

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20417 of 2016

=====

Dr. Shambhavi Kumari, W/o Dr. Ranveer Batsa, Resident of C/o Prof. Jaya Prakash Narayan Jha, Sipahi Tola, P.S. Khajanchi Haat, District - Purnea (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Human Resources Development Department, Government of India, New Delhi.
2. The Secretary, Human Resource Development Department (Education Department), Government of India, New Delhi.
3. The Central University of South Bihar through its Registrar, B.I.T. Campus, P.O. B.V. College, Patna.
4. The Vice-Chancellor, Central University of South Bihar B.I.T. Campus, P.O. - B.V. College, Patna.
5. The Joint Registrar, Central University of South Bihar B.I.T. Campus, P.O. B.V. College, Patna.
6. The Dy. Registrar Central University of South Bihar, Patna, B.I.T. Campus, P.O. B.V. College, Patna.
7. The Dean School of Education, Central University of South Bihar, Patna, B.I.T. Campus, PO- B.V. College, Patna.
8. The Executive Council, Central University of South Bihar, Patna, B.I.T. Campus, P.O. B.V. College, Patna
9. The Selection Committee, through the Chairman -Cum- the Vice Chancellor, Central University of South Bihar, Patna, B.I.T. Campus, P.O. B.V. College, Patna.
10. The National Council for Teachers Education (NCTE) through Regional Director NCTE, Eastern Regional Centre, Bhubneshwar (Orissa).
11. Swati Gupta, D/o Yogendra Kumar Gupta, C/o Joint Registrar Central University of South Bihar, Patna, B.I.T. Campus, P.O. B.V. College, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Y. V. Giri, Sr. Adv. with Mr. Purushottam Kumar Jha, Adv. Mr. Avanindra Kumar Jha
For the Responden-Univ.	:	Mr. S.D Sanjay, Sr. Adv. Ms. Priya Gupta, Adv.
For the Respondent No.11 :		Mr. Alok Kumar Agrawal, Adv.
For the Respondent-NCTE:		Mr. Sunil Kumar Singh, Adv. Mr. Ranvijay Singh, Adv. Mr. Md. Azimuddin, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 05-04-2018

The petitioner prays for the following reliefs:

- (i) To hold and declare that, since in view of the law settled by the Apex Court in various judgments, an ad



hoc/temporary/contractual employee cannot be replaced by another ad hoc/temporary/contractual employee, hence the selection of respondent No.11 and 12 (wait listed) for their contractual engagement, as Faculty against the Post Code 3096 in the School of Education in the respondent university, (in reality) the post which was approved in the year 2013 and on which the petitioner is working on contractual basis, is bad in law and hence fit to be set aside by this Hon'ble Court.

- (ii) To hold and declare that, the selection of respondent No.11 and 12 (wait listed) for their contractual engagement, as Faculty against the Post Code 3096 in the School of Education in the respondent university, *per se* smacks of illegal considerations, arbitrariness, discrimination, malafide and even otherwise bad in law, since the selected candidates are far below in merit (position/marks of written screening test & educational qualification), experience and publications, than the petitioner.

And consequent upon such declaration

- (iii) For issuance of an order, direction or a Writ in nature of certiorari, for quashing the selection/recommendation of the Selection Committee for appointment of respondent No.11 and 12 (wait listed), as Faculty in Teaching of English, against the Post Code 3096 (as Assistant Professor), in pursuance to the Advertisement No.CUSB./Advt.29/2016 dated 20.06.2016 in the School of Education as approved by the Resolution No.05/EC-28/16 dated 29.11.2016, of the Executive Council (Annexure-13).
- (iv) For issuance of an Order, Direction or a Writ in nature of Mandamus commanding the respondents to allow the petitioner to continue as an Assistant Professor in the School of Education, in the subject Teaching of English having the Post Code 3096, till the regular appointments are being made.
- (v) For issuance of an Order, Direction for grant of any other relief or relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.

It is after seeking permission that the wait listed candidate

Amrita Singh, the respondent no.12 was deleted from the array of



the respondents vide order passed on 27.7.2017 and hence the writ proceeds against the remaining 11.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The facts essential for disposal of the writ petition briefly stated is that the petitioner was even earlier, an applicant for appointment for the post of Assistant Professor in Education Programme advertised through Employment Notice dated 1.11.2013, a copy of which is enclosed at Annexure 6 to the writ petition. The personal details of the petitioner is enclosed at Annexure 5. The petitioner participated in the selection and was called for interview vide letter dated 3.2.2015 at Annexure 7 and was appointed as Assistant Professor (on contract) in the Centre for Education, under School of Education, Central University of Bihar for a period of six months vide order dated 23.2.2015 at Annexure 8. The office order to such effect is found at Annexure 9. It is not in dispute that although the appointment was made for six months on contract basis but was extended as manifest from Annexure 10 which renews the contract until December, 2016.

