
(1973) 02 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 25 of 1972

Dr. Ram Singh

APPELLANT

Vs

University of Saugar and others

RESPONDENT

Date of Decision : 05-02-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1975) ILR (MP) 292 : (1973) 18 MPLJ 561

Hon'ble Judges : Raj Krishna Tankha, J;G.P. Singh, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

This is a petition under Articles 226 and 227 of the Constitution praying that the resolution passed by the Executive Council of the University of Saugar dated 19th December 1971 (Annexure B) be quashed.

The relevant facts which are not in dispute are that the petitioner was appointed as Assistant Lecturer in Zoology in the Saugar University on 5th January 1949 and he has been serving that University since then. He was conferred the degree of Ph. D. in 1957 by the Saugar University and he was also conferred another Ph. D. degree in 1962 by the Cambridge University. The petitioner was made a Reader in the Saugar University in the year 1968. In 1971 for one year he went as Reader to Jiwaji University during which period he was on leave in the Saugar University.

A permanent post of Professor in Zoology is vacant in the Saugar University. On 31st May 1971 by an advertisement (Annexure A) applications were invited for various posts including the post of Professor in Zoology. The petitioner applied for the said post. One Dr. Bhargava who is also a Reader in Zoology in the Saugar University also applied for that post. There were other applicants also. The

selection to the post of Professor is made by a Selection Committee constituted u/s 47-A of the University of Saugar Act, 1946. A meeting of the Selection Committee was held on 4th December 1971. That meeting was attended by six members. Five candidates were interviewed by the committee. By a majority of five to one the committee recommended that the petitioner be appointed as Professor in the department of Zoology in the University. One member alone dissented from this recommendation as he felt that Dr. Bhargava should be appointed. The recommendation of the committee is contained in Annexure B. This recommendation was considered by the Executive Council of the University in its meeting on 19th December 1971 and it was resolved that "the recommendation of the Selection Committee be not accepted as its acceptance would lead to administrative and disciplinary complications". This is the resolution which is challenged by the petitioner in this petition.

Before advertng to the contentions raised in this petition, it is necessary to refer to the relevant statutory provisions of the University of Saugar Act, 1946. The Executive Council is the executive body of the University and is constituted u/s 23 of the Act. The powers and duties of the Executive Council are set out in section 24. The relevant powers and duties are contained in clauses (k), (l), (m) and (p) of sub-section (1) of section 24. These clauses read as follows:

24 (1) The Executive Council--

(k) may institute, at its discretion such Professorships, Readerships or Lecturer-ships, or other teaching posts as may be proposed by the Academic, Council;

(l) may abolish or suspend, after report from the Academic Council thereon, any Professorship, Readership, Lecturership or other teaching posts in the University;

(m) shall, save as otherwise provided for by this Act or the Statutes, appoint the officers (other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Rector) teachers and other servants of the University, and shall define their duties and the conditions of their service, and shall provide for the filling of temporary vacancies in their posts;

(p) shall, subject to the powers conferred by this Act on other authorities of the University, regulate, determine and administer all matters concerning the University, and to this end, shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes.

These provisions go to show that the Executive Council may, at its discretion, institute Professorships, Readerships or Lecturerships or other teaching post as may be proposed by the Academic Council and may abolish or suspend any of these posts after report from the Academic Council. Subject to the other provisions of the Act and Statutes, the Executive Council has the power to appoint the officers, teachers and other servants in the University. Further, subject to the powers conferred by the Act on other authorities, the Executive Council has power to regulate, determine and administer all matters concerning

the University, and to that end, can exercise all other powers of the University not otherwise provided for by the Act or by the Statutes.

Restriction on the power of appointment conferred on the Executive Council by section 24 (1) (m) was imposed by the Madhya Pradesh University Laws (Amendment) Act, 1965 which inserted section 47-A in the Act. Section 47-A so inserted reads as follows:

47-A. (1) No person shall be appointed--

(i) as a Professor, Reader, Assistant Professor or Lecturer; or

(ii) to any other teaching post of the University paid by the University; except on the recommendation of a committee of selection constituted in accordance with sub-section (2).

(2) The members of the Committee of Selection shall be--

(i) The Vice-Chancellor ... Chairman.

(ii) Head of the University Department in the subject concerned, if he is a Professor or when the Head of the University Department in the subject concerned is not a Professor or when the selection is to be made for the post of Professor, the Dean of Faculty concerned..... Member.

