

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.9961 of 2020 (O&M)

Date of Decision: 16.10.2020

Dr. Narinder Paul Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Gurminder Singh, Senior Advocate assisted by
Mr. Ramanpreet Singh Bara, Advocate for the petitioner.

Mr. Atul Nanda, Senior Advocate, Advocate General, Punjab
assisted by Mr. Avinit Awasthi, AAG, Punjab
for respondent Nos.1 to 3.

Mr. Sukhdeep Singh Bhinder, Advocate for respondent No.4-Univ.

Mr. Salil Sabhlok, Advocate for respondent No.5-UGC.

MAHABIR SINGH SINDHU, J. (Oral)

Petitioner, who claims himself to be an aspirant for the post of Vice-Chancellor, Maharaja Ranjit Singh Punjab Technical University, Bathinda (for short 'University'), has filed the present writ petition under Articles 226/227 of the Constitution of India:-

- (i) *for issuance of a writ in the nature of certiorari for setting aside the selection process for appointment to the post of Vice-Chancellor of the University as well as decision dated 19.02.2020 (P-6) taken by the Board of Governors (for short 'Board'), constituting the Search Committee;*

- (ii) for issuance of a writ in the nature of prohibition directing the respondents not to proceed with the selection process for the post in question;*
- (iii) for issuance of a writ in the nature of mandamus directing the respondents to consider the claim of the petitioner for the post of Vice-Chancellor;*
- (iv) for interim relief to the effect that during the pendency of present writ petition, the scheduled interview on 17.07.2020 be stayed or the petitioner be allowed to participate provisionally and the respondents be directed not to implement the decision of Search Committee dated 19.02.2020.*

(2) Brief facts of the case are that an advertisement dated 08.02.2019 (P-3) was issued for appointment to the post of Vice-Chancellor of the University by the Department of Technical Education and Industrial Training, Punjab (*for short 'Department of Technical Education'*). Last date for receipt of applications was fixed as 28.02.2019 up to 5:00 PM. Considering himself eligible and suitable, petitioner applied for the post in question. As per the averments made in the petition, total 28 applications were received and name of the petitioner finds mentioned at Sr. No.19 of the compilation (P-4).

University received a communication dated 14.08.2019 from the Department of Technical Education for constitution of the Search Committee in terms of Section 10(1) of the Maharaja Ranjit Singh State Technical University Act, 2014 (Punjab Act No.5 of 2015) (*for short 'Act of 2015'*). In view of the above communication, the meeting of Board was held on 11.10.2019 and it was decided to constitute a Search Committee consisting of 04 (four) Members. On 18.12.2019, Search Committee in its meeting felt necessary that 2/3 more Members be included in the Committee from the field of technical education

and for this purpose, Principal Secretary, Technical Education, Punjab was asked to take up the matter with the competent authority.

Also pertinent to mention here that in the interregnum, one Member of the above Search Committee, namely, Mr. Chander Mohan expired and in the light of above development, Board in its meeting held on 19.02.2020 decided to re-constitute the Search Committee, consisting of 06 Members, which was later on notified, vide Gazette Notification dated 07.04.2020 by the Government of Punjab.

Complete bio-datas of all 28 applicants were circulated to the Members of Search Committee through e-mail and after scrutiny of the same, 24 were found eligible for the post in question. Out of them, Search Committee in its meeting held on 26.06.2020 shortlisted 07 candidates for personal interaction to be held on 17.07.2020 at 11:00 AM.

(3) On 09.07.2020, petitioner came to know about the short-listing of 07 candidates as well as their invitation for personal interaction, thus, feeling aggrieved against the above action, he made a representation dated 09.07.2020 (P-7) with the grievance that despite being senior most Professor amongst all the applicants, his case has been ignored and requested an opportunity to appear before the Search Committee once again.

