

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.4166 of 2022

With

I.A. No. CAN 1 of 2023

DR. AMRITA BANEERJEE

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Biswaroop Bhattacharya, Adv.,
Ms. Tanuja Basak, Adv.

For the University : Mr. Amitabrata Ray, Adv.,
Mr. Pradip Kumar Ghosh, Adv.

For respondent no.6 : Mr. Soumya Majumder, Adv.,
Ms. Mayuri Ghosh, Adv.

For the State : Mr. Swapan Kr. Datta, AGP.,
Mr. Tapas Kr. Mandal, Adv.

Hearing concluded on : 17.05.2023

Judgment on : 21.09.2023

Kausik Chanda, J.:-

In Re: I.A. No. CAN 1 of 2023

This writ petition was dismissed for default on March 3, 2023.

2. Thereafter, this writ petition has been heard along with the restoration application. After going to the averments made in the writ petition, I am of the view that the petitioner has sufficiently explained the reason for non-appearance before this Court on the said date.

3. Accordingly, the application for restoration, I.A. No.CAN 1 of 2023 is allowed.

In Re: W.P.A. No.4166 of 2022

In this writ petition, the appointment of respondent no.6. as an Assistant Professor at Diamond Harbour Women's University has been challenged.

2. The principal ground for this challenge is the alleged violation of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (in short, the UGC Regulations, 2010). The petitioner contends that the Selection Committee, responsible for the relevant selection had been formed in violation of the UGC Regulations, 2010.

3. It is the case of the petitioner that the relevant advertisement inviting applications from the prospective candidates was published on September 5, 2020, explicitly stating that the recruitment would adhere to the State

Government order dated May 16, 2017, which adopted the UGC Regulations, 2010.

4. Mr. Biswaroop Bhattacharya, learned advocate appearing for the petitioner, has contended that in the present case, the Selection Committee had a Professor of Vidyasagar University, who was nominated by the Vice-Chancellor, to act as the Chairman. As per the UGC Regulations, 2010, the Vice-Chancellor of the university himself should be the Chairperson of the committee. Any delegation was impermissible in this regard. Additionally, it is argued that since female candidates applied for the post in question, the Selection Committee should have been formed with a female member in terms of 5.1.1 (a) 6 of the UGC Regulations, 2010. It has further been submitted that the head of the Department of Political Science of the university was also not a member of the Selection Committee. The aforesaid discrepancies violate the UGC Regulations, 2010. It has been contended that the UGC Regulations, 2010 is mandatory in nature and any violation thereof renders a selection invalid.

5. To demonstrate the mandatory nature of the UGC Regulations, Mr. Bhattacharya has relied upon the following judgments: **(2022) SCC OnLine SC 1382 (State of West Bengal v. Anindya Sundar Das)**, **(2022) 8 SCC 713 (Krishna Rai (Dead) through legal representatives v. Banaras Hindu University through Registrar)**, **(2022) 5 SCC 179 (Gambhirdan K. Gadhvi v. State of Gujarat)** and **(1981) 1 CHN 205 (Union of India through the General Manager, Eastern Railways v. S.N. Chatterjee)**.

6. On behalf of respondent no.6, it has been submitted that in the selection process, respondent no.6 secured the highest score 66 out of 100 while the petitioner ranked fourth with a score of 54.1. Therefore, even on the success of the writ petition, the petitioner cannot be appointed. Mr. Soumya Majumder, learned advocate appearing on behalf of respondent no.6, has relied upon the judgment reported at **(1998) 6 SCC 741 (Union of India v. N.Y Apte)** and **(1998) 2 CLJ 365 (Lalin Kumar Mahato v. State of West Bengal)** to argue that when no relief can be given to the petitioner, the writ petition should not be entertained.

7. Mr. Majumder has further submitted that the writ petition is grossly belated. Respondent no.6 left her earlier employment to join the present post on July 13, 2021, whereas the petitioner is still continuing with her position. Therefore, any interference in the selection at this stage will be iniquitous.

