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THE HIGH COURT OF DELHI AT NEW DELHI

+ **Writ Petition (Civil) No. 8707/2008 & CM No.17329/2008**

Date of Decision : 29.5.2009

DR.SUBHO MOJUMDAR (MOZUMDAR) Petitioner
Through : Ms.Neela Gokhle,
Advocate.

Versus

THE UNIVERSITY OF DELHI & ORS. Respondents
Through : Mr.V.P.Singh,
Sr.Adv. with Mr.M.J.S.Rupal,
Adv. for respondent no.1.
Mr.R.K.Saini, Adv. for
respondent Nos. 2 and 3.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.(Oral)

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India praying for issuance of a appropriate writ, order or direction to declare the process of selection for appointment to the post of Professor in the

Department of Chemistry in University of Delhi to be illegal and therefore, quash the same. It is further prayed that the respondent be directed to conduct fresh interviews for the appointment to the said post in accordance with the ordinance of the statute of the University and the notifications issued by UGC.

2. Briefly stated the facts of the case are that the petitioner is presently working as a Reader in the Department of Chemistry of the respondent /University. In pursuance to an advertisement issued on 12.3.2008 for appointment to the post of Professors in the said Department. The petitioner had applied as one of the candidates. The eligibility criteria for the said post as given in the Ordinance XXIV of the University was as under:-

“An eminent scholar with published work of high quality, actively engaged in research with 10 years of experience in post-graduate teaching and /or post doctoral research at University/National level institutions including experience of guiding research at doctoral level.”

OR

“An outstanding scholar with established reputation who has made significant contribution to knowledge.”

3. 33 candidates had applied for the six posts. The University of Delhi constituted a screening committee for short listing the candidates to be called for interview before the Selection Committee. The Screening Committee as a collective body of 10 persons, laid down a further conditions in the eligibility criteria for the posts advertised. The additional eligibility condition set out by the Screening Committee were follows:-

- a. First class academic career throughout;
- b. 10 years of teaching/research experience at P.G.level,
- c. Minimum 10 publications in the last 5 years in internationally reputed peer reviewed journals;
- d. Guidance and award of minimum 2 Ph.D. students.

4. The Screening Committee short listed only those candidates who fulfilled the criteria as mentioned hereinabove to face the Selection Committee, resulting in rejection of 21 applications out of a total number of 33 candidates. The Respondent Nos.2 and 3 were not short listed by the Screening Committee since they did not satisfy the eligibility criteria. It was set out by the Screening Committee that the Respondent No.2 does not have the necessary 10 publications in the last five years and the Respondent no.3 has not supervised to research students who have been awarded Ph.D.Degree. This has been admitted by the Respondents in their counter affidavit.

5. The first grievance of the petitioner is that in spite of the Screening Committee rejecting the candidature of respondent Nos. 2 and 3 to be considered and to call them to face the Selection Committee, the head of the department /Pro Vice Chancellor/Vice Chancellor of the University directed the Assistant Registrar (Estab-IV) to call them for interview by the Selection Committee. Thus, it is the contention of the Petitioner that once the Screening Committee has rejected the candidature of the respondent Nos.2 and 3 on account of being ineligible for the post, the Vice Chancellor /Pro Vice Chancellor cannot

overreach the decision of the Screening Committee and allow the respondent Nos.2 and 3 to be considered for selection especially when 21 other candidates have been rejected by the Screening Committee applying the same parameters. The application of respondent Nos.2 and 3 were considered only to dilute the candidature of the petitioner and as a result the petitioner was made to face an unfair competition.

6. Another subsidiary argument with regard to the candidature of respondents no. 2 and 3 was based on the ground of malafidies and bias in favour of respondents no. 2 and 3 in considering their candidature despite the fact that they were found ineligible by the Screening Committee. The petitioner tried to explain this argument by referring to the various dates. It was alleged that the advertisement was floated on 12th March, 2008. On 10th April, 2008 the Screening Committee laid down the additional eligibility criteria. On 15th /18th July, 2008 the respondents no. 2 and 3 are purported to have made representation to the Vice Chancellor requesting him to consider their case for being called for the interview. The call letters for interview were issued on 26th October, 2008 and the actual interview took place on 10th November, 2008. The contention of the learned counsel for the petitioner was that none of the candidates other than the respondents no. 2 and 3 came to know as to whether they are being called for the interview or not before 26th October, 2008. While as the respondents no. 2 and 3 made representation in the month of July itself to the Vice Chancellor

requesting for considering their candidature. It was further contended that this was in sharp contrast to the fact that the petitioner had applied for information from the respondents with regard to the selection process even after the interview was over but the same was not furnished to her on the spurious ground that disclosing of such information would jeopardize the safety of the Members of the Selection Committee. All these facts clearly showed that the respondent/university was going out of the way to ensure selection of respondents no. 2 and 3 to the post in question.

