

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

+ W.P.(C) No. 546/2014 & W.P.(C) No.3897/2014

% **18th March, 2015**

+ **W.P.(C) No.546/2014**

DR. SYED TANVIR HUSSAIN Petitioner

Through: Mr. Aditya Gaur, Adv.

versus

UNIVERSITY OF DELHI & ORS. Respondents

Through: Mr. Mohinder J.S.Rupal, Adv. for R-1

Mr. Bajrang Vats, Adv. for R-3 to R-5.

Mr. Shad Anwar and Mr. Harbir Chaudhary, Adv. for R-6.

+ **W.P.(C) No.3897/2014**

DR. RAVI DEVI Petitioner

Through: Mr. Raj Kumar Sherawat, Adv.

versus

JAWAHARLAL NEHRU UNIVERSITY & ORS. Respondents

Through: Mr.G.S.Chaturvedi, Adv. for R-1 and R-2.

Mr. Alok Singh, Mr. S.P.Singh, Mr.
N.P.Singh and Mr. C.Mishra, Adv. for
R-3

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.546/2014

1. By this writ petition filed under Article 226 of the Consitution of India, petitioner seeks the relief of quashing of the selection process conducted by the respondent nos.1 and 2/University of Delhi and the Head of the Urdu Department of the University, with respect to the four posts of Assistant Professors in the respondent no.2/Urdu Department of the respondent no.1/University. Petitioner prays that fresh interviews be conducted for selection.

2. The facts of the case are that the respondent no.1/University for its Urdu Department, vide advertisement dated 17.10.2013 advertised for filling of four posts of Assistant Professors. The eligibility criteria for consideration and short listing was prescribed, and thereafter the Screening Committee in terms of the eligibility criteria fixed for short listing, short-

listed the candidates for appearing before the interview board. Petitioner was one of the short listed candidates and he appeared before the interview board but the petitioner was not selected and respondent nos. 3 to 6 were selected. Petitioner hence questions the decision of appointment of respondent nos. 3 to 6 on the ground that their selection is illegal and arbitrary.

3. On behalf of the petitioner, basic reliance is placed upon the judgment of the Supreme Court in the case of ***Dr. J.P. Kulshrestha and Others Vs. Chancellor, Allahabad University and Others (1980) 3 SCC 418***, and para 10 thereof, and in which para the Supreme Court has observed that the interview process must be fair and it must have guidelines for marks and remarks about the candidates etc and the record of the selection process should be made available to the court whenever the court feels that it wants to examine the same to judge the lack of arbitrariness. Para 10 of the judgment in the case of ***Dr. J.P. Kulshrestha (supra)*** reads as under:-

“10. We may dispel two mystiques before we debate the real issues. Did the selection committee act illegally in resorting to the interview process to pick out the best ? We think not. Any administrative or quasi-judicial body clothed with powers and left unfettered by procedures is free to devise its own pragmatic, flexible and functionally viable processes of transacting business subject, of course to the basics of natural justice fairplay in action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and otherwise keeping with in the leading strings of the law. We find no flaw in the

methodology of 'interviews'. Certainly, cases arise where the art of interviewing candidates deteriorates from strategy to stratagem and undetectable manipulation of results is achieved by remote control tactics masked as viva voce tests. This, if allowed, is surely a sabotage of the purity of proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So it is that courts insist, as the learned single Judge has, in this very case, suggested on recording of marks at interviews and other fair checks like guidelines for marks and remarks about candidates and the like. If the court is skeptical, the record of the Selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad. Dr. Martin Luther King Jr. was right when he wrote : (The Negro is your Brother by Martin Luther King Jr. published in "119 years of the Atlantic" ed. by Louise Desaulniers, p. 515)

So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more, to use moral means to preserve immoral ends.”

4. On behalf of respondent nos. 1 and 2, counter-affidavit has been filed and in which counter-affidavit it is stated by the University that the Selection Committee constituted of external experts and the Selection Committee was unbiased and in fact no specific *malafides* and instances are alleged by the petitioner against any member of the Selection Committee, and hence the petitioner cannot question the selection process. Petitioner in rejoinder-affidavit himself has mentioned who were the members of the Selection Committee, and such persons are:-

- “1. Prof. Sudhish Pachauri, Pro Vice Chancellor
2. Prof. Umesh Rai, Director, South Campus
3. Dean, Arts Faculty, University of Delhi

4. Dr. T.A.Khan, HOD, Urdu Department, University of Delhi
5. Visitor Nominee
6. Experts:
 - a) Prof. Mohd. Hamid, Allahabad University
 - b) Prof. Nasim Ahmed, BHU
 - c) Prof. B.A.Nahri, Kashmir University”

5. It may be noted that Visitor is the President of India and the Visitor’s nominee was the nominee of the President of India in the Selection Committee.

