

(1976) 01 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 594 of 1974

Dr. J.P. Kulshreshtha and Others

APPELLANT

Vs

Chancellor, Allahabad University, Lucknow and Others

RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Allahabad University Act, 1921 — Section 32(2)
Allahabad University Ordinances — Ordinance 9(2)

Citation : AIR 1976 All 376

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : S.P. Gupta, Triloki Nath and S.C. Khare, for the Appellant; S.D. Agarwal, Shanti Bhushan and Jagdish Swarup and Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

K.N. Singh, J.—Dr. J. P. Kulshreshtha and three other Lecturers in the English Department of the University of Allahabad have invoked the jurisdiction of this Court by means of this petition under Article 226 of the Constitution challenging the selection and appointment of Dr. Mrs. Hemlata Joshi and five others to the posts of Reader in the English Department of the University.

2. In October 1970, six posts of Readers in the English Department of the Allahabad University were advertised. The petitioners, as well as respondents Nos. 5 to 10, Dr. Mrs. Hemlata Joshi, H. S. Saxena, Dr. R. R. Dutt, I. N. Agarwal, A. K. Bhattacharya and Dr. L. M. Upa-dhya, who were also Lecturers in the University in English Department, applied for the same. A number of other candidates from outside also applied for the same in the prescribed form. A Selection Committee was constituted in accordance with the provisions of the Allahabad University Act, 1921, and the Statutes and Ordinances framed thereunder. The Selection Committee decided to interview the candidates who had applied for appointment to the post of Reader. On 1st March, 1973, the

Selection Committee interviewed candidates at Allahabad. The petitioners and other candidates including respondents Nos. 5 to 10 were called for interview. Petitioner No. 2 Skand Gupt, did not appear before the Selection Committee as in his opinion the interview was without any authority of law. Dr. A. K. Bhattacharya, respondent No. 9, had also indicated his disinclination to appear for the interview but later he appeared before the Selection Committee for Viva Voce test. The Selection Committee recommended Dr. Mrs. Hemlata Joshi, Servasri H. S. Saxena, R. R. Dutt, I, N. Agarwal, A. K. Bhattacharya and L. M. Upadhyaya, respondents Nos 5 to 10, for appointment to the six posts of Readers. Petitioner No. 2, Skand Gupt, made a representation to the Executive Council challenging the legality of the selection. The Executive Council accepted the recommendations of the Selection Committee at its meeting held on 17th March, 1973. Consequently respondents Nos. 5 to 10 were appointed Readers. Thereafter the petitioners approached the Chancellor u/s 42 of the Allahabad University Act (hereinafter referred to as the Act) and submitted their representation against the appointment of respondents Nos. 5 to 10. The Chancellor by his order dated 22nd November, 1973, which was communicated to the petitioners on 15th December, 1973, upheld the selection and appointment of the said respondents and rejected the petitioners representation. Aggrieved, the petitioners approached this Court by means of this petition challenging the validity of the selection and appointment of the respondents. They have claimed relief for quashing the order of the Chancellor dated 22nd November, 1973, and the resolution of the Executive Council dated 17th March, 1973, appointing the respondents as Readers and the recommendations of the Selection Committee. They have further claimed a relief of mandamus directing the Executive Council and the University to make appointments in accordance with law.

3. Learned Counsel for the petitioners contended that the selection and appointment of Dr. Mrs. Hemlata Joshi, H. S. Saxena and I. N. Agarwal, respondents Nos. 5, 6 and 8 respectively was illegal as they did not fulfil the minimum essential qualifications prescribed for the post of Reader. It is asserted that the aforesaid respondents did not possess first or high second class Master's degree in the subject of English and as such they were not eligible for appointment to the post of Reader; the Selection Committee committed patent error of law in selecting the aforesaid respondents and the Executive Council exceeded its jurisdiction in appointing the aforesaid respondents.

4. Section 29 of the Act lays down that teachers of the University shall be appointed by the Executive Council on the recommendations of the Selection Committee, the powers and functions of the Selection Committee are prescribed by the Statutes framed under Sections 30 and 31 of the Act. Statutes 125 to 145 have been framed regulating the selection and appointment of teachers. In pursuance of Section 32 (2) (f) of the Act, Ordinances have been framed prescribing qualifications for the appointment of teachers in the University. Ordinance 9 (2) prescribes qualifications for appointment of teachers in the

Faculties of Arts, Science, Commerce and Law. The relevant portion of Ordinance 9 which prescribes qualifications for appointment of Readers is in the following terms:--

"9. The following qualifications are prescribed for the appointment of teachers in the Faculties of Arts, Science, Commerce and Law:

(2) For Readers:

(i) First or High Second Class Master's degree in the subject concerned and good academic record.

(ii) Established reputation for sound scholarship and be competent to teach upto Master's degree and guide research.

(iii) A doctor's degree, or equivalent published work.

(iv) At least 5 years" teaching experience of the subject concerned in postgraduate classes in a University recognised by law, or research experience in a Research Institute recognised by the University or the State, or the Central Government.

Provided that the Selection Committee may relax the qualifications contained in Clause (iii) for the post of Readers in the case of candidates whose total length of service as teachers in this University is not less than the period required to reach the maximum of the Lecturer's grade and who shall have established a reputation as teachers.

Provided further that in the case of women teachers of this (i.e., Allahabad) University, in place of qualification No. (iv) requiring 5 years" teaching experience in post-graduate classes a minimum of 5 years" teaching experience of the subject concerned in the graduate classes in this University may also be considered adequate for the post of Readers."

