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

RESERVED ON: 23.05.2013
PRONOUNCED ON: 12.07.2013

% LPA 464/2000

+ **DR. BHIKSHU SATYAPALA** Appellant
Through: Mr. Ravi Shankar Kumar with
Ms. Joyoti Kundu Goyal, Advocates.

versus
UNION OF INDIA & ORS. Respondents
Through: Mr. Rajeeve Mehra, ASG with
Mr. Ruchir Mishra and Mr. Mukesh K.
Tiwari, Advocates for UOI.
Mr. Devender Singh, Advocate for Resp-2.
Mr. Dushyant Parashar for Mr. Suryakant,
Advocate for Resp-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

1. The present appeal is directed against the judgment and order of a learned single judge, dismissing WP 3914/2000. In the writ petition, the selection and appointment of the third respondent to the post of Director, Nava Nalanda Mahavihara had been questioned by the Appellant (hereafter "the petitioner").
2. The brief facts necessary to decide this appeal are that an advertisement was issued on 17th May 1999, inviting eligible

candidates to apply for the said post of Director of the Nava Nalanda Mahavihara. It is common ground that the petitioner applied; so did other candidates, including the third respondent.

3. The relevant eligibility conditions in respect of the post of Director are extracted below:

“(4). Academic and other qualifications:

(1) Essential: Consistently good academic records and possessing eminent scholarship in Pali and Buddhism with the Degree of Doctrate with ability to conduct and guide original research work

(2) Published research work of high merit.

(3) At least ten years teaching experience of Post Graduate classes, guiding research work and administrative experience in a recognized institution.

Desirable: should have fair acquaintance of Buddhist philosophy and History.

(4) Age: Below 55 years”

4. The petitioner, the third respondent and several candidates applied for the post. The petitioner was working as Head of Department of Buddhist Studies in Delhi University; he was 50 years of age, and had an M.Phil degree in his favour. In addition, the petitioner cites a number of distinctions and achievements by him in respect of Pali language, studies and research. Those details have been extracted in the writ petition. The petitioner also submits that he has excellent academic credentials, having secured the highest achievements, and obtained gold medals etc. The petitioner had also contended that apart from the fact that he was the best suited candidate, the third respondent did not fulfil the prescribed eligibility

conditions. In this regard, it had been averred that the said respondent - who was ultimately selected and appointed to the post - lacked the minimum qualifications and what is more did not have the experience in guiding or supervising research scholars. The petitioner had also alleged that the third respondent had not effected any significant publication much less of importance and that as between the claims of both to be appointed, his (the petitioner's) was superior. It was pleaded in the proceedings before the learned Single Judge that even though the Selection Committee conducted a formal interview, yet it overlooked vital and material facts which rendered the application of third respondent unworthy of consideration. Consequently, submitted the appellant, the appointment itself was contrary to law.

5. A learned Single Judge of this Court dismissed the petition. The impugned order of the Single Judge is extracted below: -

“Learned counsel for the Petitioner claims that his client is better qualified than Respondent No.3. It is not possible for me to compare the qualifications of the Petitioner vis-a-vis Respondent No.3 for appointment to the post of Director, Nava Nalanda Mahavihara, Nalanda (Bihar).

There is no assertion pointed out to me to the effect that Respondent No.3 is not qualified to be appointed to that post.

Dismissed.”

6. Learned counsel for the petitioner reiterated the submissions made in the pleadings and stressed upon the fact that the petitioner/appellant was an eminent scholar of Buddhism with MA in Pali - in which he holds a gold medal which was equivalent to MA in

Buddhist studies and also M.Phil in Buddhist studies. It was submitted that the petitioner also holds a Ph.D. in these areas and is an internationally recognized scholar. Counsel submitted that the petitioner has edited several books and journals and possesses more than 18 years of post-graduate and research degree level teaching experience in Delhi University. He had worked as Head of the Department, Buddhist Studies and had successfully conducted sensitive assignments. On the basis of such distinguished credentials, the claim of the third respondent could not have prevailed at all. It was submitted that not only did the third respondent lack the essential and requisite qualifications, he even lacked the experience of guiding research scholars.

7. Learned counsel for the petitioner further placed reliance on some of the documents produced by the first respondent relating to the selection process particularly the letter of the Secretary to the Governor of Bihar dated 22.11.1999. The Governor was the Chairman of the Managing Committee and had according to the letter accorded his approval to the panel recommended for appointment placing the appellant at the first place and the third respondent immediately below him. It was submitted that having regard to this document, the first respondent could not have proceeded to appoint the third respondent. Counsel for the respondents relied upon the averments made in the various counter affidavits. It is urged that legality of the third respondent's selection and appointment depends on the question whether he was meritorious and specifically as to whether he possessed eligibility conditions which is no longer open to

debate. It was urged in this regard that the said appointment was also the subject matter of CWP 9434/1999 before the Patna High Court which by judgment dated 11.10.2006 rejected the petition. He relied upon the said judgment to say that the question of *inter se* merit is not open to judicial review.