6. The law with respect to the scope of a hearing of a writ petition filed before courts for challenging the decision of the Selection Committee is now well settled and one such judgment is the judgment in the case of ***Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others (1990) 1 SCC 305***. In this judgment, it is categorically held that courts do not sit as appellate courts over the decisions of the Selection Committee, and it is job not of the court but of the Selection Committee to scrutinize the relative merits of the candidate and decide as to whether the candidate is fit for a particular post or not. It has been observed that a court has no expertise to substitute the expertise of the Selection Committee. The relevant para of this judgment is para 12 and which para reads as under:-

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.”

7. Similarly, the Supreme Court recently in the judgment in the case of *B.C. Mylarappa Alias Dr. Chikkamylarappa Vs. Dr. R. Venkatasubbaiah and Ors. (2008) 14 SCC 306* has held that once there is scrutiny by appropriate persons and experts, being the members of the Selection Committee, and which Selection Committee looks into the data of the candidates and duly considers the same, the Selection Committee's decision comprising of experts cannot be interfered with by the courts. This judgment also holds that the expert body consisting of academicians is not required to record the reasons and the mere absence of reasons being recorded is not a ground for the decision of the Selection Committee

to be faulted. The relevant paragraphs of this judgment are paras 26 to 29 and which read as under:-

“26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the Expert Body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made herein above, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.

27. Again in *M.V. Thimmaiah Vs. Union Public Service Commission: (2008) 2 SCC 119* this Court clearly held that in the absence of any mala fides attributed to the expert body, such plea is usually raised by an interested party (in this case the unsuccessful candidate) and, therefore, court should not draw any conclusion on the recommendation of the expert body unless allegations are substantiated beyond doubt. That apart, the challenge to the selection made by the expert body and approved by the University Authorities was made by the respondent Nos. 1 and 2 who were unsuccessful candidates and were not selected for appointment to the post of Professor in the Department of Sociology.

28. In *National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman: 1992 Supp (2) SCC 481*, this Court considered in detail the role of an expert body in deciding the candidature for selection to a particular post. While doing so, this Court at SCC pp. 484-85, para 7 of the said decision observed as follows:

“7. ... In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have

given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in *Union of India v. Mohan Lai Capoor*: (1973) 2 SCC 836. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in *Capoor case (supra)* was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The *Capoor case (supra)* cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R. S. Dass v. Union of India*: 1986 Supp SCC 617 in which *Capoor case (supra)* was also distinguished.”

Keeping this observation in our mind and considering the facts and circumstances of the present case, we find that there was no dispute in this case that the selection was made by the assessment of relative merit of rival candidates determined in the course of the interview of the candidates and after thoroughly verifying the experience and service of the respective candidates selected the appellant to the post of the Professor in the said Department.

29.It is not in dispute that there is no rule or regulation requiring the Board to record reasons. Therefore, in our view, the High Court was not justified in making the observation that from the resolution of the Board selecting the appellant for appointment, no reason was recorded by the Board. In our view, in the absence of any rule or regulation requiring the Board to record reasons and in the absence of mala fides attributed against the members of the Board, the selection made by the Board without recording reasons cannot be faulted with.”

8. I may note that the Supreme Court in the case of ***B.C. Mylarappa (supra)*** has observed that once there is no rule or regulation requiring the board ie the Selection Committee to record reasons, courts cannot hold that reasons are required to be noted by the Selection Committee constituting of academicians and experts.

9. Similar is the ratio laid down by the Supreme Court in the judgment in the case of ***U.P.S.C. Vs. K. Rajaiah and Ors. (2005) 10 SCC 15*** that the Selection Committee is not bound to record reasons for its decision when there is no rule or regulation obliging the Selection Committee to record reasons.

10. In the present case, in my opinion, it is not the ratio in the case of ***Dr. J.P. Kulshrestha (supra)*** which is relied upon by the petitioner which will apply but what will apply will be the ratios of the judgments of the Supreme Court in the cases of ***Dalpat Abasaheb Solunke (supra)***, ***B.C. Mylarappa***

(*supra*) and *K. Rajaiah (supra)*. The judgment in the case of *Dr. J.P. Kulshrestha (supra)*, only makes observations of the Selection Committee's report to be considered and that the Selection Committee should act fairly, however, in the present case, it is found that no specific instances of bias and *malafides* have been alleged by the petitioner against any of the members of the Selection Committee. The process of selection by such a Selection Committee hence cannot be faulted.