(iii) One expert in the subject to be nominated by the Academic Council Member.

(iv) Three eminent educationalists not concerned with the University, one of who at least is an expert in the subject, nominated by the--Chancellor ... Member.

(v) The Chairman of the State Public Service Commission, or a member of the State Public Service Commission nominated by him ... Member.

(3) The Committee shall investigate the merits of the various candidates, including any eminent person who may not have applied, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts arranged in the order of merit,

(4) Out of the persons so recommended under sub-section (3), the Executive Council shall make the final selection;

Provided that, where the Executive Council proposes to make the appointment otherwise than in accordance with the order of merit arranged by the Committee, the Executive Council shall record its reasons in writing and submit its proposals for the sanction of the Chancellor.

A reading of this section goes to show that the Executive Council cannot appoint any Professor, Reader, Assistant Professor or Lecturer or any person to any teaching post except on the recommendation of a committee constituted under that section. The committee so constituted is presided over by the Vice-

Chancellor and consists of experts and eminent educationists and Chairman or a Member of the State Public Service Commission.

The contention of the learned counsel for the petitioner is that under sub-section (4) of section 47-A, the Executive Council is bound to make the appointment of the person recommended by the Selection Committee if only one person is recommended, or to select one from the persons recommended if more than one person are recommended. The only direction open to the Executive Council is that if a number of persons have been recommended in order of merit, the Executive Council may propose to make the appointment otherwise than in accordance with the order of merit arranged by the Committee, but in that event reasons have to be recorded and sanction of the Chancellor has to be obtained. It is also contended that the reason given by the Executive Council for not accepting the recommendation of the Selection Committee is altogether vague and without any meaning and even in the return it has not been specified as to how the petitioner's appointment would lead to administrative and disciplinary complications. It is further contended that the reasons given is wholly illusory and non-existent and the resolution of the Executive Council is in excess of the powers conferred u/s 47-A (4).

In reply the learned counsel for the respondents submitted that sub-sections (3) and (4) of section 47-A envisage that the Selection Committee shall recommend more than one person for appointment to a post and the Executive Council will have the discretion to appoint any one of the persons recommended to the post, subject to the requirement of sanction of the Chancellor in case it proposes to make the appointment otherwise than in accordance with the order of merit arranged by the committee. The learned counsel argued that sub-sections (3) and (4) do not envisage the recommendation of one single person and if only one person is recommended, the Executive Council is not bound to accept that recommendation. It is also argued that even when more than one person are recommended the Executive Council is not bound to make any appointment and it may in its absolute discretion decide not to make any appointment. It is then submitted that the recommendation of the Selection Committee has expired by lapse of time and the petition has become infructuous. It is lastly submitted that no legal right of the petitioner has been infringed by the decision of the Executive Council not to accept the recommendation of the Selection Committee.

The rival contentions mainly relate to the construction of sub-sections (3) and (4) of section 47-A which we have earlier quoted. It may first be examined whether the Selection Committee is bound to recommend more than one person in every case. It is true that sub-section (3) uses the words "shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts arranged in the order of merit;" and subsection (4) also similarly states that "out of the persons so recommended under sub-section (3) the Executive Council shall make the final selection". But it is a well-settled rule of construction that words in the singular shall include the plural and similarly

words in the plural shall include the singular. Section 5 (b) of the Madhya Pradesh General Clauses Act, 1957, which applies for construing the Madhya Pradesh University Laws (Amendment) Act, 1965 by which section 47-A was inserted, specifically provides to that effect. The words "names" and--"persons" as they occur in sub-sections (3) and (4) of section 47-A must, therefore, be construed as meaning "name or names" and "person or persons". It is true that the rule of construction enacted in section 5 (b) of the General Clauses Act applies only where contrary intention is not indicated by the statute in question. However, we do not find that there is anything in the language of section 47-A or in its context which makes the normal rule of construction contained in section 5 (b) of the General Clauses Act inapplicable. No doubt, the sub-sections in question are drafted in the plural and emphasis is laid on the plural, but these considerations are not by themselves -- sufficient to infer a contrary intention. Contrary intention to exclude the operation of the rule that the plural includes the singular is not inferred merely because the relevant provision is drafted in the plural and the subsidiary and ancillary provisions follow the same pattern and use plural words or words implying the plural; See *Sin Poh Amalgamated (H. K.) v. A. G.* (1965) 1 All E R 225 (P C). In this case it was held by the Privy Council on a construction of a Hong Kong Statute that power to appoint "Commissioner" under an Ordinance to conduct inquiry included a power to appoint a sole Commissioner and that contrary intention was not shown because ancillary provisions in the Ordinance provided that processes and warrants should be issued "under the hand of the Chairman or presiding member of the commission". The test that the Privy Council laid down for finding a contrary intention is as follows:

