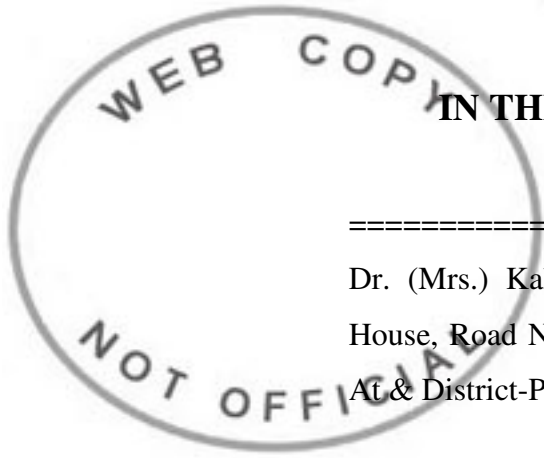




IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2716 of 2014

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Dr. (Mrs.) Kalpana Sinha, Wife of Rakesh Dhari Sinha, resident of-Dharhara House, Road No.-3, Magistrate Colony, P.O.-Ashiyana Nagar, P.S.-Rajeev Nagar, At & District-Patna 800025.

.... Petitioner/s

Versus

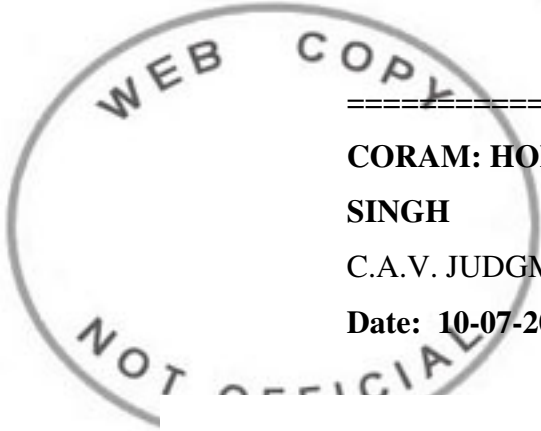
1. The Union of India, through the Secretary, N.I.Ts., Department of Higher Education, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi.
2. The Deputy Secretary (N.I.Ts), Department of Higher Education, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi.
3. The Director, National Institute of Technology, Patna-cum-Chairman, Selection Committee, N.I.T., Ashok Raj Path, Patna.
4. National Institute of Technology, Patna, through its Registrar, Ashok Raj Path, Patna.
5. The Chairman, Board of Governors of National Institute of Technology, Patna.
6. Prof. Asok De, S/o not Known to the petitioner, at present Director, National Institute of Technology, Patna-cum-Chairman, Selection Committee.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinod Kumar Kanth, Sr. Advocate Mr. Mukul Sinha, Advocate
For the Respondent Nos. 1 - 5 :		Mr. Y.V. Giri, Sr. Advocate Mr. Sanjay Kumar Giri, Advocate
For the Respondent No. 6	:	Mr. Ashish Giri, Advocate



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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date: 10-07-2015

Whether a Selection Committee constituted to assess the proficiency and knowledge of an Associate Professor, teaching English, with qualification and experience in English, in the National Institute of Technology (*hereinafter referred to as "N.I.T."*), Patna, for the purpose of his/her advancement/promotion under Career Advance Scheme (*hereinafter referred to as "C.A.S."*), with no expert in English, as its member, can be said to be a validly constituted Selection Committee, on the ground that his/her appointment in the N.I.T. as an Associate Professor being in the subject "Humanities and Social Sciences", therefore, experts in any field of Humanities and Social Sciences can be treated to be experts in the "subject" within the meaning of Clause - 23 (5) (a) of the First Statutes of National Institute of Technology (*hereinafter referred to as the "Statutes"*); is the cardinal issue



involved in the present writ application, filed under Article 226 of the Constitution of India. There is an ancillary question involved in the present case that the petitioner having participated in the process of selection and interview, whether can challenge the constitution of the Selection Committee itself, after her non-selection.

2. The petitioner, in the present writ application, has sought for a direction to the respondents for consideration of her case for advancement/promotion to the grade of Professor in the N.I.T., Patna under C.A.S. by a duly constituted Selection Committee as according to her, she was made to be interviewed by an improperly constituted Selection Committee without any expert in English, which caused great prejudice to her case for promotion, inasmuch as, the Selection Committee was not equipped to properly assess and evaluate her proficiency and knowledge in filed (English) of her research/teaching.

