

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.25849 OF 2012

ORDER:

Heard the petitioner/party-in-person and Mr.K.Ramakanth Reddy for respondent 3 & 4.

The petitioner prays for Mandamus declaring the selection and appointment of respondents 5 to 8 to the post of Assistant Professor (Arabic) without basic Urdu qualification at 10+2 or graduation level and order No.MANUU/ER-I/F.336/2011-12/127 dated 26.04.2012 terminating the contractual services of petitioner as Guest Faculty, as arbitrary, illegal and unconstitutional. The petitioner prays for a direction to respondents to appoint him as regular Assistant Professor (Arabic) with all attendant and consequential benefits by displacing anyone or all of respondents 5 to 8.

The circumstances relevant for disposing of the writ petition are as follows:

The petitioner alleges that the 3rd respondent through office order No.MANUU/Admin-III/F-336/2008-09/1278 dated 30.10.2008 engaged the petitioner as Lecturer in Arabic in the Department of Arabic. According to petitioner, the instant office order has been issued after following due selection process under University Rules and in line with the recommendations of selection committee dated 20.10.2008. The Vice Chancellor of 3rd respondent University issued office order appointing the petitioner on contract basis on a consolidated remuneration of Rs.12,000/- per month, though has

engaged the petitioner after following the prescribed Recruitment Rules. The qualifications claimed by the petitioner are excerpted in the companion case i.e., W.P.No.24169 of 2006. For brevity, these qualifications are not adverted to once again. From January 2009, the consolidated pay of petitioner was enhanced from Rs.12,000/- to Rs.15,000/- per month. The petitioner from 2010 onwards has been made a full time faculty member of the department and from March 2011, the post held by the petitioner has been re-designated as Assistant Professor. Respondent No.3, in spite of re-designating the post, did not enhance the consolidated pay or made petitioner faculty in the department, but continued to pay the consolidated pay of Rs.15,000/-. The payment of Rs.15,000/- is contrary to the University Rules and Guidelines of the University Grants Commission (UGC). The petitioner relies upon the resolution of 3rd respondent University passed to pay Rs.25,000/- per month as minimum wage to the Guest Faculty on contract basis w.e.f., 2008 onwards. In spite of such resolution, it is stated, the petitioner is paid minimum consolidated pay of Rs.15,000/- per month.

While matter stood thus, the respondent University issued Notification No.25/2011 dated 27.01.2011 inviting applications from eligible candidates for appointment to various posts. The notification prescribes that knowledge of Urdu shall be compulsory for all the teaching posts. The candidates must have studied Urdu as a subject at SSC/10+2 or graduation level. The relaxation of possessing this qualification is given to two posts reserved for SC/ST with a condition that the selected candidates have to acquire the

qualification within the prescribed period. It is further stated that the candidates who have come through 10+2+3 scheme with master's degree will be given preference. The petitioner claims to satisfy the eligibility criteria and, hence, applied to the post of Assistant Professor (Arabic) at S.No.35 in the notification. On 22.02.2012, the petitioner was called for interview. It is in this background and on further verification from reliable sources, the petitioner alleges that the candidates who attended the interview did not possess the mandatory qualification i.e., "the candidates must have studied Urdu as a subject at SSC/10+2 or graduation level". The selected candidates studied in Madrasas which are not recognized by the Government of India or UGC. These candidates acquired BA/MA directly without going through the academic scheme of yearly study which is prescribed as one of the eligible conditions. The respondents in spite of interim order in W.P.No.11660 of 2012 declared the result and the 3rd respondent University hurriedly terminated the contractual engagement of petitioner by issuing termination order dated 26.04.2012. The grievance in this behalf is junior to petitioner are continued as Guest Faculty and the termination is purely on account of vindictive attitude the 3rd respondent developed against petitioner, for the petitioner filed W.P.No.11660 of 2012 challenging the selection process. Therefore, the selection of respondents 5 to 8 is contrary to the eligibility qualification prescribed by the notification. Respondents 5 to 8 do not possess basic Urdu qualification and, therefore, the selection of respondents 5 to 8 is arbitrary, illegal and unconstitutional.

The Registrar of 3rd respondent University filed counter affidavit. The 3rd respondent denies that the appointment of petitioner as Lecturer (Arabic) on contract basis is after following the procedure prescribed by the Recruitment Rules. According to 3rd respondent, the University does not have Recruitment Rules for contract employees. The engagement of petitioner as Guest Faculty was purely on contract basis. The order appointing petitioner on contract basis refers to the following condition:

“the contractual engagement is liable for termination at any time without assigning any reason”.

