

(2015) 09 RAJ CK 0026

Rajasthan High Court

Case No: Civil Writ Petition No. 8974 of 2014

Ramneek Jain

APPELLANT

Vs

Mohan Lal Sukhadia
University and Others

RESPONDENT

Date of Decision: Sept. 2, 2015

Hon'ble Judges: Sandeep Mehta, J

Bench: Single Bench

Advocate: Salil Trivedi, for the Appellant; Rajesh Punia, Nikhil Dungawat and Nupur Bhati,
Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sandeep Mehta, J

The petitioner claims to have secured a doctorate degree in Physical Education from the respondent Mohan Lal Sukhadia University (hereinafter referred to as "the university") on 22.9.2014 and thereby gained eligibility for being appointed as an Assistant Director, Physical Education in the University.

2. The case as set up by the petitioner in the instant writ petition is that the University issued two advertisements dated 27.10.2010 and 19.9.2011 for filling up the vacancies of the posts of Superintendent Physical Education (which was later redesignated as Assistant Director of Physical Education). For reasons best known to it, the University could not complete the selections and thus, as required by the University's own regulations, the posts were readvertised through advertisement dated 19.2.2013. Applications were invited from aspirants seeking appointments on three posts of University Assistant Director of Physical Education and some post of other categories. It is averred in the writ petition that the footnote of the advertisement bears a note that the candidates, who had applied in response to the earlier advertisements of the year 2010 and 2011 needed to apply afresh subject to

meeting the qualifications and the terms and conditions of the advertisement. However, they were exempted from paying the application fee. It is further averred that, such aspirants, who had acquired the qualification after the earlier two advertisements also became entitled to apply for selection in the questioned selection process. However, again the selection could not be completed within a period of one year from the date of issuance of the notification. The petitioner refers to the Regulations dated 31.5.1989 adopted by the University for selection of teachers and officers in the University. It is claimed that Clause 2 of the Regulations specifically provides that the recruitment advertisement will ordinarily be valid for one year from the date of its publication. The petitioner thus taking recourse to the above Regulation, has raised a grievance that the advertisement dated 19.2.2013 for selection on the post of Associate Professor became otiose and non-est by efflux of time on account of non-completion of the selection process within the period of one year from the date of the advertisement. In spite of the advertisement having outlived its duration, the University, rather than cancelling the same and readvertising the posts, issued a list of eligible candidates on 18.11.2014 for the purpose of subjecting them to physical test. The petitioner further claims that having acquired the requisite qualification of doctorate in accordance with the UGC Regulations 2009 for selection as an Assistant Director, Physical Education, he is also entitled to vie for the post but is being deprived on account of the fact that the University is continuing with the selection process beyond the valid life of the advertisement which as per the petitioner should have been deemed expired in February 2014. It is the petitioner's case that by virtue of Regulation (2), it was imperative for the University to cancel the notification dated 19.2.2013 and issue a fresh advertisement so that persons alike the petitioner, who acquired qualifications in the intervening period could also participate in the selection process.

3. Notices of the writ petition were issued to the respondents. This Court, by an interim order dated 8.12.2014 stayed further selections on the post of Assistant Director, Physical Education being conducted by the University in pursuance of the advertisement dated 19.2.2013. Some of the affected candidates, viz. Dr. Kuldeep Singh Jhala, Dr. Surendra Singh Chouhan, Ghanshyam Mehru, who were invited for physical test, filed an application for being impleaded as party respondents to the writ petition. The prayer for impleadment was accepted by this Court vide order dated 6.7.2015 and the three applicants were permitted to be impleaded as party respondents to the writ petition.

