

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 9322 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI**

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

SADHU RAMKUMARDAS SHASTRI

Versus

M.S. UNIVERSITY & 5

Appearance:

PARTY-IN-PERSON

MR HARSHADRAY A DAVE, for the Respondent(s) No. 5

MR MITUL K SHELAT, for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 1 - 4 , 6

CORAM: **HONOURABLE MR.JUSTICE C.L. SONI****Date : 30/04/2013****ORAL JUDGMENT**

1. The petitioner has filed this petition under Article 226 of the Constitution of India for the following reliefs:-

“7(A) YOUR LORDSHIPS may be pleased to issue a Writ of Mandamus or any other appropriate writ for quashing and setting aside of selection procedure undertaken by the respondent Nos.1 and 2 selecting respondent No.3 to 6 pursuant to advertisement Notification dated 13.3.2008 and further be pleased to direct the respondents to undertake a fresh procedure.

(B) YOURS LORDSHIPS may be pleased to issue a Writ of Mandamus or directions directing respondents No.1 and 2 to undertake reconsiderations of petitioner's candidature and consider the same strictly and in accordance with the merits."

2. The case of petitioner is that the petitioner has passed Post Graduation from the M.S. University- respondent No.1 in the subject of Vyakaran Shastra and secured first class distinction in the examination held in the month of April 2003. In the year 2005-2006, respondent No.1 University issued advertisement for the post of Upadhyaka. The petitioner applied and was called for interview for the said post. The petitioner represented in the personal meeting with the Vice Chancellor and pointed out the fault in the advertisement. Interviews were, therefore, cancelled and the respondent University issued fresh notification inviting applications for the very post with amendment in the qualification. The petitioner again represented that this notification was also a tailor made and issued just to keep him out from selection. It was represented by the petitioner that Vedanta/ Functional Sanskrit (Sahitya) was not the subject which was taught at undergraduate level, yet the said subjects were included and Vyakaran Shastra, which was common subject being taught at all undergraduate level was deliberately kept out so as to deprive the petitioner from getting selected on the ground that the said subject was not the requirement for the posts as advertised in the notification. It is further case of the petitioner that despite the above-referred defect in the notification, the petitioner registered his candidature and applied. However, the petitioner was not called for interview. It is further stated by the petitioner that through reliable sources, he learnt that his name was included in the list of persons to be called for interview, therefore, under impression that call letter must

have been lost somewhere in the postal communication, the petitioner appeared in the interview. However, he was not allowed to participate in the selection process and appear before the selection Board on the ground that he was not possessing call letter issued by the authorities. It is further case of the petitioner that the petitioner pointed out to the authorities that since his name was included in the list of persons called for interview, he was present and he must be allowed to participate in the selection process. However, despite the repeated urging before the authorities, the petitioner was not allowed to appear and ultimately, selection process went ahead, wherein respondent Nos.3 to 5 were selected. It is case of the petitioner that the above-referred respondents were selected pursuant to illegal and irregular selection procedure and therefore, the petitioner has joined them in the petition. The petitioner is thus challenging the entire selection process as being illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

3. The petitioner has described in his petition the selection of respondent No.6, i.e. Mr. K.J. Purohit with 52% marks, though Dharma Shastra and Vedanta/ Functional Sanskrit (Sahitya) are not the subjects, as an apple of the eye.

4. The respondent University has opposed the petition by filing reply affidavit dated 6.3.3011. The petitioner has also filed affidavit dated 10.10.2012. One more additional affidavit on behalf of the respondent University is filed on 4.2.2013.

5. The petitioner has appeared as party-in-person. Learned advocate Mr. Mitul Shelat appeared for respondent Nos.1 and 2 and learned advocate Mr. Harshadrai A. Dave appeared for the private respondents.

6. I have heard the party-in-person and the learned advocates for the respondents.

7. The petitioner- party in person has submitted that the qualification in the subjects stated in the fresh notification at Annexure-A is not required for the post advertised as Vedanta/ Functional Sanskrit (Sahitya) are not the subjects taught at undergraduate level but Vyakaran Shastra, which is one of the common subjects taught at undergraduate level, is the subject required. It is deliberately not included to see that the petitioner is kept out of the selection. He submitted that it is not open to the respondent University to fill up the post of Upadhyaka (non-teaching) on the basis of the qualification in the subjects which are not at all required. He submitted that in earlier notification of 2005-2006 as also in the fresh notification for the year 2007-2008, subject of Vyakaran Shastra is deliberately excluded so as to oust him from taking part in the selection for the post of Upadhyaka. He submitted that for the post of Upadhyaka (non-teaching), if the subjects of Jyoti Shastra, Dharma Shastra, Karmakand, Vedanta/ Functional Sanskrit (Sahitya) are not the required subjects, filling up the said posts with candidates having qualification in the said subjects would be totally illegal, arbitrary and violates his fundamental rights under Articles 14 and 16 of the Constitution of India. He further submitted that respondent No.6 though secured only 52% marks in Dharma Shastra, against requirement of 55% marks, he came to be selected, which was totally illegal selection. He thus submitted to declare the entire selection process as illegal and also declare the selection of respondent Nos.3 to 6 and their consequential appointments as illegal and to quash and set aside such illegal appointments.