These objections are stated in reply to the case of petitioner that his appointment as Guest Faculty was regular and after subjecting him to selection process. The Guest Faculty is engaged for smooth running of departments till regular appointment was made by the University. It is further stated that same consolidated salary is paid to all Lecturers/Guest Faculty, including the petitioner. The petitioner was appointed on contract basis in the year 2008 and the last extension was through orders dated 19.01.2012.

The 3rd respondent denies that resolution was passed by the Executive Council of the University in the year 2008 for enhancing minimum wages to Rs.25,000/- per month to Guest Faculty. The UGC in February 2010 fixed honorarium to guest/part time lecturers at Rs.1000/- per lecture to a maximum of Rs.25,000/- per month subject to the faculty possessing minimum qualifications

for the post of Assistant Professors. The claim of petitioner from 2008 onwards, is, therefore, misconceived.

It is further replied that in response to employment notification No.25/2011 dated 27.01.2011, the petitioner had applied for the post of Assistant Professor (Arabic). The screening committee shortlisted the petitioner for sending call letter. Therefore, the petitioner attended interview along with other applicants shortlisted by the screening committee. The selection committee recommended Dr.Sumama Faizal, Dr.Sameena Kausar and Mr.Sayeed Bin Makashin for post of Assistant Professor (Arabic) under unreserved category and Dr.Mufti Mohd.Sharfe Alam for the post of Assistant Professor (Arabic) under OBC category. Thus, four candidates have secured 62%, 60%, 61% and 62% respectively out of 100%. It is stated that the petitioner has secured just 35% out of 100%. Therefore, non-selection of petitioner is reflected by the recommendations of selection committee. The 3rd respondent explains in detail the procedure followed by the University either for shortlisting or selecting the candidates and finally contends that the petitioner was subjected to interview by a duly constituted committee of the following members:

Sl.No.	Name with designation of the member	Designation
1.	Prof.Mohammad Miyan Vice Chancellor, MANUU	Chairman
2.	Prof.Tauqureer Ahmed Khan, Professor, Dept.of Urdu, University of Delhi, New Delhi	Member (Visitor's Nominee)
3.	Prof.Mohd.Abdul Majeed, Professor, Dept.of Arabic Osmania University, Hyderabad	Member (External subject expert)
4.	Prof.Zubair Ahmad Farooqui Professor, Dept. of Arabic, Jamia Milia Islamia, New Delhi	Member (External subject expert)

5.	Prof.Mohd.Salahuddin Umari, Professor, Dept. of Arabic, Aligarh Muslim University, Aligarh	Member (External subject expert)
6.	Prof.Mohd.Zafaruddin, Dean, School of Languages, Linguistics & Indiology, MANUU	Member
7.	Dr.Abdul Moiz, Head, Department of Arabic, MANUU	Member

The selection committee considered the cases of all the shortlisted candidates and their relative merits. The writ remedy against fair and valid selection of candidates at the instance of petitioner seeking judicial review of selection process and the selections made by the selection committee, which included the visitor nominee i.e., nominee of His Excellency the President of India, is impermissible. The probation of selected candidates has been declared with the completion of one year. Therefore, the 3rd respondent prays for dismissing the writ petition.

The petitioner contends that the eligibility criteria is good academic record, that means 10+2+3 and none of the selected candidates possess the qualification and, therefore, the selection of candidates is contrary to the eligibility criteria prescribed by the notification. According to him, the selected candidates studied in Madrasas and do not satisfy the minimum educational qualification. Therefore, he prays for setting aside the selection.

On the other hand, Mr.Ramakanth Reddy submits that the writ prayer is completely misconceived and by reference to general allegations and prayer, setting aside the selections is impermissible. He contends that the University called for interview as many as 84 candidates for 5 posts notified through Employment Notification

No.25/2011 and out of them 52 candidates appeared for interview. The University constituted screening committee. The screening committee has shortlisted the candidates for interview based on rational and relevant qualifications. Mr.Ramakanth Reddy vehemently contends that merely because the petitioner appears in person, the scope of judicial review against the decision of screening committee and selection committee is not changed. Without prejudice to these preliminary contentions by referring to the material of screening committee and selection committee, he contends that no exception to the selection of candidates could be stated. He contends with course that the scope of judicial review is very limited and he exalts that this Court does not deviate from the settled principles of law.

