

(2005) 12 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8003 of 2005

Dr. Ravi Shankar Pandey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 21, 31, 31(4), 31(5), 31(6)

Citation : (2006) 5 AWC 4610

Hon'ble Judges : Prakash Krishna, J; Amitava Lala, J

Bench : Division Bench

Advocate : G.K. Singh and V.K. Singh, for the Appellant; V.C. Mishra, Anil Tiwari, Vivek Rai, Vivek Mishra and S.C., for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The Sampurna Nand Sanskrit Vishwavidyalaya, a University governed by the provisions of U.P. State Universities Act; invited application for appointment of lecturers in various subjects including Sanskrit Vidya by means of advertisement No. 1/2004 dated 6th of August, 2004. The dispute in the present writ petition is confined to the appointment of respondent No. 6, Dr. (Smt.) Promodinit Panda as lecturer in the said University in the department of Sanskrit for Sanskrit Vidya. Challenging the legality, propriety and validity of the appointment of the respondent No. 6 the present writ petition has been filed by Dr. Ravi Shankar Pandey, who was also one of the applicants for the aforesaid post.

2. Briefly stated the present petition, has been filed on the ground that the University by means of advertisement No. 1/2004 invited applications for the post of lecturer in Sanskrit and prescribed the minimum requisite qualification. The Selection Committee duly constituted for the appointment of lecturer in Sanskrit Bhasa, recommended name of the petitioner at serial No. 1 and that of the respondent No. 6 at serial No. 2 but the Executive Council of the University illegally disagreeing with the recommendation made by the Selection Committee

issued appointment letter to the said respondent, who does not possess the minimum/essential qualifications as prescribed in the advertisement. It has also been averred that her application was rejected by the Head of the Department but due to intervention of the Vice Chancellor; she was called for interview. She being wife of the Registrar of the University, the University was biased in her favour and the Vice Chancellor and the University on account of mala fides issued appointment letter to the contesting respondent No. 6 which being contrary and illegal is liable to be quashed.

3. Three sets of counter affidavits have been filed. The counter affidavit filed on behalf of the respondent's No. 2, 3 and 4 i.e. the Vice Chancellor, Executive Council and the Registrar refutes the contents of the writ petition and has justified the appointment of the respondent No. 6. The counter affidavit and the supplementary affidavits filed on behalf of the respondent No. 6 are also on similar lines. However, Prof. Rajeev Ranjan Singh, Head of Sanskrit Department who was arrayed as respondent No. 5 has tiled a counter affidavit which not only supports the petitioner's allegation but attempt has been made on his behalf to widen the scope of the writ petition by raising such controversies which were not even raised and pleaded by the petitioner. Therefore, the effective counter affidavit is of that of the University and of the respondent No. 6. Their stand is that the respondent No. 6 possesses the minimum essential qualification and as such there is no illegality in the resolution of the Executive Committee resolving to appoint the respondent No. 6. In paragraph 11 of the counter affidavit it has been stated "The Vice Chancellor has given his marks in sealed cover envelope. For kind perusal of this Hon"ble Court the Photostat copy of the minutes of the Selection Committee are being filed and marked as C.A.4". The University has also come out with the case that the petitioner as well as the respondent No. 6 both were permitted for interview as both were eligible vide para 10 of the counter affidavit.

4. The respondent No. 6 in her counter affidavit submitted that she is fully qualified for the post in question. The requirement according to her is either Acharya or a Post Graduate with specialization in Vyakaran. She has labeled allegations against the Head of Department, respondent No. 5 by saying that he rejected the application and had to issue interview letter to her on the intervention of the Vice Chancellor. She has further submitted that she is not only qualified but also possessing better qualification than the petitioner. She has sufficient knowledge of English as she had compulsory English at the graduation level. The experience certificate issued by the Head of the Department is quite evident about her capability and she had taught the foreign students in the same department in the year 2001-2002. The petitioner has no knowledge of English which is material in as much as Sanskrit Vidya Discipline is specially established for imparting basic Sanskrit education to foreign students. As regards to the proceedings before the Executive Council is concerned it was submitted that the Executive Council examined the matter and found that she (Dr. Promodini Panda) is coming up at serial No. 1 and the Head of the Department(wrongly mentioned

