

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the respondent No 1 to select the petitioner and appoint him in the cadre post of Asst Professor in Genetics & Plant Breeding in the first respondent University.

This petition coming on for hearing, this day, the Court made the following:-

ORDER

Writ petition by a person who had aspired to fill up the post of Assistant Professor cadre (ICAR schemes) in the subject as notified for being filled up by the University of Agricultural Sciences, Bangalore [for short, the University] in terms of its notification No AO/RT/1129/2004-05 dated 13th December, 2004, published in the Karnataka Gazette dated 30th December, 2004 [copy at Annexure-E to the writ petition].

2. The petitioner had applied to the post of Assistant Professor in Genetics and Plant Breeding. There were as many as three posts available in this subject, out of which one post had been reserved for persons belonging to IIB-1 category

3. It is the claim of the petitioner that he is one qualified for seeking this post as against the said reserved category and being an eligible candidate in terms of the qualifications prescribed and indicated in the very notification, which, for the post, reads as under:



**II. Assistant Professor Grade Posts (ICAR Schemes)
Scale of pay Rs 8000-275-13500**

Sl No	Subject	No. of posts	Roster
1	Xxx		
2	Xxx		
3	Genetics and Plant Breeding	3	Current: 3 posts IIB-1, GM-2 (W-1)
4	Xxx		

4. Petitioner had been called for an interview in response to his application and was interviewed by the Selection Committee on 14-9-2005 in terms of the intimation, which is though dated 30-9-205, a copy of which is produced at Annwexure-H, Sri C Dinakar, learned counsel for the petitioner submits that it has wrongly mentioned the date as 30-9-2005, but it should read as 30-8-2005, which perhaps is so, as the date of the interview was 14-9-2005, as mentioned in this intimation, and it appears, the petitioner did in fact attend the interview on 14-9-2005.

5. It appears the very Selection Committee had interviewed the candidates for several other posts, which had been advertised in terms of the very notification and submitted its select list for the approval of the Board of Regents of the University and thereafter selected candidates had been sent letters of appointment.

6. It so happened that the petitioner was the only applicant for the post of Assistant Professor in Genetics and Plant Breeding in the reserved category, based on the reservation for such category also being one post and the petitioner was surprised that he had not been sent an appointment letter and on enquiry having learnt that his candidature has been rejected, has approached this court praying for issue of a writ in the nature of writ of mandamus to direct the first respondent University to select the petitioner and appoint him in the cadre of Assistant Professor in Genetics and Plant Breeding in the University, reserved in favour of a person belonging to backward Class-IIB-1.

7. Respondents 1 and 2 red caveat through their counsel Sri R Sridhar Hiremath, who took notice on behalf of the respondent and has also filed statement of objections on their behalf.

8. Submission of Sri C Dinakar, learned counsel for the petitioner is that the petitioner fulfills the qualification criteria in terms of the notification dated 13-12-2004; that the petitioner had produced the relevant certificates in terms of this notification and the qualifications as had been indicated in the notification; that the petitioner was the only applicant for

the post in the reserved category and it is to the surprise and shock of the petitioner that he had not been selected notwithstanding the petitioner having the necessary qualifications for the post that it is aggrieved by the non-selection of the petitioner as against the reserved post the present writ petition is filed.

9. Submission of Sri Dinakar is that if the petitioner has been disqualified on considerations or for reasons not germane to the requirements as indicated in the respondents' very notification, the act of non-selection becomes bad in law, which warrants interference by this court in the exercise of writ jurisdiction and appropriate writ should be issued and in this regard the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **COMPTROLLER AND AUDITOR-GENERAL OF INDIA, GIAN PRAKASH, NEW DELHI & ANOTHER vs K S JAGANNATHAN & ANOTHER (AIR 1987 SC 537**, particularly para-20 of this decision, wherein the Supreme Court had occasion to observe that it is within the jurisdiction of the High Court even in exercise of Article 226 powers to issue a writ of mandamus or writ in the nature of mandamus to direct the government or a public authority who had failed to exercise the function or wrongly exercised the function, including issue a

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specific subject, the petitioner cannot have any grievance particularly when an expert selection committee had not found the petitioner eligible to fill the post.

12. Learned counsel for the respondents would concede that assuming that the notification did not expressly say that the certificate like NET certificate issued by CSIR should in the specific subject, it could have been inferred that any candidate having familiarity in such matters would be aware of such requirement and the petitioner being himself a post-graduate and also doing research works in other subject in the very University, should have known such requirements and therefore it cannot be said that the petitioner is either surprised or is sought to be disqualified *post facto* after issuing of the appointment letters.