(4) Since no response was received by the petitioner, therefore, he filed the present writ petition for challenging the selection process for the post of Vice-Chancellor as well as decision of Board dated 19.02.2020, whereby Search Committee was constituted, which is alleged to be in violation of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (*for short 'Regulations of*

2010). Also averred in para Nos.15 & 21 of the petition that one of the candidates, namely, Dr. Ashok Kumar Paul was not even eligible, yet he has been shortlisted and called for interview.

(5) In pursuance to the notice of motion, short affidavit dated 17.07.2020 of Additional Director, Department of Technical Education was filed on behalf of respondent Nos.1 to 3 with an undertaking to file detailed reply. Thereafter, additional affidavit dated 18.09.2020 on their behalf has been filed, in which, *inter alia* submitted that Search Committee was constituted on 19.02.2020 by the Board, consisting of persons with sufficient administrative experience in the field of education/technical education in premiere Institutions, run by the Govt. of India as well as Govt. of Punjab. Also submitted that Search Committee was notified in the official gazette by the State Government, vide Notification dated 07.04.2020 (R-2) and thereafter, selection process commenced for the post in question. Also submitted that Search Committee, after evaluating the Bio-Datas of all the applicants, has shortlisted 07 candidates. Further submitted that the UGC Regulations of 2010 have already been superseded by the subsequent Regulations in the year 2018, namely, University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 (*for short* 'Regulations of 2018'), which are only directory and not mandatory. Again submitted that State Government is at liberty to frame its own laws and not bound to follow the regulations of the UGC, neither Regulations of 2010; nor Regulations of 2018 were adopted by the State Government, thus, the same are not applicable automatically. Also submitted that there has been no formal adoption of the UGC Regulations by the State

Government, thus, the same are not binding upon them. Specifically submitted in para 24 of the reply that the University does not depend on the UGC for its funding in any manner.

Still further, plea of estoppel has also been raised on the premise that petitioner participated in the selection process in pursuance of the advertisement dated 08.02.2019, but his name did not figure amongst the 07 shortlisted candidates, thus, at this stage, he is not entitled to question the selection process. Also submitted that as per settled legal proposition, the Courts are not supposed to assess the comparative merit as well as suitability of the candidates in such like matters. Categorically denied that Dr. Ashok Kumar Paul has been called for interview; rather it is submitted that his name does not figure amongst the 07 shortlisted candidates.

Rejoinder was filed on behalf of the petitioner in response to the reply of respondent Nos.1 to 3, wherein the averments made in the writ petition have been reiterated, but he resiled from the plea regarding the short-listing of Dr. Ashok Kumar Paul. Further submitted that as per Section 10 of the Act of 2015, appointment to the post of Vice-Chancellor is to be made as per the UGC Guidelines, thus, the same have become the part of the enactment (*ibid*) and as such, State is bound to constitute the Search Committee after including one nominee of the Chairman, UGC.

Deputy Registrar (Administration) has filed short reply on behalf of respondent No.4/University, wherein *inter alia* submitted that Search Committee was constituted by the State of Punjab on the recommendations of the Board and Vice-Chancellor of the University is appointed in accordance with the provisions of Section 10(1) of the Act of 2010.

Under Secretary, UGC has filed a short reply on behalf of respondent No.5-UGC while making reference to the provisions of Sections 12(d) and 26 of the University Grants Commission Act, 1956 (*for short 'Act of 1956'*) regarding the powers and functions of the UGC for improvement of University education and advice for implementation of its recommendations consistent with the Act of 1956. It is acknowledged that vide Regulation dated 18.07.2018 (Annexure R-5/1), Regulations of 2010 have been superseded and as per Regulation 7.3 of 2018 Regulations, Search-cum-Selection Committee for appointment of Vice-Chancellor shall have one member nominated by the Chairman, UGC, but in the present case, no such request was received from the State Government or the University. Also submitted that the Regulations are mandatory in nature and cannot be over-looked by the University.

