

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.24169 OF 2006

ORDER:

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

The petitioner prays for Mandamus declaring the action of respondent in sending call letters pursuant to Employment Notification No.17/2006 dated 30.07.2006 and conducting interviews of Ph.D candidates alone for the post of Lecturer in Arabic by respondent, as illegal, arbitrary and unconstitutional. The petitioner consequently prays for withholding the publication of selected candidates, if any, pending disposal of the writ petition and a direction to respondent to permit the petitioner for interview to the post of Lecturer in Arabic along with Ph.D candidates.

The allegations in the writ affidavit are that the petitioner belongs to poor muslim minority community and possess the following qualifications:

1. University Grants Commission, National Eligibility Test Examination – Qualified.
2. (Ph.D)
3. M.A (Arabic) (Gold Medalist)
4. Post Graduate Diploma in Applied Linguistics, Osmania University, Hyderabad.
5. Licentiate in Hadith & Islamic Studies – Islamic University of Madinah (K.S.A)
6. Diploma in Translation (English to Arabic vice versa) Central Institute of English and Foreign Languages (C.I.E.F.L) Hyderabad.
7. Intermediate - Board of Intermediate, Hyderabad.
8. S.S.C - Board of Secondary Education, Hyderabad.

9. Adib-E-Fazil - University of Madras, Madras.
10. Alim & Fazil – Jania Darus Salaam Arabic College, Oomerabad, N.A (Dist), Tamil Nadu.
11. Khazi – Jamia Nizamia, Hyderabad.
12. Certificate of participation in Data entry operators course.
13. Certificate of Proficiency in Information systems. APTECH Computer Education, Guntur.

The petitioner claims to have acquired vast experience in different capacities while working as:

1. Director & Translator in Institute of Islamic & Arabic Studies, Guntur (AP) since 1993 to 1998.
2. Interpreter & Translator in Ministry of Defence, Doha, Qatar (Arabian Gulf) since 1998 to 2000.
3. Senior Secondary Teacher for Arabic in International School, Jeddah (K.S.A) since 2001 to March, 2006.

The respondent issued Employment Notification No.17/2006 dated 30.07.2006 inviting applications for appointment to different posts, both from teaching and non-teaching side from the eligible candidates. The notification contains general information in respect of teaching and non-teaching appointments, requisite qualifications and experience. The petitioner applied for the post of Lecturer in Arabic under acknowledgment No.Nil dated 29.08.2006. In this writ petition, the petitioner is aggrieved by the action of respondent in not considering his application for appointment as Lecturer in Arabic. Through Employment Notification No.17/2006 dated 30.07.2006, the respondent notified two Lecturer posts in Arabic. The eligibility criteria for the post of Lecturer read thus:

Qualifications, Experience etc., for the post of Lecturer in Urdu, Persian, Arabic, English, Hindi, Public

Administration, Women Education, Business Management.

Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the master's degree level, in the relevant subject from an Indian University or, an equivalent degree from a foreign university.

NET shall remain the compulsory requirement for appointment as Lecturer for those with PG Degree. However, the candidate having Ph. Degree in the concerned subject are exempted from NET for PG level and UG level teaching. Candidate having M.Phil in the concerned subject are exempted from NET for UG level teaching only.

Candidate having computer knowledge is preferable for Lecturer in Urdu.

Specialization for the post of lecturer in English: Post-colonial Literature/Literary theory and criticism.

Specialization for the post of lecturer in Women Education: Women Studies/Political Science/Sociology.

Specialization for the post of lecturer in Business Management: Marketing/Finance/Human Resource Management.

The case of petitioner is that he possesses requisite qualifications and experience for the post of Lecturer in Arabic. Therefore, the petitioner was expecting call letter from respondent for interview to the post of Lecturer in Arabic. To his dismay, the respondent on 30.07.2006 sent interview call letters to the candidates having Ph.D qualification. The shortlisting of Ph.D candidates for interview is contrary to the notification, principles of natural justice and unconstitutional. Hence, the petitioner prays for

a direction to respondent to interview the petitioner as well along with the applicants to whom call letters have been sent.

On 22.11.2006, this Court directed the respondent to permit the petitioner to attend the interview for post of Lecturer in Arabic along with eligible candidates. The results were directed not to be declared until further orders.

The respondent filed W.V.M.P.No.2466 of 2006 to vacate the interim order dated 22.11.2006. The first and preliminary objection raised by the respondent is that the array of Registrar as respondent is contrary to the enactment, for the University can sue or be sued by the University, represented by its Registrar. The respondent admits issuing of Employment Notification No.17/2006 for filling various posts in the University, including Lecturer in Arabic. It is further stated that 121 candidates applied for two posts in Arabic. The University in accordance with the procedure constituted a screening committee to shortlist the candidates for interview. The selection committee shortlisted the candidates eligible for interview with applicants holding doctorate degree, marks secured at post graduation level and the publication made by the candidates in various journals etc. On 02.11.2006, the interviews were held and on the same day the selection committee handed over the selected list to the University for consideration. On 23.11.2006, the executive council accepted the recommendations of selection committee and declared Dr.Javed Ahmed Nadvi and Dr.Syed Alim Ashraf as selected candidates. On 23.11.2006, it is stated that the University issued appointment

orders to the selected candidates. On the right of candidate to be called for interview, the respondent relies upon Ordinance of the University published in Gazettee vide F.No.27-12/2000 dated 05.08.2003. Clause 7 reads thus:

“The prescribed qualification and experience will be minimum and the mere fact that a candidate possessing the same, will not entitle him for being called for interview. The University will have the right to restrict the number of candidates to be called for interview, to a reasonable number on the basis of qualifications and experience higher than the minimum prescribed or by any other condition that may deem fit”.