This Court is of the view that the wisdom of selection committee of academicians either on qualifications, equivalence of qualification, experience, ability, this Court will not re-examine as a Court of appeal and decide the legality of the selection made in this behalf. He contends that selection committee had the opportunity of examining the record of all the candidates who appeared for interview, VIVA etc., and marks are given and if someone does not qualify in the merit, challenged the instance of such unsuccessful candidate, except for *mala fides* and bias, is not available.

He further contends that evaluation is strictly as per the academic performance indicator and when the petitioner fails to get marks in the interview or is not recommended by the selection

committee, the grievance made is not examined by this Court as appellate body on selection committee and is untenable and liable to be rejected. The prayer for selecting and appointing a candidate who has got 35%, as against selected candidates who got 62%, 60%, 61% and 62%, is untenable and liable to be rejected.

This Court directed the 3rd respondent to produce the record relating to the selection challenged in this writ petition. The 3rd respondent has placed before the Court the record.

The following questions are framed for consideration:

- i) Whether the petitioner is entitled for writ of Mandamus declaring the selection and appointment of respondents 5 to 8 as Assistant Professor (Arabic) without basic Urdu qualification at 10+2 or graduation level is illegal and unconstitutional; and
- ii) Whether the termination of petitioner as guest faculty through order No. MANUU/ER-I/F.336/2011-12/127 dated 26.04.2012 is vitiated or not?
- iii) To what relief?

Question No.1:

The case of petitioner is that notification No.25/2011 dated 27.01.2011 is issued inviting applications from eligible candidates for appointment to teaching posts in different departments. The notification prescribes that knowledge of Urdu is compulsory for all the teaching posts. The candidate for consideration of his candidature must have studied Urdu as a subject at SSC/10+2 or graduation level. The only relaxation of condition is available to the candidates who have applied under SC/ST quota, however, the selected candidate gets certificate course in Urdu from a

recognized institution within the prescribed period. As regards preference is concerned, it is stated that candidates possessing 10+2+3 scheme with master's degree will be given preference. Now the complaint of petitioner is that the candidates interviewed by the selection committee have studied in local Madrasas which are not recognized institutions. These candidates directly passed BA/MA and do not possess the minimum condition/qualification. The petitioner filed W.P.No.11660 of 2012 for a direction to restrict selection of those candidates possessing Urdu as basic qualification as per the notification. It is the case of petitioner that the 3rd respondent University in a hurried way completed the selection process, declared the results and the petitioner was denied selection. According to petitioner, the petitioner is not selected because the selected candidates have given huge bribe to the members of selection committee. Further, respondents 5 to 8 do not possess basic Urdu qualification prescribed in the notification. Hence, he prays for setting aside the selection and appointment of respondents 5 to 8 as Assistant Professor (Arabic). On the allegation of petitioner that respondents 5 to 8 do not possess Urdu, the reply of respondent reads as follows:-

“The allegations and averments made in para 11 are false, incorrect, untenable and unsustainable. It is submitted that the petitioner mere possession the qualifications, experience and urdu subject etc, did not entitle him for appointment as Assistant Professor in Arabic. The candidates were shortlisted by the Screening Committee as per their qualifications and teaching experience, academic background and quality of publications etc., prescribed by UGC and accordingly they were called for interview. The Selection Committee

recommended the candidates, after assessing their domain knowledge, teaching skills and performance in the interview according to the merit for the post of Asst.Professor-Arabic. It is worth mentioning that the selection committee consisting of subject experts recommended the candidates, Dr.Sumama Faisal, Dr.Sammena Kausar, Mr.Sayeed Bin Makashin and Dr.Mufti Mohd.Sharfe Alam scored the total marks of 62%, 60%, 61% and 62% respectively out of 100% each. Whereas the petitioner has scored just 35% of marks out of 100. It is itself evident that the overall performance of the petitioner was not up to the mark. Therefore, based on the overall merit among all the candidates, the candidates were selected by the Selection committees. It is pertinent to mention that all the candidates have studied a subject of Urdu and moreover without studying Urdu, Arabic languages cannot be taught. The contention of the petitioner was invented for the purpose of the case with *mala fide* intention”.

