a college or a Department of the University for a period of six (6) months or more, he or she was to be given preference over others in being called for interview within the same category.

10.9. A perusal of the categories would show that under Category 1, there are eleven (11) preferences. Similarly, there are preferences under Categories II to IV, as well. The common ground which emerged during the course of the argument was that wherever under the head bachelor's degree, a hyphen appeared in the given column, it referred to the requirement of a candidate having to obtain a bachelor's degree with a division less than a second division. In other words, a candidate having acquired third division at the graduation level was also eligible provided he fulfilled the other requirements set out under the head, Masters degree in addition to a Ph.D, and in case a candidate did not possess a Ph.D, he was required to clear the NET exam. If, the provisions for screening applications contained in resolution no. 297, dated 27.01.1998, are

applied to the petitioners, they would fall in 5th or 6th preference under category-1, since all of them have a first class at the Masters level with a Ph.D in Buddhist Studies with a third division at the graduation level. Coupled with this, if Note 7, is applied to the petitioners, as they have admittedly worked as Assistant Professors in the Department of Buddhist Studies for more than six (6) months, they were to be given preference in their category, which is Category-1.

11. Mr. Rupal when confronted with this document, tried to wriggle out of the same by contending that EC resolution no. 297 dated 27.01.1998, was inherently flawed. This Mr. Rupal tried to demonstrate, the flaws in the said resolution, by referring to 8th and 9th preferences in Category-1, and similarly, to 2nd and 3rd preferences in Category-III and the only preference in Category-IV.

11.1. According to Mr. Rupal, there was no difference in the said preferences and hence, the categorization by itself was faulty. Mr. Rupal thus suggested that each preference under every category should be treated as a category by itself to overcome the problem. It was Mr. Rupal's submission that if this interpretation was applied, Note 7 of the said resolution would not come to the aid of the petitioners.

11.2. There is no doubt that the document has some ambiguity but the ambiguity, in my view, could not be used in a manner which would oust the petitioners from consideration. The document in issue is one, which is generated by University of Delhi and its own body, which is no less than the EC, would therefore, have to be read if, at all against the University of Delhi.

11.3. There is another reason as to why, Mr. Rupal's argument cannot be accepted. The reason is that the re-constituted Screening Committee which stipulated the criteria requiring the applicant to possess at least 50% marks at the graduation level, do not appear, to have put in the criteria having regard to the purported anomaly in the aforementioned resolution. The question therefore, is: Could the Screening Committee stipulate a criteria contrary to the one, which had already been put in place by the EC of the University of Delhi? In my view, the answer has to be in the negative. The reason for this is, that if the field for prescribing eligibility criteria is unoccupied then, that vacuum can be filled in by the Screening Committee. The Screening Committee cannot put in an eligibility criteria for shortlisting if, the criteria is already stipulated in the advertisement or in attendant document by one of its premier bodies, i.e., the EC. As facts have emerged in the present case, the EC had in fact put in place a screening criteria as per which even a candidate who had secured a third division at the graduation level was required to be called for an interview if, he fulfilled other eligibility conditions required for the post. The EC, in fact, in its screening procedure has clearly provided for preference being given in the category in which applicants fell if, they had worked as Lecturers (now Assistant Professors) in the college/ department of the University for a period of six (6) months or more. The petitioners clearly came within the provisions of this Note (i.e., Note 7 of Resolution No. 297) and were thus, required to be given preference for being shortlisted for the interview.

11.4. In my view what is stated hereinabove by me, clearly falls within the ratio of the judgment of the Supreme Court in the case of B. Ramakichenin.

11.5. As noted above by me, the Division Bench in Dr. Rama Kant's case has followed the judgment in the case of B. Ramakichenin. Therefore, notwithstanding the noble motivation of the Screening Committee in providing the eligibility criteria, it could not have done so as the criteria for screening applications was already in place. To that extent, the observations made in the Division Bench's judgment would apply. Mr. Rupal's argument that the observations made in paragraphs 21 and 27 of the Division Bench's judgment were per incuriam are completely misconceived and hence, rejected. Furthermore, as noted above, at no stage, did Mr. Rupal either put forth this proposition during the course of his oral submissions or inform the court as to whether or not the University of Delhi had carried the matter in appeal to the Supreme Court. The argument, in any event, is untenable.