7. The next arguments which was connected with this only was, that the Screening Committee consisted of one Prof. M. Kidwai who was a part of the Screening Committee as well as the candidate, and therefore, the selection is vitiated.

8. The respondent no. 1 filed its counter affidavit and raised preliminary objection regarding the maintainability of the writ petition on the ground that the petition is premature and is actuated by malafidies. It was also contended that the Selection Committee was constituted as per University Ordinance and consisted of Vice Chancellor, Prof. Deepak Pental, Prof. S. K. Tandon, Pro Vice Chancellor, Prof. G. Padmanaban (Indian Institute of Sciences, Bangalore), nominee of visitor, Prof. V. S. Parmar, Head Department of Chemistry, Expert, Prof. Charusita Chakravorty (Indian Institute of Technology, Delhi), External Expert, Prof. S. S. Ramasesha (Indian Institute of Science, Bangalore), External Expert, Prof. Ganesh Prasad Pandey,

(Deputy Director, Division of Organic Chemistry, National Chemical Laboratory Pune), External Expert. It was contended that the Selection Committee consisted of highly eminent people apart from the Vice Chancellor and the visitors nominee, and therefore, the petitioner was deliberately trying to stall the process of selection by raising false and frivolous pleas. The respondent also took the plea that there was concealment of fact on the part of the petitioner in as much as the entire advertisement and the correct facts were not placed before this Court. It was contended that the advertisement not only conferred power on the Selection Committee to consider the applications received even after the last date of advertisement but it also enabled the University to consider the name of suitable candidates who might not have even applied. It was stated that the entire selection process was taking place in accordance with Rule 19 the Statute of University of Delhi.

9. It was also contended on the strength of the judgment of the Supreme Court that the petitioner having participated in the selection process and fearing that the petitioner may not be found suitable by the Selection Committee is pre-empting the entire process of selection by filing the writ petition and obtaining the restraint orders. Reliance was also placed on the judgment of the Supreme Court in case titled **Madan Lal Vs. State of J& K** (1995) 3 SCC 486, wherein the Supreme Court held that once a candidate having taken a chance to appear in an interview and having remained unsuccessful, he cannot turn around and

challenge either the constitution of the selection board or the method of selection is being illegal. He is estopped to question the correctness of the selection unless and until he alleges bias or malafidies.

10. So far as the respondents no. 2 and 3 are concerned, it was mainly urged that the writ petition is totally premature and further that the Court cannot sit as a court of appeal and assess or reassess the relative merits of the candidates who have been subjected to interview by the Selection Committee consisting of expert body for this purpose. Reliance in this regard was placed on ***Madan Lal Vs. State of J & K*** AIR 1995 SC 1088 para 9.

11. The petitioner also challenged the Constitution of the Selection Committee on the ground that the same contravenes the notification No.V of the UGC to the effect that if any aspiring candidate appearing for the interview belongs to the Scheduled Cast community there has to be a representative of the said community in the Selection Committee which was not the case in the present matter.

12. The third challenge to the selection process was that one of the experts namely Mrs. Charusita Chakravorty was much junior to the candidates to be interviewed. This plea was raised by the petitioner specifically keeping in view her own candidature. It is further stated that out of the three experts, one of the experts was from Organic Chemistry and the other two were from theoretical chemistry. As per the Statutes and the law of the land if there are three branches of chemistry which are taught at

Masters level (M.Sc. Chemistry), the experts for the selection of teachers should be from one each from Inorganic, Organic and one from Physical Chemistry and preferably from experimental chemistry background. Hence, the selection of experts was also manipulated in order to select one of the respondents who was not eligible even be called for the interview. Thus the petitioner has assailed the selection procedure adopted by the University for filling up six posts of Professor in the Chemistry Department.

13. I have heard Ms. Neela Gokhle the learned counsel for the petitioner as well as the learned senior counsel Mr. V. P. Singh for the respondent no.1. I have also gone through the record.