The above Ordinance requires that a person who is candidate for appointment to the post of Reader must possess a Master's degree either in first class or in high second class in the subject with a good academic record, he must have an established reputation for sound scholarship. He is further required to have a doctor's degree or equivalent published work. The candidate must have five years teaching experience of post-graduate classes. The first proviso to the Ordinance confers power on the Selection Committee to relax qualification No. 3, namely the requirement of having a doctor's degree or equivalent published work in respect of those candidates whose total length of service as teacher in the University may not be less than the period required to reach the maximum of the Lecturer's grade and who may have established reputation as teachers. Similarly, the second proviso carves out an exception in the case of women teachers of the University. In the case of lady candidate she need not possess five years" teaching experience in postgraduate classes but she must have five years" teaching experience of the subject concerned in graduate classes in the

University of Allahabad. The provisions contained in the Ordinance thus make it clear that the Qualifications prescribed under Sub-clauses (i) and (ii) are essential qualifications which cannot be relaxed by the Selection Committee or by any authority of the University. A candidate for appointment to the post of Reader is essentially required to possess a Master's Degree in first or high second class and a good academic record. In addition to that, the candidate must have reputation of sound scholarship and be competent to teach upto Master's Degree and guide Research. These are two essential qualifications which cannot be dispensed with. In the absence of any of these two qualifications a candidate is not eligible for selection or appointment to the post of Reader and the Selection Committee has no jurisdiction to select a person for appointment who may not be fulfilling any of these two essential qualifications.

5. The petitioners have asserted that none of the three respondents, namely, Dr. Mrs. Hemlata Joshi, respondent No. 5, H. S. Saxena, respondent No. 6 and I. N. Agarwal, respondent No. 8, fulfilled the essential qualifications inasmuch as none of them possessed Master's degree either in first class or in high second class in English. The percentage of marks obtained by them has been set out in paragraph 32 of the petition which is not disputed by the respondents. The three respondents had obtained second class Master's degree in English; their percentage of marks were as under:

1. Dr. Mrs. Hemlata Joshi 52.2 per cent. 2. Sri H. S. Saxena 49.3 per cent. 3. Sri I. N. Agarwal 53.8 per cent.

None of these three respondents possessed a Master's degree in first class, instead all of them have got Master's degree in English in Second Division. The question arises as to whether these respondents fulfilled the qualifications as laid down by Ordinance 9 (2) (i). The petitioners contended that high second class Master's degree requires high percentage of marks and it does not mean a mere second class degree. On the other hand the respondents urged that there is nothing like high second class Master's degree, it means a second class degree irrespective of percentage of marks. It is admitted between the parties that all the three respondents had obtained Master's degree from the University of Allahabad. It is further admitted that the University of Allahabad awards first class Master's degree to those candidates who obtain 60 per cent, or above marks in their examination for the said degree. It is further admitted that those candidates who obtain 48 to 59 per cent marks are awarded only second class Master's degree. Thus a candidate who obtains mere 48 per cent or 49 per cent is awarded second class. Similarly those who obtain 58 or 59 per cent, marks are also awarded second class. The framers of Ordinance 9 (2) knew that there was no categorisation of a high second class Master's degree and yet they deliberately laid down high second class degree as an essential qualification. The use of the expression "high" which qualifies the second class degree is significant. It is difficult to accept the contention that this expression has no meaning or significance or that it merely contemplates a bare second class

degree. If that were so, there was no necessity to use the expression "high". The Ordinances have been framed by a body which consists of eminent persons and academicians who are well acquainted with the teaching requirements of the University. While prescribing qualifications for the post of Readers they used this expression with some purpose and meaning.

6. The expression "high second class Master's degree" has not been defined either in the Act, Statutes or Ordinances. In the absence of any definition it is permissible to consider the meaning of the expression "high" with the aid of meaning given to this expression in the eminent dictionaries. In Shorter Oxford English Dictionary the word "high" when used as adjective has been defined as "of considerable upward extent or magnitude, lying upwards, having a specified upward extent, denoting upper part". In Webster's New International Dictionary the meaning given to the word "high" when used as adjective is in the following words:

"Reaching or passing upward considerably from any given point elevated or advanced in character or quality, whether moral or intellectual possessing a characteristic quality in a supreme or superior degree....."

The aforesaid meanings given to the expression "high" indicate that the expression "high" connotes a characteristic quality of superior degree. It contemplates a Master's degree in second class of superior standard. It must be well above the fixed norms. The use of the expression "high" before the second class Master's degree clearly denotes that the second class degree must be of a higher standard. The term "high" in Ordinance 9 (2) (i) has been used in relation to qualification which signifies an upward standard. The term "high second class Master's degree" refers to percentage of marks obtained by a candidate. The qualifying term "high" occurring before the expression "second class" refers to a definite percentage of marks. The term "high" when used in relation to qualification, signifies upward standard. In my opinion the expression "high" has been used in the Ordinance with a certain meaning and purpose.

