

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 20, 2017
Judgment delivered on: August 08, 2017

+ W.P.(C) 7711/2016

DR. KANWALJEET SINGH

..... Petitioner

Through: Mr. Kunal Vinayak, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. D.P. Bhardwaj, CGSC with Mr. Satya Prakash Singh and Ms. Adrija Thakur, Advs. for R1 and R2. Mr. Kanwal Chaudhary and Mr. Rishu Kant Sharma, Advs. for R3 and R5.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“Therefore, on the facts and in the circumstances of the case it is most humbly and respectfully prayed that this Hon’ble Court may graciously be pleased to:

A. Issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the illegal, unjust, unfair and arbitrary approval order dated 22.09.2015 of the ACC (Annexure P-9) and the appointment order dated 23.09.2015 (Annexure P-10) vide which respondent No.5, who was placed at No. 2 on merits in the list of candidates recommended in the order of preference by the Search-cum-Selection

Committee, has been appointed to the post of Vice-Chancellor of LNIPE, Gwalior by the Minister of State (I/C), Youth Affairs and Sports; and

B. Issue a writ in the nature of Mandamus or any other appropriate writ or order directing the respondent No.1 to 4 to appoint the petitioner (placed at the No.1 by the Search-cum-Selection Committee) to the post of Vice-Chancellor of LNIPE, Gwalior; and/or

C. Pass such further or other orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice."

2. The petitioner in effect, is seeking quashing of the communication dated September 22, 2015 whereby the Secretariat of the Appointments Committee of the Cabinet has conveyed the decision of the ACC approving the appointment of the respondent No.5 as Vice Chancellor Laxmibai National Institute of the Physical Education, Gwalior (for short 'LNIPE') and the subsequent appointment of the respondent No.5 on the said post vide Office Memorandum dated September 23, 2015.

3. The relevant facts as noted from the writ petition are, on December 08, 2014 the Search cum Selection Committee consisting of three Members for appointment of Vice Chancellor, LNIPE was constituted by the respondent No.1 in accordance with the provisions contained under Rule 26 of the Memorandum of Association/Rules of 2014 of LNIPE, Gwalior and on January 6, 2015 and January 9, 2015 the respondent No.1 issued notices inviting applications from eligible candidates, for appointment to the post of Vice Chancellor, LNIPE.

4. It is the case of the petitioner that he submitted his application along with all

supporting documents and credentials on January 31, 2015. On February 25, 2015, the petitioner was asked to appear before the Search cum Selection Committee on March 20, 2015 for making a power-point presentation. On March 19, 2015 and March 20, 2015, the, Search cum Selection Committee met to conduct interviews. It is the case of the petitioner that the Search cum Selection Committee recommended the following three candidates in the order of preference for appointment to the post of LNIPE, Gwalior:-

- (i) Dr. Kanwaljeet Singh (Petitioner);
- (ii) Dr. Dilip Kumar Dureha (Respondent No.5);
- (iii) Dr. Nayana Diwakar Nimkar.

5. The petitioner has averred, on July 23, 2015, the respondent No.1 has recommended the name of the candidate placed at Serial No.2 Dr. Dilip Kumar Dureha (Respondent No.5) for the post of Vice Chancellor, LNIPE, Gwalior and his name was forwarded for obtaining the approval of the ACC. The ACC accordingly approved his name for appointment, which was conveyed vide its letter dated September 22, 2015 and pursuant thereto, respondent No.5 was appointed on September 23, 2015.

6. The learned counsel for the petitioner has drawn my attention to page 82 of the paper book to submit that the Search cum Selection Committee had recommended three candidates (referred above) in the order of preference with petitioner at Sl. No.1. He would state, in terms of the Office Memorandum of the Ministry of Personnel and Public Grievances and Pensions dated July 30, 2007 (Annexure P-12), the panel

recommended by the Search cum Selection Committee will have to be accepted in-toto by the Ministry/Department. Any deviation in the matter would require, the prior approval of the ACC. He states, the said instructions were reiterated by the Department of Personnel and Training vide its OM dated July 17, 2012 wherein a reference was given to the earlier OM dated July 30, 2007 and also, the fact that there are number of instances of panel being scrapped without the approval of the ACC. He has also drawn the attention of the Court to the OM dated September 05, 2014 wherein, the DoP&T has referred to the observation made by the ACC that in some of the cases submitted by various Ministries/Departments, the Selection Committee/ Search cum Selection Committee are not recommending the panel in the order of preference. The DoP&T reiterated that the Search cum Selection Committee must invariably indicate the order of preference. According to him, Ministries and Departments were requested to follow the laid down norms without any deviation. It is his submission, in the case in hand the order of preference was deviated from, by the President i.e Minister of State (I/C), Youth Affairs and Sports by recommending the name of Dr. Dilip Kumar Dureha, respondent no.5, that too, without the approval of the ACC. Once the recommendation in the order of preference was accorded by the Search cum Selection Committee, the Ministry/Department was not at all left to exercise any discretion or authority to alter the said order of preference. He states, the exercise is a mala-fide exercise overlooking the merit of the petitioner, which is extraordinary, being a person of highest level of competence, integrity, moral and institutional commitment and the same is clear from the comparative chart showing the qualification/experience of the petitioner as well as

respondent No.5.