13. On a proper reading of the notification, it is obvious that subject to fulfilling other conditions, a candidate having a certificate to indicate he has cleared NET for Assistant Professor conducted by CSIR cannot be disqualified on the grounds of want of eligibility. Petitioner in fact had produced one such certificate dated 1-11-2003, copy is produced at Annexure-D, which specifically indicates that the petitioner had qualified for filling up the posts of lectureship in life



fills the bill as the petitioner had produced a certificate which alone is issued by the CSIR even for the purpose of subjects of Genetics and Plant Breeding, definitely merits acceptance.

15. This fact situation is not disputed by the respondents. But what is urged on behalf of the respondents is that when a person produced a certificate, one such of the nature of issued by CSIR, which is more general in nature and a specific certificate which is issued by any accredited agency than in the matter of selection it is within the domain of the University to select such a person who perhaps has better qualifications, better suitable or has acquired the specialized knowledge in the specific subject and if the petitioner had found wanting in such specialized skill or knowledge in the specific subject by the Selection Committee and his candidature had been rejected, no exception can be taken for the action of the university and no interference in the matter is warranted.

16. I have given my anxious consideration to the rival submissions. It is not in dispute that the post notified by the University which is an institution or organization coming within the expression of 'State' under Article 12 of the Constitution of India, the mandate of Article 16 operates against the respondents. Fair-play and eschewance from arbitrariness

is inevitable for the respondents. Equal opportunity means to consider all eligible candidates and not to deprive an opportunity for consideration on irrelevant consideration or even on consideration not notified or indicated. A notification of the nature of Annexure-E should be taken at its face value and not by the understanding of the same by process of interpretation. It should be borne in mind this is a publication inviting applications and it is necessary that such publication particularly by indicating the qualifications for any particular post should be as clear and as precise as is possible. At any rate the qualifications not mentioned therein cannot be added by the process of interpretation or even on an understanding of an expert interview committee nor a candidate who fits the bill in terms of the very notification can be kept out of the zone of consideration on the understanding or in view of certain pretences indicated by the Selection Committee. The function of the selection committee is to make selection from amongst the available eligible candidates. It is not the function of the selection committee to redefine or prescribe afresh qualifications not found in the notification as at Annexure-E. The candidates when are numerous and the selection from eligible candidates, necessarily the selection committee has a role to play and in the matter of selection it is undoubtedly the

domain of the selection committee, unless that again is vitiated by *mala fides*, bias, victimization, whimsical or arbitration action.

17. The petitioner's eligibility cannot be disputed by the respondent at this stage, as even admittedly the respondents themselves have called the petitioner for interview. It is up to the respondents whether to call an ineligible candidate for interview or not, but it cannot be said that the petitioner lacks eligibility criteria when he had been called for interview and had been interviewed for the post.

18. In the present case, there was in fact no job for the selection committee until and unless perhaps the selection committee found that the applicant was an objectionable person for any other reason, which could have been relevant for the particular post. In terms of the counter what is indicated is that the petitioner was not selected because he had not produced the eligibility certificate in the specific subject of Genetics and Plant Breeding issued by any of the accredited institutions by a recognized agency.

19. That in fact was not the requirement, but when the petitioner had fulfilled the requirement in terms of the very notification, the petitioner could not have been kept out. The

rejection of the candidature of the petitioner on the premise that he had not produced a certificate as was desired by the selection committee clearly amounts to violation of the right of the petitioner under Article 16 of the Constitution of India in keeping out the petitioner from the zone of consideration, which is an act contrary to the very notification.

20. The post being only one and the petitioner being the only candidate, it is inevitable for the respondents to consider his candidature and proceed on further, unless it is found that the petitioner is wanting in any other manner, which was the norms followed by the University in general. No such objection has been put forth by the University in the counter filed on behalf of the respondents.

21. In the circumstance, it is inevitable to issue a writ in the nature of writ of mandamus directing the respondents to consider the candidature of the petitioner for appointment as against the notified post and to pass appropriate orders within thirty days from today.

22. Non-selection on the ground of want of production of a certificate as indicated in the counter is declared to be illegal and violative of Article 16 of the Constitution. It is also not open to the respondents to de-notify the post and to transfer it