7. The question then arises what is the percentage of marks contemplated by the high second class Master's degree. As already noted in the University of Allahabad second class degree is awarded to those candidates who obtain 48 to 59 per cent, marks. The difference between 48% and 60% is 12. If the total range of second class marks is divided in two parts it would appear that those candidates who obtain 54 per cent, marks do not fall in the category of high second class Master's degree. On the other hand, those who obtain more than 54 per cent, of marks can be characterised as having high second class Master's degree. The term "high second class degree" means a quantifiable range of second class marks and in order to obtain a quantified meaning it would be reasonable to divide the range into two parts and then to determine the upper slab as high second class. This will be in consonance with the purpose sought to be achieved by the Ordinance in question. A Reader is required to teach post-graduate classes, he occupies a high and responsible office in the academic world

of the University. The Ordinance requires that such a person must possess preferably a first class Master's degree in the subject failing which he must possess a high second class Master's degree. The emphasis is towards a higher percentage of marks in Master's degree. The purpose behind this requirement is to employ those persons who may have better academic career and those who may have obtained higher percentage of marks in Master's degree. This was necessary to achieve efficiency in teaching. In the prevailing system of examination, academic achievement of an examinee is measured by the percentage of marks and division is awarded to the successful candidates on the basis of percentage of marks. There can be no dispute that those who obtain higher percentage of marks are considered better in academic qualifications and talent than those who acquire lesser percentage of marks. The criterion for classification is the percentage of marks. In this background the Ordinance required that those who may have obtained higher percentage of marks should be eligible for appointment to the post of Header. The framers of the Ordinance never intended that a candidate who obtained a mere second class Master's degree having 48 or 50 per cent, of marks should be eligible for appointment to the post of Reader. No doubt those having second class Master's degree are eligible, but that must be of high order namely the percentage of marks must be high and superior. I have already observed that the expression "high second class" means that the candidate must have obtained more than 54 per cent, marks in the Master's degree examination. If the respondent's contention is accepted the purpose and object of prescribing high second class Master's degree would be defeated. The interpretation given by me to the expression "high second class Master's degree" fully carries out the purpose and object of Ordinance 9 (2) prescribing qualifications. I am therefore of the opinion that a candidate obtaining 54% marks or less does not fulfil the essential qualifications of "high second class Master's degree" as required by Ordinance 9 (2).

8. In the instant case, Dr. Mrs. Hemlata Joshi had obtained 52.2 per cent of marks in her M. A. examination. Similarly, H. S. Saxena obtained 49.3 per cent, while I. N. Agarwal obtained 53.8 per cent, of marks. None of these three respondents fulfilled the essential qualification of high second class Master's degree. The Selection Committee selected these respondents in violation of Ordinance 9 (2) (i). It appears that the Selection Committee did not attach any significance to the words used in the Ordinance prescribing qualifications. The Selection Committee while making selection was bound to act in accordance with the Ordinance, it could select only those who possessed the requisite qualifications. It had no power to dispense with any essential qualification or to relax them except in so far as it was permitted to do so under the two proviso to the Ordinance. As already noted the qualifications prescribed in Sub-clauses (iii) and (iv) could be relaxed by the Selection Committee but so far as the qualifications prescribed in Clauses (i) and (ii) are concerned, the Selection Committee had no jurisdiction to relax the same. It was bound to consider and select only those persons who fulfilled the essential qualifications prescribed

therein. It had no jurisdiction to ignore the essential qualifications or to select persons not equipped with the qualifications prescribed in the said Ordinance, In the instant case the Selection Committee exceeded its jurisdiction in selecting persons who did not possess high second class Master's degree in English subject. The Executive Council accepted the recommendation of the Selection Committee and appointed the aforesaid respondents. The appointments were made on the basis of the recommendations made by the Selection Committee. Therefore the order of appointment made by the Executive Council is also vitiated. These questions were raised before the Chancellor also but even he failed to appreciate these questions and the requirements of Ordinance 9 (2) (i) were not appreciated. For these reasons I am of the opinion that the selection, and appointment of respondents Dr. Mrs. Hemlata Joshi, H. S. Saxena and I. N. Agarwal was made in contravention of Ordinance 9 (2) (i); as such it is rendered illegal.

9. Learned counsel for the respondents urged that the Selection Committee was an expert body, it was well equipped to judge as to whether the aforesaid respondents possessed the requisite qualifications for appointment to the post of Reader in English. This Court should not interfere with their selection and it should not substitute its opinion for that of the Selection Committee. Reliance was placed on *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, .

10. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, the Supreme Court" observed that while considering the recommendations made by the Selection Committee or appointments made on the basis of the said recommendations the courts should be slow to interfere with the opinions expressed by experts. The Supreme Court further struck a note of caution that normally it would be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be. In view of these observations it is true that this Court cannot substitute its opinion for the opinion expressed by the experts in academic matters. But if a grievance is made that the Selection Committee consisting of experts did not act in accordance with any statutory or binding rule or if they contravened Ordinance or statutory rule in making the selection, the Court has jurisdiction to interfere with their decisions or recommendations. The Supreme Court itself observed in the aforesaid case as follows:

"What the High Court should have considered is whether the appointments 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."

Applying the principle laid down by the Supreme Court it is clear that this Court has jurisdiction to interfere if the Chancellor or the Selection Committee or the

Executive Council of the University violated any statutory binding rule as contained in the Ordinance. As discussed above, the Selection Committee as well as the Executive Council contravened the provisions contained in the Ordinance 9 (2) (i) in selecting the respondents Nos. 5, 6 and 8 even though they did not possess the minimum essential qualifications and appointed them to the post of Reader in violation of Ordinance 9 (2).