as S.C. Tiwari, while it should be Prof. Rajiv Ranjan Singh) has given note of dissent out of his personal enmity with the Vice Chancellor. Along with the supplementary counter affidavit she has filed certain documents such as course of studies for M.A. Examination 1984 of Utkal University, syllabus and testimonials and syllabus of Acharya examination and testimonials and the joining letter.

5. We have heard Shri G.K. Singh and V.K. Singh, the learned counsel for the petitioner, Shri Anil Tiwari, Advocate for the University (respondents No. 2,3 and 4), Shri Vivek Rai Advocate for respondent No. 5 and Shri V.C. Mishra, Senior Advocate for contesting respondent No. 6 and perused the record.

6. The learned counsel for the petitioner submitted that the name of the petitioner was recommended by statutory Selection Committee at serial No. 1 while the name of respondent No. 6 was placed at serial No. 2. The attention of this Court was invited by all the counsel towards the proceedings of the Selection Committee. Elaborating the argument it was submitted by the petitioner that having him placed at serial No. 1 by the Selection Committee it was not open to the Executive Council while considering the recommendation of the Selection Committee to change the serial and consequently issue appointment letter to the respondent No. 6. In view of the provisions of the Section 31 of the U.P. State Universities Act as well as of the First Statutes of the Sampurna Nand Sanskrit Vishwavidyalaya, specially with reference to 11.06 only two courses were left open to the Executive Council either to accept the recommendation of the Selection Committee or to refer the matter after recording reasons to the Chancellor, for his decision in the matter. Serious objection has been raised about the procedure adopted by the Vice Chancellor in not making available marks awarded by him before the other members of the Selection Committee. It was inappropriate to award the marks in the proceedings of the Executive Council and then declare that the respondent No. 6 is at serial No. 1. The Selection Committee has become functus officio as soon as it made the recommendation to the Executive Council. It was no longer open to any member including the Vice Chancellor, who was Chairman of the Selection Committee, to affect the recommendation made by the Selection Committee subsequently in any manner whatsoever.

7. In contra, the learned counsel for the university, Shri Anil Tiwari, Advocate, very fairly submitted that if the Court comes to the conclusion that the marks awarded by the Vice Chancellor though in sealed cover, were part of the recommendation of the Selection Committee then there is no illegality or impropriety in the appointment of the respondent No. 6. Otherwise, the procedure adopted by the Vice Chancellor is not legally correct as no such procedure has been prescribed either in the State Universities Act or in the first Statutes of the University. He also submitted, which is also apparent from the record, that the then Vice Chancellor and the Head of the Department were poles apart and there was something wrong in between them which necessitated the

Vice Chancellor to keep the marks awarded by him in a sealed cover, to avoid unpleasantness before other members of the Selection Committee.

8. Shri V.C. Mishra, senior Advocate, submitted on behalf of the contesting respondent No. 6 that this Court be pleased not to interfere in the selection process of the University in as much as substantial justice has been done and the respondent No. 6 is better/more qualified than the petitioner. He questioned the essential qualification of the petitioner and submitted that at no stage, as is clear from the precise of the petitioner, the petitioner acquired knowledge of English language which was one of the essential qualifications. He also submitted that this Court should judge the comparative merit of the petitioner visa-a-vis the respondent No. 6 on the basis of the credentials of these two candidates. If that is done so, it will be evidently proved that the respondent No. 6 being more qualified rightly received the appointment letter. He then submitted that the Selection Committee consisted of six persons, namely the Vice Chancellor who is Chairman of the Selection Committee, Head of the Department being Ex officio member, two experts of the subject and one representative of Scheduled Caste and one representative of OBC. Elaborating the argument it was submitted that since the Vice Chancellor and the Head of the Departments were at daggers drawn with each other, the marks awarded by them may be excluded so also the representatives of OBC and S.C. who were not entitled to award marks and thereafter if the Court be pleased to take into consideration only respective marks awarded by experts of the subjects to the petitioner and the respondent No. 6 then the real picture will come out. To put it differently, if only the marks awarded by the experts is taken into account in such situation the respondent No. 6 is better placed than the petitioner.