It is further stated that mere possessing qualifications, experience in Urdu subjects do not entitle the petitioner for appointment as Assistant Professor (Arabic). According to 3rd respondent, the candidates have been shortlisted by the screening committee as per their qualifications, teaching experience, academic background and quality of publications etc., prescribed by UGC. By following a definite norm, the shortlisted candidates were called for interview. The selection committee recommended the candidates after assessing their domain knowledge, teaching skills and performance in interview, according to the merit for the post of Assistant Professor. The experts of the selection committee recommended respondents 5 to 8 as they have secured 62%, 60%, 61% and 62% respectively out of 100%, whereas the petitioner secured 35%. It is stated that the selection committee consists of the following persons:

Sl.No.	Name with designation of the member	Designation
1.	Prof.Mohammad Miyan Vice Chancellor, MANUU	Chairman
2.	Prof.Tauquireer Ahmed Khan, Professor, Dept.of Urdu, University of Delhi, New Delhi	Member (Visitor's Nominee)
3.	Prof.Mohd.Abdul Majeed, Professor, Dept.of Arabic Osmania University, Hyderabad	Member (External subject expert)
4.	Prof.Zubair Ahmad Farooqui Professor, Dept. of Arabic, Jamia Milia Islamia, New Delhi	Member (External subject expert)
5.	Prof.Mohd.Salahuddin Umari, Professor, Dept. of Arabic, Aligarh Muslim University, Aligarh	Member (External subject expert)
6.	Prof.Mohd.Zafaruddin, Dean, School of Languages, Linguistics & Indiology, MANUU	Member
7.	Dr.Abdul Moiz, Head, Department of Arabic, MANUU	Member

Therefore, the reply of 3rd respondent is that the persons who satisfy the eligibility criteria have been called for interview, including the petitioner. The selection committee shortlisted the candidates for interview. The petitioner, if not included in the list of candidates shortlisted for interview, can have grievance. Hence, with the shortlisting of petitioner, the petitioner can complain against the final selection by the selection committee which decided purely on merit. The selection committee consists of experts in the field of academics and administration. They have interviewed each candidate and have allotted marks to the candidates. The standing counsel has drawn the attention of the Court to the statement of marks prepared for academic record, publication, seminar and interview and contends that the University has followed the criteria for shortlisting the candidates, interviewed the

shortlisted candidates and finally selected respondents 5 to 8.

Learned Standing Counsel relies upon the decisions reported in:

1. BASAVIAH (DR.) v. DR.H.LRAMESH AND OTHERS¹
2. MADRAS INSTITUTE OF DEVELOPMENT STUDIES AND ANOTHER v. K.SIVASUBRAMANIYAN AND OTHERS²
3. TRIDIP KUMAR DINGAL AND OTHERS V. STATE OF WEST BENGAL AND OTHERS³
4. DALPAT ABASAHEB SOLUNKE AND OTHERS v. DR.B.S.MAHAJAN AND OTHERS⁴
5. SADANANDA HALO AND OTHERS v. MOMTAZ ALI SHEIKH AND OTHERS⁵

In BASAVIAH'S (1 surpa), the Apex Court held as follows:

The Committee appointed by the University thoroughly scrutinized the qualification, experience and published works of both the candidates and made its unanimous recommendations in favour of their appointments. The University also clearly stated that the appointments of the appellants were made in consonance with the terms of the provisions of the Act. Admittedly, for the selections to the post of Readers, an Expert Committee was constituted and thereafter, its recommendations were accepted by the University and issued orders accordingly. No one had any grievance so far as the constitution of Experts Committee was concerned and no mala fides have been levelled against any member of the expert committee.

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¹ (2010)8 SCC 372

² (2016) 1 SCC 454

³ (2009) 1 SCC 768

⁴ (1990) 1 SCC 305

⁵ (2008) 4 SCC 619

It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinized the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinized the merits and de-merits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

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We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

In K.SIVASUBRAMANIYAN's case (2 supra), the Apex Court held as under:

The contention of the respondent no.1 that the short-listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent- writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor.

Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer *res integra*.

In *TRIDIP KUMAR DINGAL's* (3 *supra*), the Apex Court held thus:

“Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the Employment Exchange, they were selected and appointed in 1998-99. The candidates who were unable to get themselves selected who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the Original Application, which was not done. In any case, some of them ought to have been arrayed as respondents in a ‘representative capacity’. That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside”.

In DALPATABASAHEB SOLUNKE's (4 supra), the Hon'ble Supreme Court held as under:

“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”.

