

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Writ Petition No.19665 of 2017

Vikas Malik
Vs.
Union of India and others

Writ Petition No.19666 of 2017

Jayshree Baitod
Vs.
Union of India and others

Writ Petition No.19667 of 2017

Priyanka Yadav
Vs.
Union of India and others

Writ Petition No.19669 of 2017

Amrita Gour
Vs.
Union of India and others

Writ Petition No.19763 of 2017

Dr. Parag Dalal
Vs.
Union of India and others

Shri Gagan Bajad and Shri Vijaywargiya, Advocates for the petitioners
S/Shri L.M.Acharya, Koustubh Pathak and Shrey Saxena, Advocates for the
respondents No.1 and 2

Shri Prakhar Mohan Karpe, Advocate for the respondent No.2.

Shri Ajinkya Dagaonakar, Advocate for the respondent No.3

Ms. Archana Kher, Government Advocate for the respondent/State.

Whether approved for reporting: YES

Prescription of qualification:

The prescription of minimum qualifications and the mode of appointment in the sphere of public employment is within the domain of the appointing authority or the selection body. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualification so prescribed is reasonably relevant and do not obliterate the equality clause.

The project of TEQUIP-III is a joint venture of Government

of India and the World Bank intends to enhance the quality, improvement and efficiency standards in the participating engineering institutions.

The impugned advertisement for appointment of Assistant Professor has been issued for a specific project outer period being three years but, not under any statutory rules either referable to Article 309 of the Constitution of India or a statute, the competent authority in its power of general administration is fully empowered to prescribe the educational qualifications with qualifying GATE exam to meet the requirements.

Under the circumstances, implementation of Roster system has no relevance.

Relevant paragraphs: 1 to 9

Reserved on: 10/01/2019

ORDER
(05/02/2019)

Rohit Arya, J

This order shall govern disposal of batch of writ petitions, viz., W.P.Nos.19665, 19666, 19667, 19669 and 19763 of 2017. As similar controversy involved in all these writ petitions, they are heard heard analogously and disposed of by this common order.

Facts have been dealt with from W.P.No.19665/2017:

Taking exception to the advertisement dated 30/10/2017 issued by the respondent No.2, (National Project Implementation Unit, Government of India through its Secretary) inviting applications for 1221 posts of Assistant Professor in 53 colleges through the Centralized Engagement Process under the Technical Education Quality Improvement Project (for short, 'the TEQIP III) spread over in different States as indicated in Annexure P/1, providing the educational qualification:

BE/BTech and ME/MTech in relevant branch with 1st Class (60% or 6.75 grade point) either in bachelors or Masters degree from a recognized institution/university (for equivalent UG/PG degree refer Annexure P/1) and should have qualified through GATE exam:

petitioner with Master of Technology degree working as temporary Assistant Professor with respondent No.5; Ujjain Engineering

College, Ujjain (for short, 'the respondent No.5) on clock hour basis and being paid on the basis of number of hours worked, has approached this Court under Article 226 of the Constitution of India *inter alia* contending that; (i) the norms/educational qualifications prescribed by the University Grants Commission (for short, 'the UGC') and All India Council for Technical Education (for short, 'AICTE') do not contemplate passing/qualifying GATE exam as essential qualification for recruitment to the post of Assistant Professor; (ii) one set of *ad hoc* employees cannot be replaced by another set of *ad hoc* /contractual employees and (iii) the advertisement does not provide for reservation for various categories as per Roster system.

(Emphasis supplied)

2. On notice, the respondents No.1 and 2 have filed counter-affidavit opposing the admission of the writ petition. The respondent No.3 has also filed counter-affidavit with the contention that no relief since has been sought against it, it is not necessary party. However, it has no objection if the recruiting agency, i.e., respondents No.3 and 4 adopts higher standards and qualifications in addition to the minimum qualification notified by the respondent No.3 as long as there is availability of the courses and applicants in the country, as the case may be. Respondent No.4 in its separate counter-affidavit has also sought dismissal of the writ petition.