9. Shri Vivek Rai, Advocate who represents the respondent No. 6, Head of the Department, submitted that the petitioner was selected by the Selection Committee and the procedure adopted by the Vice Chancellor was arbitrary. The crux of the argument is that the Vice Chancellor was very much tilted in favour of the respondent No. 6 for the reasons known to him and therefore the respondent No. 6 was favoured by him irrespective of her lack of essential minimum qualifications. He, during the course of argument tried to raise number of other disputes which were neither raised nor argued by the petitioner and in such situation this Court directed him to confine his arguments which are germane to the petitioner's allegations. It was made clear to him that this Court is not interested and required to go into the dispute, if any, with the Vice Chancellor. The members of the Bar jointly said that the then Vice Chancellor has been transferred and in this fact situation the dispute, if any, has come to an end automatically.

10. We have given careful consideration to the respective submissions of the counsel for the parties. At this stage it is desirable to notice the few provisions of the U.P. State Universities Act as well as the limited scope of judicial review as laid down by the Supreme Court from time and again in regard to decision taken

by body of experts in the subject.

11. Section 31 of the U.P. State Universities Act deals with the appointment of the teachers. A bare perusal of Section 31(4), (5), (6), (7) and (8) would show the constitution of the Selection Committee, its quorum, manner of appointment of the Experts of the Selection Committee and the power of the Executive Council with regard to the recommendations made by the Selection Committee. The Selection Committee for the selection of lecturers of the University (other than Director of an Institute and the Principal of a constituent College), shall consist of;

(i) The Vice Chancellor who shall be the Chairman thereof.

(ii) The Head of the Department concerned.

(iii) Two experts to be nominated by the Chancellor.

12. In view of the provisions of U.P. Act No. 4 of 1994 two nominees one for Scheduled Caste and one of Other Backward Classes shall also be there to watch the interest of such candidates. It may be noted here that there is a dispute among the counsel as to whether these two representatives could or could not award marks for the selection of general category candidates. For us, in the present writ petition it is not necessary to adjudicate this controversy as the outcome of the writ petition is not dependant thereof.

13. Sub-section (6) of Section 31 lays down that no recommendations made by the Selection Committee shall be considered to be valid unless one of the experts had agrees such selection. The majority of the total membership of any Selection Committee subject to the provisions of Section 6 shall form quorum of the such Committee vide Sub-section (7) of Section 31. The controversy in the present case centres round to the interpretation of Sub-section (8) of Section 31 which is reproduced below:-

(8)(a) In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final:

Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final.

(aa) Where the failure of the Executive Council to take a decision within the period specified in the proviso to clause (a) is not attributable to any fault of the Executive Council, the Chancellor may require the Executive Council to take a decision within such time as the Chancellor may, from time to time, allow and may direct the Vice-Chancellor to call a meeting of the Executive Council for the purpose:

Provided that -

(i) if the Executive Council does not agree with the recommendations made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement and his decision shall be final;

(ii) if the Executive Council does not take a decision within the time allowed by the Chancellor, the Chancellor shall decide the matter and his decision shall be final.

(b)...

14. The 11.06 of the First Statute of the Sampura Nand University reads as follows ;....

(1) If the Selection Committee recommends more than one candidate for appointment, it may in its discretion arrange their names in order of preference. Where the Committee decides to arrange the names in order of preference, it shall be deemed to have signified that in the event of the first being not available, the second may be appointed and in the event of the second also being not available, the third may be appointed, and so on.