3. This is not in dispute that the petitioner did her B.A. (Hons.) and M.A. in English. She was awarded Ph.D. degree in English. In the year 1993, she was



appointed as Lecturer in English by Patna University and was posted in the English Department of erstwhile Bihar College of Engineering, Patna, the then constituent Unit of Patna University. She was promoted as Senior Lecturer in the year 1999. In the year 2004, the College was converted into National Instituted of Technology and acquired the status of deemed University, under the Ministry of Human Resource Development Department, Government of India. After the conversion of the College into N.I.T., Patna, she continued to serve there with her lien in the Patna University. Subsequently, pursuant to an advertisement, issued by N.I.T., Patna for appointment as Assistant Professor (now re-designated as Associate Professor), she was appointed as an Assistant Professor in the Department of Humanities and Social Sciences, by a letter dated 08.12.2005, which has been brought on record by way of Annexure - F to the supplementary counter affidavit, filed on behalf of the respondent nos. 3 - 5.

4. Before I proceed further, I must point out that the Department of Humanities and Social Sciences in



N.I.T., Patna, imparts teaching in following subjects/field:-

- (i) *HS 101 English Literature.*
- (ii) *HS 102 Communication skill development and Technical writing.*
- (iii) *HS 103 Remedial English.*
- (iv) *HS 104 Language Lab.*
- (v) *HS 105 Science Society and Ethical Values.*
- (vi) *HS 106 Sociology and Building Economics.*
- (vii) *HSS Elective courses (4th & 7th semester).*
- (viii) *HS 107 Industrial Economics and Financial Management.*
- (ix) *HS 108 Innovation, Entrepreneurship & IPR.*
- (x) *HS 109 Organizational Behaviour & Industrial Psychology.*
- (xi) *HS 110 History of Science & Technology.*
- (xii) *HS 111 Economics and its impact on industrial technology.*
- (xiii) *Foreign Language.*

(HS apparently stands for Humanities and Social Science)

It is the case of the petitioner that she, having qualification, knowledge and expertise in English, taught English subject only. This aspect has not been disputed by the respondents that the petitioner has been teaching no subject other than English.



5. The Ministry of Human Resource Development, Department of Higher Education of Government of India has issued guidelines dated 14.03.2012, for promotion of faculty members of N.I.Ts., under C.A.S. against advancement in their career, which is required to be adhered to by the respondents, the petitioner contends, which is also not disputed by the respondents.

6. The Director, N.I.T., Patna, through a notice dated 16.11.2012, invited applications in prescribed proforma for advancement of grades in their respective subjects under C.A.S. Initially, cut-off date for consideration of critical years of service was fixed as 13.03.2012, which was further extended up-to 31.03.2013. It is her case that she had requisite, qualifying years of service, as on the cut-off date, for consideration of advancement of grade under the said C.A.S. This fact is not in dispute that the petitioner possessed eligibility criteria for her consideration for advancement of the grade under the scheme.

7. The petitioner applied against the Notice inviting



applications and it is her case that she was the only candidate in the Department of Humanities and Social Sciences of N.I.T., Patna to have applied for such advancement to the grade of Professor. This fact is also not in dispute. From the notice, inviting applications, it appears that such advancement was being considered under C.A.S. for the Teachers working in various Departments of N.I.Ts., viz., Architecture, Civil Engineering, Computer Science & Engineering, Electronics & Communications, Electrical Engineering, Mechanical Engineering, Information Technology, Mathematics, Physics, Chemistry and Humanities & Social Sciences. A Screening Committee was constituted by the N.I.T., Patna for the purpose of scrutinizing the applications so received against Notice dated 06.11.2012. The Scrutiny Committee, after finding that the petitioner was eligible for advancement to grade of Professor, recommended her name for further evaluation by a Selection Committee, as per the Rules for grant of advancement to the grade of Professor with A.G.P. of Rs.



10,000/- (Rupees Ten Thousand). Altogether 13 names were recommended by the Screening Committee from different Departments, including the petitioner's name, in the Department of Humanities and Social Sciences. The petitioner participated in the interview conducted on 06.08.2013, but she was not selected. It is her case that out of total 13 candidates, 12 candidates were screened out for the purpose of grant of promotion to the grade of Professor with said A.G.P., only she was left out and accordingly, all the 12 candidates were recommended for promotion by the Selection Committee because experts of the concerned field were members of the Selection Committee, in their cases. It is her case that she did not know as to who are the members of the Selection Committee at the time of her interview, but after her non-selection, upon enquiry, she learnt that none of the two experts, who participated as members of the Selection Committee to evaluate petitioner's proficiency and knowledge in English, had any expertise in subject of English. It is her further case that information as regards



constitution of the Selection Committee was not furnished to her despite her best efforts. Subsequently, she learnt that following was the constitution of the Selection Committee:-

- (i) Visitor's nominee – Prof. T. Shobha.*
- (ii) Board of Governor's nominee – Prof. R. Natrajan.*
- (iii) Subject-Expert/Senate nominee – Prof. K.B.L. Srivastava.*
- (iv) Subject Expert, BOG nominee – Prof. Partha Basu.*
- (v) Chairman of Selection Committee – Prof. Ashok De.*
(who is the Director, at N.I.T., Patna).

