

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

+ **W.P.(C) No.4588/2002**

% **20th May, 2015**

DR. AMIYA BHUSHAN SHARMA Petitioner

Through: None.

Versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the petitioner. No one appeared for the petitioner even on 6.5.2015 when the matter was adjourned in the interest of justice.

2. By this writ petition filed under Article 226 of the Constitution of India, petitioner seeks appointment by promotion to the post of Professor under the Career Advancement Scheme of the respondent no.1/University w.e.f 27.7.1998. Effectively the petitioner questions the selection process to

the post of Professor conducted on 9.10.2001 whereby the Selection Committee did not find the petitioner fit to be appointed as a Professor and put another candidate at no.1 in the panel for appointment. Petitioner was placed at no.2 and hence denied promotion to the post of Professor.

3. In the writ petition petitioner states that he was better qualified and that respondent no.2 had malice and *malafides* against the petitioner and therefore petitioner was denied promotion to the post of Professor. Petitioner has in the writ petition given his account of the interview which was conducted by the Selection Committee and has stated that the Selection Committee was biased.

4. Respondent no.1/University has filed the counter affidavit and has denied the contentions raised by the petitioner. It has been denied that the Selection Committee meeting held on 9.10.2001 was rigged. The contentions of the petitioner are challenged as being baseless and ill conceived. In the counter affidavit, respondent no.1/University states that the Selection Committee's composition and procedure has been duly followed in terms of the University Grants Commission's letter of October, 1999. It is categorically stated that the respondent no.1/University has

followed the procedure set out in the Ordinance while conducting the interview to the post of Professor under the Career Advancement Scheme.

5. The law with respect to entitlement of interference by the court to a selection made by a selection committee is stated by the Supreme Court in its judgment in the case of *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others (1990) 1 SCC 305* wherein the Supreme Court has categorically held that courts do not sit as an appellate court over the decisions taken by the selection committee because it is the selection committee which scrutinizes the relevant merits of the candidates and decides whether a candidate is fit or not to be appointed to a particular post. It has been further observed in this judgment that a court has no expertise to substitute the expertise of the selection committee in scrutinizing and appointing candidates. Relevant observations in this judgment are contained in para 12 of this judgment and which para 12 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.”

6. The aforesaid proposition of law has been reiterated by 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***. In fact, the selection committee need not give reasons unless they are bound by the rules and circulars to do so, and this has been held by the Supreme Court in the case of ***National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and Others 1992 Supp (2) SCC 481***. The relevant para 7 of this judgment reads as under:-

“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.”

7. Petitioner only had a right to be considered and petitioner was considered but the Selection Committee instead found someone else entitled to promotion to the post of Professor. Since this Court cannot substitute its decision for that of the selection committee, petitioner cannot be granted appointment to the post of Professor as claimed by him.

8. Merely because petitioner makes self-serving averments of malice and bias against the Selection Committee members including the respondent no.2 does not mean that the Court has to accept the same as correct. Serious allegations of *malafides* and malice, unless substantiated to the satisfaction of the court, cannot be accepted by the court. These contentions of the petitioner are therefore rejected.

9. Dismissed.

MAY 20, 2015
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VALMIKI J. MEHTA, J.