7. It is also his submission that when the case was sent to the ACC for its approval by the respondent No.1 Ministry, there was no proper representation on the order of preference recommended by the Search cum Selection Committee, which resulted in the ACC approving the name of respondent No.5, whose name was recommended by the President i.e Minister of State (I/C), Youth Affairs and Sports. Had the respondent No.1 shown the order of preference recommended by the Search cum Selection Committee, the ACC would not have approved the name of the respondent No.5. That apart, it is his submission, full CR dossiers of the candidates placed at serial No. 1 to 3 in the order of preference were never sent to the ACC for its approval nor any specific reason for not forwarding such information as is mandatory under 13 (c) of the common proforma for proposal requiring approval of the ACC was given with ulterior motives. The learned counsel for the petitioner was at pains to state that the stand of the respondents 1 and 2 that the respondent No.5 being 57 years of age and the youngest of the three candidates, the appointment is justified, does not borne out from the records, which have been procured by the petitioner under the RTI. He states, the primary consideration for recommending the respondent No.5 on the ground the respondent No.5 is better on merit, is not tenable. The learned counsel for the petitioner has relied upon the following judgments:-

(i) 1992 AIR SC 1806 National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman;

(ii) 2016 (4) PLJR 441 The State of Bihar Through the Department of Energy Govt. of Bihar Patna v. Chhathu Lal Prakash Son of Late Upasu Manji and

connected Letters Patent Appeals;

(iii) 2010 AIR SCW 5907 Dr. Basavaiah v. Dr. H.L. Ramesh and ors and connected Civil Appeal;

(iv) 2005 (125) DLT 468 Dr. V.K. Agrawal v. University of Delhi and ors;

(v) 2011 (3) SLR 732 Vinayak Bhagwanrao Bhise v. State of Maharashtra;

(vi) 2016 Latest HLJ (H.P.) 596 Dr. J.S. Chauhn v. State of Himachal Pradesh and ors and connected writ petition;

(vii) 2016 (1) SLR 366 Federation of Farm Universities Teachers' Association in Karnataka (ffutak), Bangalore and another v. State of Karnataka and ors;

(viii) 2001 AIR (SC) 1369 A.K. Doshi v. Union of India and connected Civil Appeals;

(ix) 2015 (217) SKT 199 Shiv Charan Lal Sharma v. Union of India;

(x) 2016 (3) CalLJ 569 State of West Bengal & Ors v. Nilmadhab Thakur and Ors;

(xi) 2016(3) GauLT 294 Abhinav Deka Barua v. State of Assam and Ors.;

(xii) 1994(1) AD (Delhi) 473 Dr. S.C. Bajpai v. University of Delhi;

(xiii) 1984 AIR (SC) 1850 Jatinder Kumar v. State of Punjab;

(xiv) 1995 AIR (SC) 568 Union of India etc v. N.P. Dhamania, etc;

(xv) 1995 AIR (SCW) 2044 R.S. Mittal v. Union of India;

(xvi) 2001 (Sup2) Scale 191 Amaresh Chandra Pandey v. Prakash Singh and Ors.;

(xvii) 2011 AIR (SCW) 1690 Central for Public Interest Litigation and another v. Union of India and another.

8. On the other hand, Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondents 1 to 4 would justify the appointment of the respondent No.5 as Vice Chancellor of LNIPE, Gwalior. He states, the Office Memorandums dated July 30, 2007 and July 17, 2012 were followed by Office Memorandum dated September 05, 2014 wherein in para 2, it has been clearly mentioned that the ACC has reiterated that unless statutorily required not to arrange the names in the panel in the order of preference, the Selection Committee/Search cum Selection Committee must

invariably indicate the order of preference. It is his submission, as Rule 26 stipulates a panel of three names to be suggested by the Search cum Selection Committee, which necessarily means, the names shall not be suggested in the order of preference. In this regard, he draws my attention to Annexure P-2 (page 42 of the paper book). He states, even if the order of preference has been given by the Search cum Selection Committee, the President i.e Minister of State (I/C) was within his right to recommend one name from the panel for appointment to the post of Vice Chancellor in LNIPE. He states, the relevant consideration for recommending the name of respondent No.5 was his merit. Mr. Jain states that even otherwise, it is seen that the respondent No.1 while sending the case for approval to the ACC, has not concealed any material. Entire facts of the case and all required information including the recommended panel of Search cum Selection Committee with all its observation were made available to the ACC for perusal for a decision. He denied, the stand of the petitioner that vital information was deliberately omitted at the time of sending the case to ACC. He states, the premise on which the present petition has been filed being contrary to Rule 26 and the factual position and there are no allegations malafides against the Authorities, who had taken decision, this Court would not like to interfere with the impugned action. He concedes, that the stand of the respondents in the counter affidavit, with regard to age, is not borne out from the records and tenders apology on the same.