3. Respondents No.1 and 2 *inter alia* contend that;

(i) petitioner is not in the regular employment of respondent No.5 on the post of Assistant Professor. Therefore, no legal right vested on to him to claim any regular employment or seek protection of employment taking exception to the advertisement criticizing the prescription of educational qualifications and the eligibility conditions fixed thereunder;

(ii) TEQIP-III Project is sponsored by the World Bank and the Government of India. The Centralized Engagement

Process has issued the advertisement for availing the services of the specialized teaching faculty under the aforesaid project and is in addition to the existing teaching faculty already engaged by the respondent No.5 either on temporary basis or on sanctioned post. Therefore, the apprehension expressed by the petitioner in the instant writ petition that he is sought to be replaced by the selection process through advertisement issued by the respondent No.2 is misconceived and misdirected, besides factually incorrect;

(iii) the Centralized Engagement of Teaching Faculty initiated by the respondent No.2 is for and on behalf of respondent No.5/institution to fulfill the faculty requirement of the institution for seeking Accreditation from National Board of Accreditation (Autonomous Body constituted by the Government of India); as upon accreditation, the respondent No.5/institution shall be eligible to seek aid under the aforementioned TEQIP-III project;

(iv) The Engagement of specialized teaching faculty through the aforesaid process is project related and such engagement would come to an end automatically upon completion of the project; the outer period being three years. In other words, the Centralized Engagement Process does not seek to create new teaching posts in the respondent No.5/institution. As such, neither the centralized engagement process nor the respondent No.2 is in any manner concerned with the terms of the present employment of the petitioner;

(v) while rebutting the challenge to the requirement of qualifying GATE exam in the advertisement, it is submitted that in the year 2002-03, the Government of India with financial assistance from the World Bank has launched the Technical Education Quality Improvement Programme in three phases for systemic transformation of the Technical Education System in the India;

(a) the first phase of TEQIP commenced in the month of March, 2003 and ended in the month of March, 2009 benefiting 127 institutions in 13 States;

This project covered less than 10% of the institutions existed on that date;

(b) the second phase of TEQIP was commenced in the year 2009 and ended in March, 2017 with the objects as indicated in paragraph 7(B) of the counter-affidavit;

(c) in the current third phase of TEQIP, only the Government and Government aided AICTE approved Engineering Institutions/Engineering faculty/Engineering Teaching Department/Constituent Institutions of Universities/Deemed to be Universities and new centrally funded institutions from the focused States mentioned in the advertisement are made eligible for seeking aid. The financial agreement signed by

Department of Economic Affairs (DEA), Government of India and the World Bank for TEQIP-III envisages four Disbursement Link Indicators; accreditation and GATE qualification are amongst them. Copy of Financial Agreement is placed on record as exhibit A;

(vi) TEQIP-III seeks to enhance the quality, improvement and efficiency of the engineering education system in the focused States in the concerned institutions;

(vii) The qualification as prescribed in the advertisement, i.e., B.E./B.Tech along with M.E./M.Tech with candidates having qualified GATE exam has direct nexus with the object for recruitment of the faculty sought to be recruited for specific project only with the maximum life of three years. It is not a regular appointment against the sanctioned posts to be filled through the recruitment process with due observance of recruitment process thereof including the Roster system;

(Emphasis supplied)

Subject to the aforesaid, it is submitted that even otherwise, the prescription of educational qualification and the eligibility conditions are within the rights and authority of the respondents No.1 and 2 having direct nexus with the project for which the temporary appointments are to be made and the same are beyond the purview of writ jurisdiction under Article 226 of the Constitution of India in the obtaining facts and circumstances. That apart, the educational qualifications so prescribed in the advertisement in no way even either in violation of any statutory rules or *de hors* the norms prescribed by the AICTE or UGC.