In SADANANDA HALO's case (5 supra), the Hon'ble Supreme Court observed as under:

“It was argued generally before the Division Bench that the learned Single Judge could not have set aside the selections on the basis of the reports of the Scrutiny Committee which were, admittedly, the sample and partial scrutiny. Even during the arguments before the Division Bench no opportunity was given to the counsel for the appellants to examine the materials on record and also to take the copies thereof enabling them to support the selection of the candidates. Regarding the aspect of non joining of proper parties, i.e. selected candidates to the writ petition, the Division Bench noted the general notice directed to be issued through publication by the Single Judge by his order dated 6.10.2005. The Division Bench further noted in para 18 that the notice so published was vague as it did not mention the case numbers, districts, selection centres, etc. It also noted the arguments of the appellants that though applications were made by the selected candidates for impleadment in the related writ proceedings and though a direction was prayed for supply of copies of the writ petition, the learned Single Judge did not pass any order and the copies of the writ petition became available to the appellants only on 23.11.2005 and they had to file their Reply Affidavits even without knowing the contents of the writ petition. The Division Bench also noted the further arguments that the writ petitions themselves were vaguely drafted. It was, therefore, argued that the selected candidates were denied a fair and reasonable opportunity of projecting their cases resulting in violation of principles of natural justice. It was pointed out that even at the time of fixing the writ petition for hearing on 8.11.2005, the selected candidates were, admittedly, not impleaded as parties and the proceedings, therefore, suffered from serious procedural lapse. It was further argued that the learned Single Judge also fell in error in directing the selected candidates to file the appropriate

affidavits even without either impleading them or ensuring that the copies of the writ petitions were served on them. It was also pointed out that the reports prepared by Amicus Curaie and the three judicial officers on the basis of the sample scrutiny made by them were not made available to the selected candidates and, therefore, the learned Single Judge erred entirely in relying on those Scrutiny Reports.

Per contra, the submissions made on behalf of the appellants were opposed by the writ petitioners and it was reiterated that no prejudice was caused to the selected candidates and no such grievance was made before the learned Single Judge. It was reiterated that the selection of any particular individual or individuals was not impugned but the whole selection process was found faulty.

The Division Bench noted its own earlier order dated 4.10.2005 whereby the earlier appeals were disposed of and a further direction was given that the parties were at liberty to take recourse to provisions of Order 1 Rule 10 as also the other provisions in the CPC and the issue was left open to the learned Single Judge to direct publication of notice in newspapers so that the interested parties could appear in the proceedings if they so desire. The Division Bench in para 27 of its judgment noted about such notice having been published in the leading newspapers of Assam as also the order passed by the learned Single Judge to publish the list of selected candidates on or before 19.10.2005. It also noted that on 8.11.2005, the learned Single Judge had found that in the notice of proceedings published in the issue dated 19.10.2005 of the local daily Assam Tribune, the date of hearing had not been mentioned and, therefore, the date of hearing was directed to be published in daily "Asomiya Pratidin" to be 17.11.2005. The Division Bench also noted the subsequent orders passed by the learned Single Judge allowing the impleadment which began after the second week of November, 2005 and continued upto the last week of November, 2005 during which the hearing also took place and the judgment ultimately came to be delivered on 12.12.2005. The Division Bench further held that all the selected candidates had been duly heard on relevant

aspects of controversy and that they had expressed no grievance regarding the non impleadment or delayed impleadment or refusal of copies though prayed and applied for and as such they had waived their objections. In para 30 it was argued that:

"They obviously chanced favourable decision without any reservation in this regard and thus had waived any objection on the above counts. On this consideration alone their present turn around apparently lacks bonafide. In view of their omission to point out to the learned Single Judge the factum of non receipt of the copies of the writ petition and non impleadment in the proceedings during the pendency thereof, they are now estopped from raising these pleas of this point of time."

The petitioner, in the case on hand, challenges the selection on the other ground that the selection of respondents 5 to 8 has been made by accepting huge bribe and that they do not possess the qualification of Urdu. I am afraid the petitioner is making allegation without proper evidence or basis and the allegation cannot be entertained or expand the scope of judicial review in the matter of selection of candidates by expert body. Further, this Court cannot undertake a roving enquiry into the selection and appointment of respondents 5 to 8. Without sitting as a Court of appeal, for the limited purpose of knowing whether any favoritism has been shown or not, I have perused the applications of petitioner and respondents 5 to 8, the tabulation of marks for the academic seminars etc., and the marks secured by a candidate in the interview. The petitioner having got 35% in the selection process cannot lay a legitimate challenge to the selection of respondents 5 to 8 who have secured 62%, 60%, 61% and 62% respectively.

