

(2017) 01 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : 1667 of 2014

Ankush Jasrotia

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 28-01-2017

Acts Referred:

Citation : (2017) 01 J&K CK 0005

Hon'ble Judges : Dhiraj Singh Thakur

Bench : SINGLE BENCH

Final Decision : Dismissed

Judgement

1. The petitioner seeks the issuance of a writ of certiorari for quashing the appointment of private respondent Nos. 3 and 4 as Registrars in the discipline of Conservative Dentistry in Indira Gandhi Govt. Dental College, Jammu on two grounds; firstly, that the private respondent No. 3 was not eligible in terms of the advertisement notification dated 19.6.2014 for the engagement of Registrar, and secondly, that the four marks awarded to the private respondent No. 3 on account of his publications in the International Journal of Clinical Cases and Investigations (for short to be referred to as ""IJCCI"")) could not have been so awarded and that in case the said four marks were reduced from his overall merit, the petitioner herein would become more meritorious than the said private respondent No. 3.
2. It is pertinent to mention here that whereas, the petitioner had secured 73 points, private respondent No. 3 had secured 73.5 points.
3. At the very outset, learned counsel for the petitioner gave up the challenge to the selection and engagement of private respondent No. 4 as also gave up the challenge to the eligibility of private respondent No. 3.

4. The only issue that requires to be determined in the present petition is as to whether private respondent No. 3 could have been granted four

marks on account of the material published in the IJCCI.

5. Learned counsel for the petitioner challenged the grant of four marks to private respondent No. 3 on three grounds, firstly, that IJCCI was not a

recognised journal and, therefore, anything published in the said journal could not have been taken into consideration for purposes of allotting

marks to the said respondent; secondly, that unless and until the published material was also published in -Pub Med-, the said published material

had no sanctity and, therefore, ought to have been invisible to the members constituting the selection committee and thirdly, that there was a total

non-application of mind on behalf of the selection committee inasmuch as the process of evaluating the published material was left to a computer

programmer based upon whose decision, the committee had allotted four marks to the said private respondent No. 3.

Per contra, learned counsel for private respondent No. 3 stated that -Pub Med- was only a search engine and was not an independent journal

where material could be published directly.

6. In addition to this, it was stated that IJCCI was duly recognised and was awarded an ISSN registration No. i.e., ISSN 2229-7669 by the

NSL, which is the National Centre in India of ISSN International Centre, Paris. It was also stated that allotment of an ISSN by this international

organization itself suggested the good standard of the journal in which the material was published by the private respondent No. 3.

7. In support of his argument, reliance was placed upon Annexures R-2 and R-3 to the supplementary affidavit filed by the said respondent.

8. Heard learned counsel for the parties.

9. A perusal of the advertisement notice issued by the official respondents and, in particular, Clause 7 would show that the publication ought to

have been in a standard medical journal for which two marks were earmarked for each publication up to a maximum of ten.

10. The next issue that arises for consideration is whether the journal IJCCI was a standard medical journal or not.

11. It is not disputed that IJCCI is a journal, which has been granted an International Standard Serial Number (ISSN). ISSN is nothing but a

worldwide identification Code used by libraries, publishers, newspapers, newsletters and provides for instant publicity and recognition and

automatic inclusion in the international directory database. The fact that journals published in IJCCI are locatable through the search engine -Pub

Med- is also not disputed. If that be so, it cannot be said that IJCCI was not a recognised journal and, therefore, only because the publications of

private respondent No. 3 was not traceable through the search engine -Pub Med- would not be a reason good enough to hold that the publication

carried no weight or value especially so when publication in IJCCI has not specifically been disputed by the petitioner.

12. The next argument that process of evaluation of the published material was left to a computer programmer and, therefore, any decision based

upon the process conducted by the said computer programmer would be non est in the eyes of law is also an argument, which needs to be

rejected inasmuch as it was not the process of evaluation of the published material that was left to the computer programmer but just the process of

verification of the actual publication of the material in the journal.

In this regard, it would be apt to reproduce the relevant portion of the recommendations of the selection committee, which reads as under:

Further the publications in journals enclosed by some of the applicants with the application forms were verified on line by Sh. Anish Chib,

computer programmer of this college and were found published in standard journals...

13. From a perusal of the above, it would be clear that what was verified was the factum of actual publication and not evaluation of the published

material by the committee. If the committee consisting of experts were of the opinion that the material published was relevant and was published in

a standard journal and did require allotment of four marks then the decision of the experts cannot be questioned especially in a case where the

publications of the published material has not itself been disputed by the petitioner.

14. The extent of judicial review in involving recommendations of expert members, who evaluate qualifications, experience and published work, is

no longer res integra.

15. In *University of Mysore v. C. D. Govinda Rao*, AIR 1965 SC 491, a

Constitution Bench of the Apex Court held that the courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts, who had constituted the Selection Board and that it would be safe and wise for the courts to leave the decisions of academic matters to the experts who have the relevant expertise and knowledge in the relevant field.

16. In *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27 : (AIR 1984

SC 1543), the court observed in paragraph 29 as under :

29....As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise,

prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich

experience of actual day-to-day working of educational institutions and the departments controlling them.

17. In *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan*, (1990) 1 SCC 305 : (AIR 1990 SC 434) the Apex Court reiterated the following

principles by holding as under :

12...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to

scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted

Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be

interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating

the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the

Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all

the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative

merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.

18. In *J. and K. State Board of Education v. Feyaz Ahmed Malik*, 2000(2) R.C.R

(Civil) 212 : (2000) 3 SCC 59 : AIR 2000 SC 1039, the court

emphasized that the decision of the expert bodies should be given due weight-age by courts inasmuch as the same consisted of persons coming

from different walks of life having wide experience in the field of education and entrusted with the duty of maintaining higher standards of education.

19. This view was subsequently followed in Dental Council of India v. Subharti K.K.B. Charitable Trust, 2001(2) S.C.T. 1110 : (2001) 5 SCC

486 : (AIR 2001 SC 2151), Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, 2009(3) S.C.T. 326 : (2008) 9 SCC 284 : 2008 Lab IC

3608 (SC) and Basavaiah (Dr.) v. Dr. H.L. Ramesh and others, 2010(3) S.C.T. 680 : (2010) 8 SCC 372 : (2010 AIR SCW 5907).

20. In view of the settled principles of law as noticed above, it would be difficult for this court to hold that the material published in the Journal

IJCCI required no weight-age to be given inasmuch as this court cannot go against the decision of the selection-committee especially in the

absence of any allegation of mala fides against the members constituting the committee.

21. Be that as it may, this petition is found to be without any merit and is accordingly dismissed along with connected application. Interim direction

dated 1.7.2014 shall stand vacated.