The right of University to restrict candidates for interview is incorporated in general instructions. Therefore, it is in this background on the rejection of petitioner's application, the stand of respondent is that the screening committee focused on doctorate degree, marks secured in PG examination and publications made for shortlisting the candidates in the ratio of about 1:10. The selected candidates possessed doctorate degree, high marks in PG examination and have remarkable publications. The selection committee's recommendations have been unanimously accepted by the executive council. The respondent explained the reasons for not interviewing the petitioner. According to respondent, the interviews were completed on 02.11.2006 and copy of the interim order was received on 30.11.2006 by which time, the recommendations of selection committee have been forwarded to the executive council. The respondent takes the second preliminary objection that the continuance of writ petition

without impleading the selected candidates who are proper and necessary parties, the writ petition is liable to be dismissed.

This Court directed the respondent University to produce the record relating to subject matter of this writ petition. The respondent University has placed before the Court the record of all the shortlisted and selected candidates.

The petitioner contends that the shortlisting of candidates by reference to the criteria such as candidates holding doctorate degree, marks secured at PG level and publications made by candidate in various journals etc., is arbitrary, illegal and unconstitutional. According to him, the petitioner possessed the eligible qualification, except possessing Ph.D., and by referring to that circumstance, non-inclusion of petitioner in the list of shortlisted candidates is arbitrary, illegal and unconstitutional. Therefore, he contends that the selection process initiated by excluding the petitioner is vitiated and liable to be set aside by this Court. He relies upon the decisions reported in *OSMANIA UNIVERSITY, HYD. AND ANR v. DR. N.VENKATA RAO AND ORS*¹, *STATE OF RAJASTHAN AND ANOTHER v. KULWANT KAUR*², *RAKESH KUMAR SHARMA v. STATE (NCT OF DELHI) AND OTHERS*³ and *STATE OF ORISSA AND ANOTHER v. MAMATA MOHANTY*⁴. The decisions relied upon by the petitioner are not applicable to the case on hand.

¹ 1996(3) ALD 1071 (DB)

² (2006) 9 SCC 564

³ (2013) 3 SCC 58

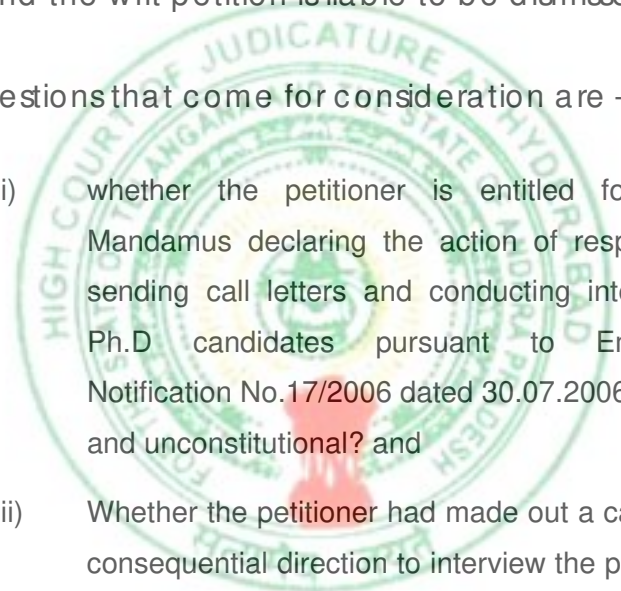
⁴ (2011) 3 SCC 436

Mr.K.Ramakanth Reddy, on the other hand, contends that the writ prayer is completely misconceived and by reference to such prayer, in the absence of selected candidates as respondents, setting aside the selections is impermissible and this Court cannot legally exercise jurisdiction. He contends that the University received as many as 121 applications for two posts in Arabic notified through Employment Notification No.17/2006. The University constituted a screening committee and the screening committee had shortlisted the candidates for interview based on applicable rational and relevant qualifications. Admittedly, the petitioner does not possess Ph.D., and it is not the case of petitioner that the candidates now selected or shortlisted do not possess doctorate degree. Mr.Ramakanth Reddy vehemently contends that merely because the petitioner appears in person, the scope of judicial review in matters of selection committee and appointment by academic body is not changed or enlarged. 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 two candidates could be stated. This Court, at any rate, cannot sit as a Court of appeal on the decision making process of expert bodies. He contends that the scope of judicial review is very limited and he humbly exhorts that this Court does not deviate from the settled principles of law in deciding the writ petition.