It is in between this period that the advertisement in question dated 20.6.2016 at Annexure 11 was published by the Central University of South Bihar which amongst others, also



notified 13 posts of Assistant Professor in the School of Education on contract basis and included the post held by the petitioner. The advertisement was a follow up of the decision taken in the minutes of the meeting enclosed at Annexure 4. The last date of submission of application was 18.7.2016.

The petitioner though filed her application for such appointment but at the same time also questioned the process in CWJC No.14805 of 2016 as according to her, there was no requirement of advertising the post held by her albeit on contract basis, rather according to the petitioner, in the nature of the selection so carried out earlier, she should have been regularized on her post by the respondents instead of going for replacement by another contractual appointment.

Since the petitioner failed to get an interim order before the writ Court that she filed an intra Court appeal giving rise to LPA No.2142 of 2016. With the consent of the parties the Division Bench considered the writ petition itself on merits but was not persuaded by the arguments advanced by the petitioner to interfere with the selection process. While thus acknowledging the right of the employer to the nature of appointment made, as well, by noting the argument of the petitioner that a contractual appointment cannot be replaced by another contractual appointee but holding the plea as pre-mature, the writ petition was dismissed and consequentially the



Letters Patent Appeal was held infructuous. A copy of the judgment and order of the Division Bench in LPA No.2142 of 2016 is enclosed at Annexure 1 to the writ petition.

On the other hand, the selection process was completed and it is the private respondent no.11, namely, Swati Gupta who succeeded in the selection process in preference to the petitioner. The respondent no.12, Amrita Singh (since deleted) was kept wait listed and it is feeling aggrieved by such action and denial of appointment despite being in service of the respondent University that the petitioner is again before this Court.

When this matter was taken up for hearing at admission stage, a preliminary objection was raised by Mr. S.D. Sanjay, learned senior counsel appearing for Central University, South Bihar (hereinafter referred to as 'the University') in questioning the maintainability of the writ petition as according to him, the writ petition was barred on the principle of *res-judicata*. Learned senior counsel invited the attention of this Court to the order passed by the Division Bench in LPA No.2142 of 2016 arising from CWJC No.14805 of 2016 to submit that the petitioner had questioned the advertisement in question dated 20.6.2016, whereby applications inter alia, had been invited for filling up 13 posts including the post of Assistant Professor (English) in the School of Education on a contract basis. A further prayer had been made for regularization of



her service. According to Mr. Sanjay, on not securing an interim order from the writ Court that the present writ petitioner in the earlier round of proceedings preferred an intra Court appeal as referred to above. He submits that the Division Bench considering the nature of contest has examined the merit of the writ petition itself but dismissed the same and consequentially the Letters Patent Appeal was rendered infructuous. He thus submits that the present writ petition raising identical issues is not maintainable and is fit to be dismissed on the principle of *res-judicata*.

Mr. Y.V. Giri, learned senior counsel has appeared for the petitioner along with Mr. Purushottam Kumar Jha, the Advocate on record. While responding to the preliminary objection raised by Mr. Sanjay, Mr. Giri has referred to the very judgment of the Division Bench and with a particular reference to the conclusion at paragraph 7 of the judgment at Annexure 1 he submits that the Division Bench even while not interfering with the selection process had kept the issues raised by the petitioner open for challenge at appropriate stage as according to the Division Bench, it was pre-mature to consider the issues at that stage. He submits that since the fear of the petitioner of her replacement by another contractual appointment has been confirmed that the present writ petition has been filed which does not suffer any infirmity rather is well founded.



Proceeding therefrom and on the issues raised in the writ petition learned senior counsel after drawing the attention of the Court to the earlier advertisement at Annexure 6, the interview letter at Annexure 7 and the letter of appointment at Annexure 8 submits that it was initially for a period of six months from the date of joining or until regular appointments, whichever was earlier. However, the appointment was extended until 23.12.2016 as confirmed from Annexure 10. It is submitted that since the petitioner already held the post of Assistant Professor (contract) in the School of Education that she felt aggrieved by the advertisement at Annexure 11 to the extent it advertised her post and the reason can be seen in the condition present at running page 46 which stipulates that though appointments were to be made on contract basis but was capable of regularization in future.

He next refers to the result of the screening test at Annexure 12 to submit that whereas the petitioner secured 65.75 marks, the private respondent has secured 59 marks and the one who was kept in waiting list namely, Amrita Singh secured 31.75 marks.

He next refers to the table at Annexure R3/D to the supplementary counter affidavit to submit that the weightage to be considered by the selection committee has been outlined and out of 100 marks, a weightage of 50% is to be given towards academic record and research performance; 30% towards assessment of



domain knowledge and teaching skills and 20% towards interview performance.

He next turns to the chart at paragraph 7 of the reply of the petitioner to the supplementary counter affidavit of respondent nos.3 to 8 to state that apart from the marks obtained towards academic performance/research publication and teaching experience the petitioner was way ahead of the private respondent with 44 marks as against 28 marks and the wait listed candidate was far below with 17 marks.

