

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

PRESENT:

The Hon'ble Mr. Justice Rajarshi Bharadwaj

W.P. A. 6010 of 2020
With
CAN No. 1 of 2020 (Old CAN 4194 of 2020)
With
CAN 2 of 2020

Dr. Md. Iqbal Alam
-Vs -
The State of West Bengal & Ors.

For the Petitioner	: Mr. Samim Ahammed Mr. Arka Maiti
For the State	: Mr. Tapan Kumar Mukherjee Mr. Somnath Naskar
For the Registrar Aliah University	: Mr. Soumya Mazumder Mrs. Era Ghose.
For the University	: Mr. L. K. Gupta Mr. R.N. Chakraborty Mr. Maharooof Ahmed
Heard On	: 23 rd March, 2021
Judgement On	: 05 th October, 2021.

Rajarshi Bharadwaj, J.:

1. It is contended by the learned counsel for the Petitioner that as is evident from the name of candidates selected for the interview, the Petitioner has been found to be eligible for the post of Registrar. The contention of the Respondents is frivolous and hence, the petition is maintainable. The issue here is whether the experience of the private respondent can be called to be equivalent of 8 years of service as a Deputy Registrar and can be appointed as a Registrar of Aliah University.

2. According to the petitioner, the Private respondent was never associated with the University administration. The learned counsel relies on the case of *Vice Chancellor L.N. Mithila University Vs Dayanand Jha* reported in 1986 (3) SCC 7 to draw attention to the point of equivalence which has been drawn solely on the basis of pay. In the said case, the Vice Chancellor by the virtue of his power under section 10(14) of the Bihar State Universities Act had transferred the respondent from the post of Principal of a particular college to the post of Reader of another college. Owing to this, an appeal by special leave was directed against the judgement and order of the Patna High Court quashing the order of the Vice Chancellor. It was held by the High Court while allowing the writ petition that, although the two posts of Principal and Reader were carried on the same scale of pay, it could not be said that the post of a Reader is an equivalent post as that of the principal in a legal sense. Therefore, the appeal had failed and was dismissed by the High Court. It was made clear however, that the University shall be at liberty to transfer the respondent as Principal in any other constituent college.
3. Similarly, the question here is as to what post is equivalent to the post of Deputy Registrar *vis a vis* the Statute of University. Schedule 1 to the Aliah University Statute, 2016, the Secretary, Faculty council and Deputy Registrar, all require the exact same qualification. Since this involves fulfillment of an objective criteria and not a subjective satisfaction of the members of the committee, the contention that the "Expert opinion" of the Selection Committee cannot be interfered by the Hon'ble Court is- liable to be rejected. Even though such findings of the selection committee ought not to be "ordinarily" interfered with, the Hon'ble Supreme Court has interfered with the findings of the selection committee in cases where the essential qualification was not fulfilled.
4. Learned Counsel for the petitioner further submits that such a manner of conduct does not make the selection process transparent because the very fact that no merit list was published, points out to the prevalent illegalities.

As established in *Vijay Kumar Pandey v. Arvind Rai Others*, reported in 2013 (11) SCC 611, the contention that the panel/merit list need not be published is without merit since only one post is involved. In this case, five candidates applied to the vacant post of Headmaster at Howrah Siksha Niketan to the School Service Commission, West Bengal. Kavindra Narayan Roy, one of the candidates found ineligible, questioned the rejection of his candidature in Writ Petition filed before the High Court of Calcutta and obtained an interim order staying publication of the panel. That order continued to remain operative for nearly five years until 2009 when the writ petitioner-Kavindra Narayan Roy withdrew the said petition as he had by that time attained the age of superannuation. The above petition was dismissed by an order holding that “since more than five years had elapsed ever since the selection process was initiated and since no panel had been published by the School Service Commission, it was not possible to direct the Commission to appoint the petitioner Shri Arvind Kumar Rai as Headmaster of the school. The Court further held that during the intervening period of five years several other candidates would have acquired eligibility for consideration against the post of Headmaster of school and that in fairness to all of them, they ought to be given a chance to offer their candidature. The Court further held that as the panel had not been published, the writ petitioner could not claim a recommendation as of right and that discretionary remedy under Article 226 of the Constitution could be exercised only when the Court was satisfied that it was equitable to do so.”

5. In the present case, because the requirement of experience as Deputy Registrar is statutory and the Petitioner fulfills the requirement for the post of Registrar as per 1st part clause a (ii). Since the administrative experience of the petitioner has not been denied by the respondent, the writ petition ought to be allowed. The grounds of challenge by the learned counsel is that the Respondent No. 6 does not have the essential qualification as per the notification dated 07.8.2019 and that the petitioner is a better candidate

and that not publishing the result of the selection process is illegal and unlawful.