Thus far and not beyond, this Court is satisfied that both on merits of the case and also having regard to the scope of judicial review, this Court is satisfied that the petitioner has not made out a case for setting aside the selection and appointment of respondents 5 to 8. This question is answered accordingly.

QUESTION No.2:

The petitioner challenges termination order No.MANUU/ER-I/F.336/2011-12/127 dated 26.04.2012, which reads as follows:

“The services of Mr.Mohammed Batalullah Farooqui who is working as guest faculty in the department of Arabic on contractual basis are terminated with immediate effect”.

The case of petitioner against the termination order is that he has been working as Guest Faculty w.e.f., 2008 onwards. The petitioner has been satisfactorily discharging his duties as Guest Faculty. The petitioner admits to have filed W.P.No.24169 of 2006 and W.P.No.11660 of 2012 against the 3rd respondent University either challenging the action of 3rd respondent University in not calling the petitioner for interview or a direction that the selection is restricted only to candidates who possess basic qualification in Urdu at SSC/10+2 or graduation level etc. In this background, the allegation against termination reads thus:

“Thus while having adequate workload the 3rd respondent University has arbitrarily terminated my contractual engagement as ‘Guest Faculty’ while the other ‘Guest Faculty’ members who are juniors to me are still continuing, my services were suddenly and arbitrarily terminated only because I have approached this Hon’ble Court by filing W.P.No.11660 of 2012.”

The termination of service admittedly is before expiry of the period. The discrimination in terminating Guest Faculty contract appointment is stated as follows:

“I submit that when juniors to me who were also engaged as contractual basis for the same post were continued till commencement of summer vacations but my contractual engagement was arbitrarily terminated.”

The petitioner has made a feeble attempt in the course of submission that the 3rd respondent University is engaging several persons still as Guest Faculty and as the petitioner has availed the legal remedies, he is denied opportunity and subjected to discrimination and not given even the concession of appointment as Guest Faculty. The reply of respondent is to the effect that the 3rd respondent University engaged contractual employees till regular appointments are made. Once the regular appointments are made, the term of contractual engagement is automatically terminated. In every order, the University has clearly mentioned that the contractual engagement is liable for termination at any time without assigning any reason. Therefore, there is no need to continue engagement of contractual faculty when the University is having regular faculty. The reply of 3rd respondent University does not deal with the definite case of petitioner that the respondent University is continuing Guest Faculty members who are juniors to him and that the termination is on account of filing W.P.No.11660 of 2012.

The right of an employee engaged on contract basis is no longer *res integra*. As the reply of 3rd respondent is that in exercise

of one of the conditions of order, engaging the petitioner on contract basis the contract is cancelled and this Court is alive to the implications of such a clause in the contract appointment and the manner in which it can be operated. After going through the pleadings in this writ petition as well as W.P.No.24169 of 2006, this Court is of the view that the 3rd respondent University during the pendency of 2006, after being satisfied about the suitability of petitioner to work as Guest Faculty appointed him as such in the year 2008. It is stated that the services of petitioner were continued subject to breaks for four years. The filing of W.P.No.11660 of 2012 and the order dated 26.04.2012 terminating the petitioner is in close proximity. This Court is not sitting in the arm chair of an appellate body and reviewing the decision of terminating the services of petitioner as Guest Faculty. However, if it appears to this Court that the contract appointment is terminated either arbitrarily or to stem out the petitioner from the University by the 3rd respondent, as the petitioner is pursuing legal remedies by filing writ petitions, such action cannot be accepted and seal of approval given. Hence, this Court is of the view that the 3rd respondent being the instrumentality of the State must act fairly and reasonably. This Court can consider making appropriate observations in this behalf to render justice to petitioner within the four corners of law. There is no reply in the counter affidavit to the allegation that juniors to petitioner are continued and that there is sufficient work for engaging Guest Faculty in Arabic. If that be the case, denying opportunity to work as Guest Faculty as well to petitioner, amounts to discrimination and arbitrary exercise of power by respondents.

Though the order dated 26.04.2012 is accepted as well within the power of 3rd respondent and can also be termed as legal in accordance with the conditions of the contract appointment, to meet the ends of justice, the Court observes that the 3rd respondent University considers engaging petitioner as Guest Faculty in Arabic, instead of considering juniors or freshers as and when the Guest Faculty is engaged by the University. The point is answered accordingly.

The writ petition is disposed of with the above observation. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

27th April, 2017

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S.V.BHATT, J