9. Having heard the learned counsel for the parties, the only issue, which arises for consideration is, whether the appointment to the post of Vice Chancellor, LNIPE, Gwalior should have been made in terms of the order of preference recommended by

the Screening cum Selection Committee. Before I answer the aforesaid issue, it is necessary to reproduce Rule 26 of the MOA/Rules and the instructions dated July 30, 2007, July 17, 2012 and September 05, 2014 as under:-

“Rule 26

Vice-Chancellor

(i) The Vice-Chancellor shall be a whole time salaried officer of the Institute and shall be appointed by the President of LNIPE, with the prior approval of Appointments Committee of Cabinet, from a panel of three names suggested by a Search cum Selection Committee specifically constituted for the purpose by the Ministry of Youth Affairs and Sports, Government of India. The composition of the above committee shall be as follows:-

- a. A nominee of the President of the LNIPE as Chairperson of the search cum selection committee.*
- b. A nominee of the Government of India (Ministry of Youth Affairs and Sports), who shall be an eminent academician/educationist nominated by the Central Government, preferably an ex-VC or serving VC of any University funded by the Central/State Government.*
- c. A nominee of the Board of Management-member.*

Provided further that if the President does not approve of any name as recommended by the search committee, he/she may call for a fresh panel.”

Dated the 30th July, 2007

OFFICE MEMORANDUM

Subject: Setting up of Search Committees / Search-Cum-Selection Committees.

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- (v) *The panel recommended by the Committee will have to be accepted in toto by the Ministry / Department. Any deviation in the matter will require the prior approval of the ACC;*
- (vi) *Extension in tenure of persons other than the Chief Executives shall also be considered by the Search-Cum-Selection Committee and its recommendations shall be accepted by the Ministry / Department. Any proposal to reject the recommendations will require the approval of the ACC. Authority for approval for extension in tenure of Chief Executives will rest with the ACC;*

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“New Delhi, the 5th September 2014

OFFICE MEMORANDUM

Subject: Setting up of Search Committees/Search cum Selection Committee

Attention of all Ministries/Departments is invited to DoPT's Om No.AB.14017/11/2004-Estt. (RR) dated 25.05.2009 on the subject mentioned above conveying the direction of the ACC that the Selection Committee/Search cum Selection Committee should recommend panels in the order of merit. The ACC has, however, observed that in some of the cases submitted by various Ministries/Departments, the Selection Committees/Search cum Selection Committees are not recommending the panel in order of merit/preference.

2. In view of the above, the ACC has reiterated that unless statutorily required not to arrange the names in the panel in the order of preference, the Selection Committee/Search cum Selection Committee must invariably indicate the order of preference.

3. *All the Ministries/Departments etc. are requested to ensure compliance of these instructions.”*

“New Delhi

Dated the 17th July, 2012

OFFICE MEMORANDUM

Subject: Setting up of Search Committees/Search cum Selection Committee

Reference is invited to this Department's OM of even number dated 30.07.2007 on the above subject. The guidelines prescribe that the panel recommended by the Committee will be valid for one year. If no selection is made within a period of one year, a fresh committee shall be constituted to prepare a fresh panel. The guidelines further stipulate that the panel recommended by the Committee will have to be accepted in toto by the Ministry/Department. Any deviation in such matters will require the prior approval of ACC.

2. *It has been observed that there are a number of instances of scrapping of panel by various Ministries/Departments without the approval of ACC. This is not a healthy practice. All the Ministries/Departments are requested to follow the laid down norms without deviation and that the powers rested with the ACC should not be exercised by the Ministries/Departments without the approval of ACC.*

3. *These instructions may also be brought to the notice of all organizations under their administrative control for strict compliance.*

4. *Hindi version will follow.”*

10. The submission of the learned counsel for the petitioner based on the aforesaid OMs are, (i) the Search cum Selection Committee must invariably indicate the order of preference; (ii) the Ministry/Department is required to accept the recommendation of the Search cum Selection Committee in toto, any deviation in the matter would require

prior approval of the ACC.

11. There is no dispute that in the case in hand, the Search cum Selection Committee had, in its recommendation given the order of preference, inasmuch as the name of the petitioner was at Sl. No.1. It is also an undisputed fact that the President i.e Minister of State (I/C), Youth Affairs and Sports had recommended the name of the person at Sl. No.2 (respondent No.5) of the recommendation of the Search cum Selection Committee, for approval of the ACC. The submission of the learned counsel for the petitioner that the President i.e Minister of State (I/C), Youth Affairs and Sports even if had to deviate, he had to take the approval of the ACC, is appealing on a first blush, but it is to be seen whether in view of Rule 26, as contended by Mr. Sanjay Jain, there was any requirement under the Rules for making recommendation in the order of preference. I have already reproduced Rule 26 of the Memorandum of Association/Rules, which relates to Vice Chancellor. The Rule only stipulates, the Vice Chancellor shall be appointed by the President of the LNIPE with the prior approval of the ACC from panel of three names suggested by the Search cum Selection Committee. The Rule, does not expressly mandate not to arrange the names in the panel in the order of preference, which is the requirement of OM dated September 05, 2014, wherein it is stated “*unless statutorily required not to arrange the names in the panel in the order of preference, the Search cum Selection Committee must invariably indicate the order of preference*”. It appears, in view of the said position, the Search cum Selection Committee has given its recommendation in the order of preference. So, the submission of Mr. Jain that, in view of Rule 26, it was not obligatory for the Search cum Selection Committee to

recommend the names in the order of preference, is without merit. Now, if the Search cum Selection Committee has given the recommendation in the order of preference, whether recommending the name of respondent No.5 for approval of the ACC amounts to deviating from recommendation of the Search cum Selection Committee, which requires prior approval of the ACC is the question, which now arises for consideration.