4. The respondent No.5/institution has filed separate counter-affidavit with the submission that pursuant to the instant advertisement, the selection process has already been completed and the candidates have already joined and working properly with further contention that the petitioner's appointment as guest faculty is purely temporary and receiving Rs.275/- per period engaged for maximum three periods on certain terms and conditions. The privity of contract between the petitioner and the respondent No.5 is regulated by such conditions. No right in excess thereto accrues to the petitioner, particularly; in the context of challenge to the instant advertisement. It is altogether for a different purpose as detailed in the counter-affidavit filed by the respondents No.1 and 2. To support the submissions, respondent No.5 has relied upon the judgment of the Hon'ble Supreme Court in the case of **Grido Ltd., and another Vs. Sadan and others, AIR 2012 SC 729** and order passed by the coordinate Bench in **W.P.No.2031/2017 (Dr. Vikas Mishra Vs. State of M.P., and others) decided on 21/03/2018 (Annexure R/3)**.

5. Heard.

6. Before advertizing to the rival contentions, regard being had to the factual matrix in hand, it is considered apposite to reiterate the law holding the field in the matter of prescription of educational qualifications and the eligibility conditions in public employment.

7. The prescription of minimum qualifications and the mode of appointment in the sphere of public employment is within the domain of the appointing authority or the selection body. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualification so prescribed is reasonably relevant and do not obliterate the equality clause [**J. Ranga Swamy Vs. Govt., of A.P., (1990)1 SCC 288 & Chandigarh Administration Through the Director Public Instructions (Colleges), Chandigarh (2011) 9 SCC 645**].

Besides, in the absence of any rules under Article 309 of the Constitution of India or a statute, the appointing authority is competent in its power of general administration to prescribe such eligibility criteria as it is necessary and reasonable in the obtaining facts and circumstances.

8. The appointment of Assistant Professor under the advertisement is since related to an object being co-terminus with the project for a limited period; till completion of the project or maximum three years whichever is earlier has no correlation with the engagement of guest faculty/Assistant Professor on clock hour/*ad hoc* basis in the technical institution. As such, it is not a case of substitution of contract faculty for contract faculty as sought to be alleged in the writ petition. As a matter of fact, the project of TEQUIP-III is a joint venture of Government of India and the World Bank intends to enhance the quality, improvement and efficiency standards in the participating engineering institutions. The respondents No.1 and 2 have rightly laid emphasis on and insistence of well qualified faculty in the advertisement in addition to B.E./B.Tech alongwith M.E./M.Tech with requirement of qualifying GATE exam. In fact, the same subserves the object for which the faculty is engaged under the instant third phase project as discussed above, i.e., upgradation of the institutions making them eligible for seeking financial aid under the financial agreement signed by the Department of Economic Affairs, Government of India and the World Bank for TEQUIP-III whereunder accreditation and GATE qualification are amongst the four relevant considerations (exhibit A). Hence, the challenge to the prescription of the qualification and GATE examination in the advertisement and that too at the instance of the petitioner is found to be misconceived and misdirected. Under the circumstances, no interference is warranted under Article 226 of the Constitution of India.

9. This Court holds that such prescription of the qualifications in the advertisement to the post in question as laid down by the Hon'ble Supreme Court in the cases referred above, i.e., qualifying in the GATE exam is not only relevant but, also has direct rationale or nexus for the purpose of improvement, quality

and efficiency standards of the engineering institutions to help facilitate accreditation to become eligible for aid under the financial agreement signed by the Department of Economic Affairs, Government of India and the World Bank as contemplated under the scheme. Further, as the impugned advertisement for appointments at issue has been issued for a specific project but, not under any statutory rules either referable to Article 309 of the Constitution of India or a statute, the prescription of qualification and implementation of Roster system has no relevance and the competent authority is fully empowered to prescribe the educational qualifications with qualifying GATE exam.

10. Upshot of the aforesaid discussion leads to dismissal of all the writ petitions.

11. All the writ petitions sans merit and are hereby dismissed. No order as to cost.

A copy of order be placed on the record of the connected writ petitions.

(Rohit Arya)
Judge
05-02-2019

b/-