

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.12276 Of 1997

Dr.G.Jeyasekaran

Assistant Professor

Dept. of Fish Processing Technology

Fisheries College & Research Institute,

Tuticorin - 628 008.

... Petitioner

Vs.

1. The Vice Chancellor

(Chairman-Selection Committee)

Tamil Nadu Veterinary and Animal Sciences University

Madras - 600 007.

2. The Registrar

Tamil Nadu Veterinary and Animal Sciences University

Madras - 600 007.

3. Dr.C.B.T. Rajagopalasamy

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent herein in his proceedings U.S.No.60108/R III/97, dated 6.8.1997 and quash the same and further direct the respondents 1 and 2 herein to appoint the petitioner herein to the post of Associate Professor in the field of "Fish Processing Technology".

For petitioner

: Mr.S.James

For R1

: No appearance

For R2

: Mr.D.Thirumavalavan

For R3

: Mr.D.Krishna Kumar

O R D E R

Dr.G.Jeyasekaran, Assistant Professor of Department of Fish Processing Technology Fisheries College & Research Institute, Tuticorin is the petitioner.

2. The first and second respondents are the Vice Chancellor and the Registrar of the Tamil Nadu Veterinary and Animal Sciences University, Madras and the third respondent is another Assistant Professor in the Department of Fisheries Biology of Tuticorin Fisheries College, where the petitioner is working.

3. The grievance of the petitioner is that he applied for the post of Associate Professor in response to the notification issued by the Tamil Nadu Veterinary and Animal Sciences University, Madras (hereinafter referred to as "University") through advertisement No.1/96 wherein, applications are invited for filling up the post of Associate Professor and ignoring his qualifications and eligibility, the third respondent was selected by the first and second respondents, therefore he is questioning the legality and the correctness of the said selection.

4. In nutshell, the admitted facts are the appointment of the petitioner as well as the third respondent as Assistant Professors in the respective departments. It is also admitted about the issuance of notification referred supra.

5. As per the above notification at Serial No.20 of the notification for Associate Professors, the University called for an application filling up through direct recruitment as Associate Professor in Fish Processing Technology Department and one post is available for the said category. As per the notification, the qualifications for the post is the person who had Ph.D. with 5 years of experience in teaching/research in the concerned subject.

6. The contention of the petitioner is that he along with four others appeared for interview on 26.6.1997 and thereafter, third respondent who is not working in the department was selected whereas, he was denied though he is working in the Department of Fish Processing Technology as

an Assistant Professor. The post of Associate Professor is from the same department, while so, the third respondent is working in the Department of Fisheries Biology which is a different Department. But the University has ignored the legitimate claim. It is further stated that the third respondent has no qualification.

7. The University filed a counter wherein, it is stated that the advertisement was issued for filling up the post of an Associate Professor in Fish Processing Technology Department. In paragraph No.7 it is stated the relaxation was made by the Board after considering the service of candidates who are in service on 3.11.1989 because the Post Graduate course was introduced in the University only after the academic year 1991-1992 and there may not be any persons obtaining Ph.D. degree with 5 years experience by then.

8. In paragraph 8 of the counter, the first and second respondents have given a Comparative Table of the petitioner as well as the third respondent on merit, qualification and eligibility.

Dr.G.Jeyasekaran

Dr.C.B.T.Rajagopalasamy

Course	Discipline	Year	Course	Discipline	Year
B.F.Sc	Fisheries Science	1983	B.F.Sc	Fisheries Science	1982
M.F.Sc.	Industrial Fishery Technology	1985	M.F.Sc	Fisheries Science	1985
Ph.D	Fishery Microbiology	1994	Ph.D	Aquaculture	1996

9. Having given the comparative chart the respondents contended that the selection of the third respondent is strictly in accordance with rules of the University and as per the decision of the Selection Committee.

10. In paragraph No.4 of the counter, it is stated that the petitioner was awarded punishment of stoppage of increment for a period of 3 years on a misconduct of unauthorised absence as the petitioner while proceeding for doing Ph.D. degree, did not obtain any proper permission from the University.

11. The third respondent who is a successful candidate and who is now an Associate Professor though appeared through an Advocate, did not choose to file any counter.

12. Heard arguments of Shri.S.James, learned counsel appearing for the petitioner and Shri.D.Thirumavalavan learned counsel appearing for the University and Shri.D.Krishna Kumar, learned counsel appearing for the third respondent.

13. The counsel for the petitioner has pointed out that as per the Rules, Regulation Status and Act of the University, paragraph No.11 deals with the Associate Professor its pay scale and its qualifications and eligibility and the method of recruitment.

14. Perused the same. In the instant case, the point for determination is whether the University has followed its own notification and the rules while selecting the third respondent and ignoring the candidature of the petitioner.

15. Point:

The notification as well as the rules clearly says that the person who possess the Ph.D. degree with 5 years experience in teaching/research in the concerned subject is eligible.

16. In the instant case, the contention of the petitioner is that he is the person with Ph.D. degree doing teaching and research in the concerned subject and was not selected.

17. At this stage, it is relevant to verify the contentions of the respondent in the counter. The respondent has clearly admitted in the counter that the petitioner obtained Ph.D. degree in Fishery Microbiology in the year 1994 whereas the third respondent obtained Ph.D. in Aquaculture in the year 1996.

18. Therefore, it is clear that the petitioner has obtained Ph.D. in 1994 whereas two years later the third respondent has obtained Ph.D.

