
(2012) 03 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15305 of 2008 and C.W.P. No. 6227 of 2009

Amit Bansal

APPELLANT

Vs

Vaish College of Engineering, Rohtak and others
 Dr.
S.K. Gupta Vs Maharshi Dayanand University

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Citation : (2012) 03 P&H CK 0184

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan J.—The first writ petition of the year 2008 has been filed at the instance of one Amit Bansal seeking for issuance of a writ of quo warranto to quash the promotion of the 3rd respondent, Suresh Kumar Gupta, to the post of Professor by order dated 21.09.2006 as being contrary to the AICTE norms regarding the number of years of experience for being considered to a higher post. The writ petition of the 2009 is at the instance of 3rd respondent S.K. Gupta seeking to quash the enquiry conducted by the respondent-University and the show cause notice issued on 24.03.2009 and also the enquiry report given on 12.03.2009 as being without jurisdiction, illegal and beyond the powers vested with the University. The writ petition filed by the Professor, whose selection is subject of challenge in the writ petition of the year 2008 has impleaded only the University as party in his writ petition. The reference to the expression "petitioner" for these two cases shall be to the petitioner in C.W.P No. 6267 of 2009 since the whole case revolves on the validity of his appointment and the challenge which he has mounted against the proceedings initiated against him questioning his right to office. At the time of institution of the writ petition, the petitioner has been working as a Professor in the Vaish College of Engineering, Rohtak which is an unaided self-financing technical institute. By proceedings of the selection made for the post of Professor in Mathematics, the Selection Committee unanimously recommended the petitioner's name on the basis of his qualification and performance in the interview. The Selection Board consisted of

two University representatives as well, who were the Head of the Department of the Mathematics and Head of the Department of Statistics from the University of Rohtak. The proceedings of the Selection Committee had been approved by the M.D. University on 03.04.2008 and at the time of grant of approval, the University had called for, inter alia, the copy of the joining report and also the verification report of all the qualifications from the Board/University concerned. The approval of the proceeding of the Selection Committee, which was issued by the University as late as in the year 2008 contained also reference to the fact that the approval for appointment would be conveyed after the receipt of the mentioned documents, complete in all respects. It would be, therefore, seen that the University was holding back its approval for the post till the verification of all the qualification requirements. It was during the officiation of the petitioner as a Professor of the College that the writ petition of the year 2008 came to be filed at the instance of an employee of the college contending that the appointment of the petitioner was against the AICTE norms. The employee would refer to the fact that as per the AICTE norms, the qualification and experience for the post of Professor is 5 years experience as Assistant Professor and/or equivalent. According to the person, who has raised an objection to the petitioner's appointment, the petitioner was appointed as an Assistant Professor only on 25.07.2004 and therefore, as on 17.09.2006 at the time when his case was taken up by the Selection Committee for appointment as a Professor, he had not the requisite number of years of experience as Assistant Professor.

2. When this writ petition was filed, the University appears to have made its own enquiries and marked them confidential in the records. The report, which was prepared by the University had the reference of the documents collected by the employee of the college under RTI and they made specific reference to the fact that the petitioner had been appointed in Vaish College of Engineering, Rohtak since 1995 as a Lecturer and the casual leave application from the year 1995 to 2006 had been deliberately destroyed by the petitioner himself vide his order dated 28.01.2008 only to conceal the fact that he had continued as a Lecturer till the year 2004 when he was appointed as an Assistant Professor. The attempt of the college to bolster the case of the petitioner that he had been appointed as an Assistant Professor even on 01.01.2001 was deliberately done only to create a document for experience qualification, which he lacked. The discreet enquiry report collected by the University made also reference to the fact that the college had not granted any proof for payment of salary as Assistant Professor from 01.01.2001 itself but the college had merely fabricated a document to show that the Selection Committee had held its proceedings on 01.01.2001 affording to the petitioner the post of Assistant Professor with no corresponding documents of payment of salary attached to the post. As a matter of fact that the Chairman of the College had himself disowned two of the letters alleged to have been sent on 24.05.2007 and 05.07.2007 showing the petitioner as an Assistant Professor from 01.01.2001.