8. It was argued in addition that the Board of Management of the Nalanda Mahavihara, i.e., the institution in question had in fact in its proceedings of the 11th meeting approved the recommendation to appoint the third respondent. Learned counsel pointed out that in fact the petitioner was a party and a member of the Board of Management and could not, therefore, have challenged the decision. It was argued more importantly that the Minutes of the Selection Committee which drew the panel nowhere indicated that the petitioner was more meritorious than the third respondent. In this regard it was emphasized that the Minutes of the meeting of the Selection Committee signed on 21.09.1999 pursuant to its deliberations specifically stated that the panel of names recommended to the Government was in alphabetical order. Counsel stressed that since this panel was drawn after considering the eligibility of all candidates and after having considered the relative experience, it was open to the Government to decide which amongst these had to be selected. It was also argued that one Venerable Bhadant Rahul Bodhi was invited as a subject expert. After taking into consideration all materials such as the qualification and experience of the individuals reflected in the panel, the Central Government decided to appoint the third respondent.

9. The first question before the Court proposed to be considered is

regarding the claim of the petitioner that he alone was eligible and more meritorious for consideration and appointment to the post. The material on record in the form of affidavits and pleadings – including the third respondent’s replies are suggestive of the fact that the latter is also a post graduate and holder of a doctorate. In fact he was also associated with the University of Mumbai for more than ten years and used to teach the post graduate students. In response to an unstarred question in Parliament, the Government of India revealed the following information: -

“Prior to his appointment Dr. Panth was Director at Vipassana Research Institute, Dhammagiri, Igatpuri, Maharashtra from 1987. Apart from his teaching and research experience at that Institute Dr. Panth was also associated with the University of Mumbai for more than 10 years at times teaching MA classes. He was also associated with the Department of Buddhist Studies, University of Delhi, Member of the Board of Studies in Pali and Buddhism of Dr. Baba Saheb Ambedkar Marathwada University, Member of the Board of Governors and Society of Central Institute of Higher Tibetan Studies, Sarnath and Member of the Board of Management of the Central Institute of Buddhist Studies, Leh.”

10. Apparently, the third respondent is holder of MA (History) degree from University of Rajasthan, post graduate (MA) qualification in Pali in Buddhist studies from Delhi University. He completed his M.Phil in Buddhist studies from Delhi University in 1983 and also obtained a doctorate (Ph.D.) in Buddhist studies from the same University. As far as work experience is concerned, he appears to have discharged responsibilities as Junior Research Fellow, Senior Research Fellow and Senior Research Associate in UGC and later

worked as Lecturer of Pali studies and subsequently Director of Vipassana Research Institute in Maharashtra from 1986 till his appointment to the post. The Central Government has also indicated that he published more than 50 research papers and presented them in various national and international conferences and seminars.

11. While exercising judicial review, under Article 226 of the Constitution, the Court's scrutiny is confined to examining the legality, procedural regularity and *bona fides* of the executive order or legislative measure. As long as these parameters are satisfied, the court would be slow in interfering or involving itself with the relative merits of the case, which in effect would amount to its donning the hat of the decision maker. In this case, the petitioner/Appellant's allegations regarding his claims being superior for the post, cannot be legitimately gone into by this court. It would, for this purpose, be sufficient to recollect the decision of the Supreme Court, in *Dalpat Abasaheb Solunke v. B.S. Mahajan* (1990-II-LLJ-470) that:

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not, has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc."

The only possible area where the Court can justifiably examine the

matter is to satisfy itself whether the third respondent in fact did fulfil the eligibility conditions, prescribed for the post. That aspect, in the opinion of the Court, is factually clear; the third respondent is a double post graduate and holder of a doctoral degree. He was a research associate and a fellow for several years, and has also been involved in teaching and guiding several research scholars. He has also apparently extensively published articles and papers which were received internationally. The court holds as insubstantial the appellants' arguments regarding ineligibility of the third respondent.

12. The last controversy pertains to the petitioner's complaint that despite the Selection Committee Chairman's recommendation that his candidature was most merited, the Central Government appointed the third respondent. On this aspect, the pleadings are clear; in order to clear the controversy, the court had summoned the original records of the Central Government. A careful reading of the Selection Committee's recommendation would reveal that the names of the three individuals placed on the panel, were in alphabetical order and not in the order of merit. The committee had held its deliberations in September and minuted its decisions immediately; they were forwarded to the Government, which had to decide the issue. In such a background, the Court does not see how one of its members- as indeed its Chairman was (despite his holding the high office of Governor)- could, by a letter of 22.11.1999 clarify what clearly the document did not state explicitly. If in fact the committee- including the Chairman had recommended that the panel was in order of merit, it should have said so in the document; on the contrary, all the members- including

the Chairman, consciously commended the three names (i.e. the panel) for consideration in an alphabetical order. Such being the case, the Central Government was justifiable in concluding as it apparently did that all names in the panel were equally merited. The files produced before the court reveal that the recommendation of the committee and all relative documents were shown to the Union Minister who chose the third respondent's claims. This court does not discern any infirmity or unreasonableness; there is no allegation of bias or *mala fides* against any one in these proceedings. The court cannot under these circumstances, impose its notions of fairness and hold that the appointment of the third respondent was in any manner contrary to law.

13. In the light of the above discussion, it is held that the appeal lacks in merit. It is accordingly dismissed. There shall, however, be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

JULY 12, 2013