Learned senior counsel has thereafter referred to Annexure 16 at page 182 to submit that the name of the private respondent appearing at page 183 would show that she had less than 6 months experience while the petitioner had almost 5 years of teaching experience whose name appears at page 184.

It is thus the submission of Mr. Giri that whereas at each stage of selection and against each category the petitioner was far ahead of the private respondent but while assessing her against the domain knowledge/teaching skill and interview performance that the petitioner has been superseded on assessment by the interview board, which is wholly arbitrary and except for reason that this petitioner had questioned the action of the respondents earlier, there is no other reason attached either. He submits that the petitioner in fact has been punished for moving the Court and challenging the



authority of the respondents to go for fresh appointment because there is no other explanation attached to the non-selection of the petitioner who was found more meritorious at each stage of the selection process.

The second issue raised by Mr. Giri is that one contractual appointment cannot be replaced by another.

The third argument advanced is that there is absolute absence as to the procedure followed by the respondents for award of marks on assessment of the candidates on domain knowledge/teaching skill as well during the course of interview.

The argument of Mr. Giri, learned senior counsel appearing on behalf of the petitioner has primarily been contested by Mr. S.D. Sanjay, learned senior counsel appearing for 'the University' who again returns to the order passed by the Division Bench in the Letters Patent Appeal filed by the petitioner in the previous round of litigation and submits that these issues were even earlier raised but negated. According to Mr. Sanjay, the present writ petition is a reiteration of the same issues.

Adverting to the merit of the case Mr. Sanjay invited the attention of this Court to the extract of Regulation 2014, a copy of which has been enclosed at Annexure 'E' to the counter affidavit of the respondent nos.3 to 8 at running page 100 and with a particular reference to the 'Preamble' at running page 107 he submits that



since the norms and standards for 4 year integrated programme had undergone a change with modification in the 'Curriculum' as well, as manifest from running page 108 which necessitated the advertisement published in the year 2016. It is the submission of Mr. Sanjay that it is to meet the challenges of the changed curriculum of the courses in question that 'the University' decided to go in for fresh appointment.

He next refers to the extract of the Statutes of the University, a copy of which is enclosed at Annexure R3/I of the supplementary counter affidavit of the said respondents, to submit that Clause 18 deals with the composition of the selection committee and in so far as the appointment of Assistant Professor is concerned, the selection committee would comprise of the Head of the Department, one Professor nominated by the Vice-Chancellor and 2 persons not in service of the University nominated by the Executive Council out of panel of names recommended by the Academic Council for special knowledge or interest, the subject with which Associate Professor or Assistant Professor will be concerned.

Learned senior counsel has also referred to Annexure R3/D to submit that the individual assessment against 100 marks by the selection committee has been explained and while academic record and research performance has been given 50% weightage, the



assessment on domain knowledge and teaching skill has been earmarked 30% while 20% is reserved for interview performance. In support learned senior counsel has referred to Annexure R3/E to inform that the Experts of the selection committee were to award marks on the pattern drawn.

Learned counsel has referred to the supplementary counter affidavit and placing reliance on paragraph 5, tried to explain the reason for the fresh selection process as also the process followed by the selection Committee to opine in favour of the private respondent which according to learned counsel was in terms of the U.G.C. regulations.

In reference to paragraph 8 of the said affidavit he submits that even if the petitioner had secured higher marks in the screening test, it was only a qualification towards interview. He submits in reference to the screening test result at running page 155 that the difference was only of 6.75 marks. Learned counsel has next referred to the marking against the academic qualification and teaching experience, copy of which is annexed at Annexure 3/J to the supplementary counter affidavit of the respondent nos.3 to 8 to submit that there is no infirmity in the award of marks against these components, which is in tune with the U.G.C. regulation. He submits that the respondents have explained the process of markings against the domain knowledge and teaching skill.



Learned senior counsel has handed over a copy of the guidelines for Screening Test and Short Listing of candidates for contract recruitment inter alia also against the post of Assistant Professor and in reference to the stipulation at paragraph 10 he submits that the weightage against each category has been outlined. According to learned counsel each of the candidates were considered by the selection committee on universal application of para-meters and since in the opinion of the selection committee the private respondent fared better as against the petitioner in so far as her domain knowledge and teaching skill is concerned and even her performance in the interview was better that accordingly marks were awarded and which puts her at a better position than the petitioner.

Learned counsel in reference to the judgment of the Supreme Court reported in **(2010)8 SCC 372 (Basavaiah (Dr.) vs. Dr. H.L. Ramesh)** with a particular reference to paragraphs 13, 20, 21 and 38 to 40 has submitted that in view of the explanation given as to the process followed by the selection committee for assessment of the candidates at paragraph 5 onwards of the supplementary counter affidavit filed on behalf of 'the University', the High Court would not sit in appeal on the recommendations of the selection committee which has been duly accepted by the Executive Council of 'the University'.