(6) It is contended on behalf of the petitioner that vide impugned decision dated 19.02.2020, Search Committee has been constituted without including the nominee of the Chairman, UGC and as such, the same is not legally sustainable being violative of Clause 7.3.0 of the Regulations of 2010. Further contended that Secretary, Department of Technical Education, Punjab is also the Vice-Chairman of Board, thus, in view of the bar under Clause 7.3 (ii) of the UGC Regulations, such a person could not be included as Member of the Search Committee.

On the other hand, learned Advocate General submitted that after the decision of the Board dated 19.02.2020 (P-6), Search Committee was notified by the Govt. of Punjab, vide Notification on 07.04.2020 (R-2), but the same is not under challenge, thus, the writ petition is liable to be dismissed only on this ground. Also submitted that petitioner participated in the selection process as his candidature were duly considered by the Search Committee in the

meeting held on 26.06.2020, but his name did not figure amongst the 07 shortlisted candidates, thus, he is stopped from challenging the selection process as well as decision dated 19.02.2020. Again submitted that all the shortlisted candidates were called for personal interaction for 17.07.2019, but at the nick of time, petitioner filed the present writ petition and obtained interim stay on 15.07.2020, whereby selection to the post of Vice-Chancellor has been stayed and entire working of the University is suffering in the absence of a regular Vice-Chancellor. Lastly submitted that in view of the provisions of Section 23 of the Act of 2015, if there is any defect or irregularity in the constitution/nomination of Member of the Search Committee, the same is inconsequential and liable to be ignored by this Court.

Learned Counsel for respondent No.4-University supported the pleas raised on behalf of the State of Punjab, whereas learned Counsel for respondent No.5-UGC has opposed the State of Punjab on the premise that nominee of the Chairman, UGC is very much necessary for constitution of the Search Committee and thus, supported the case of the petitioner.

(7) Heard learned Counsel for the parties and perused the paper-book.

(8) After taking into consideration the rival submissions of the parties and perusal of the record, the following points are culled out for adjudication of the matter in controversy:-

- (i). *Whether in view of the facts and circumstances of the present case, the writ petition is maintainable?*
- (ii). *If the above point is decided in affirmative, the next question would be as to whether impugned decision dated 19.02.2020 as well as selection process are sustainable in law?*

(9) It is pertinent to mention here that before entertaining the writ petition on merit for judicial review, this Court is entitled to examine the record of the case carefully and to satisfy itself regarding the very maintainability thereof even in the absence of any plea raised by either side to maintain the purity of justice.

(10) Before proceeding further in the matter, it would be appropriate to recapitulate the relevant provisions of Sections 2, 10, 12 and 13 of the Act of 2015, which read as under:-

“Section 2 *In this Act, unless the context otherwise requires,-*

(a) "authorities" means the authorities of the University;

(b) "Board" means the Board of Governors of the University;

(h) "member" means a member of the Board established under this Act and includes its Chairman.

Section 10(1) *The Vice-Chancellor shall be appointed by the Chancellor as per guidelines of the University Grant Commission on the advice of the State Government from the panel of persons recommended by the Board through a Search Committee to be notified by the State Government. The members of this Committee shall be nominated by the Board:*

Provided.....

(2 to 4)

(5) *The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general control over its affairs in accordance with the regulations and give effect to the decisions of the authorities of the University.*

(6 to 8)

Authorities of the University.

