

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 12216 of 2006**

% Decided on: 25.10.2010.

MR. ALI JAVED Petitioner
Through : Mr. Sanjay Parikh & Mr. Abinash K.
Mishra, Advocates.

Versus

UNIVERSITY OF DELHI & ANR. Respondents
Through : Mr. Amit Bansal with Ms. Manisha
Singh, Advocate.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for an order/direction for setting aside the selection process for the year 2006 and letter dated 12/14.06.2006 as being illegal, malicious and unsustainable and for a re-selection process to be held by the respondent no.1 for the post of Urdu professor.

2. The two main points necessary to decide the present writ petition are :

- a. That the two experts out of three were not from the panel approved by the Academic Council hence the Selection Committee was not duly constituted and the selection is vitiated.
- b. The respondent no.2 was bias against the petitioner and was acting in bad faith.

3. The brief facts leading up to the filing of the present writ are that a selection procedure was being carried out by the respondent no.1 for the post of an Urdu Professor.

4. The petitioner started his career with the respondent no.1 in the year 1983 as a lecturer in Zakir Hussain Evening College. He became Reader in Zakir College in the year 1996. In January, 1998 the petitioner joined the main University Campus in the Faculty of Arts, Department of Urdu, Delhi University as a Reader. In December, 1998, the UGC Career Advancement Scheme came into effect.

5. The petitioner admittedly became eligible under the said scheme for post of Professor. In the year 2006, the process of selection for the post of Professor (Urdu) was initiated by the Delhi University under the UGC Career Advancement Scheme, 1998 (hereinafter referred to as CAS). The petitioner was considered for the post of Professor (Urdu). His papers and publications were examined and approved by the Committee of experts which is the pre requisite requirement before the interview.

6. On 18.04.2006 the petitioner appeared before the Selection Committee for interview which consisted of the Vice Chancellor Professor Deepak Pental/respondent no.2 herein, Professor S.K. Tandon, Professor Vice Chancellor and Professor Ms. Meenakshi Mukherje, Visitor's Nominee.

7. There were three experts in the interview board namely Professor Abdul Sattar Dalvi, Professor Anis Ashfaq and Professor Shahid Hussain. It is one of the main grievance of the petitioner that at the time of interview, Vice Chancellor of the University/respondent no.1 herein questioned the petitioner on

matters extraneous to the scope of the interview thereby exhibiting bias attitude against the petitioner.

8. The petitioner in his petition has given various instances of biasness of the respondent no.2 during the interview. The bias attitude alleged by the petitioner has also been mentioned in a letter dated 20.04.2006 written by Professor A.A. Abidi one of the expert Member of the Committee who had given a note of dissent wherein he inter alia alleged that the Vice Chancellor was “pre-determined” and had “prejudiced assumption” at the time of interview, against the petitioner. The contention of the petitioner is that the respondent no.2 was bias against him and was acting with bad faith.

9. The Delhi University Teachers Association by a letter dated 04.05.2006 demanded an impartial inquiry in view of the note of dissent given by Professor A.A. Abidi.

10. According to the petitioner it was decided in the meeting of executive council that the envelope containing the recommendation of the Selection Committee should be opened after receiving the concurrence from UGC. The case of the petitioner is that in view thereof the envelop was not opened on 05.05.2006.

11. It is the petitioner’s averment that he sent a representation dated 19.06.2006 to respondent no. 2 requesting him to withhold implementation of the outcome of the selection process as the same was vitiated however, on 20.06.2006 he found a letter dated 12/14.06.2006 in the letter box of the Urdu Department wherein it was stated that the recommendation of the Selection Committee had been accepted by the Executive Council

and he was advised to apply afresh for his promotion after one year of the meeting of the said Selection Committee. Thereafter, on 22.06.2006, the petitioner sent a legal notice to the respondents.

12. On 23.06.2006 the result of the selection of the Urdu Professor was announced at the meeting of the Executive Council. A letter dated 08.07.2006 was written by two expert members of the Executive Council wherein it was stated that the contents of the letter dated 12/14.06.2006 were wrong and incorrect.

13. It is further contended by the learned counsel for the petitioner in his second submission that the Constitution of the interview panel was contrary to Resolution No. 251 dated 27.01.1978 of the Academic Council as the mandatory condition of choosing experts for interview from a panel of 15 experts was not followed, in fact, none of the members taking the interview were selected from the approved list of the Academic Council thereby vitiating the interview process. Further, though the Vice Chancellor is allowed to add/delete names from the list of panel of experts, such a modification is required to be approved by the Academic Council after due consideration and none of this was done in the present case.

14. The submission of the petitioner is that since two experts out of three were not from the panel approved by the Academic Council, therefore, the Selection Committee was not duly constituted and the Selection process is vitiated.

