

Jaya Vs. Suchit

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Court : Kerala

Decided On : Mar-08-2010

Reported in : 2010(2)KLT709

Judge : K. Balakrishnan Nair and; P.N. Ravindran, JJ.

Appeal No. : W.A. Nos. 403 and 409 of 2010

Appellant : Jaya

Respondent : Suchit

Advocate for Def. : George Poonthottam and; M. Rajagopalan Nair, Advs.

Advocate for Pet/Ap. : T.P. Kelu Nambiar, Sr. Adv.,; P.G. Rajagopalan and; M. G

Disposition : Appeal dismissed

Judgement :

K. Balakrishnan Nair, J.

1. These Writ Appeals are filed by the respondents in the Writ Petitions, challenging the judgment of the learned Single Judge, in W.P.(C) No. 15330/2005.
2. The brief facts of the case are the following: The parties are mentioned as they are arrayed in the Writ Petition. The first respondent University invited applications for appointment to the post of Lecturer (Hindi), as per Ext.PI notification dated

3.2.2003. The qualifications prescribed for the post were the following:

Good academic record with at least 55% marks or an equivalent grade at Master's Degree level in the relevant subject from an Indian University or an equivalent Degree from a foreign University.

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Note 1. Candidates, besides fulfilling the above qualification should have cleared the eligibility test for Lecturer ship conducted by the UGC, CSIR or similar tests accredited by the UGC

However, the candidates who have completed M. Phil. Degree by 31st December, 1993 or have submitted Ph.D. thesis in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. degree, they shall have to pass the NET examination.

2. A relaxation of 5% marks at Master's level is allowed to the following categories.

1. SC/ST candidates.

2. Ph.D. degree holders who have passed their Master's degree prior to 19.9.1991.

The petitioner and the third respondent were candidates, who applied for the said post. The Selection Committee assessed the relative merits of the candidates, in the light of Ext.P5 norms issued by the University, which had the approval of the Syndicate which met on 26.8.2000. The said norms lay down the parameters for awarding marks to the candidates. The total marks are fixed as 100. For academic qualification, the maximum marks, which could be awarded are, 50. For additional qualifications like NET, Ph.D. etc., 10 marks could be awarded. For publications in approved journals, the maximum marks that could be awarded are 6. For teaching experience (at the rate of 1 mark per year, subject to a maximum of 3 marks) at the University/College level, 3 marks are set apart. For consistent academic excellence, additional 3 marks are set apart. For participation and presentation of

papers in National/International Conference, 3 marks could be awarded and for interview, 25 marks are allotted. The duly constituted Selection Committee made the selection, following Ext.P5 norms and awarded maximum marks to the third respondent. The petitioner was rank No. 2 in the list. The third respondent, who got 0.29 marks more than the writ petitioner, was rank No. 1. Later, the petitioner came to know that the Selection Committee of the University awarded marks, following Ext.P5, to certain qualifications acquired by the third respondent, after the last date fixed for receipt of applications, that is, 10.4.2003. In the interview held on 26.4.2005, marks were awarded to the third respondent for Ph.D. degree, which qualification, she acquired after 10.4.2003. She was also awarded marks for making publications in approved journals after the said date and also for participation in National/International Conferences and presentation of papers, which were also done after 10.4.2003. So, if those marks were excluded, the petitioner would have a clear edge over the third respondent, it was noticed. So, the petitioner filed the Writ Petition, challenging the selection of the third respondent, mainly on the ground that she was awarded marks for the qualifications acquired by her, after the last date fixed for receipt of the applications. The Registrar of the University filed a counter affidavit, stating that the essential qualifications notified as per Ext.P1 have to be acquired before the last date fixed for receipt of the applications. But, certain other qualifications like acquisition of Ph.D. degree, participation in Conferences, publications of papers, etc. were reckoned with reference to the date of interview. That is, such qualifications acquired after the last date fixed for receipt of the applications, but before the interview, were also taken into account for awarding marks. This is the usual practice followed by the University in the matter of selection to the teaching posts, it is further stated. The third respondent also filed a counter affidavit, supporting the decision of the University.

3. The learned Single Judge, after hearing both sides, allowed the Writ Petition, quashing the selection and appointment of the third respondent and directed the Selection Committee to make selection, in accordance with the observations contained in the judgment. The learned Judge noticed that the three parameters laid down in Ext.P5, for which the third respondent was awarded marks, were acquired by her, only after the last date fixed for receipt of the applications. The

learned Judge found that she acquired the Ph.D. degree only after 10.4.2003. She published articles in approved journals and participated in National/International Conferences and presented papers only after that date. In view of the said undisputed position, the learned Judge took the view that the selection is vitiated and therefore, issued the directions we have mentioned above.