12. To answer this, it is necessary to examine the scope of all the three OM's referred above. The OM dated July 30, 2007, on which reliance was placed by the learned counsel for the petitioner, more specifically Clause 5(v) (page 93 of the paper book), stipulates that the panel recommended by the Committee will have to be accepted in toto, any deviation in the matter requires the prior approval of the ACC. Suffice to state, there is no stipulation in this OM, which prescribes the recommendation of the names in the panel in the order of preference. The position of Clause 5(v) of July 30, 2007 was reiterated in the OM dated July 17, 2012 in which it was stated that, it was observed that number of instances of scrapping of panel by various Ministries/Departments without the approval of the ACC. In that context, it reiterated to follow the laid down norms without deviation and the powers rested with the ACC should not be exercised by the Ministries/Departments without the approval of the ACC. In other words, what was contemplated by the OM dated July 30, 2007 and reiterated by July 17, 2012 was that the panel recommended must be accepted in toto and should not be deviated without the approval of the ACC. In toto means, *totally; altogether*. It is only when the panel is deviated totally/altogether i.e. scrapped, prior approval of ACC is required. Suffice to state, the said OM's (of 2007 and 2012) do not

relate to a situation where a panel of three names recommended in the order of preference, even though accepted in toto but instead person at Sl. No.1, the person at Sl. No.2 was recommended for appointment to ACC. This I say so because the OM dated September 05, 2014, even though relate to Search cum Selection Committee, does not follow the two OM's of July 30, 2007 and July 17, 2012, but it follows the OM dated May 25, 2009, which OM for the first time suggested that the Search cum Selection Committee should recommend the panel in the order of merit. If the plea of the learned counsel for the petitioner is accepted, then there was no requirement to make a panel consisting of three names; one name would have sufficed for approval of the ACC. But Rule 26 stipulates three names and not one. May be the chances of the person at Serial No.1 of the order of preference, are bright, but, there is nothing in Rule 26 or OM of September 05, 2014, which suggest the person at Serial No.1, only needs to be appointed. So, it follows, any person whose name finds mentioned in the panel, can be appointed but with reasons on the file for recommending/appointing the person, lower in the order of preference. Further any interpretation, in the manner pleaded by the Ld. Counsel for the petitioner is accepted, it would be at variance with Rule 26, which stipulates Vice-Chancellor is appointed from a Panel of three names. Moreover, in terms of Proviso to Rule 26(1), the President has the power not to approve any of the names suggested by the Search cum Selection Committee, which surely suggest the discretion of the appointing authority to recommend any name in the panel for approval of ACC, if in his opinion he is a better candidate.

13. I may state here, during the course of the arguments, note sheets of the relevant

file were produced in the Court. The note sheet dated March 31, 2015, reveals the recommendation of the Search cum Selection Committee was put for the approval of the Minister of State (I/C), Youth Affairs and Sports by the concerned Officer (Dy. Secretary). He had put the case for approval of any one name from the panel of three names. A reference was also made to Proviso to Rule 26 to the extent, that if the President does not approve of any name as recommended by Search Committee, he/she may call for a fresh panel. Thereafter, the noting of the next higher Officer dated April 01, 2015 records *"The Search cum Selection Committee has recommended the above names in order of preference. Their CVs are placed below for orders."* The Minister of State (I/C), Youth Affairs and Sports (the President) has stated that he has examined the Biodata of all the three candidates and recommends the name of the respondent No.5 considering his merits.

14. During the course of the arguments, it was put to Mr. Sanjay Jain, Ld. ASG as to what was the material, which was sent to the ACC for its approval as it is the case of the petitioner, that the Ministry/Department had not forwarded the correct/complete facts and information with respect to recommendation made by the Search cum Selection Committee to the ACC and had in fact deliberately omitted the phrase *'in order of preference'*. Mr. Jain has pointed out the record, which has already been filed by the petitioner between pages 95 to 125 of the paper book. The said record includes the recommendation made by the Search cum Selection Committee, particulars of the Officers including qualification and experience, extract of Rule 26 etc. There is nothing to deduce that the ACC has not considered the said recommendation while approving

the name of respondent No.5 for appointment. This answers the plea of the petitioner that the phrase '*in order of preference*' has been deliberately omitted in the OM dated July 23, 2015. The OM dated July 23, 2015 did state that the Minister of State (I/C) had recommended the name of respondent No.5 for the post of Vice Chancellor. In any case, it is expected that the ACC is aware of all the instructions issued from time to time by the DoP&T, which have been referred above.

