

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.1345 OF 2006

Dr. Mohamad Lateef Ahmed s/o
Taj Mohammad, Age 56 years,
Occu. Serving as Head of the
Department of the Urdu,
Government College of Arts and Science,
Kille-ark, Aurangabad ... PETITIONER

VERSUS

1. The Registrar,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
2. Dr. Mohamad Gayasuddin,
Prof. of Urdu Department of Urdu,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad. ... RESPONDENTS

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Shri F.R. Tandale, Advocate for petitioner
Shri S.S. Thombre, Advocate for respondent No.1.
Shri A.S. Shelke, Advocate for respondent No.2.
.....

CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 28th August, 2017

Date of pronouncing judgment : 12th September, 2017.

JUDGMENT (PER SUNIL K. KOTWAL, J.)

1. This petition is directed to issue writ of mandamus, to quash and set aside the appointment of respondent No.2 on the post of Professor of Urdu, Department of Urdu, made by

respondent No.1 Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. Consequential relief is sought for direction to call fresh interview by following proper procedure for the post of Professor of Urdu.

2. Contention of the petitioner in brief is that, on 7/7/2004, the respondent No.1 had given the advertisement for recruitment of the post of Professor of Urdu in the Department of Urdu. Petitioner being qualified for that post, had applied for the said post on 10/8/2004, through proper channel i.e. Director, Higher Education, Maharashtra State, Pune, the then employer of the petitioner, with requisite recommendation of the employer. On 21/12/2005, interview of the petitioner for the post of Professor of Urdu was held along with other candidates including respondent No.2, who belongs to State of Bihar. As per the advertisement, for the post of Professor of Urdu, the specialization required was "Critical Theory/ Classical and Modern Criticism, Classical and Modern Poetry or Comparative Literacy Theory/ Linguistics/ Fiction and Non-Fiction".

3. It was the case of the petitioner that he had specialization in "Critical Theory/ Classical and Modern Criticism/ Classical and Modern Poetry", however, at the time of interview, the experts who were the members of Selection Committee,

intentionally asked questions to the petitioner on "Fiction and Non-Fiction" so that petitioner would become unsuccessful candidate. In the result, the respondent No.2 was appointed as Professor of Urdu in the Department of Urdu by respondent No.1 though the petitioner was more qualified and experienced person than the respondent No.2. Grievance of the petitioner is that, as per rules, the Selection Committee shall comprise (1) Vice Chancellor, (2) Dean, Faculty of Arts, (3) nominee of Joint Director of Higher Education, (4) Head of the Department of Urdu and three experts in the field of Urdu. The general policy of the University was to appoint experts from nearby University. However, the respondent No.1 appointed two experts from State of Bihar and third expert from Delhi, namely :-

1. Dr. Naaz Quadri, Professor and Head of the Department of Urdu, B.A. Ambedkar, Bihar University, Muzaffarpur (Bihar), who was the direct teacher of respondent No.2 in this petition.
2. Dr. Anwar Saeed, Darbhanga College, Darbhanga, Bihar.
3. Dr. Shahed Hussain, Professor, Pandit Jawaharlal University, Delhi.

4. It is the case of the petitioner that, the respondent No.2 is also from Bihar State and he was well acquainted with the two appointed experts from Bihar. So also, Vice Chancellor Dr.

Kottapalle, who was the Chairman of the Interview Committee, was previously working in Pune University and respondent No.2 was also working as Lecturer in Poona College and both of them were knowing each other prior to date of finalizing the process of filling up the post of Professor of Urdu in respondent No.1 University. As a result of the alleged favouritism, though the petitioner was a better candidate, the respondent No.2 was selected by Selection Committee. Contention of the petitioner is that, the respondent No.2 had malafidely managed the appointment of experts from the place where he belongs. At the time of interview, Head of the Department of Urdu and Dean, Faculty of Arts were not present. Thus, there was insufficient quorum for conducting the interview as prescribed by University Grants Commission (U.G.C.). The selection of respondent No.2 being against the rules and regulations of U.G.C. and usual practice of respondent No.1, is illegal and deserves to be set aside.

