

WA 332/2009

BEFORE

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE HRISHIKESH ROY

Ranjan Gogoi, J

This appeal is directed against the order dated 27.8.2009 passed by a learned Single Judge of this Court in a proceeding registered and numbered as WP(C) No. 94/2007. By the aforesaid order the writ petition filed by the appellant has been dismissed and the resolution of the Executive Council of the Gauhati University dated 10.6.2006 for re-advertisement of the post of Lecturer in Geography, as impugned in the writ petition, has been upheld.

2. The bare facts that will be necessary to be noticed for the purposes of a complete and effective adjudication of the issues arising in the present proceeding may be enumerated at the outset:

An advertisement dated 31.3.2004 was issued by the Gauhati University inviting applications for filling up, inter alia, one vacant post of Lecturer in Geography. In the advertisement issued it was specifically provided that while the qualifications and other details can be had along with the application forms, NET shall remain compulsory requirement for the post of Lecturer, with exemption as per UGC guidelines. Clause 1.3.3. of the Ordinance on Recruitment, Service Condition, Workload and Leave Rules for Professors, Principals, Readers, Lecturers and other Officers of the Gauhati University as well as the relevant clause of the UGC Regulations for Appointment and Career Advancement of Lecturers, Readers and Professors in the University and Colleges which have a relevant bearing to the conditions of eligibility are extracted below, the same being relevant for the purposes of the present adjudication:

Clause 1.3.3. of the Ordinance on Recruitment, Service Condition, Workload and Leave Rules for Professors, Principals, Readers, Lecturers and other Officers of the Gauhati University :

1.3.3. Lecturer

1. Good academic record with at least 55% of the marks or, an equivalent grade B in the 7 point scale with letter grades O, A, B, C, D, E & F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University.

2. Besides fulfilling the above qualifications, candidates should have cleared the National Eligibility Test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Clause 1.3.3. of the U.G.C. Regulations on Minimum Qualifications for Appointment and Career Advancement of Lecturers, Readers and Professors in the University and Colleges :

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note : NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph. D. degree. However, the candidate who have completed M. Phil Degree or have submitted, Ph. D thesis in the concerned subject upto 31st December, 1993, are exempted from appearing in the NET examination.

In this regard, the contents of a communication dated 22.2.2002

of the Deputy Secretary of the U.G.C. addressed to the Registrar of the Gauhati University would also be required to be specifically noticed. By the said communication it was provided that a SLET qualified candidate would be eligible to apply for the post of Lecturer only in the University/ Colleges belonging to the same State whose SLET Examination he/she has cleared.

3. The appellant/ writ petitioner who is a Lecturer in Geography in the Cotton College at Guwahati submitted her application for the post in question. According to the appellant/ writ petitioner, she had passed the State Level Eligibility Test (SLET) in the year 2002. The said test was conducted by the State Level Eligibility Test Commission, Assam. According to the appellant/ writ petitioner, at that point of time, she was pursuing her research work for the Ph.D. Degree which was subsequently conferred on her.

4. It appears that along with the appellant/ writ petitioner 15 other candidates had submitted their applications for the lone post of Lecturer in Geography. In accordance with the prevailing norms in the University (it appears that the said norm was done away with prospectively by the resolution dated 16.10.2007 of the Executive Council of the University) the University forwarded the details of 15 candidates to two experts i.e. Dr. Nandeswar Sarma, L.N. Mithila University, Darbhanga (Bihar) and Dr. R.K. Rai of Dr. H.S. Gour University, Sagar (M.P.). The experts to whom the names of the candidates were forwarded under the norms in force were required to examine the eligibility of the candidates to appear in the selection on the basis of the materials furnished by them. It also appears from the materials on record that one of the experts, Dr. Nandeswar Sarma, recommended the names of 12 candidates including the petitioner, whereas the other expert, Dr. R.K. Rai recommended 8 candidates which did not include the name of the petitioner. It is also revealed by the materials on record that the names forwarded by Dr. Nandeswar Sarma was on the basis of an exercise undertaken by him which was akin to assessment of the candidates for the purpose of eventual appointment and not on the basis of their eligibility to take part in the selection that was yet to be held. However, the recommendations of the other expert, Dr. R.K. Rai was from the correct perspective spelt out by the norms in force in the University.

5. On receipt of the recommendations of the two experts the University picked up the common names in both the lists and called 8 candidates for the interview which did not include the appellant/ writ petitioner. Interviews were scheduled to be held on 24.4.2006 which got deferred to 17.5.2006. As the appellant/ writ petitioner was not called for the interview she made a representation before the Chancellor of the University (Governor of the State of Assam) on 15.5.2006 along with a similar request made before the Vice Chancellor of the University. From the records produced it appears that the representation of the appellant/ writ petitioner was forwarded by the office of the Chancellor to the University authorities for necessary action, whereafter, a call letter dated 16.5.2006 was issued to the appellant/ writ petitioner requesting her to appear for interview at 11 a.m. on 17.5.2006 in the Administrative Building of the Gauhati University. The appellant/ writ petitioner appeared in the interview. It seems that around this time several news items were published in the local newspapers to the effect that an ineligible candidate (appellant) has been selected for the post of Lecturer in Geography on the basis of the recommendations of the Chancellor. According to the University, at this stage, the proceedings of the selection held on 17.5.2006 was kept in sealed cover and the matter was put up before the Executive Council which body decided on 10.6.2006 that the post of Lecturer in Geography should be re-advertised. Aggrieved, the writ petition out of which this appeal has arisen, was filed in which the decision of the Executive Council dated 10.6.2006 was upheld by the learned Single Judge. Still aggrieved, the present appeal has been filed.

