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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 6th OF FEBRUARY, 2024**

WRIT PETITION No. 18628 of 2017

BETWEEN:-

**DR. YADVENDRA PRASAD DUBEY S/O LATE SHRI B.P.
DUBEY, AGED ABOUT 48 YEARS, OCCUPATION:
ASSISTANT PROFESSOR, R/O 535 GARHA BAZAAR,
JABALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI BRINDAVAN TIWARI - ADVOCATE)

AND

- 1. PRINCIPAL SECRETARY HIGHER EDUCATION
DEPARTMENT VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. VICE CHANCELLOR OF INDIRA GANDHI
NATIONAL TRIBAL UNIVERSITY (IGNTU)
AMARKANTAK (MADHYA PRADESH)**
- 3. REGISTRAR OF INDIRA GANDHI NATIONAL
TRIBAL UNIVERSITY, AMARKANTAK (MADHYA
PRADESH)**
- 4. DR. VISHNU NARAYAN MISHRA ASSOCIATE
PROFESSOR, INDIRA GANDHI NATIONAL TRIBAL
UNIVERSITY, AMARKANTAK (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI ARPAN J. PAWAR - ADVOCATE FOR RESPONDENTS NO.2 AND
3)***

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*This petition coming on for admission this day, the court passed the
following:*

ORDER

This writ petition is filed on the ground that petitioner was a candidate for

selection to the Post of Associate Professor for which an advertisement was issued by the Indira Gandhi National Tribal University (IGNTU), Amarkantak (M.P.).

2. Petitioner's contention is that petitioner possesses qualification of M.Sc., M.Phil and Ph.D. in the relevant subject of Mathematics, therefore, he being more meritorious should have been selected for the post of Associate Professor, but, contrary to this, private respondent No.4 has been appointed by giving petitioner less marks in the API score card and contrary to the UGC guidelines.

3. Petitioner's contention is that in the amended petition, methodology to calculate API has been given for the post of Assistant Professor, Associate Professor and the Professor, Annexure-III Table-II (b) but respondents took computation of API of private respondent No.4 for the post of Assistant Professor and by applying the same parameters favoured him in violation of the UGC guidelines. It is also submitted that petitioner had sought information under the RTI Act but the respondents did not file the complete set of the information despite order of this High Court dated 15/09/2022 which shows manipulation in the matter of private respondent No.4.

4. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Gambhirdan K. Gadhvi Vs. State of Jugarat and others, (2022) 5 SCC 179** where from reading paras-48 and 50, it is submitted that petitioner's case squarely falls within the ambit of discussions carried out in paras-48 and 50. Similarly, reliance is placed on the judgment of this High Court in the case of **Shailesh Kumar Son Wane Vs. State of M.P. and others, ILR 2021 MP 2092 (DB)** and reading from paragraphs 17 and 18, it is submitted that these two paragraphs squarely covers the case of the petitioner, therefore,

indulgence be shown and since there is violation of the UGC guidelines in making selection of the private respondent No.4, that order of appointment of private respondent No.4 may be set aside. It is also submitted that while making calculation of API for the post of Assistant Professor, same sheet has been applied for the post of Associate Professor which is contrary to the directions contained in this behalf.

5. Shri Arpan J. Pawar, learned counsel for respondents No.2 and 3, in his turn, submits that they have filed complete set of documents to demonstrate that private respondent No.4 had secured 40 marks in API and his total score was 85 as is evident from Annexure-R/2 which demonstrates that for the academic background private respondent No.4 was given 15 marks, for Research Performance based on API Score and Quality of Publications 40 marks, Assessment of Domain Knowledge and Teaching Skills 15 marks and in an Interview he was given 15 marks, totalling 85% against 11 marks secured by the petitioner under the head of Academic Background, 23.04 marks under the head of Research Performance based on API Score and Quality of Publications, 05 marks for Assessment of Domain Knowledge and Teaching Skills and 5 marks in the interview. It is further submitted that the candidate just below the private respondent No.4 is Dr. Manoj Sharma who had secured 44.90 marks against the petitioner who had only secured 44.04 marks. Thus, it is submitted that looking to the huge difference between the marks secured, only private respondent No.4 was recommended for appointment and candidature of all others was rejected.

6. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Basavaiah (Dr.) Vs. Dr. H.L. Ramesh and others, (2010) 8 SCC**

372 and reading from para-20, 21 and 38, it is submitted that where the domain is of expert, then Court should be slow to interfere.

7. After hearing learned counsel for the parties and going through the record, it will be necessary to recall that petitioner further made an argument that private respondent No.4 had moved an application as an advance copy and mentioned in that application through proper channel will follow from his present employer. In that application total number of enclosures are 149 whereby there was manipulation of the record and enclosures were allowed to be added subsequently. In this backdrop, it is submitted that contrary to the UGC guidelines, a less meritorious candidate has been selected whereas the private respondent No.4 was not having material to show that he had guided doctoral research.

8. The ratio of law laid down by Hon'ble Supreme Court in the case of **Gambhirdan K. Gadhvi (supra)** as culled out from paragraph- 48 and 50 is that in para-48 it is mentioned that State of Gujarat failed to take note of the communication from the UGC and instead the respondent-University has left it to the sweet will of the Search Committee to prescribe eligibility criteria for the appointment of the Vice-Chancellor of the University. In para-50, it is mentioned that since UGC Regulations are enacted by the UGC in exercise of powers under Section 26(1)(e) and 26(1)(g) of the UGC Act, 1956, therefore, being a subordinate legislation, UGC Regulations become part of the Act.

9. In the present case, petitioner has though contended that there is violation of UGC Regulations while advancing his arguments, but, firstly UGC has not been impleaded as a party. Secondly, which of the Regulations has been violated is not pointed out by Shri Brindavan Tiwari, learned counsel for

the petitioner, therefore, case-law laying down a ratio of law in the case of **Gambhirdan K. Gadhvi (supra)** is not having any application to the facts and circumstances of the present case.

10. As far as ratio of law laid down by the Division Bench of this Court in the case of **Shailesh Kumar Son Wane (supra)** is concerned, in para-17 referring to the decision of Hon'ble Supreme Court in the case of **Dinesh Kumar Kashyap and others Vs. South East Central Railway and others, (2019) 12 SCC 798** it is noted that our country is governed by the rule of law and then dealing with the aspect of arbitrariness to be an anathema to the rule of law, law has been laid down that legitimate expectation of the select list candidate for consideration for appointment when post in question falls vacant, cannot be denied by the Government by acting arbitrarily or without offering any justifiable reason.

11. In the present case, admittedly, two vacancies were advertised. One was filled by giving appointment to the private respondent No.4. Second vacancy has been kept vacant. Ground for not filling the vacancies is pointed out that the score of other candidates being so vastly different and lower that there would have been a mismatch in the caliber of two faculties. When tested on this ground, then the ratio of law in the case of **Shailesh Kumar Son Wane (supra)** is of no assistance to the present petitioner.

12. As far as law laid down in the case of **Basavaiah (Dr.) (supra)** is concerned, in para-20 Hon'ble Supreme Court has held that Expert Committed had carefully examined and scrutinised the qualifications, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. Hon'ble Supreme Court has further held that Division Bench

was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts.

13. In para-21, it is held by Hon'ble Supreme Court that "it is the settled legal position that the Courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualifications, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate Court on the recommendations made by the country's leading experts in the field of Sericulture." Thereafter in para-38, it is held by Hon'ble Supreme Court that the legal position is that in the academic matters, the Courts have a very limited role particularly when no *mala fides* have been alleged against the experts constituting the Selection Committee.

14. When tested on the aforesaid touchstone, then firstly, there is no plea of mala fides. Even if there are some passing references, then in absence of impleadment of the members of the Expert Committee, such pleading of *mala fides* in passing references cannot be substantiated. Therefore, in light of the decision of Hon'ble Supreme Court in the case of **Basavaiah (Dr.) (supra)**, the findings of experts cannot be lightly brushed aside merely at the instance of the petitioner.

15. This finding get support from another aspect that the difference between the score secured by the private respondent No.4 and petitioner is so huge that minor or marginal errors even if taken into consideration are not sufficient to give an edge to the petitioner's case. Therefore, on both the touchstone of there being no violation of the UGC guidelines and further there being no material to

show that the experts were acting in a *mala fide* or partial manner, this Court cannot definitely sit as an appellate authority over the judgments of the experts.

16. Accordingly, this petition is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

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