

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th July, 2011

+ W.P.(C) No.2198/2008

% DR. T.D. MURALI DHARAN Petitioner
Through: Mr. L.K. Singh, Adv.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Pinaki Misra, Sr. Adv. with Mr.
Shibashish Misra, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|----|---|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. This petition impugns the order dated 27th/28th September, 2007 of the respondent No.3, Chancellor Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth (hereinafter called "Vidyapeeth" and which Vidyapeeth has been impleaded as the respondent No.2) rejecting the claim of the petitioner in

W.P.(C) No.15197/2004 earlier preferred by the petitioner and which writ petition was vide order dated 24th March, 2007 therein was directed to be treated as the representation of the petitioner to the respondent No.3. The petitioner also seeks mandamus to the respondent No.2 Vidyapeeth to appoint the petitioner to the post of Reader (Research & Publication) in the respondent No.2 Vidyapeeth.

2. Notice of the petition was issued. The writ petition was accompanied with an application for interim relief seeking to restrain the respondents from initiating any process for filling up of the said post. Vide order dated 19th March, 2008, it was directed that any appointment made by the respondents to the said post shall be subject to the outcome of this writ petition. Pleadings have been completed and counsels have been heard.

3. The respondent No.2 Vidyapeeth had in January, 2004 invited applications for appointment to the post aforesaid. The petitioner was one of the applicants and was called for interview on 12th March, 2004 and claims to have been orally informed of his selection. It is also not in dispute that the

Selection Committee constituted for this purpose recommended a panel of two persons for appointment to the said post and in which the name of the petitioner appeared first. The other name recommended was of one Dr. Sri Prakash Pandey.

4. The 51st Meeting of the Karya Parishad of the respondent No.2 Vidyapeeth held on 15th April, 2004 approved the recommendation of the Selection Committee for appointment of the petitioner. The respondent No.2 Vidyapeeth thereafter vide its letter dated 19th April, 2004 to the petitioner, required the petitioner to submit:

- (i) Proof with respect to his present salary with grade and experience duly certified by the then employer of the petitioner.
- (ii) Documents showing that the petitioner satisfied the condition of five years experience of teaching and / or research excluding the period spent for obtaining the research degrees and had made some mark in the area of scholarship as evidenced by quality of

publications, contribution to educational innovation, design of new courses and curricula.

It was stated that the aforesaid was required to comply with UGC guidelines and to enable the respondent No.2 Vidyapeeth to issue an offer letter to the petitioner.

5. The petitioner vide his reply dated 23rd April, 2004 stated that he had already submitted all the aforesaid documents at the time of his interview; he nevertheless again furnished the particulars of the salary being then drawn by him along with No Objection Certificate issued by Somaiya Vidyavihar, Mumbai where the petitioner was then employed and also stated particulars of his teaching and / or research experience, publications, contribution to educational innovation, new design and curricula, updation of Sanskrit knowledge etc.

6. It is the case of the petitioner that notwithstanding the aforesaid, no offer of appointment was made to him and inspite of his representations.

7. It is further the case of the petitioner that upon enquiry, he learnt that his appointment was being deliberately delayed because of the Vice Chancellor of the respondent No.2 Vidyapeeth being interested in appointment of Dr. Sri Prakash Pandey who was second on the panel prepared by the Selection Committee and that the Vice Chancellor had called for a meeting of the Executive Committee to review the earlier decision for appointment of the petitioner.

8. It was then that the petitioner filed W.P.(C) No.15197/2004 (supra). The respondent No.2 Vidyapeeth in response to the said writ petition refuted the right of the petitioner to appointment; it was pleaded that though its Karya Parishad as aforesaid approved the recommendation of the Selection Committee but subsequently a Sub Committee had been appointed to review the said recommendation of the Selection Committee and the Sub Committee had on 18th September, 2004 decided to reject the recommendation of the Selection Committee and the said decision of the Sub Committee had been ratified by the Karya Parishad in its 54th Meeting held on 25th October, 2004. It was also pleaded by the respondent No.2

Vidyapeeth that the petitioner at the time of interview had not produced the books and articles of his work and his credentials in original. Needless to state that the petitioner controverted all the said averments of the respondent No.2 Vidyapeeth. It was his contention that his selection ratified by the Karya Parishad in the 51st Meeting held on 15th April, 2004 could not be reviewed, especially by a Sub Committee; that while the reasons stated in the 54th Meeting of the Karya Parishad for review of the decision was that a doubt had arisen as to the authenticity of the publications of the petitioner, the reason given in the counter affidavit was of complaints against the petitioner having been received; that the credentials of the petitioner could not be re-assessed.