4. Feeling aggrieved by the judgment of the learned Single Judge, the third respondent has preferred W.A. No. 403 of 2010 and the University has preferred W.A. No. 409 of 2010.

5. We heard Sri T.P. Kelu Nambiar, learned Senior Counsel and Sri M. Rajagopalan Nair, learned Standing Counsel, for the respective appellants. The learned senior counsel submitted that the three parameters mentioned above, for which the third respondent was awarded marks, even though she acquired those qualifications after the last date fixed for receipt of the applications, were not essential qualifications or notified qualifications, and therefore, there is nothing wrong in taking into account such additional qualifications acquired by her. In support of that submission, the learned senior counsel relied on the decision of the Apex Court in *Dipitimayee Parida v. State of Orissa* : (2008) 10 SCC 687. The learned Standing Counsel for the University also supported the above submissions and added that, all along, the University was following the practice of taking into account the qualifications acquired subsequently, provided, they are not essential, notified qualifications, while making the selections.

6. Ext.P5 reads as follows:

Appendix TO TJO No. An. H. 1/3020/09 Dated 6.9.2000. Norms for Selection of Teaching Staff in The University (Approved by the Syndicate at its Meeting Held on 26.8.2000) Lecturer Total Marks; 100 Academic qualification (percentage of marks secured at the P.G. examination reduced to 50) 50 Additional qualifications-NET-5, M. Phil-5, M. Phil + NET - 7, Ph.D.-10 (Subject to a maximum of 10 for Candidates having NET, M. Phil, and Ph.D.) 10 Publications in approved journals (2 marks for each paper - subject to a maximum of 5 marks) 6 Teaching experience (At the rate of 1 mark per year subject to a maximum of 3 marks) at the University/College level 3 Additional marks for consistent academic excellence

3Participation and presentation of papers in National/International Conference
3Performance in the interview (while Awarding marks adequate consideration should be given to co-curricular activities also) 25

It is not in dispute that the third respondent acquired the Ph.D. degree, published articles in approved journals and participated in National/International Seminars and presented papers, only after 10.4.2003, the last date fixed for receipt of the applications, but before the holding of the interview. She was awarded marks, also for the aforementioned parameters. If those marks are excluded from consideration, the third respondent will not be the candidate, having the highest marks. So, the point to be considered is whether the awarding of marks for the aforementioned parameters, to the third respondent is correct or not. By a catena of decisions of the Apex Court and this Court, it is now well settled that the qualification of a candidate for appointment to a post has to be reckoned, with reference to the last date fixed for receipt of the applications, unless otherwise specified. For example, in the case of appointment to public services in Kerala, the qualification regarding age limit is reckoned with reference to the first day of the year, in which the applications are invited. Every notification issued by the Kerala Public Service Commission will contain such a stipulation also. But, in this case, there is no such stipulation in Ext.P1. When an application is submitted for appointment to a teaching post in the University, selection has to be made by the Selection Committee constituted as per the statute. In this case, that Committee is bound to follow Ext.P5. So, the selection by the Committee, following Ext.P5 is one of the implied conditions of Ext.P1 notification. Every candidate is presumed to know that. Ext.P1 speaks of good academic record, which is a vague concept and is amenable to subjective evaluation. To prevent arbitrariness, which is likely to occur, if the evaluation is made subjectively, Ext.P5 parameters have been issued to guide the selection. So, if the parameters for assessing the concept of good academic record are to be reckoned with reference to the date of interview, the same would result in arbitrariness. The Selection Committee itself can delay the selection process by a few days, in order to enable a candidate, in whom it is interested, to acquire an additional qualification, which may result in tilting the balance in the selection. So, the cut off date has to be definite to prevent such favouritism and arbitrariness. We, need not, further discuss on that point because

the principle that the qualifications have to be reckoned, with reference, to the last date fixed for receipt of applications, is firmly established in law. The said, well-established principle cannot be diluted by describing that certain qualifications are not essential etc. Having gone through the decision of the Apex Court in *Dipitimayee Parida v. State of Orissa* (supra), we do not find anything in it, which runs counter to the well settled principle that the qualifications have to be assessed with reference to the last date prescribed for receipt of the applications. In the result, we find no reason to interfere with the judgment under appeal. Accordingly, the Writ Appeals are dismissed in limine.

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