15. Insofar as the plea of the learned counsel for the petitioner on the inter-se merit of the petitioner and respondent No.5 is concerned, suffice to state it is not for the Court to assess their relative merits and sit as an Appellate Authority over and above the decision of the Appointing Authority in the Ministry/Government. Moreover, the scope of judicial review in the cases of appointments/promotions, is very limited unless and until malafides have been alleged against the decision making Authority and proved based on cogent evidence, the conclusion cannot be interfered. No such allegations have been made; nor any Authority has been made party in person. The relevant averments in the petition are that the appointment of respondent No.5 is result of manipulation, misrepresentation and suppression of vital material before ACC and appointment is malafide. On the averments so made, the selection of respondent No.5 cannot be set aside. In this regard, I would like to refer to the judgment of the Supreme Court in the case of *J.K. Mishra v. Union of India and Ors (1997) 6 SCC 228*, wherein in para 8, the Supreme Court held as under:-

“8. Lastly it was urged that the order compulsorily retiring the appellant was a mala fide order as the same was passed at the instance of Shri

Manazure Muastafa Siddiqui, Accountant General, M.P., who bore grudge against the appellant. This argument is being noted only to be rejected. It may be noticed that the record before us does not show that Shri Manazure Maustafa Siddiqui was party to the suit. In fact he was not impleaded by name in the suit. Further, the allegations against Shri Siddiqui were totally vague. No interference of mala fide could be drawn from such allegations. In the absence of full facts and particulars in the plaint in respect of allegation of mala fides the order of compulsorily retiring the appellant cannot be held to be a mala fide order.”

16. Now, insofar as the judgments relied upon by the learned counsel for the petitioner are concerned, in ***National Institute of Mental Health & Neuro Sciences (supra)*** the facts are, the petitioner before the Supreme Court, invited applications for the post of Professor, Neurology. Dr. Gauri Devi, working as Assistant Professor in the same Institute, also applied for the post. Dr. Kalyana Raman, Associate Professor of Neurology in U.S.A. was also a candidate. The Selection Committee was constituted under the Chairmanship of DGHS, Government of India. The Selection Committee, after interview and assessing the relative merits, recommended panel of names for appointment as Professor. Dr. Gauri Devi was placed first in the panel of names. Dr. Kalyana Raman was the second. Dr. Gauri Devi was eventually appointed as Professor. Her appointment was challenged by Dr. Kalyana Raman in the High Court. The High Court allowed the writ petition, which judgment was impugned before the Supreme Court. The High Court allowed the writ petition on two points; (1) that it was not possible to say with any degree of confidence that Dr. Kalyana Raman's case has received a fair and reasonable consideration at the hands of the Selection Committee;

and (2) that the Selection Committee has not given any reason, however, brief to establish any rational nexus between the facts said to have been considered by the Selection Committee and the conclusion drawn by it. The Supreme Court has on the second point held the functions of the Selection Committee as administrative. It held that the High Court fell in error in stating that the Selection Committee ought to have given reasons in preferring Dr. Gauri Devi. It held that there is no rule or regulation brought to its notice requiring the Selection Committee to record reasons. In the absence of any requirement, the selection made without reasons, cannot be faulted. The Supreme Court also held, that procedural fairness is the main requirement in the administrative process. The Selection Committee cannot be an exception to this principle and it must take a decision reasonably, without guided by extraneous or irrelevant consideration, but there is nothing on record to suggest that the Selection Committee did anything to the contrary. It also held that the Selection Committee consists of Experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Courts should be slow to interfere in their opinion. Suffice to state, this judgment shall not help the case of the petitioner.

17. In the case in hand, even though the Search-cum-Selection Committee placed the petitioner at Serial No. 1 of the order of preference but the Appointing Authority i.e. the President, who is the Minister of State (I/C) of the Youth and Sports, recommends the name of the respondent No. 5 on merit, which has been approved by the ACC and the petitioner having failed to specify extraneous considerations which resulted in such recommendation/appointment and more over, the decision making authorities being the

highest authorities in the Ministry/Government, the judgment cannot be of any help to the petitioner.

18. Insofar as the judgment in the case of *Chhathu Lal Prakash and connected writ petitions (supra)* is concerned, the challenge in the writ petition was to the selection of the respondent No. 8 as Director (Operation), South Bihar Power Distribution Company Limited and the respondent No. 9 as Director (Project), North Bihar Power Distribution Company Limited. The challenge was primarily on the ground that the respondent Nos. 8 and 9 were awarded punishment of withholding two increments which they concealed in the application forms. Secondly, the seniority has been ignored. The official respondents justified the impugned selection by stating that the selection was made by High Powered Committee consisting of Chief Secretary and four officers of the rank of Senior Principal Secretaries. The selection was made after considering overall record of the candidates. The learned Single Judge allowed the writ petition, observing that the minutes of the High Powered Committee do not shed any light as to why only the recommended candidates were found to be the most suitable vis-à-vis other applicants. The Division Bench relied upon the judgment in the case of *National Institute of Mental Health & Neuro Sciences (supra)* and observed, there is nothing on record which would establish that the requirement of procedural fairness has not been observed in the instant case. The Division Bench observed that it would have set aside the order of the Single Judge and ordered reinstatement of the respondent Nos. 8 and 9, however, non-disclosure of punishment imposed on him by respondent No. 8, amounts to concealing vital information. The Division Bench dismissed the LPA filed by Md.

Gheyasuddin, respondent No. 8, but it allowed the other LPA filed by the respondent No. 9 as he mentioned the punishment awarded to him. In any case, the judgment of the Division Bench only reiterates the law laid down by the Supreme Court in *National Institute of Mental Health & Neuro Sciences (supra)* that, it is not necessary for the Selection Committee to record reasons. The said judgment is of no help to the petitioner. In any case, noting of the Minister of State (I/C), President LNIPE recommending the respondent No. 5, as already been reflected above, shows application of mind.