The Interpretation Ordinance was intended to avoid multiplicity of verbiage and to make the plural cover the singular except in such cases as one finds in the context of the legislation reason to suppose that the Legislature, if offered such an amendment to the bill, would have rejected it.

The above test laid down in *Sin Poh Amalgamated Company's* case was again approved by the Privy Council in the case of *Blue Metal Industries v. R. W. Dilley* (1969) 3 All E R 437. In this case it was held that the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude plurality. On the same logic it can be said that the mere fact that the reading of words in a section suggests an emphasis on plurality as opposed to singularity is not enough to exclude singularity. Applying the test laid down in the aforesaid cases, whether the Legislature, if offered the amendment to the bill in the manner we have construed the section earlier, would have rejected it, we are satisfied that there is no reason to suppose that the Legislature would have rejected it.

Further, the use of the words "if any" in sub-section (3) strongly suggests that the Selection Committee is not bound to recommend in all cases more than one name. If out of the candidates whose merits have been investigated by the

committee only one is found to be suitable for the post, the committee cannot recommend more than one name, because a person can only be recommended if he is considered suitable for the post. If only one person is considered suitable, his name alone will be recommended. In case it is held that the committee must always recommend more than one name, it would be impossible to make a selection if only one person is found to be suitable. Such a result cannot be assumed to have been intended, because it will create a deadlock in those cases in which the committee is unable to find more than one suitable person. The requirement that the committee shall arrange the names recommended in the order of merit will apply only in case where more than one name is recommended. Similarly, if only one name is recommended by the committee, the proviso to sub-section (4) will have no application, because it applies only when the appointment is made otherwise than in accordance with the order of merit arranged by the committee which contemplates more than one name.

Having considered all the aspects of the matter, we are of opinion that sub-sections (3) and (4), though laying emphasis on plurality, do not exclude singularity and that it is open to the Selection Committee to recommend only one name if only one person is found suitable for the post.

Next comes the question as to how far the Executive Council is bound to accept the recommendation of the committee when only one name is recommended by the Selection Committee. The combined effect of sub-sections (1) and (4) in case when only one name is recommended is that only that person and no one else can be selected by the Executive Council. In such a case the words "shall make the final selection" in sub-section (4) will mean that the person recommended alone can be selected. But we are not inclined to accept the argument of the learned counsel for the petitioner that the Executive Council in every case is bound to accept the recommendation of the Selection Committee when only one name is recommended and that it is bound to make the appointment as recommended. It has to be taken notice of that the Executive Council is the executive authority of the University in whom all the powers of the University, not otherwise specifically provided for, are vested. It is quite possible that by the time the recommendations of the Selection Committee reach the Executive Council it may not be advisable to fill up the post advertised for various administrative reasons, e. g. lack of funds or want of students. If an honest administrative decision is taken not to appoint a person recommended, in our opinion, the Executive Council and the University cannot be compelled to accept the recommendation of the Selection Committee and to make the appointment, though if an appointment is made, the person appointed must be one recommended by the committee.

But we do not also accept the extreme contention raised by the learned counsel for the respondents that the Executive Council may decline to accept the recommendation of the Selection Committee and refuse to make any appointment in its absolute discretion for whatever reason it may be. Every

power or discretion conferred under a statute has to be honestly exercised in furtherance of the object for which the discretion or power is conferred. As stated by Prof. S. A. de Smith, an authority on whom discretionary power is conferred "must not seek to promote purposes alien to the latter or to the spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously:" Judicial Review of Administrative Action, 2nd Edition, p. 271. The scheme of section 47-A and the object behind it clearly show that the Executive Council cannot refuse to accept the recommendation of the committee simply on the ground that the person recommended is not acceptable to the Executive Council, or that the person recommended is not suitable, or that a person rejected should have been recommended. These matters are to be judged by the Selection Committee which is especially constituted u/s 47-A for making selection and judging suitability of candidates. If the Executive Council declines to make the appointment simply on the ground that the person recommended is not acceptable or on the ground that some other person should have been recommended, the decision of the Executive Council will be contrary to the object and policy of section 47-A and will be invalid because if that were allowed every recommendation of the Selection Committee can be flouted until a person whom the Executive Council desires to appoint is recommended by the Selection Committee. Thus the Executive Council cannot arbitrarily refuse to accept the Selection Committee's recommendation and the refusal to be valid must be for reasons which are not contrary to the object or policy behind section 47-A.