9. W.P.(C) No.15197/2004 as aforesaid was disposed of vide order dated 24th March, 2007 with a direction that the same be treated as a representation of the petitioner and be considered by the respondent No.3.

10. The respondent No.2 Vidyapeeth vide its letter dated 27/28th September, 2007 to the petitioner and impugned in this petition has

communicated to the petitioner the decision of Justice P.N. Bhagwati (Retd.) acting as the Chancellor of respondent No.2 Vidyapeeth disposing of the representation aforesaid of the petitioner. The respondent No.3, chancellor of the respondent No.2 Vidyapeth has observed / found:

- (i) That before any offer of appointment to the post could be made to the petitioner, a letter was received from Professor Shukdev Chaturvedi one of the members of the Karya Parishad pointing out that no publications were produced by the petitioner before the Selection Committee and therefore the matter should be sent back to the Karya Parishad for examining the publications for the purpose of deciding whether the petitioner was fit for being appointed to the post;
- (ii) That another letter was received from Professor Ramesh Kumar Pandey one of the members of the Selection Committee, also stating that the petitioner has not produced his books and publications before the Selection Committee;

- (iii) That accordingly the Karya Parishad in its 52nd Meeting did not confirm the Minutes of the 51st Committee in so far as accepting / approving the recommendation of the Selection Committee for appointment of the petitioner;
- (iv) That the Karya Parishad of the respondent No.2 Vidyapeeth in its 53rd Meeting constituted a Sub Committee to assess and evaluate the academic credentials of the petitioner either by itself or by co-opting members from the relevant field;
- (v) That the Sub Committee so constituted observed that none of the published work, research papers and articles etc. claimed by the petitioner came up to the required standard and satisfied the test of high quality of contribution and educational innovations required for consideration for the post;
- (vi) That the six publications produced by the petitioner are not original contributions but constitute edition of works produced by others; the petitioner was not the author of any of the

publications; yet another work submitted by him was prepared by a group of scholars and the petitioner had merely coordinated the work of the group; the same was in any case not a research work;

(vii) The aforesaid assessment by the Sub Committee was accepted by the Karya Parishad which took a view that the petitioner was not fit to be appointed to the post;

(viii) That the Chancellor to satisfy himself whether the view of the Karya Parishad was correct or not referred the case of the petitioner to three outside scholars being the (i) Ex. Head, Department of Sanskrit, Osmania University, (ii) Vice Chancellor, Kavikulguru Kalidas, Sanskrit Vishwavidyalaya and (iii) Vice Chancellor, Jagadguru Ramanandacharya, Rajasthan Sanskrit Vishwavidyalaya;

(ix) The Chancellor after considering the report of the three independent outside experts was of the view that the

recommendations of the Selection Committee were not finally accepted / approved by the Karya Parishad in accordance with Rule 28(v) of the Memorandum of Association and no Offer of appointment had been made to the petitioner and that the petitioner was not eligible for appointment to the post as his publications did not show any quality evidencing scholarship nor had the petitioner made any contribution to educational innovation required for the post.

The Chancellor accordingly approved the recommendation of the Karya Parishad made in its 54th Meeting of not accepting the recommendation made by the Selection Committee and directed the post to be re-advertised.

11. The counsel for the petitioner has contended that the petitioner had in his application for appointment made full and complete disclosure; whatever works had been translated or edited by the petitioner were so described; that the petitioner had never claimed authorship of any works which he had not

authored; that others also who had not made any publications had been appointed; that the appointment of the petitioner was complete; that Sub Committee could not have re-examined the works of the petitioner which had already been examined by the Selection Committee at the time of interview and on the basis whereof recommendation for appointment of the petitioner was made; that the Sub Committee could not have reviewed the decision of the earlier Selection Committee; that all that the Sub Committee could have examined was whether the petitioner had made any misrepresentation; that neither the Sub Committee nor the Chancellor have held the petitioner guilty of misrepresentation; that without the petitioner having been found guilty of misrepresentation, the decision to appoint him could not have been reviewed; that the Chancellor was not justified in appointing another Expert Committee of three outside experts; that no fresh selection could have been made.