6. A reading of the judgment dated 27.8.2009 passed by the learned

Single Judge indicates that the learned Judge on an elaborate consideration of the conditions of eligibility spelt out in the advertisement dated 31.3.2004; the provisions of Clause 1.3.3 of the Ordinance framed by the University as well as Clause 1.3.3 of the UGC Regulations along with the letter dated 22.2.2002 came to the conclusion that the appellant/ writ petitioner who had passed the SLET was eligible to apply for the post of Lecturer in Geography as advertised. However, the learned Single Judge found fault with the manner in which the 8 candidates were initially called for the interview and 7 other candidates were excluded. In this regard, the learned Single Judge came to the conclusion that under the norms in force in the University the exercise that was required to be undertaken by the experts to whom the names of the candidates were sent, had not been correctly performed by one of the experts-Dr. Nandeswar Sarma who had recommended 12 candidates. This, according to the learned Single Judge, was on account of the fact that the said expert had recommended the names of the candidates from the perspective of their suitability for appointment and not their eligibility to be called for the selection. As the said erroneous decision had a role to play in the short listing of the 8 candidates who had been called for the interview as well as exclusion of 7 candidates from the field, the learned Single Judge took the view that though the appellant/ writ petitioner was eligible, her participation in the selection process will not validate the same, inasmuch as, other candidates who may have been eligible may have been kept out of the selection process. On the said view as recorded in the impugned order of the learned Single Judge, the further view was taken that to maintain public confidence in the matter of appointments in public offices the decision of the Executive Council should be upheld. Accordingly, the writ petition was dismissed.

7. The finding of the learned Single Judge to the effect that the appellant/ writ petitioner was eligible to participate in the selection process on the basis of her academic qualification (SLET) has not been contested by the University nor any argument on the said issue has been raised before us at the hearing. Irrespective of the absence of any challenge in respect of the said finding, on a conjoint reading of the eligibility criteria prescribed by the advertisement; the University Ordinance and the UGC Regulations read along with the communication dated 22.2.2002 of the Deputy Secretary of the UGC referred to herein above, we find that the view recorded by the learned Single Judge with regard to the eligibility of the appellant is unassailable. The appellant/ writ petitioner having cleared the SLET held by the State Level Eligibility Test Commission, Assam was eligible to apply for the post advertised by the Gauhati University in terms of the communication dated 22.2.2002 of the Deputy Secretary of the UGC addressed to the Registrar of Gauhati University.

8. The practice of sending the names of the candidates who had applied to two experts for the purpose of securing their recommendations with regard to the eligibility of such candidates is not on the basis of any statutory prescription. However, if such a norm was in force in the University (though it was discontinued later by the Executive Council resolution dated 10.6.2006), the Court must lean in favour of enforcement of the said norm. If that be so, the learned Single Judge was right in coming to the conclusion that the recommendations of one of the experts, Dr. Nandeswar Sarma, having been made from an incorrect perspective, could not have formed the basis of the exercise of short listing the candidates to be called for the interview. However, we find it difficult to extend our agreement with the views expressed by the learned Single Judge beyond the aforesaid point. No candidate who had been wrongly left out was/ is before the Court. No material in this regard had been brought on record by any of the contesting parties to enable an identification of such candidates, if any. The view recorded by the learned Single Judge with regard to wrongful exclusion of eligible candidates is, therefore, a purely hypothetical view which was not advanced by any of the parties to the proceeding. In such a situation, we are of the considered opinion that the learned Single Judge should not have proceeded to uphold the decision of the Executive Council dated 10.6.2006 to re-advertise the pos

t on the ground that the said exercise was justified on the touchstone of the necessity to instill public confidence in the matter of appointment in public offices. It is our further considered view that the learned Single Judge ought not to have extended the frontiers of the proceeding before him to undertake an exercise which the Courts normally perform when confronted with a non-adversarial litigation.

9. There is yet another aspect of the matter which will require our specific notice. From the affidavit filed by the Registrar of Gauhati University, it appears that the resolution dated 10.6.2006 of the Executive Council to re-advertise the post was primarily promoted by the fact that an ineligible candidate had participated in the interview. The particular ineligible candidate has necessarily to be understood to be the appellant/ writ petitioner. We have already held that the appellant/ writ petitioner was eligible to be called for the interview. If that be so, the basis on which the Executive Council had adopted the resolution dated 10.6.2006 will automatically cease to exist.

10. Consequently and in the light of the foregoing discussions, we allow this appeal; set aside the order dated 27.8.2009 passed by the learned Single Judge and direct the selection process to be recommenced from the stage of consideration of the recommendation(s) of the Selection Committee dated 17.5.2006 by the authority competent in law and, thereafter, to finalize the process of appointment on that basis.