11. In *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, the Supreme Court observed that if the matter involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation was capable of two constructions. On the strength of these observations it was urged by the respondents that in past the University has been following a practice in treating a candidate holding a bare second class Master's degree eligible for appointment to the post of Reader. The practice relied upon is of recent years, it was never challenged before any court of law. The respondents have not given any specific cases in support of their assertion about the practice. The Supreme Court in the case of *K. S. Srinivas* merely struck a note of caution that ordinarily the High Court should be reluctant to issue a writ of certiorari if two interpretations were possible but in the present case the expression used in Ordinance 9 (2) is not capable of two interpretations. As already discussed it is difficult to comprehend that a person having a bare second class Master's degree having obtained 48 per cent, is eligible for appointment to the post of Reader. -The construction of the expression "high second class Master's degree" does not admit of any such interpretation. I am therefore of the opinion that the alternative construction suggested by the respondents is neither reasonable nor possible. If the authorities of the University violate any statutory rule, it is always open to this Court to interfere. In *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, the Supreme Court interfered with the interpretation of the regulations as given by the Government of Bihar in considering the appointment to the post of Lecturer in Orthopaedics. The Supreme Court exar mined the meaning of the relevant regulation and took a contrary view to that taken by the University as well as the Government of Bihar. There is thus ample authority that the jurisdiction of the Court in cases of violation of the statutory provisions, is not ousted. No doubt the decision of experts familiar with academic matters should be respected but if it is found that they acted in violation of binding rule, the Court has jurisdiction to interfere with their decision. There is no dispute before me that Ordinance 9 (2) framed under the Act has statutory force and it was binding on the Selection Committee and other authorities of the University.

12. Learned counsel for the petitioners urged that the relevant data in respect of candidates was incorrectly placed before the Selection Committee as a result of which the Selection Committee made its recommendations on assumption of non-existent facts. As already noted Smt. Hemlata Joshi had obtained 52.2 per cent, of marks but in her application she had mentioned that she had obtained 54 per

cent, of marks in her M. A. examination. Learned counsel for the University has placed before me the original record which shows that the Selection Committee proceeded on the assumption that Dr. Hemlata Joshi had obtained 54 per cent, marks in her Master's degree. This was no doubt an incorrect fact. The Selection Committee was misled to believe that she had obtained 54 per cent, of marks though she had obtained only 52.2 per cent, marks. In her counter-affidavit Dr. Joshi has explained that she had mentioned the percentage of marks by memory in a hurry, it was a mistake committed inadvertently. This explanation does not appear convincing: be that as it may, it is clear that incorrect data was placed before the Selection Committee and it selected her on the assumption that she had obtained 54 per cent, of marks. It is well established that the decision taken by an authority on non-existent facts cannot be sustained in law. The selection of Dr. Mrs. Hemlata Joshi is vitiated on this ground also.

13. The decision of the Selection Committee in selecting I. N. Agarwal was further assailed on the ground that in the data placed before the Selection Committee, emphasis was laid on the musical and poetic talent of Sri Agarwal. It was asserted that the data in respect of Sri I. N. Agarwal as placed before the Selection Committee indicated that Sri Agarwal had written some poems in Hindi, It was urged that the musical talent of Sri Agarwal or his poetic talent in Hindi had no relevance to his suitability for appointment to the post of Reader. There is no doubt that Ordinance 9 (2) does not prescribe any such qualifications, but that does not forbear the Selection Committee in taking into account any other extra-curricular qualifications of a candidate. The selection would be invalid if the essential qualifications are ignored and irrelevant qualifications are taken into account.

14. Learned counsel for the petitioners urged that the recommendation of the Selection Committee was vitiated as it did not record grounds on which the selected candidates were recommended to the Executive Council for appointment as required by Clause (c) of Regulation 5. The Executive Council has framed regulations regulating the transaction of business by the Selection Committee. Regulation 5 lays down that the report of the Selection Committee should state definitely what person is recommended; it should ordinarily select at least three persons in order of merit. Clause (c) of that regulation requires the Selection Committee to state the names and qualifications of the candidates and the ground on which the candidates are selected and recommended to the Executive Council. I have perused the recommendations made by the Selection Committee in original. It does not contain any ground as required by Regulation 5 (c). But this does not vitiate the recommendation of the Selection Committee,

15. The Selection Committee was not an authority of the University prior to 1955. The Allahabad University Act was amended in the year 1954 by U. P. Act No. V of 1955. By that amending Act Selection Committee was constituted as an authority of the University u/s 16 of the Act. Thereafter the State Government amended the Statutes in 1958. The amended Statutes as published in the

Calendar of the University of Allahabad for the year 1968 contain provisions regulating the manner of transaction of business at the meeting of the Selection Committee. Statutes 126 to 136 deal with the constitution and powers of the Selection Committee as well as the manner in which its business shall be transacted at its meeting. Statute 137 lays down that subject to candidates having requisite merit being available, the Selection Committee shall recommend three persons for each appointment and shall arrange their names in order of preference. The recommendations made by the Selection Committee in the instant case were made in accordance with the provisions contained in the Statutes. Statute 137 has statutory force, it contains a binding rule. Regulation 5 (c) was framed by the Executive Council at a time when the Selection Committee was not an authority of the University. The Executive Council at that stage was competent to frame regulations for the transaction of business by the Selection Committee. But after the Selection Committee became an authority of the University the Executive Council ceased to have any jurisdiction to frame any regulation to regulate the transaction of business by the Selection Committee. Moreover, the provisions contained in the Statutes have overriding effect over the regulations framed by the Executive Council. The Statutes do not require the Selection Committee to state grounds or reasons in making its recommendations. I am therefore of the opinion that the absence of grounds in the recommendation made by the Selection Committee did not vitiate its recommendations.