(2) The Selection Committee may recommend that no suitable candidate for appointment is available. In such a case, the post shall be re-advertised.

15. A conjoint reading of the aforesaid two provisions would show that the recommendations made by the Selection Committee cannot lightly be ignored by the Executive Council. The emphasis is on the word "recommendation". The dictionary meaning of the word "recommendation" is to advise, "to impress or command". In Law Lexicon the meaning of word "recommendation" is "a statement expressing commendation or a message of this nature or suggests fit". (vide V.M. Kurian Vs. State of Kerala and Others,). It is true that the word "recommendation" is not defined in the Act or in the First Statute. In such situation the meaning of the word "recommendation" has to be understood in the context of the provision of the Act. The Act with which we are concerned here provides for constitution of Selection Committee for the purpose of appointment of teacher. The Executive Council is the highest supervisory body of a University. The Selection Committee by its very constitution consists of experts in the subject. The members of the Selection Committee are persons who have expertise in the subject while such expertise is not necessarily present in the Executive Council. Thus, the meaning of the word "recommendation" when read in its context shows that it means "giving of favorable report" and nothing more or less than that. By means of 11.06 it is open to a Selection Committee to prepare select list of not more than three persons in accordance with their merit. The select list though prepared by the Selection Committee commands high sanctity.

16. The scheme of Section 31, and the object of formation of Selection

Committee suggests, that before recommending the names of selected candidates found by it as most suitable person for the post it would proceed by discussion among its members and no member can say that he will open his mouth, afterwards and elsewhere. All the members are entitled to know the names or names of the successful candidates which is the ultimate outcome of the selection process. A member of Selection Committee cannot deprive the other members and keep the other members guessing the name of successful candidate. A Selection Committee takes the collective decision as a body which cannot affect subsequently by any act of the individual member of the Selection Committee. In this view of the matter the decision of Selection Committee placing the petitioner at serial No. 1 was its final "recommendation" notwithstanding the fact that the Vice Chancellor initially, without there being any provision reserved his right to disclose the marks awarded by him before the Executive Council.

17. The Supreme Court in the case of *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, has examined the scope and width of Section 31 of the U.P. State Universities Act with reference to the recommendation made by Selection Committee and disagreement of the Executive Council with such recommendation. Although in this case the Supreme Court held that the Chancellor while exercising the power u/s 31(8)(a) of the Act discharges administrative functions as he has only to reconsider the recommendation of the Selection Committee in the light of the disagreement, if any, expressed by the Executive Council and direct the appointment of the candidate in the select list. In this sense according to the Supreme Court there is no "Us" before the Chancellor for determination. But in the body of the judgment the Supreme Court has observed that three authorities are involved in the selection of University teachers - (1) Selection Committee, (2) Executive Council and (3) Chancellor. The Selection Committee has liberty to recommend the names of one or more candidates but no more than three names for each post. In para 12 of the report the Supreme Court has observed as follows :-

The Executive Council is the principal executive body of the University whose powers and duties are provided u/s 21 of the Act. Subject to the provisions of the Act, the Executive Council has power to appoint officers, teachers and other employees of the University. The appointment shall be made on the basis of recommendation made by the Selection Committee, which means in the order of merit of candidates arranged by the Selection Committee. The Selection Committee has expert members and it has thus the expertise to judge the relative suitability of competing candidates. The Executive Council has no such experts on the subject for selection. Therefore, the Executive Council shall make appointments as per the position or ranking obtained in the recommendation, unless any other rule requires otherwise. Section 31(8)(a) seems to suggest that if the Executive Council wants to agree with the recommendation and appoint candidates in the order of merits, no reasons are to be given. But if it wants to disagree with the recommendations made by the Selection Committee, it must

give reasons for disagreement. It has however, no power to override the recommendation and appoint a candidate of its own choice. It may disagree, but should give reasons for disagreement and refer the matter u/s 31(8)(a) to the Chancellor. Then the decision of the Chancellor shall be binding on the Executive Council.