Learned counsel has next referred to the judgment of the Supreme Court reported in **(2013)10 SCC 519 (University Grants Commission Vs. Neha Anil Bobde)** and in reference to paragraph 31 of the judgment he submits that the legal position has been reiterated and the Courts have been advised not to enter into the domain reserved for Experts on the issue of assessment of candidates. He next refers to the judgment in the case of **State of Bihar vs. Bimlesh Kumar Pandey** reported in **2016(3) PLJR 188** and in reference to the opinion expressed at paragraphs 13 and 14 of the judgment he submits that in consideration of the plea that one contractual appointment should not be replaced by another, the Court has upheld such rights of the employer even while observing that ordinarily it should not be done but if supportive with justifiable reason and more stringent recruitment process, then no infirmity can be attached.

Concluding his argument it is submitted by Mr. Sanjay that even though the decision of the selection committee to appoint the private respondent has been put to question but the final order has not been questioned by the petitioner.

Mr. Giri, learned senior counsel appearing for the petitioner in response to the arguments of Mr. Sanjay has submitted that even though an explanation has been given as to the process adopted by the selection Committee but the fact is that no parameter was fixed



by the selection committee to assess the candidates as is confirmed from paragraph 8 of the supplementary counter affidavit of the respondent nos.3 to 8 itself. He submits that there is no explanation as regarding the factors that were taken into account while assessing the candidates on domain knowledge/teaching skills as well as interview performance. It is submitted that even though paragraph 2 of the interview call letter gives weightage to the marks obtained by the candidates in the screening test but this is not reflected in the final results. Learned counsel also making reference to Clause 18 of the Regulation, the extract of which has been placed on record in the supplementary counter affidavit of the respondent nos. 3 to 8 at running page 157 of Annexure R3/I, submits that Clause 18(4) very clearly stipulates that proper procedure is to be followed by the selection committee.

Learned senior counsel in support of his submission that a disclosure of procedure to be followed by the selection committee while assessing the candidates during the interview is an essential pre-requisite, has referred to the following judgments:

- (1) (2013) 1 SCC 501 (Rajesh Awasthi vs. Nand Lal Jaiswal), paragraph 47 to 49; and**
- (2) (2008)3 SCC page 512 (K. Manjusree vs. State of A.P.), paragraph 32 to 35.**

Learned senior counsel in reference to the U.G.C.



Regulation on Minimum Qualification for Appointment of Teachers and other Non-teaching Staffs in University and Colleges and Measures for Maintenance of Standard in Higher Education in 2010, a copy of which was handed over during the course of hearing, in a particular reference to Clause 6.0.1 submits that it discusses the selection procedure to be followed but the guidelines has been ignored by the selection committee in the present case.

I have heard learned counsel for the parties and I have perused the records.

The broad issues raised by Mr. Giri, learned senior counsel appearing for the petitioner to question the selection process leading to the appointment of the private respondent, are:-

- (a) The contractual appointment of the petitioner vide appointment order dated 23.2.2015 at Annexure 8 is after undergoing a regular selection process and in absence of any complaint or charge, there was no reason for her replacement by another contractual appointment;
- (b) The counter affidavit is absolutely silent as to the procedure followed by the selection committee for award of marks on the criteria of 'domain knowledge/teaching skill' as well as in course of 'interview';
- (c) The petitioner has been penalized for questioning the action of the respondents in advertising the post held by



her through the selection process initiated vide Advertisement No.29 of 2016 by under marking her on the criteria of 'domain knowledge/teaching skill' as well as on 'interview performance'.

Another issue which would require a consideration is whether the writ petition is barred on the principle of *res-judicata* as raised by Mr. Sanjay, learned senior counsel appearing for the 'University' by way of preliminary objection.

The arguments of Mr. Giri, learned senior counsel for the petitioner has been resisted by Mr. Sanjay, learned senior counsel appearing for the 'University' on each of the issues to canvass that in absence of a plea of malafide or bias against any of the members of the selection committee, a mere second opinion by this Court on the comparative merit, would not obliterate the selection process nor this Court should exercise its extraordinary jurisdiction to sit as an appellate body for re-assessment of the performance of the candidates.

In my view, there is absolutely no contest on the settled principles advanced by Mr. Sanjay as to the limited scope of interference with a decision of the selection committee by the High Court in exercise of its plenary jurisdiction under Article 226 of the Constitution of India and the principles laid down by the Supreme Court in the case of **Basavaiah** (supra) as followed in the case of



Neha Anil Bobde (supra) are so well settled that this Court does not feel the necessity to record any opinion thereon. I am however, persuaded to reproduce some paragraphs of the judgment rendered by the Supreme Court in the case of **Basvaiah** (supra) which has been followed in the subsequent judgments and broadly outlines the parameters of exercise, before I would record my opinion whether the case in hand requires any interference and whether the petitioner has made out a case for indulgence:

20. 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.

21. 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.

38. 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 fides have 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.”