16. It was then urged for the petitioners that under the Act, Statutes and Ordinances there was no provision for holding Interview for selection of teachers for appointment to the post of Reader. In the advertisement issued by the University inviting applications for appointment to the post of Readers the University did not place any such condition that the candidates would be required to appear for interview before the Selection Committee. It was urged that in the absence of any statutory provision, the Selection Committee had no jurisdiction to hold interview or to disregard the candidature of a person who did not appear before it for interview. In this background it was urged that the Selection Committee exceeded its jurisdiction in considering the case of only those candidates who appeared before it for interview in disregard of other candidates who fulfilled the requisite qualifications. It is true that neither the Act, nor the Statutes nor the Ordinances contain any provision that selection of teachers shall be made after a viva voce interview of the candidate, but the Act, the Statutes and the Ordinances contemplate that appointment of a teacher in the University including a Reader shall be made by selection. The Statutes further require that selection shall be held by a Selection Committee constituted in accordance with the provisions contained therein. Thus the Act and the Statutes contemplate selection. There can be various methods of selection. It may be by a competitive examination, another by examination cum viva voce or by viva voce alone and fourthly by examination of academic record with a viva voce test. The Act and the Statutes framed thereunder do not prescribe any specific method of

selection, though the Statutes contemplate selection of candidate by a Selection Committee. The Selection Committee considered it necessary to hold selection by holding interview of the candidates. The interview was not the sole criteria for the selection. The Selection Committee admittedly considered the data of the qualifications, teaching experience and other academic records of the candidates. Selection on the basis of interview is a well recognised method of selection, it was not prohibited by the Act or the Statutes framed thereunder. The Selection Committee did not contravene any provisions of the Act, Statutes or Ordinances in holding interview of the candidates for the purpose of making selection. The records produced before me show that letters of request were sent to all the candidates who had applied for appointment to the post of Reader including petitioner No. 2 to appear for interview before the Selection Committee on March 1, 1973, at 10-30 A. M. in the Vice-Chancellor's chamber, Senate Hall, Allahabad. Out of 25 persons who had applied for the Reader's post, 13 candidates turned up and all of them were interviewed by the Committee. In the counter-affidavit of Sri B. M. Singh, Registrar of the University, it has been asserted that the Expert members of the Committee were of the opinion that only those should be considered who had appeared for interview, other members of the Selection Committee agreed with this proposal and as such the cases of only those candidates who appeared for interview were considered by the Selection Committee and those candidates who did not appear for interview were not considered for selection. In pursuance of this decision the case of Skand Gupta, petitioner No, 2, was not considered by the Selection Committee as he did not appear for interview before it. In my opinion the Selection Committee did not contravene any provision of the Act or Statute in adopting the method of interview for making selection in addition to consideration of the academic records.

17. It was then urged for the petitioners that even if interview was permissible, the Selction Committee did not fix any norm for allotting marks to evaluate the comparative merits of the candidates who appeared before it for Interview. In the absence of any fixed norms the Committee acted arbitrarily in making the selection. It was further urged that the record of the Selection Committee does not show as to on what basis or ground the Selection Committee found respondents Nos. 5 to 10 superior in merit in comparison to petitioners Nos. 1 to 4. Further the Selection Committee did not record the result of the interview in any form nor the same was forwarded to the Executive Council with the result the Executive Council could not take into consideration the result of the interview held by the Selection Committee. The petitioner's averment in paragraph 60 of the petition that the Selection Committee did not record the result of the interview in any form and that it did not remit the result of the interview in any form to the Executive Council is not disputed by the respondents. The petitioners raised this grievance before the Chancellor also but the Chancellor rejected the contention on the ground that the Selection Committee was the best judge of the merits of the candidates and it was assessed by experts; therefore, it was not

possible to brush aside the assessment and evaluation of the worth of the candidates unless there are compelling reasons for it and the Committee is shown to have violated any provisions of the Act or the Statutes.

18. As already noted there is no Statutory provision for interview nor any procedure has been prescribed either under the Statutes or the Ordinances laying down any criteria for evaluation of merit at the interview. In the absence of any statutory provision it is not possible to hold that the Selection Committee acted arbitrarily in evaluating comparative merits of the candidates at the time of interview. No doubt it would be desirable for the Selection Committee to keep a record of the interview and the marks allotted, if any, to the respective candidates at their viva voce interview. The Selection Committee is required to assess the merit and suitability of the candidates in an objective manner. The recommendations made by the Selection Committee are forwarded to the Executive Council. The members of the Executive Council deliberate over the recommendations of the Selection Committee and the Executive Council is empowered under the Statutes to disagree with the recommendations and to send the same back to the Selection Committee for reconsideration or to forward its opinion to the Chancellor for orders. The Statutes clearly show that the Executive Council has power to disagree with the recommendations of the Selection Committee. The Executive Council cannot perform its function and its members cannot properly discuss the recommendations unless the Selection Committee forwards the result of viva voce interview along with its recommendations. No doubt the Selection Committee was the best judge of the merits of the candidates but it cannot act arbitrarily in making selection. In order to avoid charge of arbitrariness it would be proper to maintain record of the interview as that would further benefit the members of the Executive Council also in discharging their functions.

19. In the instant case the Selection Committee has failed to maintain any record of the viva voce interview, but I do not consider it proper to interfere with the entire selection on this ground. The opinion of the experts should not lightly be brushed aside by this Court. As already discussed in academic matter this Court will not interfere with the selection unless there is violation of statutory provisions. In the absence of any statutory provisions to the contrary, the Selection Committee as an authority of the University was competent to adopt its own method to judge the merit and suitability of candidates. Though maintenance of result of interview would have been desirable, but in the absence of such record, the Selection Committee cannot be presumed to have acted arbitrarily. The Selection Committee did not contravene any statutory rule, therefore its recommendations cannot be quashed on this ground.