(Emphasis supplied by us).

18. From the above quoted Para it is clear that the Selection Committee has two expert members and it has the expertise to judge the relative suitability of the competing candidates while Executive Council has no such experts on the subject for selection. Therefore, it was held, as indicated above, "the Executive Council shall make appointment as per position or ranking obtained in recommendation, unless any other Rule requires otherwise." It has been further held that it has no power to override the recommendation and appoint a candidate of its own choice. Now; reverting to the facts of the present case we find that the proceedings of the Selection Committee have been annexed as Annexure - 4 to the counter affidavit of the University. 41 candidates were called for interview. Out of them 5 were absent. The following panel was prepared on the basis of the interview by the Selection Committee in respect of Sanskrit Vidya for the post of lecturer: -

(i) Dr. Ravi Shanker Pandey (petitioner).

(ii) (Smt.) Dr. Promodini Panda (Respondent No. 6).

(iii) Dr. Ramakant Pandey and Dr. Kamlesh mani Tripathi.

19. Thereafter, it has recorded that there would be one year's probationary period which can be extended. Then it has been signed by six persons including (1) Prof. Ranjan Mishra, the Vice Chancellor, -Chairman, (2) Prof. Vashu Dev Ghusey - Expert, (3) Prof. K.C. Padi -Expert, (4) Dr. Uma Kant Yadav - Member OBC, (5) Prof. Rajiv Ranjan Singh - Head of the Department and (6) Dr. Prem Prakash - Member of the Scheduled Caste. The Vice Chancellor has made an endorsement under his signature which reads as follows :-

Apna Anka Dene Ka Adhikar Surakshit Rakhata Hun Jise Karyakarini Mein Prastut Karoonga. Sansodhit ...(illegible) ... Hi Many a Hoga.

20. Prof. Rajiv Ranjan Singh, Head of the Department who is the respondent No. 5 in the writ petition has also recorded a note of dissent by stating that unanimously all the persons agreed to the first name. The name mentioned at the serial No. 2 of Dr. (Smt.) Promodini Panda, and at serial No. 3 Dr. Kamlesh Mani Tripathi, they do not possess speciality in Grammar and therefore he is dissenting. Dr. Tripathi had a little knowledge of Grammar and Dr. (Smt.) Panda could not give satisfactory reply relating to Grammar subject. Dr. Rama Kant Pandey has absolutely no knowledge of English. Therefore, the name of the person mentioned at serial No. 1 is being recommended. Our attention was also invited by the members at Bar to the document which was prepared by Prof. K.C.

Panda in presence of all the Committee members and certified by the Vice Chancellor namely Rajendra Mishra. It appears from there that the marks given by the Committee of members are mentioned at the end of the marks thus awarded and the certificate given by the Vice Chancellor In between it is mentioned at serial No. 1 Ravi Shanker Pandey, at serial No. 2 Promodini Panda, at serial No. 3 (R.K. Pandey), (K.M. Tripathi). The learned counsel for the petitioner strenuously contended that from the minutes of the Selection Committee which have been annexed by the University alongwith the counter affidavit, it is clear that Ravi Shanker Pandey, the petitioner was placed at serial No. 1 by the Selection Committee in its recommendation made to the Executive Committee. The Vice Chancellor has no right to keep the marks awarded by him in a sealed cover. In this view of the matter it was submitted that the only course left open to the Executive Council in the case of disagreement with the recommendation of the Selection Committee was to refer the matter to the Chancellor u/s 31(8)(a) of the Act. The only argument of the learned counsel for the University was that the note put by the Vice Chancellor that he will disclose the marks in the meeting of the Executive Council was part of the recommendation of the Selection Committee and as such if the marks awarded by the Vice Chancellor are added, the respondent No. 6 acquires serial No. 1 in the panel of the selected candidates. But he could not point out any such provision which may entitle the Vice Chancellor to adopt the procedure as adopted by him. Needless to say the U.P. State Universities Act is a self contained Act and it contains the provisions regarding the manner of the appointment of a teacher. The three authorities of University are necessarily involved in the appointment and selection of a teacher. They are (1) The Selection Committee, (2) The Executive Council and (3) The Chancellor. The Vice Chancellor is the Chairman of the Selection Committee. The decision taken by the Selection Committee is not an individual decision and it is a collective decision of a statutory body. Vice Chancellor has to perform various functions and duties. He has altogether different capacity while discharging the duties as of Chairman of a Selection Committee than as a member of Executive Council. The Selection Committee and the Executive Council, they operate in their respective fields delineated by the provisions of the Act. The Selection Committee becomes functus officio as soon as it makes recommendation as its object to recommend the name of suitable person for appointment as teacher. In this connection it may be noted here that a Selection Committee is not necessarily required to make recommendation but can refuse to recommend the name if no suitable candidate in its opinion is available. The idea of formation of Selection Committee which also consists of two Experts is to examine the suitability of the applicants for the post. In this connection it is relevant to record the observations made by the Supreme Court in the case of The Chancellor and Another Vs. Dr Bijayananda Kar and Others, wherein it has been observed that;---

