

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.663/2014

Friday, this the 23rd day of August 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Mr. Dinesh Chand
r/o 384, 3rd Floor, Dr. Mukherjee Nagar
Delhi – 110 009
2. Dr. Vijay Kumar Tiwary
r/o B-5/375, Yamuna Vihar, Delhi – 110 053
3. Mr. Shashi Kumar Sharma
r/o A-17/21, Gali No.1, Ravidas Gali
Brahampuri, Delhi – 110 053
4. Mr. Hari Niwas
r/o B-2/363, Yamuna Vihar
Delhi – 110 053
5. Mr. Ravindra Kumar
r/o E-453, Gali No.17
Ashok Nagar, Delhi – 97
6. Mr. Ram Niwas Khari
r/o B-2/363, Yamuna Vihar
Delhi – 110 053
7. Mr. Avinash Bhanudas Jagtap
5/3 B Wing Madu Krishana Survey
No.478/6, Sadarbazarpeth, Satara
Maharashtra 415 002

..Applicants

(Mr. Nalin Kohli, Mr. M K Bhardwaj and Mrs. Harvinder Oberoi, Advocates)

Versus

1. University Grant Commission
Through Chairman/Secretary
Bahadur Shah Zafar Marg
New Delhi – 110 002
2. Ministry of Human Resource Development
Through its Secretary

Govt. of India
Shastri Bhawan, New Delhi – 110 001

3. Salil S.,
Pay Scal
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
4. Nikhil Kumar
Community College
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
5. Vinod Singh Yadav
(Northern Regional College Bureau)
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
6. Prashant
Career Oriented Education
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
7. Jitendra
(Northern Regional College Bureau)
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
8. Ajay Kumar
Coordination Planning and Policy II
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002
9. Megha Kaushik
Major Research Projects (New & Old Both merged)
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi – 110 002

..Respondents

(Mr. Ravinder Aggarwal, Advocate for respondent No.1,
Nemo for respondent No.2,
Mr. A K Behera, Advocate for respondent Nos.3 to 9)

O R D E R (ORAL)**Justice L. Narasimha Reddy:**

The University Grants Commission (UGC), the first respondent herein, issued a notification dated 16-17.02.2013 inviting applications for the post of Education Officer. 17 vacancies were notified, subject to slight change, either way. For the selection undertaken through the said notification, the UGC has adopted the process of conducting written test, comprising of two parts, followed by holding of interview. The written tests were conducted on 30.06.2013 and 14.07.2013. A list of 100 candidates, including all the categories, was prepared on the basis performance in the written test, and they were called for interview. Based on the marks allotted by the members of the Selection Committee, the candidates were selected and orders of appointment were issued.

This O.A. is filed challenging the entire selection process undertaken by the first respondent in relation to the advertisement referred to above.

2. The applicants submit that the conducting of written test was an important step in the selection process and having conducted the same, that too in two parts, the 1st respondent completely ignored the marks assigned to the candidates. They also contend that the entire process smacks of arbitrariness and is contrary to law laid down by the Hon'ble Supreme Court in

Ashok Kumar Yadav & others v. State of Haryana & others, (1985 (4) SCC 417 and other subsequent judgments.

3. The respondent No.1 on the one hand and respondent Nos. 3 to 9 on the other, filed separate counter affidavits. It is stated that the written test was conducted only for the purpose of short listing the candidates to be called for interview and the plea raised by the applicants is totally untenable. It is stated that according to the Recruitment Rules also, the holding of written test is not mandatory, and as a matter of fact, such tests were not conducted in the earlier selections.

4. The respondents further contend that the O.A. is not maintainable inasmuch as the applicants participated in the selection process and have raised the issue only when they were not selected.

5. The post involved is the Education Officer in the UGC. Out of 17 posts, 10 were un-reserved; 1 each were required for SC & ST, and 5 for OBC. Subsequently, the figure was enhanced to 19. In the notification, the qualifications are stipulated and there is no dispute that the applicants and the selected candidates possessed the qualifications. The initial notification did not elaborate upon the process of selection. It was only through a notification dated 08.06.2013, that the first respondent elaborated the process. Paragraphs, 1, 6, 7, 8 and 9

are relevant for the purpose of this O.A. and they read as under:-

“1. The UGC announces to conduct a national level examination for recruitment to the post of Education officer on 30th June, 2013.

2. All those applicants who had applied online in response to our advertisement issued on 16.2.2013 and 17.2.2013 are invited to appear in the said examination.

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6. The examination will consist of two objective type papers – Paper I will consist of 60 questions out of which candidate will be required to attempt 50 questions and Paper II will consist of 50 compulsory questions. Each question will carry 2 marks.