5. By filing affidavit-in-reply, respondent No.1 specifically denied the allegations of favouritism on the part of respondent No.1. According to respondent No.1, the allegations leveled by petitioner against the respondents are baseless and without any substance. On the other hand, respondent No.2 was appointed by following due procedure of law and considering his

merit and educational qualification. It was only co-incidence that the two experts were from Bihar State and that was nothing to do with the appointment of respondent No.2. Calling the expert is procedure which is to be adopted by University so as to get meritorious candidates. The Selection Committee was constituted under Section 76(2) of the Maharashtra Universities Act, 1994 to recommend the candidate on the post of professor as follows :

1. Dr. Nagnath Kottapalle, Vice Chancellor, Chairman.
2. Dr. A.P. Pathan, Chancellor's Nominee.
3. Dr. S.N. Puri, Chancellor's Nominee.
4. Prof. Mohd. Fayyaz, Director of Higher Education's Nominee
5. Dr. Naaz Quadri, Subject Expert.
6. Dr. Mohd. Shaheed Hussain, Subject Expert
7. Dr. Rais Anwar Rahman, Subject Expert
8. Dr. Gajanan Surase, Registrar, Secretary of the Committee

6. After assessing the educational qualification and subject proficiency of the candidates, the respondent No.2 was selected by the Committee. The Committee had considered (1) qualification, (2) teaching/ research experience, (3) proficiency and (4) performance at the interview. Only because petitioner was not selected, such baseless allegations are made without

producing material in support of these allegations. The qualification of respondent No.2 was better than the petitioner. In brief, contention of respondent No.1 is that, the respondent No.2 was selected by the Selection Committee by following the due procedure of law and, therefore, this petition being baseless, deserves to be rejected.

7. Respondent No.2 also opposed this petition by filing reply affidavit mainly on the ground that, when petitioner participated in selection process of the Professor of Urdu as one of the candidate, he is estopped from challenging the constitution of Selection Committee. The Selection Committee was also constituted as per the provisions of the Maharashtra Universities Act, 1994 and the selection of respondent No.2 was made by the Committee on the basis of academic qualification, publication of research experience, proficiency and performance at interview. All allegations made in the petition are baseless and devoid of any substance. According to this respondent, he was better qualified and experienced person than the petitioner. Respondent No.2 has specifically denied any acquaintance with the two experts who belonged to Bihar State. According to the said respondent, he had no occasion even to meet these experts prior to the interview. The respondent No.2 was not knowing any of the member of the Selection Committee prior to the interview.

On the other hand, the respondent No.2 had completed his Bachelor of Arts from L.N. Mithila University, Darbhanga whereas Dr. Naaz Quadri was working as Professor of Babasaheb Ambedkar Bihar University, Muzaffarpur. Even respondent No.2 had no occasion to meet Vice Chancellor, who was Chairman of Interview Committee. In brief, contention of respondent No.2 is that, being meritorious candidate, he was selected by Selection Committee after following due procedure of law and, therefore, this petition is required to be dismissed.

8. Learned counsel for the petitioner submitted that, in the Selection Committee constituted under Maharashtra Universities Act, 1994, three experts were invited by the respondent No.1 University, but out of those three experts, two were from State of Bihar, from where the respondent No.2 belonged and, therefore, those two experts from State of Bihar were biased against the petitioner. It is also the contention of learned counsel for the petitioner that the Vice Chancellor Dr. Kottapalle, who was the Chairman of Interview Committee, was previously working in Pune University and respondent No.2 also worked as Lecturer in Poona College at Pune and both of them were well acquainted with each other, prior to the date of finalising the process of selection of post of Professor of Urdu and, therefore, while selecting respondent No.2, partiality was

done by the Selection Committee.

9. Learned counsel for both the respondents submitted that, the allegation of bias is baseless and petitioner has not placed any substance on record to show that the two experts hailing from Bihar State were well acquainted with respondent No.2 and Dr. Kottapalle, who was Chairman of Selection Committee, was well acquainted with respondent No.2 since before the interview and, therefore, all of them carried bias against the petitioner.

10. Learned counsel for the respondents placed reliance on the judgment of the Supreme Court in case of **Dr. G. Sarana Vs. University of Lucknow & ors.** reported in [**(1976) 3 SCC 585**], wherein Apex Court held that, what has to be seen in a case where there is allegation of bias in respect of a member of an Administrative Board or Body, is whether there is a reasonable ground for believing that he was likely to have been biased. In other words, whether there is substantial possibility of bias animating the mind of the members against the aggrieved party. The Apex Court also upheld the opinion of the High Court that the appellant having submitted to the jurisdiction of Selection Committee, he could not be permitted to turn around and denounce the constitution of the Committee. Principles laid

down by the Supreme Court in case of Dr. G. Sarana (*supra*) apply to the facts of this case.

