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PRADEEP SINGH DEHAL

v.

STATE OF HIMACHAL PRADESH & ORS.

(Civil Appeal Nos. 7211-7212 of 2019)

B

SEPTEMBER 17, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Service Law:

C *Appointment/Selection – To the post of Asstt. Professor – In one advertisement (Adv. No. 3 of 2010) selection process not completed – Subsequent advertisement (Adv. No.3 of 2011) requiring that the candidates who had applied pursuant to previous advertisement need not apply afresh – Appellant (OBC candidate) and respondent (General Category candidate) did not apply afresh in response to subsequent advertisement – Appointment of appellant*
D *– Challenged by respondent contending that he was not given any credit for the “publications” in the subsequent selection process, whereas credit was given for the “publications” in the previous selection process – High Court allowed the writ petition directing to add to the score-sheet of the respondent five marks on the parameters of “publications” – In review petition High Court order was affirmed – Plea of appellant that such “publications” were not before the Search Committee as the respondent had not submitted any “publications” – Held: In the facts of the case, it cannot be said that the “publications” were not before the Search Committee*
E *– However, it is for the experts to award marks for “publications” –*
F *The Court, in exercise of its power of judicial review, cannot award marks for “publications”.*

Selection Process – Process of conducting separate interviews for the posts under General Category and OBC Category – Held: Such process is not fair and reasonable – Every person is a General
G *Category candidate – If a reserved category candidate is in merit, he will occupy the General Category seat.*

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Allowing the appeals, the Court

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HELD : 1.1 As per the conditions pertaining to advertisement No. 3 of 2011, (subsequent advertisement) the applications submitted earlier were to be considered. This shows that the “publications” of the writ petitioner were with the University when the writ petitioner was granted marks for “publications”. Even if the Selection Committee has undergone a change as well as norms of selection as per the Regulations, the Selection Committee was within its jurisdiction not to award any marks for “publications”, if it was not meeting the requisite conditions. It cannot be said that the writ petitioner has not submitted any “publications”. Such “publications” were before the Search Committee when the writ petitioner was interviewed on May 13, 2012. [Para 12] [346-D-F]

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1.2. However, it is for the experts to award marks for “publications”. The High Court, while exercising the power of judicial review, does not sit in the arm chair of the experts to award the marks for publications, that too, on the basis of an earlier selection process. The marks obtained by the writ petitioner under the heading “publications” on May 13, 2012 were not before the High Court. The appellant was granted three marks for “publications” in the earlier selection process initiated vide advertisement No. 3 of 2010. Such “publications” were also required to be taken into consideration by the Selection Committee. [Para 13] [346-G-H; 347-A]

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University Grants Commission & Anr. v. Neha Anil Bobde (Gadekar) (2013) 10 SCC 519 : [2013] SCR 521 – relied on.

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2. The process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal. Though, none of the parties have raised any dispute about it but since the same is inherently defective, the Court is constrained to observe so. Every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category

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- A candidates or such other category as is permissible under law. If a reserved category candidate is in merit, he will occupy a general category seat. Therefore, the selection process conducted by the University cannot be said to be fair and reasonable. Consequently, the University is directed to re-examine the selection process by constituting an Expert Committee who shall consider the “publications” of the candidates who were being considered in pursuance of advertisement No. 3 of 2011 and make suitable recommendations accordingly by having a joint merit list of all the categories of candidates who applied for appointment to the post of Assistant Professor. However, in such selection process, the appointment of candidates already selected will not be disturbed, except the appellant whose appointment shall be subject to the decision of the University on the basis of recommendation of the Expert Committee. [Paras 14 and 17] [347-B-C; 348-B-C]

- D *Indra Sawhney & Ors. v. Union of India & Ors. (1992) Supp. (3) SCC 217 : [1992] 2 Suppl. SCR 454 – followed.*

Vikas Sankhala v. Vikas Kumar Agarwal (2017) 1 SCC 350 : [2016] 7 SCR 639 – relied on.

- E Case Law Reference

[2013] SCR 521	relied on	Para 6
[1992] 2 Suppl. SCR 454	followed	Para 14
[2016] 7 SCR 639	relied on	Para 15

- F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7211-7212 of 2019.