19. Insofar as the judgment of the Supreme Court in the case of *Dr. Basavaiah (supra)* is concerned, there, the Supreme Court was considering facts, where University constituted a Committee of experts, which recommended the appointment of the appellants after evaluating their qualifications, experience and published work and found them eligible and suitable for the post. The Supreme Court held, in academic matters, the Courts have very limited role, particularly, when no malafide has been alleged against the experts' constituted Selection Committee and the Court should not sit as an appellate authority over the decision of the experts. This judgment is also of no help to the petitioner. In the case in hand, the allegations of malafide against the authorities are not there. Neither they are parties in their individual capacity, so as to meet the allegations if any made against them. A decision taken by the Appointing Authority cannot be reversed by this Court.

20. In *Dr. V.K.Agrawal (supra)*, this Court was considering a case of re-employment of the petitioner. His case was considered by an Advisory Committee. He was not

found fit for employment. This Court held, it is not for the Court to see whether Teacher is a distinguished Teacher or not. It also held that the Court does not consist of experts in the subject concerned, and the Court must refrain from going into the opinion of the experts. It held that the Court cannot sit as an appellate court in the decision of the expert members. This case also is of no help. The decision of the Appointing Authority cannot be reversed by this Court in view of my conclusion above.

21. Insofar as the case of *Vinayak Bhagwanrao Bhise (supra)* is concerned, in the said case, the Bombay High Court has held that the Court cannot sit in appeal over the decision of the Selection Committee, consisting of experts; moreover, when no allegation is made against the members of the Selection Committee.

22. In the case of *Dr.J.S.Chauhan (supra)*, the Himachal Pradesh High Court held, that the scope of judicial review of recommendations of Selection Committee is very limited since the Selection Committee consists of experts. The Court also held that the judicial review in such cases is very limited to oversee, whether the appointment had contravened any statutory or binding rule or ordinance; and the Court should give due regard to the opinion expressed by the Experts constituting the Selection Committee and its recommendations.

23. In *Federation of Farm Universities Teachers' Association in Karnataka (ffutak), Bangalore and another (supra)*, the Karnataka High Court dismissed the challenge to the appointment of the respondent No. 3 as Vice-Chancellor by holding that the same was done as per the recommendations of the Search-cum-Selection

Committee on merit. It held, all statutory requirements have been complied with in the making of the appointment. True, that in the case in hand, the Selection Committee, has placed the petitioner at Serial No.1 in the order of preference, which was not adhered to by the Appointing Authority that is the President of the Institute, while recommending the person at Serial No.2, i.e., the respondent No.5 herein, whose name was eventually approved and was appointed. Still the action of appointment is administrative in nature. Translating the ratio of the judgments relied upon by the learned counsel for the petitioner, the impugned action cannot be interfered with by this Court, unless, it is in violation of statute; mala fide; for extraneous consideration. That apart, if the reasoning given by the Appointing Authority that, it recommends the name of respondent No.5, being meritorious; this Court, cannot draw a conclusion otherwise to say that, on comparison, it finds the petitioner more meritorious. Such is not the scope of judicial review in view of the settled law laid down and referred to by the counsel for the petitioner himself.

24. Insofar as the case of ***Dr. A.K. Doshi and connected appeals (supra)*** are concerned, in the said case, some posts of Member, Company Law Board had fallen vacant. The Selection Committee headed by a nominee of the Chief Justice of India was constituted. The appellants before the Supreme Court were Mr. S.B.Mathur, who was recommended for appointment as Member (Technical) and Dr. A.K.Doshi at serial No. (1) in the reserved panel. In para 13 of the judgment, on which reliance has been placed, it is noted that the Government of India framed Company Law Board Rules, 1993. It provided, selection of Members shall be made by the Government of India in

consultation with the Chief Justice of India. All materials relevant are to be placed before the Selection Committee. It is the Selection Committee which makes selection on the basis of relevant material. After the Selection Committee completes the exercise and recommends one or more names for appointment, the recommendations along with the material considered by the Selection Committee should be placed before the Appointment Committee without any further addition or alteration. If in an exceptional case, the Appointment Committee feels that certain material which was not available to be considered by the Selection Committee, has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointment Committee with the additional material for its consideration. The Supreme Court held, such a course, will be in accordance with the scheme of the Rules and the purpose of making appointment to important public office. In the case in hand, as noted above, it is the submission of the learned Additional Solicitor General, that the materials between pages 95 -125, were sent and were there before the ACC, while seeking its approval, which included, the panel of names in the order of preference along with the extract of Rule 26 and also the particulars of the Officers in the panel, which included qualification and experience. If that be so, relevant material including the recommendation of Search cum Selection Committee was sent to ACC, still the ACC approved the name of respondent No.5 for appointment. So this judgment has no applicability in the facts of this case.