11. In the case at hand, after careful examining the documents placed on record by the petitioner, it emerges that, no material has been placed on record by the petitioner to show that the two experts who were members of Selection Committee and who belonged to State of Bihar, were knowing the respondent No.2 since before the date of interview. No material is placed on record by the petitioner to show that the Vice Chancellor Dr. Kottapalle, who was the Chairman of Selection Committee at any time worked together with the respondent No.2 at Pune or he was well acquainted with the respondent No.2 since before the date of interview which has affected the procedure of selection of respondent No.2 on merits. In the circumstances, when no material is placed on record by the petitioner to show that since before the interview the above said two experts and Chairman of Interview Committee had well acquaintance with respondent No.2 prior to the date of interview, no inference can be drawn that those two experts from Bihar or Vice Chancellor Dr. Kottapalle carried any bias against the petitioner.

12. On the other hand, the Interview Committee consists

of total 8 members and, therefore, opinion of such three members would have not created any influence on the opinion of remaining five members. Therefore, even assuming that few members of Selection Committee had any bias against the petitioner, that would have not changed the ultimate conclusion drawn by Selection Committee of eight members. It is not the case of the petitioner that other five members of the Selection Committee were also biased against the petitioner. In the circumstances, the allegation of bias levelled by petitioner against three members of the Selection Committee appointed for selection of Professor of Urdu, in compliance with Section 76(2) of the Maharashtra Universities Act is baseless and irresponsible. Only because certain questions were alleged to have been asked to the petitioner which he could not answer properly, it cannot be said that the Selection Committee showed favouritism or partiality.

13. In our view, the petitioner, having participated in selection process by appearing for interview as one of the candidate for the post of Professor of Urdu without raising any objection, he cannot be permitted to challenge the procedure of selection or about the composition of Selection Committee. In the case at hand, all the objections raised by petitioner are only after selection of respondent No.2 for the post of Professor.

Therefore, such afterthought action taken by the petitioner was rightly rejected by the respondent No.1 University. Learned counsel for the petitioner could not point out any provision of law to show that the three experts shall be from nearby State or University as canvassed by the petitioner. Therefore the objection that experts should be called from nearby State is baseless and needs no consideration. The advertisement was issued inviting applications from candidates from all over India. Members of Selection Committee are selected from all over India.

14. It is important to note that the petitioner has not disputed the legality of constitution of selection committee under Section 76 (2) of Maharashtra Universities Act, either in pleading or in argument. Petitioner has raised only objection that at the time of interview, Head of the Department of Urdu and Dean, Faculty of Arts were not present. This objection is also not supported by any material on record. We are inclined to accept the averments made in the affidavit filed by respondent No.1 denying such allegation.

15. Insofar the objection raised by the petitioner that there was no sufficient quorum for conducting the interview as prescribed by U.G.C. is concerned, the quorum prescribed under Rule 3.3.0 under University Commission (Minimum Qualifications

Required for Appointments and Career Advancement of Teachers in University and Institutions Affiliated to it) Regulations, 2000 (hereinafter referred as U.G.C. Rules), is minimum four members including two outside experts. It is not disputed by the petitioner that 6 members of Selection Committee were present at the time of interview including 3 experts. The objection raised by petitioner regarding inadequate quorum at the time of interview is afterthought and is even otherwise factually incorrect and is thus rejected.

16. It is the case of the petitioner that, he was better qualified than respondent No.2. On the other hand, according to respondent No.2, his qualification is better than the petitioner. Therefore, the comparative chart of qualification of the petitioner and respondent No.2 on the basis of their application forms, is set as under :

EDUCATIONAL QUALIFICATION					
Petitioner			Respondent No.2		
Degree	Year	% of marks	Degree	Year	% of marks
B.A.		49.83	B.A.		64.00
M.A.		54.25	M.A.		68.00 (Gold Medal)
M.Phil./ NET/SET/ GRF		Nil	M.Phil.	1983	
			NET	1985	
Ph.D.	2000		Ph.D.	1991	