7. Paper I will be of general nature of assess the general awareness, reasoning communication skill, administrative skill, comprehension, analytical skill, etc. and Paper II will be to test language efficiency of the candidates. The candidate will have the option either to opt for language efficiency in Hindi or alternatively in English.

8. The timings for test will be as follows:-

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|------|-----------|--------------------------|
| (i) | Paper – I | 9.30 a.m. to 10.45 a.m. |
| (ii) | Paper –II | 10.45 a.m. to 12.00 noon |

9. Result will be prepared as per the aggregate of marks secured by the candidate in Paper I and Paper II. Thereafter, based on the merit short-listing will be done for inviting the candidates for interview from amongst the candidates who fulfill the eligibility conditions as per UGC Cadre Recruitment Rules for the said post and other such conditions that may be laid down by the Commission for the purpose of selection.”

6. From a perusal of the extracted paragraphs, it would be evident that the written test, conducted in papers I & II was treated as an important step in the process of selection. Each paper carried 100 marks and it is only based on the “merit” in the written test, that the short listing was required to be

undertaken. The notification, however, is silent as to the weightage to be given to the marks secured by a candidate in the written test. This is obviously on account of the fact that the Recruitment Rules do not provide for holding of written test and such a test was not conducted earlier. With a view to maintain transparency and objectivity, the first respondent has chosen to conduct the written test in two parts.

7. It is not uncommon that the selecting agencies, such as UPSC, undertake the process of short listing of candidates for that purpose. The criteria are not restricted to verification of essential and desirable qualifications. They also take into account, other factors, such as, experience and research. The holding of a full-fledged and perfect examination, just for the purpose of short listing of the candidates, is totally unknown to law.

8. Further, in the process of selecting candidates for public employment, the written test is treated relatively more reliable and objective, compared to the interview. Wherever the written test and interview are chosen as the method for selection, the allocation of marks for both of them is required to be announced, at the threshold itself. There are instances where the stipulation of minimum marks in the interview half way through the selection process was found fault with.

9. In **Ashok Kumar Yadav's** case (supra), the Hon'ble Supreme Court held that the allocation of excessively high marks for the component of interview is prone to adversely affect the selection process and bring about the element of arbitrariness. It was opined that not more than 15% marks shall be allocated to the interview. It is a different matter that the relief was molded in that case in a particular way, having regard to the complicated nature of the situation obtaining therein.

10. We are of the view that the first respondent ought to have restricted the allocation of marks for interview to 15%. We have before us, the marks secured by the applicants and other successful candidates, both in the written test and interview. If 85% marks, obtained in the written test and 15% marks obtained in the interview are taken into account, the result would, by and large, remain the same, except that one candidate in OBC category and one in SC category are affected.

11. The calculation undertaken by both the parties resulted in a situation where the applicant No.1, by name Dinesh Chand, would secure 70.19286 marks in the aggregate, as a result of compounding 85% marks in the written test and 15% marks in the interview. This is more than the marks, secured by the last candidate, who was selected under the OBC category. The applicant No.5, by name Ravindra Kumar, secured 66.79286 marks, which is more than the second candidate, who was selected under that category. It is rather incidental that the

applicants did not implead the candidates, who would be immediately affected.

12. One of the options open to the Tribunal is to adjourn the O.A. enabling the applicants to implead the affected candidates. However, taking into account, the fact that the O.A. was filed way back in the year 2014 and many developments have taken so far, we explored the possibility of accommodating the applicant Nos. 1 and 5, who are otherwise eligible to be selected and appointed, but were denied on account of the procedure adopted by the respondents.

13. We ascertained from the first respondent as to whether it would be possible to accommodate the applicant Nos. 1 and 5, who hail from the reserved categories, by creating supernumerary posts, without prejudice to the rights of other selected candidates. Across the Bar, it is stated that such a post would not result in dislocation of the establishment. The respondents are agreeable for the course of action, which we proposed.

14. We, therefore, partly allow the O.A. and direct that the first respondent shall treat applicant Nos. 1 and 5 as eligible to be appointed as Education Officer under OBC and SC categories respectively. They shall be accommodated by creating supernumerary posts and their appointment shall take effect only from the date of their joining. They shall be placed below

the 19 candidates, who are selected and appointed to the post in question, in pursuance to the Notification dated 16-17.02.2013. The process shall be completed within a period of two months from the date of receipt of copy of this order. The applicant Nos. 1 and 5 when appointed shall not be entitled to any arrears, nor shall they be entitled to any retrospective seniority.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

August 23, 2019
/sunil/