

Mrs. Rekha Chaturvedi vs University Of Rajasthan And Ors on 13 January, 1993

Equivalent citations: 1993 SCR (1) 186, 1993 SCC SUPL. (3) 168, (1993) 2 SCT 279, 1993 AIR SCW 1488, (1993) 1 SCR 186 (SC), 1993 LAB. I. C. 1250, (1993) 1 LABLJ 818, 1993 UJ(SC) 1 333, (1993) 1 UPLBEC 745, 1993 SCC (SUPP) 3 168, (1993) 25 ATC 234, 1993 BLJR 2 868, (1993) 1 CURLR 410, (1993) 1 SERVLR 544, 1993 SCC (L&S) 951, (1993) 66 FACLR 464, (1993) 1 LAB LN 617, (1993) 1 JT 220 (SC)

Author: P.B. Sawant

Bench: P.B. Sawant, N.P Singh

PETITIONER:

MRS. REKHA CHATURVEDI

Vs.

RESPONDENT:

UNIVERSITY OF RAJASTHAN AND ORS.

DATE OF JUDGMENT 13/01/1993

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

SINGH N.P. (J)

CITATION:

1993 SCR (1) 186

1993 SCC Supl. (3) 168

JT 1993 (1) 220

1993 SCALE (1) 93

ACT:

Service Law:

University--Appointment of Assistant Professors--Requisite qualifications--Whether to be considered as on the last date for submission of applications or as on the date of selection--Guidelines for future selection process--Laid down.

HEADNOTE:

The Respondent University invited applications for appointment to 10 posts of Assistant Professors. Out of 112

applications received, the Screening Committee recommended 106 candidates for being Interviewed and found the remaining 6 applicants ineligible. However, only 65 candidates appeared for the interview. 6 candidates were selected from the general category-, and 2 from the Reserved Category. 5 candidates Including the petitioner were placed on the waiting list.

As per the advertisement, a candidate should have a doctorate degree or research work of equally high standard, and good academic record with atleast a Second Class Master's Degree. The lack of doctorate degree could be made up by either research work of equally high standard or M.Phil with two years research work. Except in the case of Respondent No.10, who had a doctorate degree as on the last date for submission of applications, the qualifications of other selected candidates had to be relaxed by the Scrutiny Committee.

The petitioner challenged the appointment of the six selected candidates from the general category, before the High Court, but was not successful. Being aggrieved by the High Court's judgment, the petitioner preferred the present Special Leave Petition.

On behalf of the Respondent-University it was contended that since at the time of selection Respondent Nos. 5 and 4 had obtained their doctorate degrees they could be said to have fulfilled the qualifications;

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that since respondent Nos. 6 and 7 were registered for Ph. D. in 1982, by the time of the selection they had put in research work connected with their thesis and on the date of selection, they had about 3 years' experience in research work; that respondent No.8 had good academic record both in MA and B.A. and the Scrutiny Committee could under the Ordinance relax the qualifications as admittedly sufficient number of candidates with doctorate degrees were not available; and that even the petitioner did not have the doctorate degree; that the candidates had already been appointed in February 1985 and they have been working since then and some of them were also due for promotion to the higher posts in the near future; and that their record of teaching so far has been excellent and unblemished and so their selection need not be interfered with at this late stage.

Dismissing the Special Leave Petition and laying down the guidelines for future selection process, this Court, HELD : 1. In the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. Therefore, when the Selection Committee took into consideration the requisite qualifications as on the date of selection rather than on the last date for

preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. However, the selected candidates have been working in the respective posts since February 1985. Almost eight years have elapsed. There is also no record to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some candidates in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. For these reasons, this Court is not inclined to set aside the selections made by the Screening Committee. [195H, 196A-E]

A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors., (1990) 4 SLR 235 and The District Collector JUDGMENT:

Society) Vizianagaram & Anr. v. M. Tripura Sundari Devi, (1990) 4 SLR 237, relied on.

2. It is necessary to emphasise and bring to the notice of the Respondent-University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. For this purpose the following guidelines are laid down for the future selection process:

(i) The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes. [196F]

(ii) The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose.

The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration. [196G,H, 197A-B]

(iii) When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal. [197C]

(iv) The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made. [197D]

(v) The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available. [197E-F] & CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 6324 of 1992.

From the Judgment and Order dated 20.11.1991 of the Rajasthan High Court in D.B. Civil Spl. Appeal No. 226 of 1991.

S.K. Jain for the Petitioner.

Manoj Swarup, Ms. Lallta Kohli (For M/s Manoj Swarup & Co.) and S.K. Bhattacharya for the Respondents. The following Order of the Court was delivered:

By this petition, the petitioner has challenged the appointment of six respondents from General Category as Assistant Professors (Lecturers) in the Department of History in the University of Rajasthan.