From the Judgment and Order dated 24.06.2015 of the High Court of Himachal Pradesh, Shimla in CWP No. 4060 of 2014 and order dated 30.07.2015 in Rev. Pet. No. 92 of 2015.

- G Abhijat P. Medh, Adv. for the Appellant.

Rameshwar Singh Malik, Harikesh Singh, Satyendra Kumar, Ajay Dig Paul, Surender Kumar Gupta, Piyush Beriwal, Ms. N. Annapoorani, Ashwani Kumar Dubey, Pankaj Sharma, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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HEMANT GUPTA, J.

1. The challenge in the present appeals is to orders passed by the High Court of Himachal Pradesh, Shimla on June 24, 2015 and July 30, 2015 whereby, the Himachal Pradesh University¹ was directed to add five marks on the parameter of “publications” in favour of the respondent No. 3² in respect of appointment to the post of Assistant Professor in the Department of Education in the International Centre for Distance Education and Open Learning, Shimla.

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2. Initially, an advertisement No. 3 of 2010 was published inviting applications for seven posts of Assistant Professor viz. four posts under Unreserved category, one post under Other Backward Classes³ category, one post under Scheduled Castes category and one post in Scheduled Tribes category. The appellant and the writ petitioner were the applicants for such posts. However, none of the candidates were appointed to such posts. Thereafter, another advertisement No. 3 of 2011 was published. This time, advertisement was published for the post of Assistant Professor inviting applications for six posts under Unreserved category, one post under OBC category, one post under Scheduled Castes category and one post under Scheduled Tribes category. One of the conditions in the advertisement was that the candidates who have applied earlier as per revised UGC guidelines and also with reference to previous advertisements need not to apply again. However, they may send additional information, if any.

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3. The appellant and the writ petitioner did not apply again nor said to have furnished any additional information. In such selection process, the appellant was recommended by the Expert Committee for appointment against the post meant for OBC category, having obtained 60.83 marks.

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4. Such appointment was challenged by the writ petitioner, *inter alia*, on the ground that he has not been given any credit of “publications” whereas, for such “publications”, he has been given credit when he was considered in pursuance of the post applied in response to advertisement

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¹ for short, ‘University’

² hereinafter referred to as ‘writ petitioner’

³ for short, ‘OBC’

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- A No. 3 of 2010. The High Court accepted the claim of the writ petitioner with the following directions:

“The writ petition is accepted and respondents No. 1 and 2 are directed to add to the score-sheet of the petitioner five marks on the parameter of “publications”. In case the petitioner then is ranked first, then subject to completion of all necessary formalities the respondent concerned shall proceed to in accordance with law appoint him to the post of Assistant Professor, Education.”

- B 5. The appellant filed review petition which came to be summarily dismissed on July 30, 2015. Still aggrieved, the appellant filed the present appeal.

C 6. The argument of the appellant is two-fold. First, it is for the experts to assess the marks for “publications”. Since the writ petitioner has not sent any “publications” along with his application form, therefore, he has not been granted any marks under the heading “publications”. It is also argued that decision of the experts as to how much marks should be awarded cannot be interfered with by the High Court, while exercising the power of judicial review under Article 226 of the Constitution of India. Even if, the Court finds that certain marks under heading “publications” have not been granted, the only course of action open to the Court is to remit the matter to the experts to examine the grant of marks under the heading “publications”, if any. The reliance is placed upon judgment of this Court in *University Grants Commission & Anr. v. Neha Anil Bobde (Gadekar)*⁴ wherein this Court held as under:

“31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore v. C.D. Govinda Rao* [AIR 1965 SC 491], *Tariq Islam v. Aligarh Muslim University* [(2001) 8 SCC 546 : 2002 SCC (L&S) 1] and *Rajbir Singh Dalal v. Chaudhary Devi Lal University* [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887], has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem

H ⁴ (2013) 10 SCC 519

they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps *as it may think fit* for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any “qualifying criteria”, which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.”