8. It is the petitioner's case that Professor K.B.L. Srivastava was in the branch of Psychology, whereas, Professor Partha Basu belonged to the field of Economics. It is her case that for the purpose of evaluating and assessing her proficiency and knowledge for grant of said career advancement, experts should have been chosen from the field of research and teaching to which she belonged. It is, therefore, her stand that the Selection Committee could not duly assess her proficiency and



knowledge in English, since there was no expert in English in said Selection Committee.

9. This fact is not in dispute that there was no expert in English in the Selection Committee so constituted, for the purpose of consideration of petitioner's case for granting advancement/promotion under III - tier C.A.S. There is also no dispute about the fact that the petitioner was the only candidate in the Department of Humanities and Social Sciences, whose case was being considered for grant of Professor's grade under C.A.S. It is the case of the respondents that since the petitioner was working as Associate Professor in the Department of "Humanities and Social Sciences", experts in any subject of Humanities and Social Sciences could be appointed as expert of the Selection Committee for considering her case for promotion. It is their specific case that the experts, who belonged to Psychology and Economics, were men of eminence and had the required expertise to evaluate the petitioner's proficiency and knowledge in English, for her promotion and constitution of the Selection Committee on

that basis, cannot be said to be bad.

10. Before I proceed further, I consider it proper to refer to the statutory requirement governing the constitution of Selection Committee. Clause - 23 (5) (a) of the Statutes prescribes the manner in which the Selection Committee is to be constituted for recruitment of Academic Staffs or for promotion in the N.I.T. and reads thus:-

(a) the Selection Committee for recruitment of Academic Staff (excluding the Director and the Deputy Director), or for promotion shall be as under:

(1) Director or Deputy Director - Chairman

(2) Visitor's Nominee - Member

(3) two nominee of the Board one being expert,

but other than a member of the Board

- Member

(4) one expert nominee of Senate from outside

the institute

- Member

(5) Head of Department concerned - Member

(for other than the post of Professor)''



The said provision envisages appointment of two experts, one nominated by the 'Board' which means "Board of Governors" of the N.I.T. within the meaning of Section 3 (a) of the National Institutes of Technology Act, 2007 (*hereinafter referred to as the "Act"*). The other expert is to be the nominee of the Senate from outside the institute.

11. Section 11 of the Act lays down the constitution of the Board of Governors of which, the Director of the concerned N.I.T. is an Ex-Officio Member. Section 14 of the Act deals with the constitution of Senate of a N.I.T. There also, the Director is an Ex-Officio Member. Evidently, the Director plays an important role being a member of the Board and, at the same time, member of the Senate for the purpose of nominating experts. It was well within his knowledge, being Director of the N.I.T., Patna that the petitioner had qualifications in English and she was teaching subject English only in the N.I.T., as an Associate Professor in the Department of Humanities and Social Sciences. It cannot be said that the respondents/authorities were not in know of the fact that



the petitioner was the only candidate, whose case was to be considered for promotion to Professor's grade under C.A.S. in the Department of Humanities and Social Science with qualification and experience of teaching English only.

12. What the Selection Committee so constituted, for the purpose of considering the petitioner's case for grant of advancement under C.A.S., was required to do can be seen from the letter dated 14.03.2012 (Annexure - 2 to the writ application), issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India, which contains general and specific guidelines for promotion of faculty members of N.I.Ts. under C.A.S., in consultation with the Chairperson of Board of Governors and Directors, N.I.Ts. Paragraph - 4 (b) of the said letter reads thus:-

4. (b.) For a faculty member to gain advancement under CAS, he or she must satisfy the approved criteria under three broad heads: (i) a critical number of years in the lower level or designation and/or AGP, (ii) cumulative academic performance during the service period



at the current level in terms of teaching and research output as well as sharing institutional responsibility, and (iii) proficiency and knowledge in one's chosen field of research and teaching. Superior record in all these three fronts qualifies a faculty member for advancement to a higher level. (Emphasis mine)

Evidently, apart from considering the critical numbers of years in the lower designation and/or A.G.P. and cumulative academic qualification during the service period and the current level in terms of the teaching and research output as well as sharing institutional responsibility, the Selection Committee has been vested with a duty to see that a candidate satisfies “proficiency and knowledge in once chosen field of research and teaching”. The question would be as to whether the persons, who were experts in Psychology and Economics, could assess the proficiency and knowledge of petitioner's chosen field of research and teaching, which was/is indisputably English?