12. As far as the other contentions of learned counsel for the petitioners are concerned with regard to the constitution of the Screening Committee, such as, the failure to call a minimum of 45 candidates in the OBC category; and the shortlisting of candidates, who did not have relevant qualifications, in my view, cannot be sustained for the following reasons:-

12.1 In so far as the constitution of the Screening Committee is concerned, there is no doubt that while the nominee of the Vice Chancellor had to be a person who held the post of the Professor (as per EC Resolution No. 141 dated 06.10.2009), the fact of the matter, is that, no professor was available in the Department of Buddhist Studies. Therefore, the Vice Chancellor nominated Dr. H.P.S. Gangnegi. The question really is, did the nomination of Dr. H.P.S. Gangnegi, in these circumstances, prejudice the petitioners? While the counsel for the petitioners may be right in his contention that the EC Resolution No. 141 did not mandate that only a Professor from Department of Buddhist Studies had to be nominated, it certainly may have resulted in a situation of a Professor being nominated, who was far removed from the area concern for which scrutiny of applications had to be conducted. Though the doctrine of necessity as articulated by Mr. Rupal may not be applicable in the facts of the present case which, incidentally, is also not a stand taken in the counter affidavit of the University of Delhi, it is clear that no prejudice was caused to the petitioners solely on that account, as: firstly, Dr. H.P.S. Gangnegi was conversant with the subject in issue. Secondly, Dr. H.P.S. Gangnegi was one of the persons who had selected the petitioners at the time they were appointed as Assistant Professors on an ad-hoc basis, there being no plea in the writ petition that he had any animus qua the petitioners; and last but not the least, the petitioners had not raised any objection to the appointment of Dr. H.P.S. Gangnegi as a member of the Screening Committee, at the first possible opportunity. Having regard to these factors, I am not persuaded to strike down the impugned action on the ground of flawed constitution.

12.2. In so far as the grievance made with regard to failure to call requisite

number of candidates under OBC category is concerned, I am in agreement with the submission of the counsel for the University of Delhi that the relevant provision stipulates, what should be the maximum number of candidates that are required to be called qua a post in issue. In the OBC category, a total number of 29 candidates were called. There is clearly no minimum number fixed. While, in a given case, it could be argued, where an abysmally low number is called, that there is lack of adequate representation, which perhaps, could become a ground for challenge-in the instant case the decision to call 29 candidates out of a total of 46 candidates who had applied under the said category, cannot lead to such a conclusion. The Screening Committee had called more than 50% candidates, in the OBC category.

12.3. The other ground of challenge, which is that, candidates had been shortlisted who had at the Masters level taken subjects which were not relevant to Buddhist Studies, in my view, is an aspect, in respect of which, a court would ordinarily rely upon the fair judgment of the concerned experts in the field. The requirement to have a Masters degree in the relevant subject could not be construed to mean only the concerned subject; given the fact that in today's time and space educationist place much weight on multi-disciplinary exposure. Having said that, it would, however, have to be borne in mind by the experts that while shortlisting candidates, they do not pick up those, who are not even remotely concerned with the subject with which they would be required to grapple with in the course of their work.

12.4. Mr. Jain, in the course of his submissions, had taken examples of Political Science, Sociology and Linguistics to contend that they were completely unrelated or unconnected with Buddhist Studies. The learned counsel also referred to the syllabus crystalized for the said subjects to support his submission.

12.5. The respondents, on the other hand, have adverted to the fact that the Department of Buddhist Studies in the past, more precisely, between 2008 and 2013 has conferred Ph.Ds on students which are related to the field of Political Science, Sociology and Philosophy.