8. As against the above arguments, learned advocate Mr. Mitul Shelat appearing for the respondent University submitted that the University wanted to appoint the persons with higher qualification specialization in the subjects of Jyoti Shastra, Dharma Shastra, Karmakand, Vedanta/ Functional Sanskrit (Sahitya) for the purpose of imparting good education to the students by such qualified persons. Mr. Shelat submitted that with this idea in the mind, applications were invited from the persons having specialization in the aforesaid subjects. Mr. Shelat submitted that it is not correct that Vedanta/ Functional Sanskrit (Sahitya) was not the subject required for the post of Upadhyaka. Mr. Shelat submitted that the petitioner, who has qualification in Vyakaran Shastra, wanted to exclude other subjects. However, since the University wanted the persons having specialization in the above subjects, post of Upadhyaka was decided to be filled in with the persons having qualifications and specialization in the said subjects. Mr. Shelat submitted that the Ordinance of the University gives powers to the Vice Chancellor to fix qualifications for different categories of non-teaching posts and the Vice Chancellor has in exercise of such powers fixed the qualifications which are provided in the notification for the post in question. Mr. Shelat submitted that in fact, the petitioner did not participate in the selection as his representation to include Vyakaran Shastra was not accepted. Mr. Shelat submitted that the petitioner cannot impose upon the University to fill up the post of Upadhyaka with the persons having qualification only in the subject of Vyakaran Shastra. He submitted that it is for the University and its authorities to decide what subjects are required for the post in the University. Mr. Shelat submitted that appointments to the post of Upadhyaka advertised vide notification at Annexure-'A' have been made in accordance with law and there is no illegality committed in the said process of

appointment. Mr.Shelat submitted that respondent No.6 is qualified for the post of Upadhyaka as he has also secured 64% of marks in Sahitya from M.S. University. Mr. Shelat thus urged to dismiss the petition.

9. Learned advocate Mr. Harshadrai A. Dave appearing for the private respondent, while adopting the arguments of learned advocate Mr. Shelat, submitted that the subjects which are provided in the notification for the post in question are the subjects required for the post in question and it is nowhere provided that only Vyakaran Shastra subject is the required qualification for the post in question. Mr. Dave submitted that in fact, the University has taken more care by requiring the candidates with specialization in the subjects of Jyoti Shastra, Dharma Shastra, Karmakand, Vedanta/ Functional Sanskrit (Sahitya) in the interest of the students and inclusion of such subjects by the authorities of the University is in accordance with the Ordinance and therefore, no error could be found in the selection process undertaken by the respondent University. Mr. Dave submitted that the private respondents, who have been selected and appointed on the post of Upadhyaka do possess the requisite qualifications as provided in the notification and there is no illegality committed in their appointments. Mr. Dave submitted that when the petitioner had not participated in the selection process, he is not entitled to make grievance about the selection process undertaken by the respondent University. He thus urged to dismiss the petition.

10. Having heard the petitioner- party in person and learned advocates for the respondents, it appears that in 2005-2006, the University had issued notification inviting applications for the post of Upadhyaka (non-teaching) requiring candidates with specialization in the subjects of Jyoti Shastra, Dharma Shastra,

Karmakand and Vedanta. Total four posts of Upadhyaka (non-teaching) were notified, out of which, two posts were reserved for S.T. and SEBC candidates respectively. It appears that the said notification was cancelled and the notification, which was subsequently issued in 2007-2008, further included the subject of Functional Sanskrit (Sahitya) in the list of specialization. Thus, specialization required by the notification of 2007-2008 for the post of Upadhyaka was in the subject of Jyoti Shastra, Dharma Shastra, Karmakand, Vedanta/ Functional Sanskrit (Sahitya). Inviting the candidates with qualification of Archarya/ Master Degree with 55% marks from Indian University or equivalent qualification from recognized University in the subject qualification with specialization in the above-referred subjects, goes to show that the University and its authorities were much concerned about selecting and appointing more qualified persons for the post in question.

11. The petitioner has failed to point out that the subject of Vyakaran Shastra was the only required qualification for the post in question. The petitioner has also failed to point out that the University and its authorities could not have fixed the qualification or specialization in the subjects mentioned in the notification for the post in question.

12. It clearly appears from the Ordinance of the University that the powers were delegated to different authorities, including Vice Chancellor, for different items. Item No.40 in the delegated powers provides for fixation of the qualification for different categories of non-teaching staff and the power is given for such item to the Vice Chancellor. In exercise of such powers, qualification has come to be fixed for the post of Upadhyaka. It is required to be noted that it is for the concerned authorities to lay down the qualifications for appointment to different posts in the University and such exercise

of powers providing for qualification for recruitment to the post in the University cannot be subject to judicial review. Therefore, contention raised by the petitioner that Vyakaran Shastra could be the only subject for the post in question cannot be accepted as it was not for the petitioner to decide what could be the qualification for the post in question but, it was for the respondent University and its authorities to decide the qualification for recruitment to the post in question.

13. So far as the grievance against respondent No.6 is concerned, it is required to be noted that he has held two additional qualifications and one of which is Degree in Sahitya with 64% of marks and Sahitya, being one of the subjects required, it cannot be said that he was not having requisite qualification with 55% marks. In reply affidavit, details about process undertaken by Selection Committee are pointed out wherefrom it clearly appears that interviews of 31 candidates were taken and on comparison of the merits of the candidates, ultimately final selection came to be made and appointments came to be given to the private respondents. No illegality in such selection process has been pointed out by the petitioner.

14. For the reasons stated above, the petition is devoid of merits and is required to be dismissed. Hence, the petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

Sd/-
(C.L. SONI, J.)

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