13. This has to be kept in mind that the said III - tier C.A.S. under which the petitioner's case was considered is



said to have since come to an end with effect from 01.04.2013, from which date, IV - tier C.A.S. has been introduced. It is the respondents' objection that no relief can be granted now to the petitioner when III - tier C.A.S. policy has ceased to exist. It is the case of the petitioner, on the other hand, that she cannot be denied the right of due consideration of her case for promotion under C.A.S., as it then existed, when she was interviewed by an improperly constituted Selection Committee, which according to her is her fundamental right flowing from Article 16 of the Constitution of India.

14. Mr. Vinod Kumar Kanth, learned senior counsel, appearing on behalf of the petitioner, has submitted, referring to sub-Clause - 5 of Clause - 23 of the Statutes, that a sensible meaning and purposive construction will have to be given while interpreting the word "expert" existing therein, which would advance and achieve the purpose for which the Selection Committee is required to be constituted. He has relied upon Supreme Court decision in case of *"Dr. Triloki Nath Singh Versus Dr.*



Bhagwan Din Misra and Others” reported in “(1990) 4 *Supreme Court Cases* 510”, wherein, the Supreme Court held that Selection Committee, consisting of panel of experts in Hindi Literature, cannot be said to be legally constituted body for the purpose of selection for the post of Reader in Linguistics in the Department of Hindi. He has contended, relying upon other Supreme Court decisions in case of “*New India Assurance Company Ltd. Versus Nusli Neville Wadia and Another*” reported in “(2008) 3 *Supreme Court Cases* 279” and “*N. Kannadasan Versus Ajoy Khose and Others*” reported in “(2009) 7 *Supreme Court Cases* 1” that the statutory provisions are required to be construed in a manner so that the purpose of the said provision is fulfilled. He has submitted that it will lead to anomalous situation, if experts are selected, for the purpose of evaluating the proficiency of a candidate having expertise and experience of teaching in English language, from any of more than hundred subjects falling under the stream “Humanities and Social Sciences”, which is too vast and its effect would be detrimental to the very purpose. In



support of his submission that Clause - 23 (5) (a) of the Statutes should be so construed as to give them a sensible meaning, he has relied upon a decision of Supreme Court in case of *“H.S. Vankani and Others Versus State of Gujarat and Others”* reported in *“(2010) 4 Supreme Court Cases 301”*.

15. Mr. Kanth, learned senior counsel, has also contended that consideration of the petitioner’s case for grant of advancement under C.A.S. by an incompetent, improperly Selection Committee has taken away her fundamental right guaranteed to her under Article 16 of the Constitution of India, as, according to him, the equal opportunity would mean, in the present case, a right to be duly considered by a properly constituted Selection Committee for promotion, which is a Fundamental Right of an Indian citizen. He has relied upon a Supreme Court decision in case of *“Ajit Singh and Others (II) Versus State of Punjab and Others”* reported in *“(1999) 7 Supreme Court Cases 209”*, in support of this submission.

16. Mr. Y.V. Giri, learned senior counsel, appearing on behalf of the respondents-N.I.T., on the other hand, has



submitted that the petitioner having participated in the process of selection and having taken a chance to get the advantage of advancement under C.A.S., cannot subsequently question the constitution of the Selection Committee itself. He has secondly submitted that in the notice inviting applications, “Humanities and Social Sciences” was mentioned as the Department in which the promotions were to be considered. He has contended that the interview was conducted by a high level Selection Committee, consisting of experts in the field of Humanities and Social Sciences and men of eminence. He has referred to the appointment letter of the petitioner, which has been brought on record by way of Annexure - F to the supplementary counter affidavit filed on behalf of the respondents dated 08.12.2005, in order to submit that her appointment in the N.I.T., Patna was to the post of Assistant Professor (now re-designated as Associate Professor) in the Department of Humanities and Social Sciences and not in the Department of English. He has referred to Paragraph - 12 of the counter affidavit, filed on



behalf of the N.I.T., Patna, in support of his submission that though English is the subject of the petitioner's specialization, she is not an Associate Professor in English rather she is continuing as Associate Professor in the Department of Humanities. He has further contended, referring to Clause - 4 (g) of the guidelines, issued by the Department of Higher Education, contained in the letter dated 14.03.2012 (Annexure - 2 to the writ application) (*Supra*) that constitution of Selection Committee, procedure and criteria of selection is to be the same for external and internal candidates and there cannot be a separate subjectwise interview in C.A.S. selection and interviews are to be conducted, as per the Statutes, alongwith candidates for direct recruitment against vacancies, if any. He has submitted, therefore, that there was one Selection Committee constituted, consisting of the two experts, as mentioned above, having expertise in the field of Psychology and Economics, to interview the candidates for the purpose of advancement under C.A.S. He has emphasized that Clause - 4 (g) of the said



guidelines prohibits separate Selection Committees for assessing the suitability of the candidates for the purpose of grant of advancement under C.A.S. to the persons belonging to the same Department. He has also emphatically submitted that the Statutes do not permit sub-division of the subject “Humanities and Social Sciences” and has contended that there is conscious omission of the word “subject” in the Statute, dealing with the constitution of the Selection Committee.