8. With regard to the constitution of the Selection Committee, Mr. Majumder has pointed out that as per Regulations 5.1.1 of the UGC Regulations, 2010, a Selection Committee for the post of Assistant Professor can have a maximum of eight members. The selection process, in this case, was also governed by Section 27 (2) of Diamond Harbour Women's University Act, 2012 (in short, the said Act of 2012), which permitted a nominee of Vice-Chancellor to be the head of the Selection Committee instead of the Vice-Chancellor himself as the Chairperson. The petitioner has not challenged Section 27(2) of the said Act of 2012.

9. Mr. Majumder has contended that the composition of the Selection Committee adhered to the UGC Regulations, 2010. Drawing attention to clause 5.1.1(a) 6 of the UGC Regulations, Mr. Majumder has submitted that the said clause requires “an academician” to represent any of the six categories mentioned therein, not multiple representatives for each category. He has further submitted that out of six categories mentioned in clause 5.1.1 (a) 6, four categories are statutorily reservable, whereas the other two namely “Minority” and “Women”, are not. He has argued that this will lead to an absurd situation if a selector representing the Schedule Caste category has to walk out of the interview room to give way to another selector to interview a Minority candidate and so on.

10. He has further argued that if the argument of the petitioner is accepted then the number of members of the Selection Committee will be thirteen. Mr. Majumder has argued that the said clause 6 does not use the expression “as the case may be” or the expression “wherever applicable” as appearing against clause 5.1.1 (a) 3, which implies that the legislators did not desire more than one academician to represent the categories.

11. Mr. Majumder has also argued that in the present case, six members were present. The requirement of quorum and the presence of outside subject experts had been fulfilled. He asserted that the writ petitioner filed this petition after the result of the selection process had been declared on February 10, 2021, which estopped her from challenging the selection process. In this regard, Mr. Majumder has relied upon the judgment

reported at **(2008) 4 SCC 171 (Dhananjay Malik v. State of Uttaranchal)**.

12. To appreciate the controversy involved in this case, it is necessary to note that clause 19 of the relevant advertisement dated September 5, 2020, mentioned that the recruitment process for the post in question would be in terms of the State Government Order No.516-Edn (U)/1U-91/10 dated 16.05.2017.

13. By the aforesaid government order dated May 16, 2017, the State prescribed for direct recruitment of Assistant Professors, Associate Professors and Professors in State-aided Universities based on UGC Regulations, 2010. The relevant segment of the said notification is quoted below:

“Composition of the selection committee and the selection criteria based on the candidates’ academic record, research experience, performance in his/her previous academic/research positions in the colleges/universities/research institutes/industries and other related aspects may be decided by the appropriate bodies of the concerned university taking into consideration as far as practicable, the relevant guidelines of UGC in such matters.”

14. The aforesaid provision makes it clear that it was not mandatory for the appointing authority to follow the UGC Regulations, 2010.

15. Paragraph 5.1.1 of the UGC Regulations, 2010, prescribes the following composition of the Selection Committee for the relevant post.

“5.1.1 Assistant Professor in the University:

(a) The Selection Committee for the post of Assistant Professor in the University shall have the following composition.

1. The Vice Chancellor shall be the Chairperson of the Selection Committee.

2. Three experts in the concerned subject nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned.

3. Dean of the concerned Faculty, wherever applicable

4. Head/Chairperson of the Department/School.

5. An academician nominated by the Visitor/Chancellor, wherever applicable.

6. An academician representing SC/ST/OBC/Minority/Women/ Differently-abled categories to be nominated by the Vice Chancellor or Acting Vice Chancellor, if any of the candidates representing these categories is the applicant and if any of the above members of the selection committee do not belong to that category.

(b) At least four members, including two outside subject experts shall constitute the quorum.”

16. In contrast, Section 27 of the Diamond Harbour Women’s University Act, 2012, provides for the composition of the Selection Committee in the following manner:

“Selection Committee for Teachers of the

27. (1) A University Professor or a University Associate Professor or a University Assistant Professor shall be appointed by

University the Vice-Chancellor, on the recommendation of the Selection Committee, and the constitution of the Selection Committee as well as the procedure for holding its meetings shall be in consonance with the University Grants Commission Regulations and Recruitment Rules framed by the State Government from time to time.