The function of the Selection Committee comes to an end when the process of selection is completed and proceedings are drawn. Every member of the

Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before the Committee. Normally, it would not be considered bonafide act of member of a Selection Committee to say, after the selection is over and he has signed the proceedings, that he "overlooked" certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained.

21. Although the aforesaid observations of the Supreme Court were made in a slightly different context but we are of the opinion that the same holds good for the present case. The Vice Chancellor being Chairman of the Selection Committee was the master to control, manage and supervise the proceedings of the Selection Committee. He took active part in the selection process. There was absolutely no justification for the Vice Chancellor being the Chairman of the Selection Committee in adopting this novel method even if he had some difference of opinion with the Head of the Department. The two Experts were there who took active part when merit list was drawn. Merit list which was prepared by Prof. K.C. Panda, one of the Experts has been certified by the Vice Chancellor under his signature wherein the petitioner Ravi Shanker Pandey has been shown at serial No. 1. It is part of the recommendation of the Selection Committee. The reservation made by the Vice Chancellor can, by no stretch of imagination, be called as part of "recommendation" of Selection Committee.

22. We also find sufficient force in the argument of the learned counsel for the petitioner that if there was any disagreement with the recommendation of the Selection Committee the matter should have been referred by the Executive Council to the Chancellor as provided u/s 31(8)(a) of the Act. The Supreme Court in the case of Km. Neelima Mishra (supra) has said that Executive Council shall make appointment as per the position or ranking obtained in the recommendation, unless any other Rule requires otherwise. Meaning thereby the Executive Council is not empowered to select a person placed at serial No. 2 or 3 and ignore the candidate placed at serial No. 1 by the Selection Committee. In case the Executive Council does not agree with the recommendation of the Selection Committee the matter should have been referred to Chancellor. To put it differently, it follows that the Executive Council is bound to accept the recommendation made by the Selection Committee as such or to refer the matter to the Chancellor in case of disagreement. The impugned action of the Executive Council suffers with manifest error of law being in violation of Section 31 of the Act

23. Now we take the argument raised by Shri V.C. Mishra, Senior Advocate, counsel for the respondent No. 6, who vehemently submitted that this Court should consider the comparative merits of the petitioner as well as of the respondent No. 6. We are afraid that in view of well settled proposition laid down by the Supreme Court and the limited scope of the judicial review in such matters, can accept the said arguments. There are catena of decisions wherein it has been held that it is not function of the Court to hear appeals over the

decision of the Selection Committees and to scrutinize the relative marks 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 is 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 selection or proved mala fides affecting the selection etc. vide Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, . This case has been followed in Union of India (UOI) and Another Vs. Samar Singh and Others, . In this case reference has been made by the Supreme Court to its earlier judgment delivered in the case of Dr. Jai Narain Misra Vs. State of Bihar and Others, .