17. Mr. Giri, learned senior counsel, has further submitted that the wisdom of such level Selection Committee consisting of persons of eminence, should not be doubted by this Court in a proceeding under Article 226 of the Constitution of India, exercising power of judicial review. He has placed reliance upon Supreme Court decision in case of *“Basavaiah (Dr.) Versus Dr. H.L. Ramesh and Others”* reported in *“(2010) 8 Supreme Court Cases 372”*, with special reference to Paragraph - 21 of the said decision. He has also placed reliance upon a decision of Supreme Court in case of *“Ramesh Chandra Shah and*



Others” Versus Anil Joshi and Others” reported in “(2013) 11 Supreme Court Cases 309”. According to Mr. Giri, the decisions of Supreme Court, upon which learned senior counsel, Mr. Kanth, has placed reliance, do not apply to the present set of facts and circumstance of the case, as, according to him, it was conscious omission not to mention the word “subject” in the Statute governing constitution of Selection Committee.

18. Mr. Ashish Giri, learned counsel representing respondent no. 6, while adopting generally, the submissions made on behalf of respondents, as noted above, would contend that the question of grant of advancement to the petitioner under old III - tier C.A.S. has become academic as IV - tier C.A.S. has come into force with effect from 01.04.2013, giving a go bye to the previous scheme. He has submitted that the petitioner’s case for advancement/promotion can now be considered only under the prevalent IV - tier C.A.S. In reply to this submission, Mr. Vinod Kumar Kanth, learned senior counsel, appearing on behalf of the petitioner, has relied



on a Division Bench decision of Allahabad High Court dated **30.04.2015**, delivered in **Writ A. No. – 51603 of 2014 (Teachers Association MNNIT, Allahabad and Another Vs. Union of India and Others)** and has contended that the said policy decision has so far not been made part of the Statute, in the absence of assent of the “visitor” in view of said decision. I will consider this contention of Mr. Ashish Giri, later, in this judgment.

19. As has been noted in the very opening paragraph of the present judgment, what meaning is to be given to the word “expert” as occurring in “Clause - 23 (5) (A) of the Statutes is the central point which requires determination in the present case for the purpose of constitution of a Selection Committee, to consider cases for grant of advancement in the scale of Professor with A.G.P. under C.A.S., in the Department of Humanities and Social Sciences in N.I.T., Patna. It has been stated on behalf of the respondents that there are nearly 170 subjects, which fall within the category of “Humanities and Social Sciences” and it has been canvassed that



experts in either of these subjects could be appointed as expert-members of the Selection Committee. According to the respondents, in the absence of the word 'subject' mentioned in Clause - 23 (5) (a) of the Statutes, the said word cannot be read into the said provision in order to conclude that expert would mean "subject expert".

20. In my opinion, Clause - 23 (5) (a) of the Statutes requires to be read with the purpose for which it is there in the Statutes. The purpose is manifest and obvious. The fundamental and primary purpose of constitution of the Selection Committee is to evaluate and assess the proficiency and knowledge of a faculty member for recruitment to a post/promotion to higher grade or grant of advancement to higher grade and in the present case to the grade of Professor under C.A.S. The Selection Committee consists of 6 members, two of whom should be the experts, to make assessment/evaluation in tune with the guidelines, as contained in letter dated 14.03.2012, issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India.



The function and duty of the Selection Committee is thus to assess “proficiency and knowledge in once chosen field of research and teaching” (*emphasis added*). Thus, while considering the case of an Associate Professor, whose chosen field of research is English, it would be difficult to accept the plea that persons having no experience or expertise in such field can still assess the proficiency and knowledge of a person being considered for advancement/promotion under C.A.S.

21. Mr. Kanth, learned senior counsel, appearing on behalf of the petitioner, is right in his contention that the expert, as occurring in Clause - 23 (5) (a) of the Statutes for the purpose of constitution of Selection Committee, could not mean expert in any subject of the stream under Humanities and Social Sciences and if such interpretation is given, it would give rise to an anomalous and absurd situation. Purposive construction is an effective well accepted and established tool for interpreting Statutes, and has been applied by Supreme Court in the case of “New India Assurance Company Ltd. Versus Nusli Neville



Wadia and Another” (*Supra*). In case of “N. Kannadasan Versus Ajoy Khose and Others” (*Supra*), the Supreme Court held that if plain meaning assigned to the sections result into absurdity and anomaly, literal meaning would not be applied and held that the Court may have to change the interpretative tool, if necessary to give effective, contextual meaning to a statutory provision. The Court held that construction of Statute must subserve the tests of justice and reason. Relevant portion of Paragraph - 55 of the said decision is extracted hereinbelow:-

55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).