20. It was urged that the Selection Committee was partial and biased in favour of Dr. A. K. Bhattacharya, respondent No. 9, some of its members personally interested in his Selection as a result of which the recommendations made in his favour are vitiated. It was further urged that Dr. A. K. Bhattacharya as well as

petitioner No. 2, Skand Gupta, both had not appeared before the Selection Committee on 1-3-1975 under protest. But since members of the Selection Committee were personally interested in the selection of Dr. A. K. Bhattacharya, he was sent for and interviewed, no such opportunity was afforded to Skand Gupta, petitioner No. 2. The Selection Committee did not give equal treatment to Skand Gupta.

21. The Selection Committee was an authority of the University constituted under the Act. It was required to hold selection in an impartial and unbiased manner. The selection would be vitiated if it is demonstrated that some of the members of the Selection Committee were biased in favour of respondent No. 9. It is well settled that bias is a facet of mala fides. Bias vitiates exercise of power in the same manner as mala fide exercise of power is void. In *S. Pratap Singh Vs. The State of Punjab*, the Supreme Court observed that mala fide exercise of power is no exercise of power at all. In considering the question of mala fides the dominant motive or purpose should be taken into account. It is not always possible to prove mala fides by direct evidence. It is permissible to discern mala fides on proved facts and circumstances. In *S. Parthasarathi Vs. State of Andhra Pradesh*, it was held that there must be a "real likelihood" of bias, that means that there must be a substantial possibility of bias. The Court has to judge the matter as a reasonable man would judge on any matter in the conduct of his own business. After considering the question at length the Supreme Court observed that there was difference between "real likelihood" and "reasonable suspicion"; while in the latter case plea of bias could not be upheld, but in the former case the plea would be established if on the existence of circumstances from which a reasonable person could think it probable that the authority concerned was biased, in that situation, test for real likelihood of bias would be fulfilled. It is in the light of these principles that the petitioner's plea of bias needs consideration.

22. In paragraphs Nos. 12 to 16 of the petition the petitioners have stated that Skand Gupta, petitioner No. 2 and Dr. Bhattacharya, respondent No. 9 both did not appear before the Selection Committee for interview on 1-3-1973 in protest. The interview commenced before the Selection Committee on 1-3-1973 at about 10.30 A. M. The Selection Committee had completed the interview of all the other 12 candidates who presented themselves before it by 2.30 p. m, Thereafter the Selection Committee started its deliberations. A little later the Selection Committee sent a special messenger to the staff room of the English Department of the University to fetch Dr. Bhattacharya who had not presented himself, for interview. Dr. Bhattacharya was not present in the campus. Sri H. S. Saxena, who was present in the staff room went to fetch Dr. Bhattacharya. During all this time the Selection Committee kept waiting for Dr. Bhattacharya. On receiving the message Dr. Bhattacharya arrived; he was met in the room of Personal Assistant to the Vice-Chancellor by the Dean, Faculty of Arts, Prof. G. R. Sharma and the Head of the English Department, Professor Y. Sahai, who were members of the Selection Committee. They talked to Bhattacharya and persuaded him to appear before the Selection Committee. Dr. Bhattacharya was escorted to the Committee

Room and interviewed by the Selection Committee. The Selection Committee did not send any invitation, or offer or information of second opportunity of interview to Skand Gupta, petitioner No. 2, who had also not presented himself for interview, although he was present in the campus of the University. In paragraph 16 of the petition the petitioners have asserted that on these facts it can reasonably be inferred that some of the members were personally interested in the selection of Dr. Bhattacharya. They were partial to him and it was with that end in view that the Selection Committee sent message to Dr. Bhattacharya to present himself for interview and the Members of the Selection Committee went out of their way to persuade Dr. Bhattacharya to present himself before the Selection Committee for interview. No such message was sent to Skand Gupta, petitioner No. 2.

23. Dr. Bhattacharya and B. M. Singh, Registrar of the University have filed counter-affidavits which contain replies to the allegations made by the petitioners. Dr. Bhattacharya has stated his version in paras. 10 to 16 of his affidavit. In the first place he denies to have refused to appear for interview before the Selection Committee. He has asserted that the Selection Committee had power to hold interview of the candidates for making its recommendations, no special messenger was sent to him nor he was asked by any member of the Selection Committee to appear before the Selection Committee. He has further asserted that he had been informed by his friends that the Selection Committee had interviewed a number of candidates and was about to break for lunch and would resume its session after 2 P. M. He went for lunch to the residence of H. S. Saxena and after lunch he presented himself for interview on his own. By that time the Selection Committee had not completed the interview. In fact, two outside candidates were being interviewed and he had to wait for his turn. He has denied to have met the members of the Selection Committee in the room of the Personal Assistant to the Vice-Chancellor.