Before I would proceed to record my opinion on the issues raised by Mr. Giri, I would first deal with the issue of maintainability because if the objection of Mr. Sanjay is upheld then I am not required to express any opinion on the remaining issues. According to Mr. Sanjay, learned senior counsel appearing for the ‘University’ the issue raised in the proceeding are the issues which had earlier been raised by the petitioner in CWJC No.14805 of 2016 and negated as the writ petition was dismissed by the Division Bench while considering the appeal of the petitioner in LPA No.2142 of 2016. According to learned counsel, the petitioner cannot be permitted to re-agitate the issues on the principles of *res-judicata*.

The judgment of the Division Bench in LPA No.2142 of 2016 has been enclosed at Annexure 1 and confirms that the petitioner had questioned the Advertisement No.29 of 2016 impugned at Annexure 11 herein as according to her, having been appointed after facing a selection process, albeit on contract basis, there was no need for her replacement by another contractual appointment. The opinion of the Division Bench at paragraph 7 is a



confirmation of the right of the petitioner to move through the present writ petition inasmuch as her challenge was rejected on grounds of being pre-mature and the Division Bench refused to record any opinion on the issue so raised, at that stage. The issue thus, was left open by the Division Bench and as feared by the petitioner, her contractual appointment has been replaced by the contractual appointment of the private respondent. The apprehension so expressed earlier, has been confirmed vesting her with every right to question the selection process culminating in the appointment of the private respondent on all issues available. In fact, in absence of any opinion recorded by the Division Bench on the issues raised by the petitioner, the objections raised by Mr. Sanjay applying the principle of *res-judicata*, is misconceived because these principles do not apply in the present contest.

This would bring this Court to the issues raised by Mr. Giri and before I would record my opinion on other issues, I would first deal with the issue whether one contractual appointment can be replaced by another contractual appointment. For the purpose I would refer to the explanation given by the respondent 'University' in the supplementary counter affidavit filed on 16.1.2018 and present at running page 141 of the proceedings. The answer is found at paragraph 5 of the said affidavit when it is explained that the need for fresh advertisement for fresh recruitment arose because



of the NCTE Regulation notified on 28.11.2014 laying down various parameters for the recruitment of teachers in the University including the contractual post held by the petitioner. A fresh advertisement was thus issued for filling up these posts which included the post held by the petitioner. The judgment relied upon by Mr. Sanjay rendered by the Division Bench of this Court in the case of **Bimlesh Kumar Pandey** (supra) does at paragraph 14 record an opinion that ordinarily, a set of contractual appointees should not be replaced by another set of contractual appointees but the opinion recorded is not absolute rather accompanies an exception and where such selection is founded on a justifiable reason and an even more stringent recruitment process, no objection can be raised by any person. The issue having been deliberated upon by a Division Bench of this Court on the right of employer to do so, I would find no infirmity with the decision of the 'University' to have a broader competition in selecting Assistant Professor for its University which is not only in tune with the developing facet of education but is a positive measure. The issue thus raised by Mr. Giri that one contractual appointment cannot be replaced by another is not an absolute principle rather has to be tested from case to case and even if, ordinarily it should be avoided but if it is resting on a justifiable reason, it requires no interference. In my opinion, the explanation given by the 'University' for



advertising the post held by the petitioner along with other posts stands to reason.

This would bring this Court to the other two issues raised by Mr. Giri, i.e.

- (a) whether the petitioner has been punished by the selection committee in undermarking her on 'domain knowledge/teaching skill' as well as in 'interview', for her earlier challenge ; and
- (b) whether there has been a discussion by the selection committee as to the procedure they intended to follow while assessing the candidates on these criteria.

Before I would proceed to deal with these issues, I deem it necessary to discuss the comparative merit of the two candidates which are borne from the records of the proceedings as well as the record of the selection process handed over by Mr. Sanjay. The inter-se merit of the petitioner and the private respondent in the screening test is manifest from its results enclosed at Annexure 12 and which is as follows:

- (1) Shambhavi Kumari (petitioner) - 65.75 marks
- (2) Swati Gupta (Respondent No.11) - 59 marks

The petitioner topped the screening test and was ahead of the next candidate i.e. the private respondent by 6.75 marks.

Annexure R3/D of the supplementary counter affidavit of



the respondent nos.3 to 10 filed on 26.2.2018 is an extract of the UGC Regulation as to the weightage and gives a guideline as to the weightage to be given by the selection committee against different criteria against 100 marks. The distribution of marks under the guidelines of the U.G.C. is as follows:

1.	Academic record and Research Performance.	50%
2.	Assessment of Domain Knowledge and Teaching Skills.	30%
3.	Interview performance.	20%

As regarding the marks earned by the two candidates on Academic Record and Research Performance, the details have been enclosed at Annexure 3/J of the supplementary counter affidavit filed on behalf of the respondent nos.3 to 8 on 22.2.2018. The chart would show that of the total 50 marks weightage, a maximum 33 marks is to be given against the Academic Qualification while 10 marks is to be given against Teaching Experience and 7 marks against Research Publication which perhaps by a typographical error has been mentioned as 17 marks. The award of marks given by the selection committee on the Academic Record and Research Performance to the petitioner and the private respondent, is as follows:

1.	Academic Qualifications	Maximum marks -33
----	-------------------------	-------------------



(a)	Dr. Shambhavi Kumari	27
(b)	Ms. Swati Gupta	17

2.	Teaching Experience- Maximum marks 10	Research Publication Maximum marks 7	Total
(a)	Dr. Shambhavi Kumari - 10	7	17
(b)	Ms. Swati Gupta - 10	1	11

Up to this stage which is based on objective evaluation, the writ petitioner stands far ahead of the private respondent. From hereon the selection committee was to assess the candidates on their domain knowledge and teaching skills against 30 marks and on their interview performance against 20% marks.