22. In my opinion, therefore, while selecting experts for constitution of the Selection Committee for the aforesaid purpose, experts in the subject were required to be appointed as members, otherwise, very purpose of



selection, with experts as its members would stand frustrated. I must take note of the fact that though the petitioner was working as an Associate Professor in the Department of Humanities and Social Sciences, but that would not mean that she was appointed to teach all subjects of Humanities and Social Sciences in the said Department. This is not even the case of the respondents. She was appointed to teach English in the said Department. The subjects which are taught in the subject of Humanities and Social Sciences have been mentioned in Paragraph - 4 of the judgment. From the reading of the list of subjects/sub-subjects, it would appear that the petitioner's appointment was for Item Nos. - (i) to (iv) and she had not experience of teaching other items mentioned therein, which position is admitted.

23. A similar issue had arisen before the Supreme Court in case of "Dr. Triloki Nath Singh Versus Dr. Bhagwan Din Misra and Others" (*Supra*), where for the purpose of selection of Reader in Linguistics in the Department of Hindi, a Selection Committee consisting of



3 heads of Hindi of other Universities, as external experts, was held to be wrong and illegal on the ground that all the experts were of Hindi subject for selection of one Reader in Linguistics. The Supreme Court held that Hindi Language and Literature and Linguistics are two separate subjects in the Department of Hindi. The Supreme Court also held that merely because Linguistics is also a subject of study in one paper of Hindi, it could not be said that Linguistics and Hindi Language and Literature fall under the same subject of study in the University. In the present case, the petitioner was though appointed as Associate Professor in the Department of Humanities and Social Sciences in N.I.T., Patna, but her appointment was for the purpose of teaching English in the Institute, on basis of her post-graduate qualification, research and experience of teaching in “English”. This is an admitted fact that the petitioner has been teaching English and English only in the N.I.T., Patna. In such circumstance, if a Selection Committee was to be constituted to assess her proficiency and knowledge in her “chosen field of research and



teaching”, for her career advancement to the grade of Professor, in my opinion, experts should have been selected accordingly; otherwise, the whole purpose of C.A.S. shall stand frustrated.

24. I am, therefore, of the considered opinion that the Selection Committee, constituted for the purpose of considering the petitioner’s case for grant of advancement under C.A.S., must have comprised experts of her subjects and not any of 170 subjects (as stated by learned senior counsel for N.I.T., Patna) falling under the stream, “Humanities and Social Sciences”. I find substance in the submission made on behalf of the petitioner that provisions of a Statute must be construed so as to give them a sensible meaning, as laid down by Supreme Court in case of “H.S. Vankani and Others Versus State of Gujarat and Others” (*Supra*). The Supreme Court held that construction of an enactment that leads to impracticable results should be avoided by the Court as even the Rule making authority expects the Rules not to visualize absurd results. Paragraphs - 43 to 46 of the said decision is



relevant for the present case and are being quoted hereinbelow:-

43. It is well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim ut res magis valeat quam pereat (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

44. In this connection reference may be made to the judgment in R (Edison First Power Ltd.) v. Central Valuation Officer wherein Lord Millet said: (All ER pp. 116-17)

“116. The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.

117. But the Strength of these



presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it.....”

45. Reference may also be made to the judgment in *Andhra Bank v. B. Satyanarayana* wherein this Court has held: (SCCP p. 662, para 14)

“14. A machinery provision, it is trite, must be construed in such a manner so as to make it workable having regard to the doctrine ‘ut res magis valeat quam pereat’.”

46. In *Tinsukhia Electric supply Co. Ltd. v. State of Assam* this Court held as follows: (SCC p. 754, para 118)

“118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ‘ut res magis valeat quam pereat’. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to



ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it.”