24. Normally after the denial of the petitioner's allegations by Dr. Bhattacharya no further investigation would have been necessary, but the version placed before the Court in the affidavit of B. M. Singh, the Registrar of the University is quite different. Relevant facts in this respect are stated in paragraphs 12 to 16 of the affidavit of B. M. Singh, the Registrar of the University. It would be pertinent to quote the relevant portion of the Registrar's affidavit as contained in paragraph 14 of this affidavit:--

"In fact 13 candidates had been interviewed by the Selection Committee. It may further be stated that Dr. A. K. Bhattacharya and Shri Skand Gupta did not present themselves for interview at the prescribed time. On behalf of Dr. Bhattacharya it was pleaded by some members of the Selection Committee that he was not appearing at the interview under protest in view of the fact that his contention with regard to the fixation of his salary had not been accepted by the University in the past and also because he felt indignant at being called for interview after having served for a number of years. The members of the

Selection Committee were Of the view that they would not consider a person unless he presented himself for interview, and accordingly, a message was sent out to Shri Bhattacharya that if he likes, he could appear at the interview. Thereafter Dr. A. K. Battacharya appeared before the Selection Committee. In regard to the contents of this paragraph, it is only stated that the Selection Committee had sent a messenger to the Staff Room of the English Department of the University to inform Dr. A. K. Bhattacharya that in case he liked, he could appear at the interview. The rest of the allegations made in this paragraph are not admitted for want of knowledge."

25. In paragraph 15 of his affidavit the Registrar has stated that it was open to the petitioner No. 2 also to appear before the Selection Committee, but he himself did not appear before the Selection Committee. In paragraph 16 of his affidavit the Registrar states that the members of the Selection Committee were not biased or partial towards Dr. A. K. Bhattacharya. He has further asserted that Dr. A. K. Bhattacharya was not fetched by the Selection Committee as stated. Only a messenger was sent to the English Department to inform Dr. A. K. Bhattacharya that in case he wanted to appear before the Selection Committee it was open to him to do so. The interview was not over when the message was sent. In fact, the meeting of the Selection Committee was continuing and Dr. A. K. Bhattacharya was interviewed when the proceedings were continuing. The allegation that Dr. A. K. Bhattacharya was persuaded to present himself before the Selection Committee for interview is wholly incorrect. The case of petitioner No. 2 and that of Dr. A. K. Bhattacharya was not similar because the members of the Selection Committee did not say that Dr. Bhattacharya did not appear before the Selection Committee under protest.

26. These are the averments contained in the aforesaid three affidavits. On a careful analysis of the same I find that the petitioners' allegation that Dr. A. K. Bhattacharya had also refused to appear for interview under protest is correct. No doubt Dr. Bhattacharya has denied this but the facts stated in the affidavit of B. M. Singh, support the petitioners' contention. Dr. Bhattacharya is highly interested person and his testimony in this matter must be scrutinized with care. B. M. Singh, the Registrar has clearly stated that Dr. Bhattacharya had not appeared for interview at the prescribed time, and that some of the members of the Selection Committee informed other members that Dr. A. K. Bhattacharya did not appear before the Selection Committee for interview under protest, thereafter, on the pleading of the members of the Selection Committee a special messenger was sent to call Dr, Bhattacharya and it was only thereafter that Dr. Bhattacharya appeared and interview took place. These facts are clearly established from the respective affidavits. B. M. Singh's version in this respect appears to be correct. It is noteworthy that on 17th March, 1973 when the recommendations of the Selection Committee were to be discussed by the Executive Council, the petitioner No. 2, Skand Gupt submitted a written representation to the Vice-Chancellor which is on the record of the file relating to the selection. In that representation petitioner No. 2 had made these very

allegations and had raised the question of partiality of the members of the Selection Committee towards Dr. A. K. Bhattacharya. In his representation before the Chancellor the petitioner again raised this question. The University submitted its comment to the Chancellor on April 13/14, 1973, in reply to the petitioner's representation. Those comments are annexed as Annexure "E" to the affidavit of B. M. Singh. The facts stated in paragraph 6 of that comment clearly support the petitioners' contention that on behalf of Dr. Bhattacharya some members of the Selection Committee pleaded his case and a message was sent out to Dr. Bhattacharya to appear at the interview. It was thereafter that Dr. Bhattacharya came in for interview.

27. In view of these facts and circumstances it is clear that some of the members of the Selection Committee were interested in Dr. A. K. Bhattacharya and for that reason they went out of their way to persuade the members of the Selection Committee to send word to Dr. Bhattacharya to enable him to appear at the interview. As already noted the Selection Committee had decided to consider the cases of only those candidates who appeared before it for interview. In that context letters for interview had already been issued to all the candidates including Dr. Bhattacharya. If Dr. Bhattacharya had not appeared before the Selection Committee, the members of the Selection Committee in the normal course of discharge of their duties had no business to send word to him or to invite or persuade him to appear at the interview. Moreover no such invitation was sent to Skand Gupta. The proved facts clearly show that some of the members of the Selection Committee were partial towards Dr. A. K. Bhattacharya and for that purpose they persuaded other members of the Selection Committee to adopt this unusual course.

28. The petitioners' assertion that Sri G. R. Sharrna, the Dean of Faculty of Arts and Sri Y. Sahai, the then Head of the English Department, who were members of the Selection Committee talked to Dr. A. K. Bhattacharya in the room of the Personal Assistant to the Vice-Chancellor and persuaded and escorted him in the Committee Room where selection was held is denied by Dr. Bhattacharya. But his mere denial is not sufficient to discard the petitioners' averments specially having regard to his denial of other facts which have been found correct, namely, that he never protested or refused to appear before the interview or that any message was sent to him by the members of the Selection Committee calling him for interview. In such a situation it would not be proper to reject the petitioners' averments merely on the denial of Dr. Bhattacharya. The Selection Committee was impleaded as a respondent to the petition. Notices were served on the University authorities, but no affidavit has been filed by any of the members of the Selection Committee. No doubt B. M. Singh, the Registrar, has filed affidavit on behalf of the University and in paragraph 16 of his affidavit he has denied the petitioner's assertion in this respect but the averments contained therein are of no consequence. B. M. Singh was not a member of the Selection Committee. He could have no personal knowledge as to what happened in the Selection Committee. Moreover the averments contained in paragraph 16 of his