2. The University invited applications by its advertisement dated 12.10.1983 for appointment to 10 posts of Assistant Professors (Lecturers). The last date for submitting applications was 14.11.1983. Out of 112 ap-

plications received, the Scrutiny Committee of the University on 25.4.1984 recommended 106 candidates for being interviewed, the remaining six being found ineligible for the posts. Out of the 106 candidates so recommended, only 65 candidates appeared for interview, out of which the Scrutiny Committee selected 8 candidates who are respondents 5 to 12 before us. Out of the 8, two were earmarked for the reserved posts. We are not concerned with the selection of the said two candidates under the reserved category. The Scrutiny Committee also placed five other candidates including the present petitioner on the waiting list.

3. The minimum qualifications for appointment to the post of Assistant Professor (Lecturer) as laid down by Ordinance 149-B of the Handbook of the University of Rajasthan, Part- II, Volume-I are as follows:

"141-B The following shall be the minimum qualifications for University teachers in the Faculties of Arts. Fine Arts, Social Sciences, Commerce and Science :-

A. Minimum qualifications for Lecturers/Research Associates in the Faculties of Arts, Social Sciences, Science and Commerce :

[Except in the subjects of English, Modern European Languages, Physical Education, Health Education & Sports Journalism and Home Science];

a. A Doctorate degree or research work of an equally high standard; and b. Good academic record with at least a second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University having regard to the need for developing interdisciplinary programmes, the degree in (a) and (b) above may be in relevant subjects. Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in (b) above: Provided further that if a candidate possessing a Doctorate degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record (weightage being given to M.Phil. or equivalent degree or research work of quality) may be appointed provided he has done research work for at least two years or has practical experience in a research laboratory/organisation on the condition that he will have to obtain a Doctorate degree or give evidence of research of high standard within eight years of his appointment, failing which he will not be able to earn future increments until he fulfills these requirements."

Although these were the qualifications required by the University Ordinance, the advertisement inviting applications stated the following qualifications as necessary for being eligible to the posts :

"ASSISTANT PROFESSORS (LECTURERS): (Except in the subject of Drawing & Painting and Dramatics, Education, Management studies and English).

(a) A Doctorate's degree or research work of an equally high standard and

(b) Good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or/equivalent degree from a foreign University.

Having regard to the need for developing interdisciplinary programmes, the degrees in

(a) and (b) above, may be in relevant subjects:

Provided that if the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of very high standard, it may relax any of qualifications prescribed in

(b) above.' Provided further that if a candidate possessing a Doctor's degree of equivalent research work is not available or is not considered suitable, a person possessing a good academic record, (weightage being given to M.Phil. or equivalent degree or research work of quality) may be appointed provided he has done research

work for at least two years or has practical experience in a research laboratory/organisation on the condition that he will have to obtain a Doctor's degree or give evidence of research of high standard within eight years of his appointment failing which he will not be able to earn future increment until he fulfils these requirements.

EXPLANATION For determining 'good academic record' the following criteria shall be adopted :-

(i) A candidate, holding a Ph.D. degree should possess at least a second class Master's degree; or

(ii) A candidate without a Ph.D. degree should possess a high second class Master's degree and second class in the Bachelor's degree; or

(iii) a candidate not possessing Ph. D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's degree.

2. Persons having secured marks more than the mid point of the prescribed minimum marks for passing an examination in the second division and the prescribed minimum marks for passing an examination in the first division by a university shall be deemed to have passed that examination in the high second class'. It will be apparent that there was a divergence in the qualifications as per the University Ordinance (as quoted in the written submissions on behalf of respondent No. 5) and the qualifications as per the advertisement as stated in the rejoinder of the petitioner since in particular the Explanation does not find place in the Ordinance. The University itself has produced before us neither the Ordinance nor the advertisement issued. In the absence of a copy of the relevant Ordinance, however, it is not possible to say as to whether the qualifications mentioned in the advertisement were at variance with those mentioned in the advertisement. Be that as it may.

4. It will thus be obvious from the requirement of the aforesaid qualifications, that on the last date for submitting the applications, a candidate applying for the said posts should have had (a) doctorate Degree (in the relevant subject), or research work of an equally high standard (in the relevant subject), and (b) good academic record with at least a second class Master's Degree (in the relevant subject). However, if the Selection Committee was of the view that the research work of a candidate as evident either from his thesis or from his published work was of a very high standard, the Scrutiny Committee could relax the qualification that the candidate should have had at least a doctorate Degree or research work of an equally high standard and good academic record with at least a second class Master's Degree. Secondly, if the candidate possessing a doctorate degree or equivalent research work was not available or even if available, was not suitable, the candidate possessing a good academic record (preferably M.Phil or equivalent Degree or research work of quality) could also be appointed provided he had done research work for at least two years or had practical experience in a research Laboratory/Organisation. However, this relaxation could be given on the condition that the candidate would obtain a doctorate Degree or give evidence of research of high standard within eight years of his appointment. If he did not satisfy the second requirement, all that he could be visited with was a handicap that he would not be able to earn future increments

until he fulfilled the said requirement. It is, therefore, obvious that a doctorate Degree was not a must and the lack of doctorate Degree could be made up by either of the qualifications laid down above. None of the candidates except respondent No.10 who had applied and appeared for interview (including the petitioner) possessed the doctorate Degree by the last date of submitting the applications for the posts.

