

(2002) 03 KL CK 0064
In the High Court Of Kerala
Case No : O.P. No. 7338 of 2000

Dr. Abraham Kuruvilla

APPELLANT

Vs

Sree Chitra Tirunal Institute for Medical Science and
Technology and Others

RESPONDENT

Date of Decision : 26-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 03 KL CK 0064

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : M. Rajasekharan Nair, for the Appellant; T.R. Ravi, A.G. Arun and A.N. Kuttan for Respondent No. 1 and B. Ramachandran, Addl. C.G.S.C. for Respondent No. 12, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The Petitioner in this Original Petition challenges his non-inclusion in Ext. P-9 list of Assistant Professors/Scientists found eligible for placement in the next higher grade of Associate Professor etc. under the Flexible Complementing Promotion Scheme. The brief facts necessary for the disposal of the case are the following.

2. The Petitioner is an Associate Professor in the Department of Neurology of Sree Chitra Tirunal Institute for Medical Sciences and Technology (hereinafter referred to as the Institute). As per the Scheme governing" promotion by upgradation under the Flexible Complementing Promotion Scheme, the Petitioner on completion of four years service is eligible to be placed in the grade of Associate Professor. From Ext. P-3 order, it is clear that all Assistant Professors found eligible under the Scheme are entitled to be placed in the grade of Associate Professor. The Petitioner joined the Institute in June, 1990. According to the Petitioner, he was the most qualified among the Assistant Professors and his case for grant of advance increments was even considered by the governing body, but the same was declined only for the reason that there is no rule

enabling such payment.

3. On 4th January 1999, the Institute invited applications from the academic staff who have four years service as on 31st December 1-998 to consider them for promotion under the F.C.P. Scheme. The Petitioner also submitted his application with requisite testimonials and self-assessment in the prescribed form. The Petitioner was interviewed by the Senior Staff Selection Committee consisting of six persons on 28th September 1999. The Selection Committee made its recommendations and the Governing Body which met on 18th December 1999 approved the recommendations of the Selection Committee and the list of candidates selected was published as per Ext. P-9. The Petitioner who is the Assistant Professor in the Neurology Department was not selected. The Petitioner challenges his non-selection on various grounds. He alleges bias from the part of the third Respondent. He also alleges bias against the Director of the Institute who is the tenth Respondent. The fourth Respondent who was included in the Committee as outside expert was a close friend of the third Respondent, according to the Petitioner. Therefore, it is submitted by him that the said trio influenced the Selection Committee and ensured his non-selection though he is a highly qualified person. The Petitioner relies on Exts. P-4, P-5 and P-6 communications from the third Respondent to support his allegations of bias against the said Respondent. Ext. P-5 is a Note from the third Respondent to the Petitioner which reads as follows:

I have no time to read this. Instead of putting in the waste paper basket, put back to your mail box.

Ext. P-4 is a communication which dissuades the Petitioner from proceeding with the research programme. The Petitioner wrote an article to the Editor of *Epilepsia*. Dr. Timothy Pedley, criticising an article written in it by the third Respondent. The Editor of the said publication referred the Petitioner's comments to the author of the article, the third Respondent. Thereupon, the third Respondent issued Ext. P-6 communication calling upon the Petitioner to inform whether he has sent the material to the journal after getting previous approval from the institution. Ext. P-7 is a communication issued by the 10th Respondent/Director to the Petitioner on the very same subject matter calling upon him to inform whether he sent the material to the journal for publication after obtaining permission from the Head of his Department. The Petitioner placed reliance on Ext. P-10 series Confidential Reports and contends that the third Respondent was harboring ill will towards him. The Petitioner also places reliance on Exts. P-11, P-12, P-13, P-14 and P-15 to contend that the third Respondent was not on good terms with the Petitioner and therefore biased against him. From the materials produced, it would appear prima facie that there is a real likelihood of bias against the Petitioner from the part of the third Respondent.

4. Respondents 1 and 3 have filed counter-affidavits denying these allegations. The Petitioner has filed a reply affidavit to the counter-affidavit filed by the third

Respondent reiterating his contentions. He has also produced several documents along with the reply affidavit and also along with the additional affidavits in support of his contentions.

5. I called for the records of the case. The proceedings of the Senior Staff Selection Committee which met on 28th September 1999 and assessed the claim of the Petitioner was also made available. The decision of the Committee reads as follows:

Not recommended for the following reasons:

1. No original research contribution.
2. Poor performance in the interview.
3. Clinical competence and technical knowledge did not measure upto expected standards.

It is signed by five members of the Selection Committee including Respondents 3, 4 and 10. Even though I perused the entire records produced, I could not find the basis on which the Selection Committee arrived at the above quoted decision. Only the conclusions are given without any reference to any materials. Normally, in such selections, there will be norms or regulations providing for the maximum marks and also the minimum marks to be scored. Further, the marks allotted will be divided into various items. There may be a minimum marks fixed to be scored under each item and there may be further stipulations as to how the marks for each item is computed with reference to the relevant parameters. But, in the case at hand, it is seen that the mere conclusions alone are given and there is no record or minutes or anything else to suggest how the Committee arrived at the above quoted conclusions. The Petitioner in the Original Petition thought that he might have been superseded on the basis of the adverse remarks in the Confidential Reports. But the decision quoted above has nothing to do with such adverse Confidential Reports.

6. Against his non-inclusion in Ext. P-9, the Petitioner has filed a representation before the Governing Body on 21st February 2000. In view of the pendency of the Original Petition, the Governing Body has not considered the same. The Selection Committee only makes the recommendation. It is for the Governing Body to take the decision. By taking Ext. P-9 decision, the Governing Body followed the recommendations of the Selection Committee. The Petitioner filed a detailed representation requesting reconsideration of his case.

7. Both sides have cited several decisions in support of their respective contentions. Having regard to the course I am adopting in this case, I am not referring to any of those decisions. This Court under Article 226 of the Constitution of India, cannot substitute the decision of the Selection Committee and recommend the Petitioner for promotion. This Court is concerned only with the decision making process. It is desirable that in the case of selection of this nature done by the first Respondent-Institute, which is an Institute of national

importance, things are done transparently according to well-settled norms fixed in advance. The first Respondent cannot adopt the attitude, "Show me the man, I will tell the law". Having regard to the course adopted by the Committee as evident from the minutes, arbitrary action cannot be ruled out. The decision of the Committee may be honest or dishonest may be right, or may be wrong. But the procedure followed makes it impossible for any other body or court to review the decision taken by them.

8. Since the matter is pending before the competent authority, I am not expressing any final opinion in this case. I direct the Governing Body of the first Respondent-Institute to consider the representation of the Petitioner against his non-selection. This the Governing Body shall do in accordance with law after giving an opportunity of being heard to the Petitioner. Respondents 3 and 10 may not participate in the Governing Body, if they are members of the same, while this matter is considered by the said forum. Having regard to the materials produced in this case and to avoid the charge of bias and to uphold the purity of the decision, I am making this order that they may not participate in the Committee considering the representation of the Petitioner. In case the Governing Body is not able to take a decision objectively on the suitability of the Petitioner for upgradation on the basis of the minutes and other records of the Selection Committee, the Governing Body will be free to take appropriate further decision in the matter including the formation of a fresh Selection Committee and re-assessment of the Petitioner in accordance with law afresh.

9. The Governing Body shall take the decision as directed above within, three months from the date of receipt of a copy of this Judgment.