Section 12. *The following shall be the authorities of the University, namely:-*

(i) the Board of Governors

(ii to v)

Section 13. (1) *The Board shall consist of a Chairman, a Vice-Chairman, seven ex-officio members and six nominated members.*

(2) *The Chief Secretary of the State of Punjab shall be the Chairman.*

(3) *The Principal Secretary to Government of Punjab, Department of Technical Education and Industrial Training shall be the Vice-Chairman.*

(4)(a) *The Chairman shall ordinarily preside over the meetings of the Board.*

(b) *.....*

(5)(a) *The Chancellor shall nominate the following members of the Board for a period of three years and they shall be eligible for re-nomination for another term of the same period, namely:-*

- (i) two members from amongst the eminent Industrialists;*
- (ii) two members from amongst the eminent technologists;*
- (iii) one principal of the college by rotation from amongst the colleges affiliated with the university; and*
- (iv) one head of the department by rotation from amongst the heads of the departments of the university.*

(b) *The following shall be the Ex-officio members, namely:-*

- (i) Vice-Chancellor, Maharaja Ranjit Singh State Technical University, Bathinda;*
- (ii) Vice-Chancellor, Punjab Technical University, Jalandhar;*
- (iii) Secretary to Government of Punjab, Department of Finance;*
- (iv) Director, Technical Education and Industrial Training, Punjab;*
- (v) Chairman of the North-West Committee, All India Council for Technical Education, Chandigarh;*
- (vi) President of the Confederation of Indian Industry or his nominee; and*
- (vii) Director of Indian Institute of Technology, Ropar.*

(6 to 15) *.....”*

Section 10 (1) talks about the appointment to the post of Vice-Chancellor and from perusal of the same, the following steps are discernable:-

- (i) nomination of members for search committee by the Board;*
- (ii) notification of search committee by the state government;*
- (iii) preparation of panel by search committee;*
- (iv) recommendation by the Board;*
- (v) advice of state government; and*
- finally appointment is made by the Chancellor as per guidelines of the UGC.*

(11) Undisputedly, at the first instance, Search Committee was constituted by the Board in its meeting held on 11.10.2019, consisting of following 04 Members:-

- | | | |
|----|--|-----------------|
| 1. | <i>Chief Secretary, Punjab</i> | <i>Chairman</i> |
| 2. | <i>Principal Secretary, Finance,
Govt. of Punjab</i> | <i>Member</i> |
| 3. | <i>Secretary, Technical Education &
Industrial Training, Punjab</i> | <i>Member</i> |
| 4. | <i>Mr. Chander Mohan,
Ex-Managing Director and
Vice-Chancellor of Punjab,
Tractor Ltd. and Swaraj Majda Ltd.</i> | <i>Member</i> |

Shortly thereafter, one of the above four members, namely, Mr. Chander Mohan died and Search Committee in its meeting held on 18.12.2019 observed that it would be appropriate if 2/3 technical members are also included in the Committee. Resultantly, Board in its meeting dated 19.02.2020 re-constituted the Search Committee and nominated following 06 (six) members:-

- | | | |
|----|--|-----------------|
| 1. | <i>Chief Secretary, Punjab</i> | <i>Chairman</i> |
| 2. | <i>Principal Secretary, Finance,
Govt. of Punjab</i> | <i>Member</i> |

- | | | |
|----|---|----------------------|
| 3. | <i>Secretary, Technical Education & Industrial Training, Punjab</i> | <i>Member</i> |
| 4. | <i>Director, IIT, Ropar</i> | <i>Expert Member</i> |
| 5. | <i>Director, NITTTR, Chandigarh</i> | <i>Expert Member</i> |
| 6. | <i>Vice-Chancellor, GNDU, Amritsar</i> | <i>Expert Member</i> |

Sub-section 1 of Section 10 (*ibid*), Government of Punjab, vide Gazette Notification dated 07.04.2020 notified the Search Committee. Concededly, the above Notification is not under challenge till date for the reasons best known to the petitioner; rather he is assailing only the decision dated 19.02.2020 taken by the Board (1st step).

Perusal of provisions of Sections 2, 12 & 13 (*ibid*) reveal that the Board is an Authority under the Act of 2015, thus, it can neither be substituted by the State of Punjab; nor with the University; but despite that, it has not been impleaded as party respondent by the petitioner, thus, non-impleadment of the Board itself is fatal for maintainability of writ petition.