25. What disastrous result would it have, if the plea advanced on behalf of the respondents is accepted that experts in any field of the stream “Humanities and Social Sciences” could be appointed as members of the Selection Committee for considering the case for advancement under C.A.S. for grant of Professor grade with A.G.P. can be seen by an illustration. In the present case, in order to assess the petitioner’s proficiency and knowledge, experts in the subject of Psychology and Economics were appointed as members of the Selection Committee. The petitioner has admittedly no higher qualification in Psychology and Economics. The experts have no higher qualification or experience of research or training in English, which is the chosen field of the petitioner’s research and teaching. Would it be rational (if submission on behalf of the respondents is accepted), to appoint a person having expertise, qualification and experience in the field of Sanskrit (a subject in Humanities and Social



Sciences) to evaluate the proficiency and knowledge of an Associate Professor in English for the purpose of his advancement under C.A.S. to the “grade of Professor”! This, in my opinion, will give rise to absurd situation and if such interpretation is given to Clause - 23 (5) (A) of the Statutes, it will result into absurdity. Humanities and Social Sciences are major categories of academic disciplines. The Social Sciences include Economics, Political Science, Human Behaviour and Psychology and also includes amongst its branches some fields in Humanities, such as: Anthropology, Archeology, History Law and Linguistics etc. The consideration, for the purpose of selection of experts would not depend upon the name of the Departments in which a faculty member is working for the advancement under C.A.S., rather it will depend upon the “chosen field of research and teaching of the faculty member”, whose case is to be considered; otherwise, it would be not possible to objectively and accurately assess his or her “proficiency and knowledge” in the concerned field/subject.



26. The issue involved in the present case can be viewed from another angle, by addressing a question as to whether the constitution of the Selection Committee to evaluate the petitioner's proficiency and knowledge in her chosen field of research and teaching, was rational, reasonable, logical when it was well within the knowledge of the respondents that the petitioner's chosen field of research and teaching was English and her proficiency and knowledge was required to be assessed in that subject/field! In my opinion, the appointment of persons, who were experts in the field of Psychology and Economics, to assess the petitioner's proficiency and knowledge in English defeats the very basic logic and common sense. The respondents, authorities/bodies, competent to nominate the experts should have acted with reason while selecting experts, as the Selection Committee was required to evaluate the petitioner's proficiency and knowledge in English. In my opinion, reasonableness, fairness and rationality are the fundamental requirements of administrative decisions and if this Court, while



exercising jurisdiction under Article 226 of the Constitution of India, finds these attributes lacking in State action, remedial orders will be required to be issued. It is well recognized principle that a State action which does not withstand the test of fairness and reasonableness or if it is found to be illogical, such action would be violative of Article 14 of the Constitution of India (*V.C. Banaras Hindu University and Others Versus Shrikant: (2006) 11 Supreme Court Cases 42*).

27. I do not find much force in the submission made by Mr. Y.V. Giri, learned senior counsel, that teaching of English in N.I.T., Patna is not as important as other subjects of Science and Engineering, taught in the Institute and that standard of imparting English teaching in these Institutes is not of higher level and, therefore, in order to assess petitioner's proficiency and knowledge for that purpose, the persons, who were appointed as experts, were competent enough to assess the petitioner's proficiency and knowledge in English, though such experts were from the fields of Psychology and Economics. Reason is very



simple. Advancement under the C.A.S. is allowed to a faculty member in N.I.T. for achievements in his or her chosen field of research and teaching. An Associate Professor, working in the Department of Humanities and Social Science, cannot be said to be “less equal” than other equals imparting teaching in the N.I.T. in different subjects.

28. Mr. Giri has placed reliance upon a Supreme Court decision in case of “Basavaiah (Dr.) Versus Dr. H.L. Ramesh and Others” (*Supra*), in support of his plea that in the matter of recommendations made by expert bodies, the scope of judicial review is very limited. In my view, the said judgment does not have application in the present case, as the present case involves the constitution of the Selection Committee/expert body itself and this Court is not entering into merits of recommendation made by the Committee.

29. The plea that the petitioner, after having participated in the process of selection by appearing before the Selection Committee, cannot question the



validity of the constitution of the Selection Committee itself, is not acceptable to me in the present set of facts and circumstances, as it was not made known to the aspirants that such would be the constitution of Selection Committee, which would not have any expert in English to assess petitioner's proficiency and knowledge in English, prior to the date when the petitioner participated in interview on 06.08.2013. There would have been no reason for the petitioner to know before the interview was held or result was notified that such members would be there in the Selection Committee as experts, who would be having no higher qualification or experience of research and teaching in the petitioner's subject/field of research and teaching, i.e., English. Once she learnt about the illegal constitution of the Selection Committee, she challenged her non-selection as well as the constitution of the Selection Committee itself. Mr. Giri, learned senior counsel, has relied upon Supreme Court decision in case of "Ramesh Chandra Shah and Others Versus Anil Joshi and Others" (*Supra*), in support of the submission. The



said decision of the Supreme Court cannot be applied in the present facts of the case as in that case, after having participated in the process of selection, the respondents of that case had sought to challenge the advertisement and process of selection on the ground that they were *ultra vires* the provisions of extant Rules. It cannot be said in the present case that the petitioner, knowing well that the experts were from different fields, who constituted the Selection Committee, consciously took part in the process of selection. He has also relied upon Supreme Court decision in case of *“Vijendra Kumar Verma Versus Public Service Commission, Uttarakhand and Others”* reported in *“(2011) 1 Supreme Court Cases 150”*, in support of his submission in this regard. In the said case, in the notification publishing result of successful candidates in the written examination, it was made clear that knowledge of candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office Operation would be essential. In the call



letter also, this criteria was set out. In that circumstance, the Supreme Court held that knowing well such criteria, the appellants of that case appeared in the interview. In that circumstance, the Supreme Court held that after having participated in the process of selection without any protest, they could not turn back to say that the procedure adopted was wrong and without jurisdiction.