(2) Notwithstanding anything contrary to the provisions of University Grants Commission Regulations, the nominee of the Vice-Chancellor shall be the head of the Selection Committee, which shall send its recommendations in writing to the Vice-Chancellor along with reasoned record of assessment of the persons appeared before it for selection.”

17. It is also necessary to notice that Section 28 of the said Act of 2012, plays an important role in selection. Section 28 reads:

“Procedure for holding meeting of Selection Committee **28.** (1) At least four members, including two outside subject experts, shall constitute the quorum for a meeting of the Selection Committee.

(2) If the Vice-Chancellor does not accept the recommendation of a Selection Committee, it shall refer the recommendation back to the Selection Committee

with reasons for reconsideration and if the Vice-Chancellor does not accept the reconsidered views of the Selection Committee, the matter shall be referred to the Chancellor with reasons and the decision of the Chancellor shall be final.”

18. A comparison of a Selection Committee for the post of Assistant Professor between the UGC Regulations, 2010, and the Diamond Harbour Women’s University Act, 2012, will make it clear that in the case of the former, the Vice-Chancellor should be Chairman while the latter allows his nominee to be the head of the selection committee. The composition is otherwise similar.

19. Under the Diamond Harbour Women’s University Act, 2012, the Vice-Chancellor retains his discretion not to accept the recommendation and refer it back to the Selection Committee for reconsideration. If the reconsidered view of the Selection Committee is not acceptable to him, he shall refer the matter to the Chancellor of the university for his decision.

20. In the present case, the Selection Committee was formed by the following members:

“1. Professor Sabyasachi Basu Ray Chaudhury, Vice-Chancellor, Rabindra Bharati University, Chancellor’s Nominee & Subject Expert of the Selection Committee.

2. Professor Sibaji Pratim Basu, Professor, Department of Political Science, Vidyasagar University, Vice-Chancellor’s Nominee, Subject Expert & Chairperson of the Selection Committee.

3. Prof. Anindya Jyoti Majumdar, Professor, Department of International Relations, Jadavpur University & Subject Expert.

4. Professor Rabindranath Bhattacharyya, Professor, Department of Political Science, Burdwan University & Subject Expert.

5. Professor Tapan Mandal, Dean Faculty of Arts, Diamond Harbour Women's University.

6. Dr. Tapu Biswas, Dept. of English, Visva-Bharati University, Member as per UGC stipulation.”

21. Admittedly, in the present case, the UGC Regulations, 2010, was deviated by the absence of the Vice-Chancellor and a woman member in the Selection Committee. However, a member was nominated by the Vice-Chancellor in terms of clause 5.1.1(a) 6 of the UGC Regulations, 2010. In my view, the aforesaid deviations do not warrant interference with the selection.

22. The aforesaid clause 5.1.1(a) 6 was incorporated to protect the interest of a candidate who belongs to the SC/ST/OBC/Minority/Women/Differently-abled category. Given that the petitioner and respondent no.6 both are women, it cannot be said that the petitioner has been discriminated against due to the absence of a female member in the Selection Committee.

23. In the present selection process, the Vice-Chancellor himself approved the recommendation of the selection committee and appointed respondent no.6 following the power conferred under Section 27(1) of the

Diamond Harbour Women's University Act, 2012. The Vice-Chancellor could not have played any different role if he had acted as the Chairman of the Selection Committee in terms of UGC Regulations, 2010.

24. It is true that in ***Anindya Sundar Das (supra)***, a Division Bench of this Court has held that in case of any conflict between the UGC Regulations and the State Act, the UGC Regulations will prevail. The other judgments cited by the petitioner also support that view. In the present case, the Vice-Chancellor accepted the recommendation of the Selection Committee. His role as the Chairman could not have altered the decision to select respondent no.6 for the relevant post.

25. In that view of the matter, it is not necessary to delve into the other aspects of the matter as raised by respondent no.6.

26. Accordingly, W.P.A. No.4166 of 2022 is dismissed without any order as to costs.

27. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)