25. Insofar as the judgment in the case of *Shiv Charan Lal Sharma (supra)* is concerned, this Court held that in terms of Rule 5 (6) of the Rules, Government is bound

by the recommendation of the Selection Committee. The Court held, the ACC cannot set aside the appointment to be made in terms of the panel prepared by the Selection Committee. A Mandamus was granted for appointing the petitioner as Presiding Officer in terms of the recommendation of the Selection Committee. In this case, in the first round of litigation, judgment was passed in favour of the petitioner, whereby the Court had rejected, the stand of the Government that the petitioner was not qualified to be appointed as the Presiding Officer of the Tribunal. The matter was remanded back to the ACC for its approval. The ACC again rejected the case of the petitioner on the same ground, which decision was set aside by this Court, while directing the appointment of the petitioner. The judgment is distinguishable on facts.

26. In the case of *State of West Bengal & Ors Vs. v. Nilmadhab Thakur and Ors (supra)*, the facts were, an advertisement was issued on 5th November, 2014 inviting applications from eligible persons for the posts under the Juvenile Justice Board (JJB) and Child Welfare Committee. The tenure was for a period of 3 years. Respondent Nos. 1 and 4 applied for the post of social worker to be associated with the JJB. They underwent a selection process. A merit list was prepared and the respondent No. 1 was second in the merit list. He and another person found suitable for being selected to the post of social workers for the JJB. Respondent No. 4 was the 5th person in the waiting list prepared on the same day. However, on 9th March, 2015, a notification was issued by the Government of West Bengal declaring the names of the persons who would constitute the JJB. Saswati Saha who was first on the merit list and respondent No. 4 were the two workers appointed to the Board. Being aggrieved by that notification, the

respondent No. 1 challenged the same. The learned Single Judge allowed the writ petition and set aside the appointment of the respondent No. 4 and directed the appointment of the respondent No. 1. The Division Bench of the High Court held that the Government, even though under the Rules, is not bound by the recommendation of the Selection Committee, however, there must be cogent reasons for rejecting the recommendations made by the Selection Committee. It also held that respondent No. 4 was last in the waiting list having secured fewer marks. The Government has acted arbitrarily in appointing the respondent No. 4. The judgment of the Single Judge was upheld. Suffice to state, the case is distinguishable on facts inasmuch, in view of the reasons given by the Minister of State (I/C), Sports and Youth Affairs, which have already noted above. That apart, the respondent No. 5 was part of the panel recommended by the Committee and not in the waiting list. I have already held that the Minister of State (I/C) was well within his rights to recommend one name from the panel, not necessarily, the name of the person at serial No. 1. That apart, the appointment of the respondent No. 4 was set aside by the Calcutta High Court as he was at serial No. 5 of the waiting list and no reasons have been given before rejecting the claim of respondent No.1.

27. Insofar as the case of *Abhinav Deka Barua (supra)* is concerned, the facts are on 15th December, 2015, an advertisement was issued inviting the applications for the post of Junior Assistant in Higher Secondary School in Lakhimpur District. The petitioner applied for the post and qualified in the written test. The petitioner also appeared in the Computer Test, Computer Typing and Viva Voce. As per the selection made by the

Committee, the petitioner was adjudged having secured highest marks by taking into consideration the marks secured in all the categories. The minutes of the selection were sent to the respondent No. 3 for the purpose of making appointment. However, a decision was taken by the respondent No. 3, refixing the computer test, computer typing and oral interview. In other words, the earlier test and interview were abandoned. It was the case of the respondents that the Inspector of Schools being the appointing authority, is competent to order for re-examination in case of detection of irregularity in order to ensure that the selection is fair and transparent. The High Court relied upon the Services Rules 2003 to hold that the appointing authority is to fill up the vacancy in order of merit/preference, determined by the Selection Committee. It did not permit the respondent No. 3 to deviate from the decision of the Selection Committee and make its own assessment. Suffice to state, in the case in hand Rule 26 of the Memorandum of Association/Rules of 2014 suggests, the President of the LNIPE, who is the Minister Incharge, Youth and Sports Affairs, Government of India to be the appointing authority and he shall appoint the Vice Chancellor with the approval of the ACC, from a panel of three names suggested by the Search-cum-Selection Committee. In other words, a person, who is part of panel of three names, can be appointed. The said judgment is distinguishable on facts. There is no dispute, the name of the respondent No. 5 was in the panel recommended by the Search-cum-Selection Committee and he could have been appointed.

28. Insofar as the case of *Dr. S.C. Bajpai v. University of Delhi (supra)* is concerned, the facts of the case were, sometime in the year 1981 the post of the Vice Principal,

Bhagat Singh College (Evening classes) was advertised. The petitioner who was the senior most lecturer in the college applied for the post. On May 15,1982 the petitioner was interviewed by the Selection Committee Along with other candidates. The Selection Committee selected the petitioner for the post of Vice Principal and accordingly recommended his case for appointment to the Governing Body. However, according to the letter of the Principal dated June 28,1982 it appears that the Selection Committee's recommendation was not accepted on the ground of the Selection Committee not being properly constituted as the Chairman of the Governing Body, who is also an ex-officio member of the Selection Committee, was not present in the said meeting.. The petitioner protested on the ground that he was duly selected by the Selection Committee and there was no flaw in the Constitution of the Committee. Notwithstanding the protest, there was a fresh selection and the petitioner also appeared again before the Selection Committee on July 9, 1982 along with six other candidates. After interviewing the candidates the Selection Committee, which was constituted in accordance with Ordinance xviii (4)(4) of the Ordinance framed under Section 30 read with Section 31 of the Delhi University Act,1922, again selected the petitioner for being appointed to the post of the Vice Principal. A perusal of the minutes of the Selection Committee, however, reveal that the Chairman did not agree with the decision of the Selection Committee. Thereafter on August 30,1982 the matter came up before the Governing Body but it did not agree with the selection made by the Selection Committee and decided to re-advertise the post. The only reason given for not accepting the recommendation of the Selection Committee was that the teacher members of the