3. An regards the attempt of the petitioner to make it appear as though that he

held the post of Assistant Professor from 01.01.2001, I would reject as false and artificial and I would not detain myself at length on this aspect, for there are several factors that show that the petitioner could not have officiated as an Assistant Professor from 2001. Even apart from the absence of leave applications and the salary registers relating to the said period, even the members of the Selection Committee including the persons who were nominees from the University would plead selective amnesia to show that they did not remember whether the petitioner had the requisite number of years of experience and whether they had seen any document showing that the petitioner had been appointed as Assistant Professor from the year 2001 itself. Indeed such a contention would be impermissible for the college to make, especially in view of the fact that when the Selection Committee was proposing the name of the petitioner only on 25.07.2004 to the University seeking for its approval. They were not making a reference about any anterior de facto officiation of the petitioner as an Assistant Professor at that time. I would, therefore, find as correct the enquiry report made by the University that the petitioner had been appointed as an Assistant Professor only in 2004 and on the day when the Selection Committee was proposing his name as a Professor on 17.09.2006, the petitioner had not the requisite experience as per the AICTE norms.

4. The issue would, therefore, be whether the absence of such qualification would result in the petitioner being termed as an usurper of public office and the issue would be amenable for being interfered with by an order of Court at the instance of a person, who was not a competitor for the post but merely an employee. The point for consideration would also be whether the University had any role to play and would have a power to reject the recommendation of the college for approval for appointment as a Professor, although he did not have the requisite qualification as per the AICTE norms.

5. The petitioner would contend that the selection proceedings of the petitioner as a Professor had been approved by the University even on 02.04.2008 but strangely enough it was the approval for appointment, which was withheld. Once an approval had been given to the proceedings of the Selection Committee, the appointment was a sine qua non and there is no question of withdrawal of recommendation for said appointment. The petitioner had more than 15 years of teaching experience and had been made Principal of College and working as such, he had no need to obtain any approval from the University in view of the fact that it was self-financing unaided college, as per the categorization made by the Hon''ble Supreme Court in Jassa Singh and Others Vs. State of Haryana, and as subsequently laid down by the Hon''ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, . According to the petitioner, the only requirement was that the selection had to be made by the Selection Committee as per the qualifications laid down by the AICTE. The appointees of private unaided institutes always bore the brunt of lesser salary than what was accorded to Government colleges and therefore, the extent of control by the University on the private colleges as regards the candidates, who were actually

occupying the posts was limited. The petitioner would contend that the University was only an examining body and had no major role to pay as regards qualification requirements. The attempt of the petitioner, therefore, was to contend that the University itself cannot render invalid the appointment of a person as a Professor by the fact that the person did not have a requisite experience and if at all the appointment was not as per the AICTE norms, it would only make the appointment irregular and not illegal. If during the pendency of the writ petition, the petitioner had completed the number of years of experience that issue itself shall be taken into account and the Court would not make an undue intervention to vacate the person from office by acceding to a demand for issuance of a writ of quo warranto as claimed by the petitioner in the writ petition filed in the year 2008.