11. Counsel for the petitioner relied upon the judgment in the case of *D.V. Bakshi and Others etc. etc. Vs. Union of India and Others AIR 1993 SC 2374* and para 7 thereof to argue that there must be maintained a record by the Selection Committee however, I note that it is not even the case of the petitioner in the writ petition that the Selection Committee has not maintained any record of the selection. In fact, this judgment goes against the petitioner because this judgment holds that general charges of nepotism and favoritism are not sufficient noting that the petitioner in this case has not made or alleged specific instances of bias or *malafides* and has only made general charges against the Selection Committee of *malafides* and bias. The judgment in the case of *D.V.Bakshi (supra)* therefore does not support the petitioner.

12. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

W.P.(C) No. 3897/2014

1. This writ petition filed under Article 226 of the Constitution of India will also stand dismissed in terms of the observations made while deciding the W.P.(C) No.546/2014 inasmuch as in this case also, petitioner has been considered by the Selection Committee but instead of the petitioner, the respondent no.3 was appointed.

2. The scores which have been given by the Selection Committee are in the form of a chart annexed to the counter-affidavit of respondent nos. 1 and 2 and this chart reads as under:-

“JAWAHARLAL NEHRU UNIVERSITY

Name of School: School of Environment Sciences **Name of Post:** Associate Professor

Advt. N. RC/44/2012 **(Post No.33)** **(Unreserved)** **Number of Post:** 01 **Number of Candidates(s):**Seven (07)

Selection Committee Meeting held on: 27 May, 2014 **at 02:00 PM** **in the Office of the Vice-Chancellor**

Sl. No.	Name of shortlisted candidates appeared before the Selection Committee for interview	Selection Committee Criteria				Total Score obtained
		(A) Academic Background (Maximum of 20 marks)	(B) Research Performance and quality of publications (Maximum of 40 marks)	(C) Assessment of Domain Knowledge and Teaching Skills (Maximum of 20 marks)	(D)Performance in Interview (Maximum of 20 marks)	

1.	Dr. Jayant K. Tripathi	14.8	26.2	12.0	13.6	66.6
2.	Dr.Mathukumalli Bala Krishna Prasad	-	Absent	-	-	AB
3.	Dr.Sreenivasa Rao Amaraneni	12.0	18.2	9.2	6.4	45.8
4.	Dr.R.Babu Rajendran	-	Absent	-	-	AB
5.	Dr.M.Muthukumar	12.2	18.8	10.2	8.6	49.8
6.	Dr.Rani Devi	12.6	17.0	8.4	8.0	46.0
7.	Dr.Manju Rawat Ranjan	11.7	13.0	8.7	7.5	40.9

”

3. The Selection Committee in this case comprised of the Vice Chancellor of the respondent no.1/University, Dean of the School of Environmental Sciences, a Professor of Environmental Science and Engineering from IIT, Mumbai, a Professor of the Department of Chemistry of IIT, New Delhi and the Vice Chancellor of the University of Allahabad who is an expert in the subject and a Chief Scientist of the National Physical Laboratory.

4. The grievance of the petitioner in this case is that petitioner was more qualified and she should have been given more marks than the respondent no.3 with respect to the research programmes and quality publication,

however, as noted, while deciding the W.P.(C) No. 546/2014, this Court cannot substitute its opinion for the opinion of the Selection Committee, whose constitution has been given above, and which has the necessary expertise whereas this Court does not have so. The argument therefore urged on behalf of the petitioner by claiming that she has more qualification in terms of the eligibility criteria to be considered by the interview committee, cannot be accepted by this Court in view of the fact that marks under all/different heads have been given by the Selection Committee to the different candidates and which Selection Committee is entitled to do in view of the fact that it is the committee which has to decide the relative merits and de-merits of the candidates.

5. Another argument of the petitioner in this case was that the list of successful candidates was not put on the website, but this is an argument which does not affect the merits, and in any case respondent nos.1 and 2 have stated that they did not put the results on the website for the reason that it may in some manner have a bearing on the future prospects of employment of a candidate if it is shown on the website that the candidate is unsuccessful and which may hence hinder the future prospects of the candidate.

6. In view of the above this petition is also dismissed.

MARCH 18, 2015
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VALMIKI J. MEHTA, J.