14. At the outset, it must be stated that at the time of the conclusion of the arguments the learned senior counsel for the respondent no. 1 had very fairly conceded before this Court that the respondent/university would not accept the recommendation of the Selection Committee so far as the respondents no. 2 and 3 are concerned and in case their names are recommended by the Selection Committee for the appointment to the post of Professor, they would not be sent to the Executive Council for the purpose of approval and appointment. This statement was made by the learned senior counsel in the larger interest of the studies of the students being affected on account of non-filling of the vacancies to the post of Professor, and thereby jeopardizing the academic interest of the students.

15. A perusal of the averments made by the petitioner and the arguments which have been advanced are substantially based on

the non eligibility of the respondents no. 2 and 3 and their inclusion in the list of candidates for the post of interview by the Selection Committee. Even the allegation of favouritism and malafidies are attributed to them. Though a perusal of the record shows that the submission made by the learned counsel for the petitioner on the strength of the ineligibility of respondent nos. 2 and 3 having been declared by the Screening Committee they ought not to have been called for the purpose of interview but the very fact that the learned senior counsel has very fairly conceded that in case the recommendations are made by the Selection Committee with regard to respondents no. 2 and 3 the same will not be sent for approval to the Executive Council in fact takes wind out the sail of the petitioner. Therefore, the entire edifice of the petitioner which is based on the strength of her submission with regard to the challenge to the candidature of respondents no. 2 and 3 is brought to nought and no relief whatsoever can be granted to the petitioner on that score.

16. I do not agree with the submissions of the learned counsel for the respondent that the petitioner can be prohibited from challenging the process of selection after having participated in the same on the strength of the judgment of the Supreme Court in **Madan Lal's** case (Supra) on account of the fact that the facts of the present case are slightly distinguishable from the fact of the reported case. In **Madan Lal's** case (supra) the candidate was purported to have appeared in the interview and was declared to be unsuccessful in the process of selection. It was in

such a contingency that the Court observed that the petitioner who has participated in the selection process and has been declared unsuccessful and it was held that he cannot be permitted to turn around and challenge the Constitution of the Selection Committee or the process of selection on the ground of doctrine of estoppel but the facts of the present case are different in as much as the petitioner though has participated in the process of selection but the outcome of the selection is yet to be declared as the same has been stayed by this Court and he has come to the Court at the earliest possible opportunity raising doubts about the selection process. This question has become of academic value today on account of the fact, Sh.V.P.Singh, learned Senior counsel at the time of the conclusion of the arguments has stated that the recommendation of the Selection Committee with regard to the respondents No.2 and 3 would not be accepted.

17. The only other argument which has been raised by the learned counsel for the petitioner with regard to the challenge to the process of selection is that according to the instructions of the Government of India, respondent /University ought to have an expert in the category of SC in the Selection Committee to interview to SC candidate Dr.Ahilesh Kumar Verma.

18. Admittedly, there is no merit in this submission of the learned counsel for the petitioner because firstly, the selection committee has been constituted according to the statute of the University and secondly, there is no reservation to the post of

Professor and thirdly, in any case the petitioner not being a SC, an aggrieved party and therefore, cannot raise any grievance on account of the same.

19. As regards the contention of the petitioner that there was an expert by the name of Mrs. Charusita Chakravorty who was junior to him could not have been a Member of the Selection Committee as it would jeopardize his interest or that there was a Prof. M. Kidwai who was a Member of the Screening Committee and also a candidate are not the grounds for setting aside the process of selection. The reason for this is that the expert who is said to be the junior of petitioner as a matter of fact was invited as Professor and an external expert for the post for which the petitioner was an aspirant in the capacity of a Reader and therefore, this argument was totally absurd. So far as the grievance of Professor Kidwai is concerned, I have seen the original record, this does not support the contention of the petitioner in any manner whatsoever.

20. So far as the process of selection is concerned, the result of the Selection Committee has been kept in a sealed cover and is yet to be declared as the same was stayed vide order dated 10.12.2008.

21. For the reasons mentioned above as the result of the selection is yet to be declared, therefore, the writ petition of the petitioner is premature as the challenge to the candidature of the respondent no.2 and 3 does not revive any more at this stage.

Accordingly, the writ petition is dismissed with the above observations. The stay granted on 08.12.2008 stands vacated.

MAY 29, 2009
RN/KP

V.K. SHALI, J.