6. The Learned Counsel would refer to several decisions of the Hon''ble Supreme Court that dealt with the cases of inadequate experiences at the time of appointment being made up during the pendency of proceedings to apply a favourable consideration and not to vacate the person from office. In *Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme Court considered the experience for promotion as a Professor of the concerned speciality. I will not find a reason to apply this decision in a case where I will not accept the contention that the petitioner had been officiating as an Assistant Professor from the year 2001 itself. I have already found that the contention so taken by the petitioner and supported by the college management was by manipulation of records and the petitioner could not have been working as an Assistant Professor before 25.07.2004 when the Selection Committee had recommended the appointment and secured the University approval subsequently on 08.02.2005. A Division Bench of this Court held in *Guran Dass Vs. State of Punjab and others* 2003 (3) SCT 969 while considering the challenge to the reversion made due to shortfall in the experience for a service prior to the regularization where the Court held that the State was not justified in excluding the experience which a person had gained prior to actually being regularized in the particular post. What I have said above as regards Asim Kumar Bose's case applies to this as well, for there is nothing to show that the petitioner has worked as an Assistant Professor from the year 2001. For the same reason the reliance on decision cited by the counsel for the petitioner in *Ashok Kumar, Clerk Vs. State of Haryana* 2003 (3) SCT 276 will require to be rejected because the Court was considering there a case of experience gained by a person on ad hoc basis as relevant when the rule nowhere stated that the experience should be in the regular service alone. On the other hand, actually the AICTE norms clearly stipulates the experience for the post of a Professor as 5 years experience as Assistant Professor. In the face of specific requirement as per the AICTE norms, it shall be impermissible for a person to contend that even ad hoc officiation would be sufficient for consideration for promotion.

7. In at least two decisions, the Court have considered the effect of a person securing the requisite years of experience during the pendency of proceedings.

In *Krishan Kumar Rao Vs. Haryana Warehousing Corporation* 1994 (4) SCT 158, a Single Bench of this Court was considering the effect of matriculation certificate from an institute, which was not recognized by the Government. The Court found that there was no fraud or forgery on the part of the petitioner and a mere non-recognition of a certificate ought not to result in removal from post. The Court was finding that the employer ought to have verified the service for the qualifications and if a person, who had been allowed to continue for over 5 years and allowed him to gain experience, he could not be thrown out of service merely for a non recognition of the certificate by the Government. The Court was holding so by relying on the judgment of the Hon'ble Supreme Court in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, that held that what degrees of Universities cannot give, experience could give and where the appointment consideration was on the basis of requisite experience, the fact that a person had an actual experience would supplant the requirement of educational qualification. The Supreme Court was actually considering the extreme situation of when a hands-on-experience for the post was always relevant and was prepared to dilute the educational qualification requirement before appointment. I do not think that such a situation obtains in this case. In this case we are considering a person that did not actually have the experience, which he was required to possess in terms of the AICTE norms. In *Aijaz Hussain Shah Vs. Director Health Services, Jammu* 1998 (2) SCT 343, a Bench of the Jammu and Kashmir High Court observed that appointments made of persons not possessing the requisite experience should not be lightly interfered with, if the person had gained experience during the pendency of the writ petition. The Court was giving a direction to the authorities to consider the person, who had come before the Court also. At least the Court was not approving of the selection right away already made but was directing consideration of his candidature subsequently. The Court was adopting a humanitarian consideration for the person who was already holding the post.

8. All the decisions cited will not go as far as to say that the petitioner's appointment when the petitioner was not possessing the requisite number of years of experience could be seen to be justified. would also not go as far as to say that the University had no role to play and they had merely to look the other way and not intervene even when specific evidence was brought that the petitioner did not have the requisite experience. AICTE norms ought not to be placed some where in the air or in the vacuum. University that affiliates a college is bound to ensure that the norms prescribed by a Technical Education Council are properly observed so that the standards set by the University for running educational institution are duly complied with. The fact that a college is unaided cannot secure an autonomy to such a college to dilute the requirements of the AICTE as regards the qualification of its teaching staff, both as regards educational qualification and experience. An unaided self-financing college has still to conform to the University directives as regards the approval of appointments so that the persons, who hold various posts have the requisite

qualification that an expert body like AICTE has laid down. The reliance made by the petitioner's counsel that the University has little role to play after the AICTE prescribes the qualifications is neither here nor there. If the University cannot control effectively the college which it affiliates, the petitioner can have no better case by pointing out to AICTE as holding a better position and control. Indeed it is the failure of compliance of AICTE norms, which is taken as a ground by the University for withdrawing the approval granted to the college for the appointment of the petitioner as the Professor. I will not, therefore, reject the contention that the University cannot withdraw the approval for appointment as not tenable. The petitioner's challenge with regard to the same contained through the writ petition in C.W.P. No. 6227 of 2009 ought to fail.