24. In National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, it has been held that Selection Committee takes interview of the candidates, makes the assessment of their relative merits and recommends a panel of names of appointment. The function of the Selection Committee is neither judicial nor adjudicator. It is purely administrative. There is no Rule or Regulation which requires the Selection Committee to record reasons. When the Selection Committee consisted of Experts in the subjects for selection and they were men of high status and also of unquestionable impartiality, the Court should be slow to interfere with their opinion.

25. The Supreme Court set aside the order passed by the Administrative Tribunal which interfered with the recommendation of the Selection Committee on the basis of its earlier judgment given in the case of Dalpat Abasahed (Supra) in Kuldip Chand Vs. State of H.P. and others, and Durga Devi and another Vs. State of H.P. and others, .

26. In view of the above authoritative pronouncements of the Apex Court we are of the opinion that scope of judicial review against the recommendation of the Selection Committee is very narrow and only in limited circumstances the Court can review the recommendation of the Selection Committee. We are of the view; as indicated above, that the Vice Chancellor was wrong in not disclosing the marks awarded by him before the Selection Committee in the meeting of the Selection Committee and could not do so subsequent to the closure of the meeting. The Executive Committee also acted against the law in not honouring the recommendations of the Selection Committee by changing the order of the merit list on subsequent disclosure.

27. It is well settled that after the selection process is over neither the selectors can interfere with the selection already made by them nor the selectees, participated in the selection, can turn around and challenge the same. It is also well settled that the Court cannot sit over a selection process as an expert. Court only interferes when illegality or material irregularity is apparent from the face of the selection process. Factually illegality or material irregularity arose by the action of the Vice-Chancellor during the selection. He withheld signing of the

selection script and making panel for the purpose of production to the Executive Council. We have not been favoured with any material to establish that the selection process will continue till the date and time of placing the report of the Selection Committee before the Executive Council. Being not so, it can be safely construed that selection process was over as soon as selection is made by the Committee and signed the script making a panel. Therefore, the action on the part of the Vice-Chancellor in withholding him from giving marks till the meeting of the Executive Council was totally unjustified. The selectors, inclusive of Chairman, had obviously become *functus officio* immediately after completion of the selection process by the Selection Committee. The Vice-Chancellor has to discharge two distinct roles in the Selection Committee and in the Executive Council. In the Selection Committee he is the Chairman when in the Executive Council he is the member. As and when selection process is over, he has no role to play as Chairman of the Selection Committee. He acted in that way and got the other members of the Executive Council influenced. The entire process of selection of the respondent No. 6 by the Executive Council became outcome of illegality and material irregularity. Therefore, she has to face the consequences.

28. The argument of the learned counsel for the respondent No. 6 that this Court should be guided only by the marks awarded by the two Experts Jacks merit. It runs counter to the statutory provision which contains the constitution of the Selection Committee. Therefore, the said argument sans merit and is hereby rejected.

29. Lastly, the learned counsel for the respondent No. 6 submitted that substantial justice has been done in the matter and this Court should not interfere with the appointment of the respondent No. 6 who is more meritorious and the other lacks the essential qualification.

30. In this connection it is desirable to look into the advertisement which has been filed as Annexure - 1 to the counter affidavit prescribing the essential minimum qualification for the post in question. One of the qualifications is "Acharya" or Sanskrit with speciality in "Vyakaran" in undergraduate degree preferable; ability to teach through English Medium. It was submitted that the petitioner never had English as a subject. Therefore, the petitioner does not fulfill the requisite essential qualification. The Sanskrit has to be taught in the University to foreign students and as such lack of capacity to teach Sanskrit in English Medium is fatal. Whereas, the case of the petitioner is that even if he had not English as a subject but he has got good proficiency in English and can very well teach the Sanskrit through English Medium. Counsel for the petitioner submitted with reference to the educational qualifications of the respondent No. 6 that she had Sanskrit as one of the subjects in undergraduate course but has no specialty in Grammar, which is one of the essential requirements for the post. The length and width of the arguments of the counsel for the private parties is that other side does not fulfill the minimum qualification prescribed for the lecturer. It is neither necessary nor desirable to adjudicate the said issue in the