He further contends that the wisdom of selection committee or academicians either on qualifications, equivalence of

qualification, experience, ability etc., 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 and marks were allotted and if someone does not qualify to be included in the shortlisted candidates at the instance of such unsuccessful candidate, except for *mala fides* and bias, the challenge is not entertained. The writ prayer with the subsequent developments in the matter of selection is rendered infructuous and the writ petition is liable to be dismissed.

The questions that come for consideration are –

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- (i) whether the petitioner is entitled for writ of Mandamus declaring the action of respondent in sending call letters and conducting interviews of Ph.D candidates pursuant to Employment Notification No.17/2006 dated 30.07.2006, as illegal and unconstitutional? and
 - (ii) Whether the petitioner had made out a case for the consequential direction to interview the petitioner to the post of Lecturer (Arabic) along with Ph.D candidates?

The case of petitioner is that he is as much qualified as Ph.D candidates who were called for interview. According to him, he possesses academic qualifications, experience and not including the petitioner in the shortlisted candidates for interview is arbitrary, illegal and unconstitutional. The case of respondent University is that according to Ordinance published in Gazette vide F.No.27-12/2000-Desk (U) dated 05.08.2003, the prescription of qualification and experience will be minimum and the mere fact a candidate

possess the qualification will not entitle him for being called for interview. The University will have the right to restrict the number of candidates to be called for interview to a reasonable number on the basis of qualification/experience higher than the minimum prescribed or by any other condition that the University may deem fit. It is the further case of respondent that Employment Notification dated 30.07.2006 was issued by incorporating this general information as well. Therefore, the screening committee appointed by the respondent University shortlisted the candidates in the ratio of 1:10 by considering doctorate degree, marks secured in PG examination and the publications made by an applicant. Admittedly, the petitioner though satisfies minimum qualification does not possess the qualifications of candidates shortlisted by the screening committee. The petitioner until and unless points out that a candidate without Ph.D degree or a candidate with less qualification than the petitioner possess was shortlisted, the very fact that he is not called for interview cannot challenge the action of respondent. This Court, after perusing the material available on record, *prima facie* is of the view that challenge to the action of respondent in not sending call letter to petitioner is completely misconceived. Therefore, this contention of petitioner is rejected.

The petitioner received vacate stay petition along with counter affidavit on 04.12.2006. The stand of respondent University is that as per the schedule notified in this behalf, on 02.11.2006, the selection committee interviewed the candidates shortlisted by the screening committee and handed over its recommendations to the

University in a sealed cover on the same day. On 23.11.2006, the executive council of respondent University accepted the recommendations of the selection committee and appointed vide proceedings dated 23.11.2006 Dr. Javed Ahmed Nadvi and Dr. Syed Alim Ashraf as Lecturers in Arabic. In this background, the objection of Mr. Ramakanth Reddy is that once the selection process is completed and in the absence of candidates as respondents and more particularly without specific challenge to the selection of Dr. Javed Ahmed Nadvi and Dr. Syed Alim Ashraf, the prayer in writ petition could not be considered by this Court. He relies on the decision reported in *TRIDIP KUMAR DINGAL AND OTHERS v. STATE OF WEST BENGAL AND OTHERS*⁵ for the proposition that the selected candidates are necessary parties to the *lis*.

The decision of experts about suitability of a candidate and selection thereof by an Expert Committee and accepted by the Executive Council is not normally interfered with under writ jurisdiction, except for *mala fides*, bias or arbitrariness. The procedure for shortlisting the candidates by the respondent University is not challenged and in the case on hand applicable or relevant and discernable criteria is followed for shortlisting the candidates. After perusing the applications of petitioner, selected, shortlisted and interviewed candidates, this Court holds that no exception to the action of respondent in not sending call letter to petitioner is successfully made out. Though the petitioner persuaded this Court to examine the qualifications of selected

⁵ (2009) 1 SCC 768

candidates and petitioner's qualification/experience, this Court is of the view that in view of the settled position of law, this Court cannot sit as a Court of appeal on the decision of experts who constituted the screening or selection committee, which includes a nominee by His Excellency the President of India. This Court refers to the principle laid down by the Apex Court in *DALPAT ABASAHEB SOLUNKE AND OTHERS v. DR.B.S. MAHAJAN AND OTHERS*⁶ which reads as follows:

"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 (1990) 1 SCC 305

In *SADANANDA HALO AND OTHERS V. MOMTAZ ALI SHEKH AND OTHERS*⁷, the Apex 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

⁷ (2008) 4 SCC 619

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."

For the above reasons and having regard to the binding precedents on the scope of judicial review, it is held that the writ prayer is rendered infructuous. This Court cannot sit as a Court of appeal and decide merits and that in the absence of selected candidates as respondents, no relief can be worked out to petitioner. Hence, the points are answered against the petitioner.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

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

S.V.BHATT, J

27th April, 2017
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