It has then to be seen whither in the instant case the refusal of the Executive Council to accept the recommendation of the Selection Committee was proper. We have already quoted the resolution of the Executive Council. We have also said that the resolution itself is vague and it does not disclose in what manner the acceptance of the proposal of the Selection Committee, that the petitioner be appointed as Professor, could have led to administrative and disciplinary complications. No clarification of the reason given is offered in the return. The petitioner has been in the employment of the University right from 1949 and it is alleged in the petition, which fact is not denied, that he has never been a cause of any administrative or disciplinary complication. We asked the learned counsel appearing for the respondents to throw some light as to in what manner the petitioner's appointment to the post of Professor would have led to administrative and disciplinary complications and he very fairly and frankly did not say anything against the petitioner. All that he said was that Dr. Bhargava who was also a candidate before the Selection Committee and whose name was not recommended by the committee (as only one member was in his favour) is a senior Reader in the same department and in case the petitioner is appointed Professor he would be superseded and that may create some administrative and disciplinary complications. We may say at once that what the learned counsel submitted is not pleaded in the return. But even if we accept that this was the real reason for not accepting the recommendation of the Selection Committee, we feel that the Executive Council was not justified in doing so. If what is stated

by the learned counsel is correct, the recommendation of the Selection Committee was not accepted in the interest of a person who was not found suitable and that certainly cannot be a valid reason as it will defeat the provision of section 47-A which envisages action in favour of persons who are found suitable by the committee and not in favour of those who are rejected by the committee as unsuitable. Moreover, if this were held to be a valid reason, in all cases where a junior person, who is more qualified and suitable than the senior, is selected by the Selection Committee for a higher post, the recommendation will have to be rejected because in most of such cases the senior who is not selected is likely to feel aggrieved and to create disciplinary complications. It is not disputed that a Reader cannot because of his seniority alone be appointed to the post of a Professor. He has to stand in competition with other persons who may apply for the post irrespective of whether the other applicants are his juniors in the same department. We are satisfied that the reason given by the Executive Council for refusing to accept the recommendation of the Selection Committee is either non-existent or entirely irrelevant and contrary to the object and policy underlying section 47-A. The resolution of the Executive Council is, therefore, invalid.

Learned counsel for the respondents contended that the Executive Council need not have given any reason. We need not go into the question whether in refusing to accept the recommendation of the Selection Committee and in declining to make any appointment to the post the Executive Council is bound to give any reason, for in the instant case the order is a speaking order and reason has been given. As the reason on which the order has been passed is either non-existent or irrelevant, the exercise of the power of declining to make the appointment cannot be said to have been validly exercised.

As regards the argument that the petition has become infructuous because the recommendation of the Selection Committee has by now lapsed after the expiry of one year, it is true that under Statute 21-AA recommendations of the Selection Committee lapse after expiry of one year, but when this petition was filed one year had not expired. Moreover, if the resolution of the Executive Council (Annexure B) is allowed to stand, that would come in the way of the petitioner if and when he is again selected by the Selection Committee when the post is advertised. We do not, therefore, think that the petition has become infructuous.

Coming to the argument that no legal right of the petitioner has been infringed, our opinion is that as a candidate recommended by the Selection Committee the petitioner has a right to see that the power of the Executive Council in accepting or declining to accept the recommendation is properly exercised. This limited right of the petitioner flows from the terms of section 47-A. The petitioner cannot certainly be declared to have been appointed, but to the limited extent indicated above he is entitled to ventilate his grievance in this Court.

We allow the petition and quash the resolution of the Executive Council dated 19th December 1971 (Annexure B). In the circumstances, we do not make any

order as to costs. The amount of security deposit shall be refunded to the petitioner.