affidavit that the members of the Selection Committee were not biased or partial towards Dr. A. K. Bhattacharya has been sworn on the basis of records. Learned Counsel for the University has produced the records before me, it does not contain any note by the members of the Committee in this matter. Obviously B. M. Singh was not entitled to speak about the mental state of the members of the Selection Committee. Bias or partiality is not always apparent. Many a time it is the result of a mental state and since B. M. Singh was not a member of the Selection Committee he could not be in a position to deny the petitioners' allegation of bias against the members of the Selection Committee. It is further noteworthy that even in the affidavit of Sri B. M. Singh there is no denial of the petitioners' allegations that Sri Y. Sahai and Sri G. R. Sharma both talked to Dr. Bhattacharya and persuaded him to appear before the Selection Committee. The proved circumstances and preponderance of evidence available on the record clearly point out that some of the members were interested in the selection of Dr. A. K. Bhattacharya and an unusual method was adopted to send message to Dr. Bhattacharya. In this context the petitioners' assertion that two of the members of the Selection Committee viz., Y. Sahai and G. R. Sharma both talked to Dr. Bhattacharya and persuaded him to appear at the interview before the Selection Committee, appears to be correct. The totality of all these facts and circumstances is sufficient to persuade a reasonable person to arrive at the conclusion that some of the members of the Selection Committee and specially the two members named in the petition were biased in favour of Dr. Bhattacharya. There is no dispute that these two members participated in the deliberations of the Selection Committee and made recommendations in favour of Dr. A. K. Bhattacharya. In this view of the matter, I hold that the recommendation of the Selection Committee for the appointment of Dr. A. K. Bhattacharya is vitiated and his appointment is rendered illegal.

29. Lastly learned counsel for the petitioners urged that the Selection Committee did not act in a just or impartial manner in making the selection, instead, it adopted arbitrary attitude in making the selection. The Selection Committee on the advice of two experts arranged the names of selected candidates on the basis of merit and preferences. In that list one Dr. T. Bose was placed at serial No. 1 for appointment to the post of Reader. But this list was altered by the members of the Selection Committee and the opinion of the experts was overruled and name of Dr. T. Bose was not recommended to the Executive Council for appointment on the ground that Dr. T. Bose had neither submitted his application through proper channel nor produced no objection certificate as required by the rules or the letters issued for interview. A perusal of the original report of the meeting of the Selection Committee as produced before me by the learned counsel for the University shows that the experts on the basis of interview and academic records found Dr. T. Bose the most meritorious and suitable person for appointment to the post of Reader, but other members of the Selection Committee rejected his candidature after the selection had already been made.

30. There are no rules nor any of such rules were brought to my notice by the learned counsel for the parties requiring a candidate to send his application through proper channel or to pro(SIC) no objection certificate. There is no provision either in the Statutes or in the Ordinances that if a candidate does not apply through proper channel or if he fails to produce no objection certificate at the time of interview his candidature shall be cancelled. In the absence of any rules, the Selection Committee had no jurisdiction to exclude the name of Dr. T. Bose from the list of selected candidates. No doubt in the letter which was issued for interview to Dr. T. Bose, he was asked to bring the no objection certificate but the letter did not contain any condition that in the event of non-production of no objection certificate he would not be considered for selection. The purpose behind the no objection certificate is to furnish information that the candidate if employed elsewhere can join the University on his being selected and that his employers would have no objection. It is noteworthy that neither in the advertisement nor in the rules nor in the letter sent for interview to the candidates, they were informed that in case of non-production of no objection certificate, their candidature would be cancelled. Moreover, Dr. T. Bose appeared before the Selection Committee, he was interviewed even though he did not produce no objection certificate and the Selection Committee selected him for appointment even in the absence of no objection certificate. Once Dr. T. Bose was selected and placed at serial No. 1 the Selection Committee had no justification to delete his name from the list of selected candidates on the ground of non-production of no objection certificate. Even if it was open to the Selection Committee to insist on production of no objection certificate, Dr. T. Bose should not have been allowed to appear at the interview in the absence of no objection certificate. But once he was interviewed and found most meritorious candidate, it was unreasonable to delete his name from the list of selected candidates. The procedure adopted by the Selection Committee was arbitrary and without jurisdiction.

31. Learned counsel for the petitioners lastly urged that the petitioners' academic record was much better than that of those selected; but the Selection Committee arbitrarily selected those whose academic record was inferior. The question as to whether the petitioners or respondents should have been selected on the basis of academic records or as to who were most suitable for selection is not within the jurisdiction of this Court, in Selection Committee had the exclusive jurisdiction to consider this question. This Court cannot sit in appeal over the selection made by the Selection Committee which is more familiar with the academic matters.

32. In view of the above discussion I allow the petition and quash the selection and appointment of Dr. Mrs. Hem Lata Joshi. Sri H. S. Saxsena, Sri I. N. Agarwal and Dr. A. K. Bhattacharya, respondents Nos. 5, 6, 8 and 9 respectively. The order of the Chancellor is also quashed. The petition, however, fails as against Dr. K. R. Dutt and Dr. L. N. Upadhyaya, respondents Nos. 7 and 10. It will be open to the University to hold fresh selection in accordance with law for filling the

vacancies in the post of Reader in the English Department. In the circumstances there will be no order as to costs.