9. That would leave us with the consideration of whether the writ petition for quo warranto could be issued at the instance of a person, who claims that the appointment made of the petitioner was invalid and that the petitioner should be directed to vacate from office. The selection of the petitioner as a Professor was being made on 17.09.2006 and the University approval has come on 03.04.2008. It was only at the stage when the University was yet to grant the approval for the appointment itself that the writ petition came to be filed. I cannot find that there is any issue of laches that could be urged against the person, who has filed the writ petition in C.W.P. No. 15305 of 2008. Learned counsel appearing for the petitioner would refer to the decision of the Hon'ble Supreme Court in *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, in support of his contention that quo warranto cannot be issued. The Supreme Court was considering the case of appointment of a Principal of a private aided school not satisfying the requisite qualification. The Court actually found as a matter of fact that the person was holding the office of the Principal from the year 1981 to 1990 and held that there was nothing to show that he lacked the essential qualification or that he projected that his qualifications were to be there more than what he actually possessed. I have already rejected the contention that the petitioner was holding the post of Assistant Professor from the year 2001. He lacked therefore the qualification at the time when his case was considered for the post of Professor. The decision in *Dr. M.S. Mudhol's* case cannot come to the assistance of the petitioner. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, the Court was considering that before a writ of quo warranto could be issued, the Court must be satisfied that office in question was a public office. The Court was dealing with a case where the Board of experts appointed by University was considering the selection of candidates for the post of Reader in English in the Central College, Bangalore. The Court held that if the expert bodies had taken a decision for the appointment, it shall be unsafe for a Court to make an intervention. The Supreme Court was commenting about the manner of intervention by a High Court treating the issue as one of certiorari. While setting aside the order of the High Court, the Court held that

in dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable

or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

10. In *Satvir Singh Ahlawat Vs. The State of Haryana* 1993 (2) SCT 770, a Division Bench of this Court held while considering the appointment of employee under the Haryana Vidhan Sabha Secretariat Rules that the selection process started from the issuance of the advertisement and if an appointment is challenged on the ground of lack of eligibility and during the pendency of the writ petition, if the appointed person attained eligibility entitling him reappointment to the same post, it would be a futile exercise to issue a writ of quo warranto.

11. We are dealing with the situation where the appointment is to the post of a Professor by a private engineering college. I will not go as far as to say that it is public office and a person that holds an office without authority is an usurper of the office. On the other hand, it must be taken as appointment in a private college, which is governed by contract and if the person cannot hold that office at that time, the Court will go no more than state that he did not have the requisite qualification and if there is a candidate who is better qualified and who is required to be considered, he should have displaced him by reference to AICTE norms. In this case the challenge comes not at the instance of a person, who was vying for the post with the petitioner. He was trying to contend that the appointment made of a particular person was invalid. I have already held while deciding the writ petition filed at the instance of the petitioner that his challenge to the withdrawal of approval for appointment cannot survive favourable consideration. That ought to be taken as sufficient and I will find no reason to issue a writ of quo warranto as sought for in the writ petition.

12. In the ultimate analysis, the writ petition filed by the petitioner in C.W.P. No. 6227 of 2009 challenging the action of the University ought to fail. The writ petition filed in C.W.P. No. 15305 of 2008 filed by the petitioner ought also to fail

for a different reason that holder of office is not a holder of public office, which would require to be annulled by issuance of a writ in the manner sought for. The college will be at liberty to seek for a fresh consideration in the light of the number of years of experience that the petitioner has secured during the pendency of proceedings or by competitive selection method, if there is any other candidate, who is fit for consideration. The college will prepare a panel and make a selection and seek for approval of the University in accordance with law. With these observations, both the writ petitions are disposed of.