4. Learned counsel for the petitioner referring to the above Rules formulated by the University under Section 13 of the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 vehemently contended that the advertisement had an expiry date of one year and no sooner, the said period of one year lapsed, the posts were required to be readvertised and fresh recruitment process had to be initiated. Learned counsel contended that in the very same notification dated 19.2.2013, numerous other posts were also advertised. For some of the posts, the

University itself, on the expiry of the period of one year has cancelled the advertisement and has issued a fresh notification for recruitment. He submits that the University cannot be allowed to adopt inconsistent and arbitrary criterion while applying Regulation No. 2 to the same advertisement. He thus contended that the writ petition deserves acceptance and while quashing the advertisement dated 19.2.2013 so far as the posts of Assistant Director, Physical Education are concerned, the same may be directed to be readvertised so that the petitioner and other similar candidates, who acquired eligibility during the intervening period can vie for the posts.

5. In the reply filed by the respondent University to the writ petition, a preliminary objection has been taken regarding the petitioner's locus-standi to challenge the proceedings. It is asserted that the University has already screened and shortlisted a number of candidates for physical fitness test and a list has also been published on 18.11.2014. The petitioner admittedly did not possess the requisite qualification for participating in the selection process for the post of Assistant Director, Physical Education by the last date of submission of application forms and therefore, he cannot lay claim for selection in the questioned selection process. So far as the petitioner's main ground of challenge that advertisements published for the very same post in the years 2010 and 2011 were cancelled after the lapse of one year is concerned, it is countered with the assertion that in the advertisement dated 27.10.2010, the post advertised was that of Superintendent, Physical Education. The nomenclature of the post was later on changed to University Assistant Director of Physical Education in light of the amended UGC Regulations. In this background, the earlier advertisement dated 27.10.2010 was withdrawn. The fresh advertisement dated 21.9.2011 was issued subject to the permission and sanction of the State Government. The State Government sanctioned the post on 20.11.2012 i.e. after more than one year of the advertisement and thus, the University was constrained to cancel the earlier advertisement and issue a fresh one on 19.2.2013. On the strength of these submissions, the petitioner's claim that the advertisements stood cancelled by lapse of time is countered. So far as the petitioner's claim that the University acted slackly and did not take the requisite steps for making timely recruitment pursuant to the issuance of the advertisement dated 19.2.2013 within the period of one year, it is averred in the reply that the process of selection commenced immediately after the issuance of the advertisement and the list of 41 candidates shortlisted for physical fitness test was published on 18.11.2014. The delay for the intervening period is attributed to various unavoidable factors like student union elections, assembly elections and parliament elections. As regards, the Regulation No. 2 dated 31.5.1989 adopted by the Board of Management, it is asserted that the resolution does not prescribe a mandate that every advertisement shall lapse at the end of one year from the issuance thereof. It is averred in the reply that it is for the University to decide looking to the facts and circumstances of each case, as to whether the advertisement is to be treated non-est on the expiry of one

year period prescribed in the Regulation or not. Emphasis is laid on the expression "ordinarily" occurring in the Regulation and it is asserted that the University has to consider and take a decision as to whether or not it would be viable and justified to continue with the selections after lapse of one year from the date of advertisement. The fact that the very same advertisement was treated cancelled after lapse of one year for few posts to be specific, those of Associate Professor, Assistant Supervisor and Assistant Librarian is admitted. It is averred that revised minimum eligibility standards as prescribed by the UGC were accepted for these posts after the issuance of the advertisement by the BOM and therefore, these posts were resolved to be readvertised. The copy of the BOM's resolution dated 27.3.2015 has been placed on record alongwith an additional affidavit wherein the decision to readvertise the aforesaid three posts and to continue with the remaining selection process for the post of Assistant Director Physical Education was taken. The contents of said counter affidavit and the minutes of the Board of Management are not disputed by the petitioner.

6. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

7. The substratum of the petitioner's case is based on the arbitrariness attributed in the University's action. The petitioner asserted in the writ petition that similar selection procedures advertised in the years 2010 and 2011 were treated lapsed after one year in accordance with Clause 2 of the BOM's Regulations of 1989 but in the present set up, the University did not take a similar step to the detriment of the petitioner and other similar candidates. Much emphasis was laid on the fact that even in the questioned selection process, the advertisement was treated lapsed for some of the posts whereas, a different yardstick was applied for the posts of Assistant Physical Education on which, the petitioner stakes claim on the basis of the qualification which he gained during pendency of the proceedings. In this regard, the pleadings of the parties are very relevant. The University has taken a specific stance that no progress whatsoever was made in the selections advertised in the year 2010 and 2011 and therefore, a conscious decision was taken by the BOM to cancel the advertisements and to readvertise the posts. The cancellation also became necessary as the nomenclature of this particular post was changed from Superintendent to Assistant Director Physical Education in view of the new UGC guidelines. Thus, the argument advanced on behalf of the petitioner that in not taking a similar decision for the current selection, the University acted arbitrarily, is prima-facie untenable. Sufficient reasons have been assigned in the notesheet dated 27.3.2015 for continuing with the present selection process. The notesheet also takes care of the petitioner's allegation that in the very same advertisement, some of the posts were readvertised, whereas the process for recruitment on the post of Assistant Director, Physical Education was continued. The BOM took a conscious decision for readvertising some of the posts because of subsequent developments, which came around on account of the UGC Regulations issued in the

year 2013. Thus, the petitioner does not stand to gain from the abovementioned action of the University.

8. There is a marked difference in the steps taken by the University for the posts of Associate Professor, Assistant Supervisor and Assistant Librarian and as against the posts of Assistant Director in Physical Education. The other posts mentioned above, were readvertised owing to a significant subsequent development. So far as the post of Assistant Director, Physical Education is concerned, as mentioned above and at the cost of repetition, it may be noted that BOM took a considered decision to continue with the advertisement for the said post keeping in view the fact that the process was delayed on account of three elections, which were held during the preceding year. The University had already initiated the process for short-listing etc. and therefore, there was no reason to stifle the whole process only because one year's period had lapsed from the date of issuance of the advertisement. The expression "ordinarily" used in BOM's resolution dated 31.5.1989 cannot be construed to mean mandatorily. The very fact that the expression "ordinarily" is used in the resolution leaves no room for doubt that the University is empowered to take a decision to continue with the advertisement even beyond the period of one year in appropriate circumstances. The expression "ordinarily" was interpreted by the Hon'ble Supreme Court in the case of [Commissioner of Customs, Mumbai Vs. J.D. Orgochem Limited](#), (2008) 128 ECC 14 : (2008) 154 ECR 14 : (2008) 226 ELT 9 : (2008) 5 JT 635 : (2008) 6 SCALE 669 relied upon by Shri Nikhil Dungawat, learned counsel for the applicants as below:--

"13. The expression "ordinarily" may mean "normally". It has been held by this Court in *Kailash Chandra v. Union of India* and *Krishangopal v. Shri Prakashchandra and Ors.* [(1974) 1 SCC 12], that the said expression must be understood in the context in which it has been used and, thus, "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the Court would not be subordinate to it.

When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily".

9. Thus, viewed in light of the above interpretation of the expression "ordinarily", it is clear that exceptions are permissible, where the expression "ordinarily" is used. It is never used in reference to circumstances when there is no exception. Had it been the intention of the statute making body to leave no room for exceptions, then the expressions "shall" or "mandatorily" would have been used while formulating the Rule.

10. If the selection process is stifled on technicalities raised by the petitioner, the events will take the course of a vicious circle and will probably never end thereby adversely affecting the university students, who are suffering due to lack of faculty

members.

11. In view of the aforesaid discussion, the petitioner is not entitled to challenge the decision of the respondent University to continue with the selection process initiated for the post of Assistant Director of Physical Education through the advertisement dated 19.2.2013 even beyond the period of one year.

12. The writ petition thus being devoid of any merit is hereby dismissed.

13. No order as to costs.