30. I will now be dealing with the plea, as has been taken by Mr. Ashish Giri, that the III - tier C.A.S. under which the petitioner's case was considered for grant of advancement came to an end with implementation of IV - tier flexibility faculty structure, implemented in all N.I.Ts., as per Ministry of Human Resource Department of Higher Education dated 15.01.2014 and, therefore, the petitioner's case cannot be considered now, under the previous III - tier C.A.S., which scheme no more exists. The plea cannot be accepted for the reason that this Court, in the present proceeding under Article 226 of the Constitution of India, this Court is exercising power of judicial review over the process of selection for grant of



advancement under III - tier C.A.S. in which the petitioner had participated. This Court is testing the validity of the constitution of Selection Committee, constituted for the purpose of evaluating and assessing the petitioner's proficiency and knowledge in the subject concerned. This Court is, thus, considering as to whether the petitioner's right to be considered for advancement under previous III - tier C.A.S. has been honored or not or it has been infringed. There cannot be two opinions, now, in view of various decisions of superior Courts that right to be considered for promotion is a fundamental right, which flows from Article 16 of the Constitution of India. This Court is thus considering in present case, whether the petitioner's case for advancement/promotion was considered in accordance with law and whether any illegality committed during the process of consideration is so prejudicial to the interest and right of the petitioner which would require this Court to step in, for enforcement of her legal/fundamental right, to undo the illegality done to her.



31. I am of the considered opinion, in the present set of facts, as discussed above, that the word “expert”, as occurring in Clause - 23 (5) (a) of the Statutes, would mean expert in the subject of research/teaching of the faculty member, whose case for grant of advancement under C.A.S. is being considered. This is because such experts are required to evaluate the proficiency and knowledge of such faculty member in his/her “chosen field” of research and teaching. In the present case, indisputably, the petitioner has experience of research and teaching in English. In such circumstance, experts in the concerned subject, i.e., English, ought to have been nominated by the Board and Senate, as members of the Selection Committee, under Clause - 23 (5) (a) of the Statutes. I, accordingly, hold that the constitution of Selection Committee for the purpose of assessing the petitioner’s proficiency and knowledge was illegal.

32. I am of the considered opinion that because of wrong constitution of the Selection Committee, which interviewed the petitioner, petitioner’s case was severely



prejudiced and her right to be considered for promotion/advancement stood breached. I, accordingly, quash the decision of such Selection Committee dated 06.08.2013 (Annexure - 6), rejecting the petitioner's case for grant of advancement on the basis of the interview held on the same date, i.e., 06.08.2013. This application deserves to be allowed and is, accordingly, allowed with the following directions to the respondents, more particularly, respondent nos. 3, 4 & 5:-

(i) There shall be constituted a Selection Committee, consisting of experts in the field of English subject for considering the petitioner's case afresh for advancement under III - tier C.A.S. Such Committee must be constituted within a period of one month from the date of receipt/production of a copy of this judgment and order. I make it clear that all the functionaries responsible for constitution of the Selection Committee, in the light of the present judgment of this Court, shall come in aid to ensure that there is no hindrance or delay in constitution of the Selection Committee.



(ii) The petitioner's case shall be considered by the Selection Committee, so constituted, within a period of one month from the date of its constitution and the respondents, thereafter, will be required to proceed in accordance with law, in terms of the decision/recommendation of the Selection Committee.

(iii) The Selection Committee, whenever meets for the purpose of considering the petitioner's case, in the light of the present directions, shall proceed as if it were considering the petitioner's case as on 06.08.2013.

(iv) In case the petitioner's case is recommended for such advancement/promotion by the Selection Committee, she shall be entitled to all benefits in terms the scale of pay from the date, other Faculty members in the Institute have been granted such benefits on the basis of such interview held on 06.08.2013. In that circumstance, the Court expects that there shall be no delay in payment of arrears etc.

33. Before I part with this judgment, I must record that no case of *mala fide* has been made out against

respondent no. 6.

34. This writ application is allowed with the order and directions as above.

35. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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