BOOKS PUBLISHED				
Petitioner		Respondent No.2		
1 book published		2 books published 1 book edited		
TEACHING EXPERIENCE				
Petitioner		Respondent No.2		
Undergraduate experience		Undergraduate experience		
Lecturer	10.9.1974 to 5.10.1985	Lecturer	7.12.1988 to 6.12.1998	
Reader	8.10.1985 to 8.10.1998	Reader	7.12.1998 till date of application i.e. 26.7.2004	
Professor	Nil	Professor	Nil	
Postgraduate experience		Postgraduate experience		
Petitioner		Respondent No.2		
Lecturer	1986 to 1991	Lecturer	27.2.1993 to 6.12.1998	
Reader	3.7.1991 to 8.10.1998	Reader	7.12.1998 till 26.7.2004 (i.e. date of application)	
Professor	Nil	Professor	Nil	
CONTRIBUTION TO EDUCATIONAL INNOVATION				
Petitioner		Respondent No.2		
Nil		Display of Urdu Video Cassettes on Television		
DESIGN OF NEW COURSES & CURRICULA				
Petitioner		Respondent No.2		
Nil		1) Submitted proposal to U.G.C. for Urdu Journalism Centre 2) Designed H.S.C. Teachers' Training Course in Urdu		
RESEARCH PAPERS PUBLISHED				
Petitioner		Respondent No.2		
Total 3 Papers		Total 17 papers		
BOOKS PUBLISHED				
Petitioner		Respondent No.2		
1		2 Books published 1 Book edited.		

NO. OF REFRESHER COURSES ATTENDED	
Petitioner	Respondent No.2
3	3
ORIENTATION COURSES	
Petitioner	Respondent No.2
NIL	1
PAPERS PRESENTED AT CONFERENCES SEMINARS	
Petitioner	Respondent No.2
5	Co-ordinator U.G.C. Sponsored one day National Seminar held on 8/3/2003
PARTICULARS ABOUT RESEARCH WORK	
Petitioner	Respondent No.2
Applied for recognition as Research Guide for Ph.D. Degree No. of students guided for M.Phil/ Ph.D. Nil.	No. of Students guided for Ph.D....3 Study of problems of communalism in Urdu Novels. Current research work – Nazre-Quazi Abdul Sattar

17. The comparative study of educational qualification and experience of the petitioner and respondent No.2 shows that, respondent No.2 is more qualified and meritorious than the petitioner. This also negates the possibility of alleged favouritism done by the respondent No.1.

18. Next objection raised by learned counsel for the petitioner is that, no marking or grading system was followed by Selection Committee and, therefore, the selection process by the said Committee was vitiated. He placed reliance on **Kiran Nimbalkar Vs. State of Maharashtra** reported in **[2007(4)**

Mh.L.J. 775]. In that case, on account of bar of age limit as well as absence of grading or marking system being followed in the process of selection by Selection Committee, the selection of the respondent No.5 therein was set aside by the Division Bench of this Court. However, the learned counsel for the respondent No.2 has rightly pointed out that, in the pleadings the petitioner has not raised any objection regarding absence of marking and grading system and, therefore, such objection cannot be considered across the bar. Be that as it may, such grading and marking system is not prescribed under U.G.C. Regulation 3.4.0 as specified above.

19. This Court, in case of Kiran Nimbalkar (supra), after considering the regulations framed by the Central Council of Indian Medicine governing the appointment of teaching staff in Ayurvedic Colleges, held that since two equally qualified candidates were available, in absence of marking and grading system, it could not be ascertained as to why only respondent No.5 was preferred. However, in the case at hand, under U.G.C. Regulations governing the selection of Professor, experience, qualification and research work parameters, have been prescribed, and applying these parameters, the Selection Committee selected the respondent No.2. In our view, the judgment in case of Kiran Vs. State of Maharashtra (supra) is not

applicable in the case at hand and is clearly distinguishable in the facts of this case.

20. On the other hand, in **Dalpat Appasaheb Solunke Vs. B.S. Mahajan** reported in **[AIR 1990 SC 434]**, Apex Court ruled that, the decision of Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of Committee or its procedure vitiating the selection or proved malafides affecting the selection. In the case at hand, neither illegality nor patent material irregularity in constitution of Committee or patent irregularity in the procedure vitiating the selection or proved malafides affecting the selection are established by the petitioner. Therefore, the selection of respondent No.2 by respondent No.1 on the post of Lecturer of Urdu cannot be set aside by allowing this Writ Petition. Judgment of Supreme Court in case of Dalpat Appasaheb Solunke (supra) applies to the facts of this case.

21. Another material aspect is that, the petitioner has already retired from his service and, therefore, the relief sought by the petitioner to direct the respondent No.1 to call fresh interview for the post of Professor of Urdu has become infructuous. On this count also this petition fails.

22. Accordingly, after careful consideration of each and every objection raised by the petitioner while challenging the selection of respondent No.2 on the post of Professor of Urdu in respondent No.1 University, we have come to the conclusion that, none of the prayers sought by the petitioner can be allowed. This petition being devoid of merit, deserves to be dismissed. Hence we pass the following order :

ORDER

1. Writ Petition is dismissed.
- 2 Rule is discharged.
- 3 No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/