12.6. A cursory examination of the titles of the Ph.Ds awarded in the Department of Buddhist Studies would show that each one of them seem to be connected to the period when Buddhism took its roots in India. Anyone who has studied Indian Philosophy would know that a large section of Indian Philosophy is rooted in Buddhism. Suffice it to say, that whether, Masters, in a particular subject would have relevance is something which cannot be ordinarily assessed by the courts as they are not experts in the field. But this would not relieve the experts of their obligation to assess the relevance of the subject in which the applicant has qualified at the Masters level. This is not an area which is completely immune from judicial review, as sought to be contended on behalf of the respondents. In this particular case, I do not propose to venture in this particular direction as there isn't available on record; enough material, to sustain the charge.

12.7. There is another ground of challenge raised by the petitioners. It is contended that the University of Delhi failed to evaluate the candidates on the basis of API. The University of Delhi, in its additional affidavit, has clearly explained that at the time when the selection was carried out, that part of UGC Regulation 2010 which required them to assess candidates on the basis of API scores, had not kicked-in. As per the affidavit of the University of Delhi, the part pertaining to API scores, referred to in the regulation, was adopted by the EC only on 17.08.2013. Having regard to the same, I am not inclined to accept the contentions advanced on behalf of the petitioners that the selection process was faulty as candidates were not evaluated based on API scores.

12.8. This brings me to the last limb of the argument advanced on behalf of the petitioners, which is, that the officials of the University of Delhi had tried to mislead the court by indicating that the appointment letters were handed to the successful candidates at 10.20 a.m. on 21.08.2013. Since, the explanation is backed by an affidavit of an officer of the rank of Assistant Registrar in the University of Delhi, I do not intend to delve into the matter any further on account of the fact that the candidates were ultimately not allowed to join despite letters of appointments having been issued, in deference, to the interim order passed on 21.08.2013. I must, however, point out that appointment letters appended alongwith the applications filed by some of the respondents do not bear the annotation of receipt of the appointment letters by hand; perhaps rightly so, as these are copies of originals handed over to the concerned respondents. Therefore, in the given circumstances, at this juncture, one may only presume that either on the office copy or in some other manner such endorsements of receipt were recorded. As indicated above, since an official has filed an affidavit, and nothing contrary to the same has been brought to my notice, apart from bare speculation, I intend to put this issue at rest and not take it any further.

13. At this juncture, the question is what relief ought to be given in the present petition. Since, I have held that the Screening Committee was not empowered to stipulate an eligibility criteria, as the criteria for screening applications had already been put in place by the EC, the entire selection procedure would stand affected. The necessary consequences of which would be that the University of Delhi would have to recommence the procedure from the stage of advertisement and short-list all such candidates who are eligible as per the criteria stipulated by the EC in its Resolution No. 297 dated 27.01.1998. This defect cannot be cured by confining the relief to four (4) posts and leaving the remaining five (5) post undisturbed as they have been filled up pursuant to the modification of the interim order dated 21.08.2013, by this court, vide its order dated 23.10.2013, since it would reduce the number of vacancies, which would have otherwise been available to the applicants, had they been shortlisted for consideration as per the criteria stipulated in EC Resolution No. 297, dated 27.01.1998. However, removing those who have already joined at this point in time may cause difficulties for the students. Therefore, keeping in mind the interest of the

students, till the fresh selection process is completed, those who have joined pursuant to order of this court dated 23.10.2013, will continue in their post subject to, no equities being claimed by them, on account of this protem arrangement. Their applications for appointment to permanent posts of Assistant Professor, in their respective categories will, however, be considered according to the extant regulations.

14. Accordingly, the writ petition is allowed. The selections made pursuant to advertisement dated 11.01.2012 are set aside, with the caveat set out above. The University of Delhi would be at liberty to recommence the procedure for filling up the posts of Assistant Professors in the Department of Buddhist Studies from the stage of receipt of applications. The entire process will be completed expeditiously though not later than eight weeks from today. There shall, however, be no orders as to costs.

15. With the aforesaid observations in place, the captioned petition and the pending applications are disposed of.