15. On the basis of these facts the petitioner has filed the present writ petition.

16. In their counter affidavit the respondent have submitted

that the petitioner does not have a vested right to be selected and appointed under the Career Advancement Scheme and the petitioner was fully considered and duly interviewed by the duly constituted selection committee which did not find him suitable for promotion.

17. It is further submitted by the respondent that the process of promotion is a long drawn one involving following stages:

- a) Scrutiny of Self –Assessment proforma;
- b) Constitution of Sub-Committee for determining the date of eligibility
- c) Evaluation of published work by three experts and
- d) Finally constituting the Selection committee for holding the interview.

18. Hence the recommendation of the experts body does not mean that the petitioner had been cleared for the selection to the said post at best it only entitled the petitioner for consideration by the Selection Committee. The fact that he was eligible for consideration does not mean he is automatically selected.

19. It is also submitted by the respondents that the Executive Council in its meeting on 05.05.2006 authorized the Vice Chancellor to open the envelopes containing the recommendations of the Selection committee with regard to promotion from Reader to Professor in the Department of Urdu, on receiving the concurrence from UGC and the same shall be treated as having been opened on 05.05.2006 at the meeting of Executive Council. Subsequently, the approval was received from the UGC on

19.05.2006 and thereafter, in terms of the Executive Council resolution, the envelope was opened. This fact was duly recorded to the Executive Council on 23.06.2006. So, it is wrong to allege that rejection was communicated to the petitioner without waiting for Executive Council approval.

20. It is averred by the respondents that the Selection Committee had recommended that the case of the petitioner be reviewed after one year, which was duly communicated to him. However, the petitioner did not apply thereafter and continued to pursue the present writ petition on frivolous and technical objections, treating the same as an alternate means for gaining promotion to the post of professor.

21. It is also submitted that the petitioner does not have a vested right to be selected and appointed under the Career Advancement Scheme. The petitioner's case was fully considered and he was interviewed by the duly constituted Selection Committee and was called for interview. The selection Committee, which comprised six high level experts, out of which four were from outside the Delhi University, did not find him suitable for promotion hence his case was recommended for review.

22. According to the respondents any challenge to a decision by the competent authority on the ground of malice and bias has to specifically pleaded and proved by the person alleging the same and a vague and formal pleading in this regard does not meet the requirement in law so as to entitle the person making such allegation to any relief. The petitioner has nowhere stated why the vice chancellor would be biased against him. He has only statements about the conduct of vice chancellor during the

interview, which are clearly motivated on account of his not having been selected. Moreover, Vice Chancellor was just one amongst the six member selection committee and so it is not likely that the Vice Chancellor could have influenced the remaining five members of selection committee. If this was true, petitioner would have protested immediately after the interview and not after two months. Therefore, no case of bias or malafide has been made out.

23. I have gone through the records of the petition, counter and also have given careful consideration to the submissions made by the learned counsel for the parties at the bar and shall now proceed to deal with the same.

i) Firstly, the petitioner has sought to challenge the selection process of the year 2006 on the ground that the said selection process is backed by the malice. The said fact is sought to be amplified by the petitioner on the ground that there is strong letter of dissent written by one Prof. Abidi by way of letter dated 20.4.2006 addressed to UGC (University Grant Commission) whereby he has questioned the conduct of the Vice Chancellor (respondent No.2) as predetermined as he has ignored the petitioners' positive remarks. Further, the petitioner alleged the questions asked at the time of the interview were not related to the subject but are extraneous in nature.

ii) The respondent lodged the protest against the said allegation of the malice by contending that the malice cannot be established merely by saying and with the bald averments of predetermined mind. The

petitioner must show as to how the selection process is vitiated by the malice.

24. At the outset, I would say whenever the administrative decision is challenged on the count of malice or malafides, there is greater degree of the burden cast upon the party alleging such malafides or malice to establish the malice of fact and or malice in law. The factual malice can be brought in to light by showing that the entire process of decision making is actuated by malice is thus vitiated by circumventing the facts because of such malice. The legal malice would be flouting the legal framework because of the malice.

25. The petitioner has nowhere stated why the Vice Chancellor would be biased against him. He has only made the statement about the conduct of Vice Chancellor during the interview, which is apparently motivated on account of his not having been selected. Moreover, Vice Chancellor was just one amongst the six member selection committee and so it is not likely that the Vice Chancellor could have influenced the remaining five members of the Selection Committee. If this was true, the petitioner would have protested immediately after the interview and not after two months. Therefore, no case of bias or malafide has been made out.

26. It is settled law that any challenge to a decision by the competent authority on the ground of malice and bias has to be specifically pleaded and proved by the person alleging the same and a vague and formal pleading in this regard does not meet the requirement in law so as to entitle the person making such allegation to any relief.