(12) It has come on record that on 12.06.2020, bio-datas of all 28 applicants were supplied to the Members of the Search Committee through e-mail and after scrutiny of the same, 24 were found eligible. After evaluation of the complete details of all these 24 applicants as reflected in their respective Bio-Datas, qualifications, administrative experience, research publications and international exposure, Search Committee in its meeting held on 26.06.2020 unanimously shortlisted 07 candidates, who were fulfilling the criteria laid down by the UGC and they had been invited for personal interaction.

(13) Undisputedly, prior to institution of the present writ petition, representation dated 09.07.2020 was made by the petitioner to the Chief Secretary, Govt. of Punjab while raising the plea that despite being more

meritorious, he has been ignored and gist of the same could be culled out as under:-

- (i) *he is having more academic, research and administrative experience;*
- (ii) *senior most Professor amongst all applicants;*
- (iii) *having more than 35 years of teaching, research and administrative experience of three Universities of Punjab i.e. GNDU, Amritsar; SLIET, Longowal and IKGPTU, Jalandhar;*
- (iv) *served as officiating Director in SLIET, Longowal; Dean and Professor in IKGPTU, Jalandhar for more than 22 years;*
- (v) *senior most Professor in Technical Education in State of Punjab and higher academic grade (67000-79000) is due since February, 2010.*

Curiously, petitioner in his above representation, which is the very basis for asking the writ of mandamus, never raised any grievance against the decision of the Board for non-inclusion of the nominee of Chairman, UGC as Member of the Search Committee; rather his sole plea was regarding comparative merit viz-a-viz 07 (seven) shortlisted candidates. It transpires that only after 09.07.2020, petitioner became wiser; borrowed the plea of non-inclusion of the nominee of Chairman, UGC in the impugned decision dated 19.02.2020 without realizing that this was merely a first step for nomination of the Members of Search Committee, which subsequently merged with the Gazette Notification issued by the State Government on 07.04.2020 and that is not even under challenge till date.

(14) Also necessary to mention here that in para Nos.15 & 21 of the writ petition, it has been averred by the petitioner that one of the shortlisted candidates, namely, Dr. Asok Kumar Paul was not eligible, yet he has been called for interview and both these paras being material are extracted as under :-

“15. That after applying for the said post by the petitioner and after the short-listing process carried out by Search Committee, the petitioner has now come to know that the Search Committee has scheduled the interview/interaction session for the purpose of appointment to the post of Vice Chancellor on 17.07.2020. It has come to the knowledge of the petitioner that the Search Committee has called only 7 applicants for the interview and other 21 applicants have been ignored without there being any justified reason. Even with regard to the rejection of the application of the applicants no information has been given by the search committee. The 7 applicants who have been issued the interview letters are far junior than the petitioner and the petitioner has far better qualifications and experience than those candidates and he is most suitable amongst the applicants who applied for the post of Vice Chancellor. Further one of the applicants namely Ashok Kumar Paul who has been called for interview is not even eligible as on the date of submitting of the application and he was not having the experience of 10 years as professor on the date of submission of application.

21. Because further it is pertinent to mention here that in the panel of seven candidates, one of the candidates namely Ashok Kumar Paul was not even eligible to apply for the post as on the date of submission of application. The said candidate was not only shown as eligible candidate in the shortlisted list, but his name has been included in the panel by ignoring the name of the petitioner. This shows the illegal and biased action of the respondent department, which is not sustainable in the eyes of law.”

Even submissions to the above effect were also made on behalf of the petitioner at the time of issuing notice of motion as well as granting interim stay on 15.07.2020 and which read as under:-

“It is, accordingly, submitted that the petitioner who was among 28 persons shortlisted, but has not been called for

interaction which has been restricted to 7 persons for 17.07.2020, though he had been called for earlier interaction in the year 2015. One of the person so called allegedly does not fulfill the criteria of 10 years experience as Professor in a University, as per Clause 7.3 (i) of the UGC Regulations.”