present proceeding in as much as the University in its counter affidavit referred to above, has come out with a specific case that both of the parties possess the minimum requisite qualification for the post in question. Moreover we find that on the question of essential qualification the Supreme Court in the case of Dr. Kumar Bar Das Vs. Utkal University and Others, and G.N. Naik v. Goa University and Ors. JT 2002 (1) S.C. 562 has observed that in such matters having regard to the high qualifications of the Experts, the Experts' views are entitled to great weight as the Chancellor cannot normally interfere with the subjective assessment of the merit of candidates made by an Expert Body unless mala fide and other collateral reasons are shown. In that case the eligibility criteria was about "10 years teaching and/ research experience". Candidate having teaching experience of 7 years and 8 months 14 days with research experience of one year 5 months 14 days was selected by the Selection Committee which was set aside by the Chancellor on the ground of lack of minimum qualification. The Supreme Court found fault with the order of the Chancellor on the ground that the opinion of the Experts in the Selection Committee must be taken to be the appellant's teaching and research experience satisfied the above condition of "about 10 years". In the case of G.N. Naik (Supra) it was observed that the Court would not be justified in adopting a legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility. Faced with the stand taken by the University that both the petitioner as well as the respondent No. 6 possesses the minimum qualification for the post in question it is not desirable to adjudicate the said issue in the present writ petition.

31. It may also be noted here that the Supreme Court in the case of Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, has held that the Selection Committee has no power to relax the essential qualification unless such power is vested in it by law.

32. The argument of the learned counsel for the petitioner with regard to the mala fides against the Vice Chancellor as well as the arguments of the learned counsel for the respondent No. 6 with regard to the mala fides against the Head of the Department, do not impress us. It is true that the respondent No. 6 happens to be the wife of the Registrar of the University. But this by itself does not show that a person like Vice Chancellor who is holding such a high post would be under the influence of the Registrar of the University. The University has also explained in the counter affidavit that it is practice prevalent in the University that the selected candidates give their joining on the same day immediately after the conclusion of the meeting of the Executive Council. This practice is almost prevalent in every University including the Allahabad University. Thus no capital can be made out of the fact that the respondent No. 6 gave the joining on the date when the Executive Council met. Similarly we find that the respondent No. 6 has failed to prove any mala fide on the part of the Head of the Department against her. It is a different thing that the then Vice Chancellor and Head of the Department may be holding different views on a

particular issue. But it does not necessarily meant that they had mala fide intentions either against the petitioner or against the respondent No. 6.

33. The upshot of the above discussion is that the name of the petitioner No. 1 was recommended by the Selection Committee at serial No. 1 and as such the Executive Council could not issue appointment letter to the respondent No. 6 after permitting the Vice Chancellor to open the sealed cover containing the marks awarded by him, in the meeting of the Executive Council.

34. In view of this discussion, we find that the appointment of the respondent No. 6 is illegal and contrary to Section 31(8)(a) of the Act and as such the appointment of the respondent No. 6 is quashed. The matter is referred back to the Executive Council to take an appropriate decision in the matter in accordance with law. It is made clear that the question of respective qualifications of the petitioner and the respondent No. 6 has not been adjudicated upon by us on merit. The authorities concerned may examine the same if it is permissible under law without being influenced by any of the observations made by this Court.

35. In the result the writ petition succeeds and is hereby allowed. The appointment of the respondent No. 6 is hereby quashed. But the relief claimed in the petition that a writ, order or direction in the nature of Mandamus commanding the respondent authorities to appoint the petitioner as Lecturer in the Department of Sanskrit Vidya of the University, cannot be granted by this Court. The Executive Council is the appointing authority and a decision in this regard has to be taken by the Executive Council at first.

36. However no order is passed as to costs.