It is since the petitioner had complained that she had been penalized for taking recourse to judicial remedy to question the selection process in so far as the post held by her is concerned that this Court directed the counsel for the ‘University’ to produce the Tabulation Chart as well as the records connected with the selection process vide order passed on 16.1.2018 and 1.2.2018. It is in compliance of this Court’s order that the individual files of the two contesting candidates herein as well as the wait listed candidate together with the file relating to screening test and the result-sheet in a sealed-cover was produced. Since the records did not contain any proceedings of the selection committee as to the procedure adopted by them/the parameters drawn for assessment of the



candidates on 'domain knowledge/teaching skill' as well as during the course of 'interview' that this Court posted the matter under the heading 'To be Mentioned'. However, on query made from Mr. S.D. Sanjay, learned senior counsel for the 'University' as to whether there was any other proceedings recording the minutes of the selection committee on the assessment of the candidates on the criteria discussed above, Mr. Sanjay while praying for an accommodation on 29.3.2018 confirmed on 30.3.2018 that there is no separate file containing the minutes of the selection committee on the parameters followed by them to assess the candidates on 'domain knowledge/teaching skills' as well as during the course of 'interview'. The position is recorded in the order of this Court passed on 29.3.2018 and 30.3.2018.

Before placing on record the assessment of the selection committee of the two candidates herein on the criteria of 'domain knowledge/teaching skills' and 'interview', I deem it necessary to record the stand of the respondents in the 3 affidavits filed in the present proceedings. A counter affidavit is filed on behalf of the respondent nos. 3 to 9 on 26.7.2017 and basically raises issue of maintainability of the writ petition by trying to demonstrate that the issues raised herein had been raised by the petitioner earlier but without success. A copy of the counter affidavit filed in the earlier writ proceeding is also enclosed.



A supplementary counter affidavit was filed on behalf of the said respondents on 16.1.2018 and while paragraph 5 of the counter affidavit explains the reasons for recruitment, the respondent 'University' in paragraph 6 admits that it is the regulations laid down by the University Grants Commission for recruitment of Teachers together with the weightage assigned which has been considered by the selection committee in its recommendation. Paragraph 7 of the supplementary counter affidavit encloses an assessment chart which is to be followed by the selection committee for assessment of the candidates and the distribution of marks is mentioned against each criteria. The admission in paragraphs 6 and 7 of the supplementary counter affidavit gains importance because it is in reference to the guidelines laid down in the U.G.C. Regulation that the respondent 'University' defends the assessment carried out by the Experts of the selection committee but it is to be seen whether the U.G.C. Regulation on the issues, indeed has been followed. Paragraph 8 of the supplementary counter affidavit is again important because it admits that the marks obtained by a candidate in the screening test shall be given weightage for 'domain knowledge' as well as in 'interview'. The respondents in paragraph 11 of the supplementary counter affidavit rely upon Clause 18 of the Statute to defend the recommendation of the selection committee as well as its



constitution. A rather important feature of the selection process is that in none of the 5 files handed over by Mr. Sanjay, there is a single file which records any decision relating to the constitution of a selection committee in tune with the stipulations present in Clause 18 of the Statute so relied upon by the 'University'.

A second supplementary counter affidavit is filed by the 'University' on 22.2.2018 and it is fairly admitted in paragraphs 3 and 4 thereof that the criteria laid down by the University Grants Commission in its U.G.C. Regulation, 2010 as amended from time to time as well as the parameters for marking laid down therein has been followed by the selection committee. According to the 'University, securing higher marks on academic record and research performance alone would not be enough for selection. The university has again relied upon Clause 18 of the Statute to defend the selection process followed by the selection committee and has discussed the stages undergone by the candidates in paragraph 7 of the said affidavit. Even though an explanation is sought to be given on the assessment of 'domain knowledge/teaching skills' as finalized by the selection committee but the parameter drawn is absent rather it is admitted that on the basis of unanimous decision of the Experts of the selection committee that the marking was done against this criteria which was signed by all members and forms the recommendation. It is admitted that no individual assessment was



recorded by the Experts and that there is no other document of individual assessment.