27. In the present case, the petitioner was called for the interview on 18.4.2006. The interview was held amongst the other candidates, there was a board which was constituted to interview the petitioner and others, there were recommendation of selection which happened as per the majority decision of the said board. It is not the allegation of the petitioner that the act of the respondent No.2 is backed by the personal or political vendetta. It is also not the case where there is a change in management and suddenly the petitioner is not considered for the promotion. But rather, the petitioner is alleging that the interview itself is vitiated by bias as the respondent no.2 was sitting with a predetermined mind. It is difficult to draw any inference as to malice without disclosure of the facts as to which of the circumstances leads to the fact of the predetermined situation leading to malice. This level of dissatisfaction lies in every person faced with adverse decision but the said pre determined situation culminating into factual malice has to be shown by complete disclosure of facts instance by instance and not generally alleging that the questions were not pertaining to the subject or the respondent no.2 overlooked the works of the petitioner.

28. Further, the serious allegations like malice also do not stand established on the basis of the letter of dissent written by one expert out of body of board interviewing the candidate. If the Court is persuaded by the letter of dissent written by a person amongst the body of experts which favours one candidate then it would not be unfeasible to draw the inference to the contrary. It is difficult to assume or presume the factual malice unless it is corroborated by the material which has to be placed on record.

The respondent University has also written a letter wherein the respondent has also suggested to reconsider the petitioners promotion to the post of the professor. This shows rather bonafides as against malafides in facts. Thus, it is difficult in these circumstances to draw any inference of malice and thus the selection process is not backed by the malice.

29. Secondly, the petitioner's allegation that the interview board was constituted in violation of resolution 275 as amended by resolution 251 is also rejected as meritless. The respondent in its reply submitted that the said objection is at the best irregularity which is curable in law is satisfactory response to this.

In ***Post Master General Kolkata & Others Vs. Tutu Das (Dutta)***, (2007) 5 SCC 317 wherein the Apex Court has emphasized the drawn distinction between regularization or illegal appointment is stated as under:

14. The question involved herein came to be considered by a Constitution Bench of this Court in Umadevi (supra) wherein noticing a long line of recent decisions and upon consideration of the question as to whether the right to life protected by Article 21 of the Constitution of India would include the right of employment as well, vis-a-vis application of principles of equality, it was inter alia held;

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In *State of Mysore v. S.V. Narayanappa* [1967] 1 SCR 128 this Court stated that it was a misconception to consider that regularization meant permanence. In *R.N. Nanjundappa v. T. Thimmiah* : (1972)ILLJ565SC this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

Counsel on behalf of the respondent contended that regularization would mean

conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

16. In *B.N. Nagarajan v. State of Karnataka*: (1979)11LLJ209SC this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularization.

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53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa* and

B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one- time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have From the above it is clear that the defects which are curable in law for the want of non compliance which is one of the elements in the selection process can be regularized but the permanent employment cannot be regularized in law if it is at the outset illegal.

30. The respondent has drawn Court's attention to the resolution 251 where the vice chancellor is empowered to add or delete the names of the persons from the list of the experts in consultation with the academic council. The said acts were done by the exercise of the powers.

31. As per the Resolution No. 251 of the Academic Council,

the Vice Chancellor is empowered to add/delete the names of experts on the approval of the Academic Council. In view thereof, the respondent no.2 added four names on the panel of experts before the date of interview on 18.04.2006. However, these names have been duly ratified by the Academic Council on 12.12.2007. Thus the action for ratification was taken by the respondents.

32. Under the resolution no time limit has been prescribed for the names to be altered/ratified to the Academic Council. Admittedly the Academic Council normally meets only once or twice a year and important academic issues cannot wait for such meetings. Therefore, powers have been given to respondent no.2 to take decisions and subsequently report the same to Academic Council. Once the addition of names of the experts in the panel is ratified by the Academic Council, the same relates back to the date of making such amendment by the Vice Chancellor/respondent no.2. Thus the objection raised by the petitioner about the experts on the Selection Committee that the same were not from the approved panel of experts has no force. There is a force in the submission of the learned counsel for the respondents that assuming it as an irregularity, the same is even curable in law and not an illegality.

33. Thus, the said board constituted for interviewing the petitioner by virtue of the ratification and regularization cannot lead to vitiation of the selection process.

34. In view of the same, there is no ground made out for interference in the said selection process under Article 226 of the Constitution of India.

35. For the aforesaid reasons, this court is not inclined to interfere with the decision of the Selection Committee which is passed in the year 2006. However, the case of the petitioner would be reviewed at the time of appointment for the same post in future as observed by the selection committee earlier in case he applies for the same.

36. The writ petition is disposed of with the aforesaid directions. No costs.

MANMOHAN SINGH, J.

OCTOBER 25, 2010
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