6. Learned Counsel appearing for the respondent authorities submits that even though the petitioner held teaching and research positions, he lacked administrative experience and thus lacks the qualifications as per (a) (ii) of Recruitment notifications. Respondent no. 6 has held administrative positions and thus satisfies the qualification requirement in paragraph (a) (ii) of the Recruitment notification. The selection committee consisting of experts having both academic and administrative experience have considered the equivalence aspect from all angles- the nature of administrative experience and pay scale. The matter of equivalence is an administrative decision and the selection committee is not required to record reasons since courts “normally” do not interfere in the absence of a mala-fide intention. The petitioner has erroneously relied on *Vice Chancellor L.N. Mithila University Vs Dayanand Jha* (Supra) since it involves a case of transfer of a principal of college to the post of Reader of another college on the same pay scale. The Supreme Court had held that these posts are not of equal status and responsibility since an employer cannot transfer an employee to any post which reduces his status even at the same pay scale. Issue of equivalence ought to be addressed more from the nature of duties and responsibilities required and if such experience can be equated with the post of Registrar of the University. The concerned Act does not require any mode of publication. Also, the plea of non-publication of the interview results is factually incorrect because the petitioner filed the writ having beforehand information about the selection- which serves the purpose of publication.
7. The petitioner claims eligibility for appointment as per clause (ii) of the Recruitment notification because he possessed 15 years of teaching experience but Petitioner’s candidature does not reveal that he had any administrative experience. The petitioner invites to set aside the decision of the selection committee to appoint Respondent No. 6 as Registrar despite

himself lacking administrative experience and also fails to mention as to what constitutes an equivalent post of Deputy Registrar.

8. All members of the Selection committee were outsiders and the appointment of Respondent No.6 was on a unilateral recommendation of the members of committee by the executive council. Respondent No.6 was also found eligible for positions in two other universities. Since the petitioner admits that both of them were eligible to be considered, the issue here is of the comparative assessment of essential criteria made by the selection committee. The petitioner does not demonstrate any illegality or arbitrariness in the decision of the selection committee since no case of mala-fide or non-transparent decision making has been made out.
9. As established in *B.S. Minhas vs Indian Statistical Institute* reported in AIR (1984) SC 363. the law does not require that the selection committee should record how it assessed the candidates and normally courts do not interfere with the appointment decisions of an expert body carrying out management functions. It was held that in any case, the petitioner was duly and properly considered for selection to the post of Director and he could not possibly make any grievance about violation of a bye-law.
10. In the case of *M.V. Thimmaiah & Ors vs Union Public Service Commission* reported in 2008 (2) SCC 119, the Bombay High Court considered the case of the two candidates who were eliminated by the Selection procedure and held that the procedure adopted by the Selection Committee was not arbitrary or in any way discriminatory. It was further held that if this type of interference is permitted then it would imply that the Tribunals and the High Courts would sit as the Selection Committee or act as an Appellate Authority over the selection. The view taken by the High Court was that it is always within the power of the Selection Committee to record its own assessment about the selection which may be at variance with that of the reporting officer or reviewing officer. It was also a process of selection and the Selection Committee was constituted by the Commission and headed by the member of the Commission. Every appointment has an element of

subjectivity and the court should normally not interfere with such decisions unless there is a mala-fide intention or gross arbitrariness.

11. The Petitioner has relied upon *Akbaruddin Owaisi Vs. State of Andhra Pradesh* reported in 2013 (11) SCC 611 which can be distinguishable, since the former involved the requirement to publish a panel/merit list on the basis of statutory regulations. Here, in the present case there is no such statutory requirement. Also, the petitioner has not demonstrated any prejudice from non-publication of panel/merit list. There was no panel or merit list in this case to begin within the first place.

12. The Statute of the University clearly states:

“3. The MUSAJIL (Registrar)

(i) *“The MUSAJIL (Registrar) “shall” be appointed on the recommendation of the Selection committee under Statute 18”*

13. In the instant case, Respondent No.6 has been appointed on the recommendation of the Selection Committee. Thus, the question of selection committee recommending the appointment of Registrar does not arise as it is within the powers envisaged under the ambit of this statute. A better question and issue at hand is whether Respondent No.6 satisfied the requirements to be appointed to the post of Registrar and whether it was done in a lawful manner i.e., if it did not involve arbitrariness or non-transparent conduct.

14. Chapter III of Aliah University Statute says:

“21. (1) (b) The University may appoint a Registrar having requisite qualification for a period of not more than four years as may be decided by the Majlis i- Muntazimah (Executive Council).

15. The above provision 21 (1) (b) of Chapter 3 of the University Statute states that the University may appoint a Registrar on deputation having the “requisite qualifications” as may be decided by the Executive Council. Thus, it confers upon the Executive council certain discretion as to “what constitutes a requisite qualification.” Since the Executive council is within

its ambit to decide if a candidate has fulfilled “those requisite” qualifications, the appointment of Respondent No.6 as Registrar is within the Executive Council’s power to appoint the most suitable candidate, decide on equivalence of experience thus making the appointment of Respondent No.6 as proper, lawful and non -arbitrary.

16. The issue which arises for consideration is whether the experience of private respondent can at all be called equivalent of 8 years of service as Deputy Registrar. In the instant case, the Respondent No. 6 belonging to the West Bengal Civil Service (and carrying out duties in various senior administrative positions) clearly meets the requirement of the Desirable Qualifications. Thus, the experience of private respondent does constitute as being equivalent of 8 years of service as Deputy Registrar. The Respondent No. 6 clearly satisfies the requirement 27 (2) (a) as per the above-mentioned Statute 10 since he was in fact appointed by the Majlis-Muntaziman (Executive Council) on the recommendation of a selection committee constituted for the said purpose. Moreover, he being an officer of West Bengal Civil Service (Executive) cadre and having post graduate degree (and not below the rank of Deputy Secretary), also satisfies the requirement mentioned under 27 (2) (b) of the above statute, thus clearly establishing, the transparency, credibility and non-arbitrariness of the said appointment.
17. For the foregoing reasons, the writ petition is dismissed.
18. In the circumstances of the case, the parties will bear their own costs.
19. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rajarshi Bharadwaj, J.)