It is here that paragraph 21 of the judgment rendered by the Supreme Court in the case of **Basavaiah** (supra) becomes relevant because the various criteria on which the Expert Committee in the said case had recorded its opinion is completely absent in the present case where it is the subjective satisfaction of the members of the Expert Committee which is the foundation for the assessment on ‘domain knowledge/teaching skill’ or ‘interview’ and which is not founded on any defined parameters. The objectivity thus of such marking is missing and the result of such opinion is reflected from the result-sheet produced in sealed cover which was opened in presence of the counsel on 30.3.2018. The Experts of the selection committee have chosen to unanimously award the following marks to the two candidates herein against the criteria of ‘domain knowledge/teaching experience’ and interview:

Sl. No.	Name	Domain Knowledge/ Teaching Experience	Interview	Total
1	Dr. Shambhavi Kumari	10	6	16
2.	Ms. Swati Gupta	22	15	37

As a result of the aforementioned assessment by the Experts forming the Selection Committee, the final status comes out as under:



		Academic Performance and Research Performance (50 Marks)		Domain Knowledge & Teaching (30)	Interview (20)	Total (100)
S.N.	Name of Candidate	Academic Performance (Maximum weightage 33 marks)	Research/ Teaching Experience & Research Publication (Maximum weightage 17 marks)			
1.	Dr. Shambhavi Kumari	27	17	10	06	60
2.	Ms. Swati Gupta	17	11	22	15	65

Despite repetition I need to mention here that although the interview call letter as well as the stand of the University in the affidavit(s) filed, acknowledges weightage of marks secured by the candidate in the screening test during assessment on ‘domain knowledge/teaching skill’ and ‘interview’ and even though the petitioner topped the screening test with 65.75 marks against 59 marks secured by the private respondent but the result-sheet does not reflect grant of any such weightage.

It is now to be seen whether the stand of the respondents in defence of the Experts of the selection committee on assessment of the candidates against the ‘domain knowledge/teaching skill’ and ‘interview’ as tried to be explained in paragraph 8 of the supplementary counter affidavit is supported by the statutory provisions and whether the unanimity in decision of the Experts is sufficient to uphold the recommendations.

Clause 18 of the Statute relied upon by the respondents themselves, the relevant extract of which is enclosed at Annexure



3/I of the first supplementary counter affidavit though stipulates of a selection committee as well gives the details of its constitution but as noted above, the record so handed over by the 'University' contain no such decision of its constitution. Clause 18(4) of the Statute again provides for the procedure to be followed by the selection committee as laid down in the ordinances but this essential feature has been overlooked by the Experts of the selection committee as the records confirms that even though the respondent-University supports the recommendation as being in tune with the U.G.C. Regulation, 2010 as amended from time to time as manifest from paragraph 4 of the second supplementary counter affidavit but the relevant extract of the U.G.C. Regulation, 2010 as it stood amended on 18.11.2015, a copy of which was handed over during the course of hearing confirms, that the Experts of the selection committee have clearly defaulted in following the norms laid down on the assessment of a candidate against the 'domain knowledge/teaching skill' criteria by not following the parameters laid down for such assessment in the U.G.C. Regulation 2010/2014 dated 18.11.2015 in so far as it provides for the Preliminary Score-Sheet for Assistant Professor.

While the respondents have brazenly admitted in paragraph 8 of the second supplementary counter affidavit that it is on the unanimity in the Expert opinion that assessment was done of the



candidates on ‘domain knowledge/teaching skill’, this discretion is not vested in the Experts of the selection committee rather the parameters are well drawn as to the award of marks for such criteria as detailed under:

“(b) Assessment of Domain knowledge and Teaching Skills: 30
(to be assessed by Screening/Selection Committee)

Sl. No.	Criteria		Max. Score	Score obtained
1.	PhD in relevant subject/area of specialization : M.Phil. in relevant subject/area of specialization: PG in relevant subject/area of specialization:	8 points 5 points 4 points	8	
2.	Books in the area of specialization** Books by International Publishers: Books by National publishers:	8 points/book 4 points/book	15	
3.	Experience in domain area: Total Teaching experience of not less than 1 year duration: Training/field work/workshops of not less than 1 week duration:	1 point/year 1 point	2	
4.	Patents/Awards/Honours: Patent : Awards instituted by Government of India/Science academies/Government of Kerala/Academy awards in literature : Awards for best thesis given by the University :	5 points 3 points/number 3 points	5	
	Sub Total for (b)		30	

**Books considered under category (a) will not be counted under category (b)

The result-sheet confirms that the writ petitioner was awarded 10 marks on ‘domain knowledge and teaching skill’ which confirmingly is a whimsical assessment in view of the parameters present in the U.G.C. Regulation on such criteria. In fact as per the distribution of the 30 marks so provided therein the writ petitioner



could not be given such low marks because apart from the award of marks on qualification and experience, she was also entitled to marks on her 'publication' and 'awards' the details of which can be gathered from the individual file presented by the 'University'. While there is no dispute that as per the distribution above, 8 marks was to be awarded to the petitioner for her PhD qualification and another 2 marks on her teaching experience of 4 years 11 months, surprisingly and with no justifiable reason, she has been denied marks on her publications as well as the awards. The individual file of the petitioner has been handed over by Mr. Sanjay and while item no.23 contains the details of professional recognition, award etc., the details of research papers are given in item no.25. Similar details are present in the file of the private respondent. The acknowledgement of this position can be found in the screening file where the respondents do agree that while the petitioner has 14 publications to her credit, the private respondent has 17 but whereas the teaching experience of the private respondent is less than 6 months, the teaching experience of the petitioner is more than 4 years and 11 months with last couple of years in the university.