The six candidates from the general category whose appointment is challenged before us and who are respondents 5, 6, 7, 8, 10 and 11 before us had on the relevant date the following qualifications according to the Scrutiny Committee:

----- S.I Name Respon- Doctorate
Published Good Good 2year No. dent No. Degree works of Record Record research
high No. no.

Standard

1. Dr.(Miss) 11 No. No. Yes Yes No. santosh Sharma (Awarded on 4.1.85)
- 2.Shri Krishna 6 No. No. Yes Yes No. Gopal Sharma
3. Dr.(Mrs.) 10 Yes No. Yes Yes Yes Vibha Updhyaya
- 4.(Miss)Saroj 7 No. No. Yes Yes No. Sharma
- 5.Dr.Shyam 5 No. Yes Yes No. Yes Singh (Awarded Ratnawat on 14.12.84)
- 6.(Miss) 8 No. No. Yes Yes No. Pramila (Passed Sharma M.A in 1982)

It is apparent that respondent No. 5 had no doctorate Degree. He had good academic record in M.A. but did not have good record in B.A. He had published work of high standard and also two years' research work to his credit. Respondent No.6 had no doctorate Degree. He had, however, good academic record both in M.A. and B.A.; but had neither any published work of high standard nor two years research experience, to his credit. Respondent No.7 had no doctorate Degree. She had, however, good academic record both in M.A. and R.A. She had not published work of high standard nor had she two years' research work to her credit. Respondent No. 8 had no doctorate Degree. She had, however, good academic record both in MA. and B.A. though she did not have to her credit published work of high standard nor two research work. Respondent No.10 had doctorate Degree and also a good academic record both in M.A. and BA. She had also experience of two years research

work though there was no published work of high standard to her credit. Respondent No.11 had no doctorate Degree. She had, however, good academic record both in M.A. and B.A. She had no published work of high standard or two years' research work to her credit.

It is on record that respondent Nos. 5 and 11 were awarded doctorate Degree on 14.12.1984 and 4.1.1985 respectively which is of course irrelevant since the qualifications had to be judged with reference to the last date for submitting the applications for the posts.

Thus except in the case of respondent No.10, the qualifications of the other selected candidates had to be relaxed by the scrutiny Committee. However, there is no record of the minutes of the meetings of the Scrutiny Committee to show whether and in what manner the Scrutiny Committee had applied its mind and relaxed their qualifications. The affidavit filed on behalf of the University shows that the minutes, if kept, were destroyed. It was sought to be argued by Shri Manoj Swarup on behalf of the University that since at the time of the selection, respondent Nos. 5 and 11 had obtained their doctorate Degrees they could be said to have fulfilled the qualifications. He also argued that since respondent Nos. 6 and 7 were registered for Ph.D. on 22.1.1982 and 26.5.1982 respectively, by the time of the selection they had put in research work connected with their thesis and in February 1985, viz., the date of selection, they had about 3 years' experience in research work. As regards respondent No. 8, she had good academic record both in M.A. and BA. and the Scrutiny Committee could under the Ordinance relax the qualifications as admittedly sufficient number of candidates with the doctorate Degree were not available. He also urged in this connection that even the petitioner did not have the doctorate Degree. He further submitted that it was open to the Scrutiny Committee to weigh the over-all qualifications of the candidates and relax the required qualifications in favour of the deserving and suitable candidates which the Scrutiny Committee did or should be deemed to have done. The Scrutiny Committee was a high power Committee and after interviewing 65 candidates, it had selected only 8 candidates and had placed them in the order of merit. The Court should not, therefore, interfere with the said selection. He further pointed out that the candidates had already been appointed in February 1985 and they have been working ever since till date. Some of them are also due for promotion to the higher posts in the near future. Their record of teaching so far has been excellent and unblemished. Whatever may be the defects in the selections, this Court may not interfere with the said process of selection at this late stage.

5.The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or

manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors.*, (1990) 4 SLR 235 and *The District Collector & Chairman, Vizianagaram (Social Welfare Residential School Society) Vidanagaran & Anr. v. M. Tripura Sundari Devi*, (1990) 4 SLR 237.

6. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, 'it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its ordinance/Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question, or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in ques-

tion, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal. D. The University/Selection Committee must mention in its proceedings of selection the reasons for

making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.

7. Although, therefore, for reasons stated above, we deem it inadvisable to interfere in the selections made in the present case, we direct that the University and its Selection Committee should observe the above norms in all future selections.

The Special Leave Petition is dismissed subject to the above directions.

G.N.

Petition dismissed.