Governing Body opposed the appointment of the petitioner as they were dis-satisfied with the style of functioning of the petitioner. It is pertinent to point out that the petitioner because of his seniority had already been functioning as the Acting Vice Principal in charge of the Evening college. This appointment of the petitioner had been duly approved by the University. But pursuant to the decision of the Governing Body the petitioner was directed to be relieved from the post of the Acting Vice Principal on August 31, 1982. On September 4, 1982 the petitioner filed the present writ petition whereby he challenged the decision of the Governing Body dated August 30, 1982. By order dated September 7, 1982 status -quo regarding the petitioner's posting as the Vice Principal was directed to be maintained by the court. However, on September 7, 1983 the court permitted the second respondent to make regular appointment to the post of the Vice Principal in charge, Evening Classes subject to the final decision in the writ petition. In this order it was further directed that this fact should be expressly stated in the appointment order of the person who may be appointed against the post of the Vice Principal In charge, Evening Classes. Armed with this direction, the said respondent proceeded to make fresh selection. This time the Selection Committee, which met on April 21, 1984, recommended the appointment of the intervenor, Dr.S.P.Sharma, who came to be appointed as Vice Principal in charge Evening classes on April 25, 1984 but his appointment was specifically made subject to the result of the writ petition.

29. This Court held that, normally, the Governing Body is bound to accept the recommendations of the Selection Committee unless there are sufficient reasons recorded to discard with the recommendations of the Selection Committee and also

merely because the representative of the Governing Body, did not agree with the other members of the Committee, was not sufficient reason to discard the recommendations of the Committee. The petition was allowed and the petitioner was granted consequential benefits. The case is distinguishable on facts.

30. Insofar as the case in ***Jatinder Kumar v. State of Punjab (supra)*** is concerned, the Supreme Court held, selection by a Commission is only a recommendation of the Commission. The final appointing authority is the Government. The reliance was placed by the learned counsel for the petitioner on para 12, in which, Supreme Court held as under:

“12. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by reasons of high ability varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for

appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution, This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The Government also cannot appoint a persons whose names does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in A.N.D. Silva v. Union of India and State of Haryana v. Subash Chander Marwaha & Ors. The contention of Mr. Anthony to the contrary cannot be accepted”.

31. Suffice to state, the ratio of the judgment makes it clear that the Government is not bound to accept the recommendations made by the Commission. It also held that it cannot discard the order of merit except for good reasons viz. bad conduct or character. This judgment is also distinguishable as while recommending the name, the President has recommended the name of the respondent No. 5 on merit, after perusing the Bio

datas of all the three names in the panel, which has been accepted by the ACC. There are no allegations of mala fide against any of the authorities for this Court to interfere.

32. Insofar as the case of *Union of India etc v. N.P. Dhamania (supra)* is concerned, the Supreme Court has held that though the appointing committee is not bound to accept the recommendations, but the same cannot be rejected without recording reasons. The reasons for departure must exist on the files and have to be supplied to the Court as and when required. The Supreme Court found that recommendations were rejected without recording reasons. The case is distinguishable on facts inasmuch as the noting suggests on examining the bio datas the name of respondent No. 5 was recommended and the case has no applicability to the facts of the present case, and in view of my conclusion above.

33. In *R.S. Mittal v. Union of India (supra)*, the Supreme Court held, there has to be a justifiable reason to decline a person, who is on the select panel. The note sheet suggest, on examination of the Bio datas, the name of respondent No.5 was recommended, it cannot be said to be without any basis. Moreover, there are no allegation of malafide.

34. Insofar as the case of *Amaresh Chandra Pandey (supra)* is concerned, the facts are, order of preference was given by Selection Committee to the respondent for appointment as Assistant Professor. However, the Vice Chancellor who was the Chairman of the Selection Committee altered the said preference. It was held, when the Vice Chancellor is the Chairman of the Selection Committee, it would be unthinkable

that the so called power of approval or disapproval would bring within its sweep the power of altering the order of preference indicated by the Selection Committee. The case is distinguishable on facts, inasmuch as, the Vice Chancellor was the Chairman of the Selection Committee and approving Authority; which is not the case here as the Minister Incharge was not part of the Search-cum-Selection Committee.

35. Insofar as the *Centre for Public Interest Litigation and another (supra)* is concerned, the reliance placed by the learned counsel for the petitioner on this judgment is to the extent where the Supreme Court held, Government is not accountable to the Courts in respect of the policy decisions. However, it is accountable to the legality of such decisions. Having noted the facts and the law, the decision to appoint respondent No.5 cannot be faulted.

36. In view of my discussion above, I do not see any merit in the writ petition. The petition is dismissed. No costs.

AUGUST 08, 2017/ak

V. KAMESWAR RAO, J