State of Punjab in their reply specifically denied the above averments and faced with the precarious situation, petitioner in his replication has taken a u-turn on the premise that he came to know about the above factual position regarding short-listing the name of Dr. Ashok Kumar Paul from his own sources and due to that reason, the narration were made in the writ petition.

Be that as it may, it is a matter of fact that averments of the petitioner qua short-listing the name of Dr. Ashok Kumar Paul were factually incorrect. Still further, as noticed above, an incorrect contention was raised at the instance of petitioner on 15.07.2020 to the effect that he was amongst the 28 short-listed candidates; rather as a matter of fact, his name was never short-listed. As already discussed, there were total 28 applicants for the post in question; after scrutiny, 24 were found eligible and out of them, only 07 have been short-listed for personal interaction and petitioner stands nowhere. Thus, on both these counts, petitioner tried to mislead the Court just to keep the selection process on tenterhook by all means.

(15) It is noteworthy that as per sub-section 5 of Section 10 (*ibid*), Vice-Chancellor is “principal executive and academic officer of the University”, thus, the post in question is not merely a source of employment to earn the livelihood; rather to be taken as a role model. Vice-Chancellor is virtually the *de facto* Head of the University, where future citizens are prepared for the betterment of the society, therefore, petitioner ought to have exhibited the responsible behavior instead of making the unfounded allegations and that

too, supported by way of an affidavit, which concededly are not correct, thus, the petitioner has not approached this Court with clean hands.

(16) Concededly, petitioner participated in the selection process as his bio-data was duly evaluated along with other applicants on 26.06.2020, but his name did not figure amongst the 07 shortlisted candidates by the Search Committee. Consequently, all 07 candidates were called for personal interaction for 17.07.2020, but none of them has been impleaded as party respondents in the present writ petition and in their absence, petitioner is asking to set aside the selection process as well as decision of the Board dated 19.02.2020 for constitution of the Search Committee after a period of approximately five months. Thus, in the opinion of this Court, as on today, petitioner is only a bystander and by no stretch of imagination, he could be termed as an aggrieved person for invoking the jurisdiction of this Court.

(17) In view of the facts and circumstances, discussed hereinabove, the irresistible conclusions would be as under:-

- (i) *Petitioner participated in the selection process without raising any grievance, but when his name did not figure amongst the 07 shortlisted candidates on 26.06.2020, then he filed the present writ petition as a somersault;*
- (ii) *Petitioner has challenged the decision dated 19.02.2020 taken by the Board, but it has not been impleaded as party respondent to the writ petition;*
- (iii) *Notification dated 07.04.2020, issued by the Govt. of Punjab, constituting the Search Committee, is not under challenge by the petitioner till date;*
- (iv) *None of the 07 (seven) shortlisted candidates has been impleaded as party respondents;*
- (v) *Above all, petitioner made incorrect assertions in para Nos.15 & 21 of the writ petition, which were duly supported by way of his affidavit dated 14.07.2020 regarding short-*

listing of Dr. Ashok Kumar Paul and obtained interim stay on 15.07.2020 against the selection for the post of Vice-Chancellor, resulting into irreparable loss to the University.

(18) In view of the above, petitioner has made himself disentitled from challenging the selection process for the post in question as well as legality and validity of decision dated 19.02.2020 of the Board while invoking the extra ordinary jurisdiction of this Court under Articles 226/227 of the Constitution. As a result thereof, point No.1 is decided in negative and it is held that the writ petition is not maintainable.

Since point No.1 has been decided against the petitioner, therefore, there is no need to examine the point No.2 as the same has become academic in nature.

Accordingly, the writ petition is dismissed.

Needless to say that consequent upon dismissal of the present petition, interim order dated 15.07.2020, passed by the co-ordinate Bench of this Court, comes to an end automatically.

October 16th, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>