7. Learned counsel for the University refers to the policy and programme for recruitment of Lecturers in the University including contemplating marks for “publications”, which is as under:

(vi)	Publications	5	International, National referred Journals: 1 Mark each. Authored books*: 1 Mark each. Chapter in Books* (Excluding proceedings of seminars/ conferences): 0.5 Marks each. Edited books*: 0.5 Marks each. Publications in popular magazines, newspapers etc.: Nil. *On the relevant subject only.
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8. It may be noticed that the post of Lecturer has been renamed as Assistant Professor and that the norms of the appointment to the posts of Assistant Professor are prescribed by the UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010⁵.

9. Learned counsel for the University submitted that the discretion as to whether any marks for “publications” are to be awarded or not falls within an exclusive domain of the experts. It is argued that marks obtained in the earlier selection process which was not completed cannot

⁵ for short, ‘Regulations’

A be directed to be taken into consideration as not only the Selection Committee is different but also the selection in response to advertisement No. 3 of 2011 is being conducted after framing of the Regulations for appointment to the post of Assistant Professor.

B 10. On the other hand, learned counsel for the writ petitioner pointed out that not only the writ petitioner was granted five marks in the earlier selection process but also five marks were granted to the post of Assistant Professor in Education against the general category post. Such document has been appended with Annexure R-3/5.

C 11. In this background, we examine the respective contentions of the parties.

D 12. As per the conditions pertaining to advertisement No. 3 of 2011, the applications submitted earlier were to be considered. This shows that the “publications” of the writ petitioner were with the University when the writ petitioner was granted marks for “publications”.
E Even if the Selection Committee has undergone a change as well as norms of selection as per the Regulations, the Selection Committee was within its jurisdiction not to award any marks for “publications”, if it was not meeting the requisite conditions. But surprisingly, the writ petitioner has not been granted any marks under the heading “publications” in the interview held on May 12, 2012, when the candidates for under OBC category were interviewed but the writ petitioner was granted five marks for “publications” when the interview was being conducted for the post of Assistant Professor under general category on May 13, 2012. Though, the writ petitioner has not appeared in the interview but the fact remains that he has been granted five marks for “publications”. It is the same
F Selection Committee who conducted interview on May 12, 2012 and on May 13, 2012. Therefore, the stand of the appellant that the writ petitioner has not submitted any “publications” does not merit acceptance. Such “publications” were before the Search Committee when the writ petitioner was interviewed on May 13, 2012.

G 13. But it is equally true that it is for the experts to award marks for “publications”. The High Court, while exercising the power of judicial review, does not sit in the arm chair of the experts to award the marks for publications, that too, on the basis of an earlier selection process. The marks obtained by the writ petitioner under the heading “publications” on May 13, 2012 were not before the High Court. The appellant was

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granted three marks for “publications” in the earlier selection process initiated vide advertisement No. 3 of 2010. Such “publications” were also required to be taken into consideration by the Selection Committee.

14. We find that the process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal. Though, none of the parties have raised any dispute about it but since the same is inherently defective, we are constrained to observe so. Every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law. It is a consistent view of this Court starting from *Indra Sawhney & Ors. v. Union of India & Ors.*⁶ that if a reserved category candidate is in merit, he will occupy a general category seat. In *Indra Sawhney’s* case, the Court held as under:

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

15. In judgment reported as *Vikas Sankhala v. Vikas Kumar Agarwal*⁷ one of the questions examined was whether reserved category candidate who obtains more marks than the last general category candidate is to be treated as general category candidate. It was held that such reserved category candidate has to be treated as unreserved category candidate provided such candidate did not avail any other special concession. The Court held as under:

“84.2. Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.”

⁶ 1992 Supp. (3) SCC 217

⁷ (2017) 1 SCC 350

A 16. The concessions which were availed by the reserved category candidates are in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates.

17. In view of the said fact, we find that the selection process conducted by the University cannot be said to be fair and reasonable.
B Consequently, the University is directed to re-examine the selection process by constituting an Expert Committee who shall consider the “publications” of the candidates who were being considered in pursuance of advertisement No. 3 of 2011 and make suitable recommendations accordingly by having a joint merit list of all the categories of candidates who applied for appointment to the post of Assistant Professor. However,
C in such selection process, the appointment of candidates already selected will not be disturbed, except the appellant whose appointment shall be subject to the decision of the University on the basis of recommendation of the Expert Committee.

D 18. We hope that University will be able to finalise the revised selections within a period of six months from today.

19. The appeals are, thus, allowed in the above terms.