12. I have at the outset enquired from the counsel for the petitioner as to what is the “right” of the petitioner. The petitioner has not been appointed. The petitioner is at best a selected candidate. It is the settled position in law

that a selected candidate has no right of appointment. I have recently in judgment dated 5th May, 2011 in W.P.(C) No.827/2010 titled ***Devi Darshan Seth Vs. UOI*** and in judgment dated 3rd May, 2011 in W.P.(C) No.178/2011 titled ***Dr. Prem Lata Vs. GNCTD*** examined plethora of cases in this regard and need is as such not felt to burden this judgment with the same. Even if it were to be believed that the appointing authority of the respondent No.2 Vidyapeeth had accepted the recommendation of the Selection Committee, as long as no appointment had been effected and which had not been effected, the respondent No.2 Vidyapeeth had a discretion not to appoint the petitioner. The Supreme Court in ***R.S. Mittal Vs. UOI*** 1995 (2) SCC 230 has held that the Court has a power to only examine whether there are any reasons for not making such appointment. As long as some reasons exists, the Court cannot compel the appointing authority to make the appointment.

13. In the present case the aforesaid narrative would show that there are reasons aplenty for the respondent No.2 Vidyapeeth, inspite of recommendation of the Selection Committee, having not appointed the petitioner.

14. The counsel for the petitioner would argue that the non appointment of the petitioner is for the reason of *mala fide*. The senior counsel for the respondent has rightly contended that charge of *mala fide* is easily made then made out. The petitioner in the present case has failed to lay any foundation for such *mala fide*. The reasons why the Vice Chancellor was or would be interested in appointment of the person at serial No.2 in the Selection Panel have not been stated. Moreover, the appointment was not in the hands of the Vice Chancellor alone. The matter as aforesaid has been examined by the highest body of the respondent and all have been *ad idem* that the petitioner is not a suitable person. This Court is neither competent nor would sit in appeal over the decision of the experts. The Apex Court in ***Dr. Basavaiah Vs. Dr. H.L. Ramesh*** 2010 (7) SCALE 529 has reiterated that the Courts have a very limited role particularly when no *mala fide* has been alleged against the experts and that it would normally be prudent / wholesome and safe for the Courts to leave the decisions to the expert. It was further held that as matter of principle the Courts should never make an endeavour to sit in appeal over the decision of the experts. If the experts have stated that the

petitioner does not fit the bill for appointment for the reason of having not done the work and research essential for performance of duties on the said post, the Court would accept the same particularly when the Chancellor of the respondent No.2 Vidyapeeth to satisfy himself has got the matter examined from outside experts also. It thus cannot be said that any injustice has been done to the petitioner. The credentials of the petitioner have been examined at the highest level and the petitioner has been found unsuitable for the job.

15. The Senior counsel for the respondent taking cue from the queries made to the counsel for the petitioner has referred to para 18 of ***M.D., T. Nadu Magnesite Ltd. Vs. S. Manickam*** AIR 2010 SC 3125 to contend that to be able to maintain any action existence of a right is essential and without right there could be no claim. He has further from the documents, sought to establish that the petitioner in his application for appointment had not made a clean breast relating to his publications. It is further stated that the Minutes of the 51st Meeting of the Karya Parishad ratifying the selection of the petitioner were not ratified in the 52nd Meeting and are thus of no avail. It is

also contended that the petitioner is a habitual litigant and had also filed W.P.(C) No.7941/2009 in this Court impugning the order of the appointment to the post of Registrar of the respondent University for which also the petitioner had applied and which writ petition was dismissed on 1st April, 2009 observing that the petitioner had not stated full and true facts and had not come to the Court with clean hands. It is contended that the petitioner for his such conduct is in any case not a suitable person for the post and cannot be thrust on the respondent No.2 Vidyapeeth.

16. No merit is found in the petition; the same is dismissed. I refrain from imposing costs on the petitioner.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 13, 2011

‘gsr’ (corrected and released on 28th July, 2011)