As already indicated, the other default committed by the Experts of the selection committee is that even though it is admitted that the marks earned by the candidates in the screening test would be given weightage during the assessment of 'domain



knowledge/teaching skills’ as well as during the course of ‘interview’ but the assessment by the Experts in the selection committee belies the assurance given.

It is after filing of 2 affidavits and on direction of this Court issued for production of the files relating to the selection process on 1.2.2018 that a second supplementary counter affidavit is filed by the ‘University’ on 22.2.2018 and the pleadings missed out in the earlier stand taken by them on the parameters drawn for assessing the candidates on ‘domain knowledge and teaching skill’ is sought to be met with explanation present at paragraphs 10, 11 and 12 which in my opinion, again, is not in tune with the parameters present in the U.G.C. Regulation as amended from time to time and circulated on 18.11.2015 referred to above. The respondent University has fairly conceded that there is no separate proceeding to record the minutes of the selection committee and thus the explanation present at paragraphs 10 to 12 of the second supplementary counter affidavit is an acceptance of the default of the statutory procedures infracting the selection process.

The rules of the game has to be drawn in advance for it not only confirms to the fairness and transparency in a selection process but is also reflective of its objectivity. However, the case in hand cuts a sorry picture of the manner in which the selection committee has proceeded to record its recommendation in favour of the private



respondent. Even when the U.G.C. Regulation, 2010 as amended draws the parameters for assessment of the candidates by the selection committee on their 'domain knowledge/teaching skill' as well as in 'interview for recording its decision but the mandatory procedure has been breached. The 'University' fairly admits that there is no minutes of the selection committee to explain the factors considered by the selection committee to result in the unanimity of their decision on assessment of the candidates. The selection process is clearly fraught with violations and is resting on a subjective opinion of the Experts rather than confirming to the objectivity of the decision-making process in tune with the U.G.C. regulations.

Fairness and transparency in the recommendations of a selection committee, is a hallmark of any selection process and which I am afraid is grossly missing in the present case. The death knell in the coffin of the selection process is provided by the selection of the wait listed candidate. Such has been the state of displeasure and hostility of the selection committee towards the petitioner that even though she comes 2nd in the merit list after the private respondent with 60 marks yet a person with 42 marks has given preference as a wait listed candidate.

In the circumstances discussed, if the petitioner has advocated apprehension that her candidature suffered prejudice due to her earlier adventure in questioning advertisement perhaps she is not very off target because even after qualifying as a more meritorious candidate than the



private respondent in the screening test as well as on academic performance/research, not to miss the 4 years 11 months teaching experience with last 2 years (almost) spent with the respondent 'University' without any complaint on her teaching skill nor found wanting on her domain knowledge of the subject, yet she has failed to even make it to the waiting list.

Mr. Sanjay in defence of the action of the Selection Committee has argued that in absence of plea of malafide or bias, the comparative assessment of the candidates would not require a relook. I am afraid to note that while the petitioner has carried the contest with utmost dignity befitting a scholar by not using harsh expletives against the selection committee members but I am not in a position to reserve the same opinion for the Selection Committee Experts who have belied their status of a neutral body consisting of academicians. The assessment made by them is a confirmation of their hostility and they have chosen to impose their such authority in the manner best understood by them to wrest away the claim from the petitioner.

For the discussions made, I am persuaded to accept the argument advanced on behalf of the petitioner that she has been made a victim of the circumstances and the Experts in the selection committee have been unfair on her assessment against 'domain knowledge/teaching skill' as well as on her 'interview' which assessment is confirmingly de hors the parameters present in the U.G.C. Regulation as discussed above.

In result, the entire decision-making process culminating in the recommendation in favour of the private respondent by the Experts in



Selection Committee for the post of Assistant Professor, School of Education (teaching of English) as accepted by the Executive Council of the Central University of South Bihar in its 28th meeting impugned at Annexure 13 cannot be upheld and is accordingly set aside and consequentially the appointment order of the private respondent is quashed and set aside.

Let the ‘University’ constitute the selection committee afresh in tune with Clause 18 of the Statute and take the selection process to its logical conclusion strictly in terms of the guidelines present in the U.G.C. regulation preferably within a period of 6 weeks from the date of receipt/production of a copy of this judgment.

The writ petition is allowed together with cost quantified at Rs.10,000/- payable by the University to the petitioner.

Let the records of the Selection Process together with the Result-sheet be returned to Mr. S.D. Sanjay, learned senior counsel for the University.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	08-03-2018
Uploading Date	06-04-2018
Transmission Date	NA