19. Further, the petitioner obtained Ph.D. in Fishery Microbiology whereas the respondent obtained Ph.D. in Aquaculture, this Court has verified the Fishery Microbiology and the Aquaculture to know what is the part of the Post Graduate degree in Fish Processing Technology.

20. Through the additional type set the petitioner has filed the syllabus of the University for the Ph.D. decree programmes. This was not denied by the respondent. Therefore, the Court has verified the same.

21. Department of Aquaculture deals with the following subjects:

II DEPARTMENT OF AQUACULTURE

Sl. No	Course No.	Title	Credit Hours	Semester in which offered
1	FAQ 121	Inland aquaculture	2+1	II
2	FAQ 122	Aquaculture	2+1	II
3	FAQ 211	Fish genetics	2+1	III
4	FAQ 222	Fish seed production and hatchery management	2+1	IV
5	FAQ 311	Coastal aquaculture	2+1	V
6	FAQ 322	Shrimp farming and hatchery management	2+1	VI
7	FAQ 411	Fish pathology and parasitology	2+1	VII
8	FBT 411	Fishery biotechnology	2+1	VII
9	AHU 311	Livestock production and management	2+1	V

IV department deals with the following:

IV DEPARTMENT OF FISH PROCESSING TECHNOLOGY

Sl. No	Course No.	Title	Credit Hours	Semester in which offered
1	FBC 111	Fishery biochemistry	2+1	I
2	FMI 121	Fishery microbiology	2+1	II
3	FPT 211	Fish curing	2+1	III
4	FPT 222	Fish canning	2+1	IV
5	FPT 222	Fish freezing	2+1	IV
6	FPT 321	Fish by-products	2+1	VI
7	FFM 321	Microbiology of fish and fishery management	2+1	VI
8	FBC 321	Fish in nutrition	2+1	VI

Sl. No	Course No.	Title	Credit Hours	Semester in which offered
9	FPT 411	Quality control, food laws and management	2+1	VII
10	FPT 411	Fishery products development	2+1	VII

Plain perusal of the above two tables clarify that the Department of Aquaculture is entirely different department from that of Fish Processing Technology Department.

22. In the instant case, we are concerned with the Fish Processing Technology because the University intended to appoint an Associate Professor in the said department and notification was issued for filling up the said vacancy. In IV syllabus at Serial No.2, Course No. FMI 121 deals with Fishery Microbiology and it is in Department of Fish Processing Technology. The respondent/University admitted that the petitioner had obtained Ph.D. degree in the said Fishery Microbiology. Therefore, it is established that the petitioner has obtained Ph.D. from the department of Fish Processing Technology and it is the Ph.D. in Fish Microbiology.

23. While so, the Aquaculture is not one of the course or subject as far as the department of Fish Processing Technology is concerned and on the other, it is entirely a different department. The syllabus II deals with Department of Aquaculture and at Serial No.2 FAQ 122 Aquaculture is mentioned.

24. Therefore, it is clear that the third respondent has obtained Ph.D. from the department of Aquaculture but not in the subject of Fish Processing Technology.

25. Further, the internal communication of the University dated 10.10.2000 disclosing the allotment of Course No, Title and Course Teacher for the common syllabus etc. discloses that at Page No.2 that Fish Harvesting and Processing Technology wherein, it is clearly mentioned that the Fish Microbiology and the fundamentals of the Microbiology are part and parcel of the said research work under Fish Harvesting and Processing Technology whereas in paragraph No.3 of the annexure the Aquaculture was dealt in detail and the place of Aquaculture are the subjects for research under Aquaculture.

26. Therefore, through the documents of the University, it is clearly established that the petitioner is possessing all required qualifications having obtained Ph.D. degree in Fishery Microbiology and working as an Assistant Professor in the Department of Fish Processing Technology and he has also obtained Ph.D. in the same subject 2 years prior to the third respondent and the third respondent has obtained Ph.D. from other subjects.

27. Thus, the important facts are ignored by the Selection Committee and the third respondent was selected.

28. The argument of the counsel for the University that since there is a punishment of stoppage is awarded for the petitioner his case is not considered. It is without any merit because in the instant case the post is intended to be filled up through direct recruitment and not by promotion. The department action if any required to be considered for in service and not from direct recruitment. When a person has been applied in response to the notification and seeking direct recruitment, the stoppage of increment will not in any disqualify him. Apart from that when the petitioner has made an application, he was called for interview and he was interviewed. The University should have rejected the case of the petitioner, if he is facing any disciplinary action. The alleged misconduct is not a serious one.

29. Thus, ignoring his qualification as well as seniority which is against to the spirit of their own notification and the syllabus and also the rules and regulations of service.

30. For all the foregoing reasons, I am of the opinion that the petitioner is entitled for appointment as an Associate Professor and therefore, the first and second respondents are directed to appoint him forthwith even if necessary by cancelling the appointment of third respondent as it has been made against to the rules and regulations of the University Rules and against to the notification issued by the University.

31. Accordingly, the writ petition is allowed as prayed for with costs of Rs.5,000/-.
sgl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Vice Chancellor
(Chairman-Selection Committee)
Tamil Nadu Veterinary and Animal Sciences University
Madras - 600 007.

2. The Registrar
Tamil Nadu Veterinary and Animal Sciences University
Madras - 600 007.

+ one cc to Mr. S. James, Advocate sr no. 39464
+ one cc to Mr. S. Thirumavalavan, Advocate sr no. 39468
+ one cc to Mr. D. Krishnakumar, Advocate sr no. 39483

BV(CO)
NM(13.09.2006)

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