

(1998) 07 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 8706 of 1982

Dr. Salik Tewari

APPELLANT

Vs

Chancellor, Gorakhpur University and others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 407(1)

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Anand Kumar Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—By means of the present writ petition, Dr. Salik Tewari has prayed for issuance of a writ in the nature of certiorari quashing the order of appointment of Dr. Fateh Bahadur Ojha (respondent No. 5) as the Principal of Lal Bahadur Shastri Degree College, Mughalsarai, Varanasi, as well as the orders dated 17.5.1982 and 7.7.1982 suspending the petitioner and rejecting his representation u/s 68 of the State Universities Act (hereinafter referred to as the Act) respectively.

2. The factual matrix in a short compass is that the Selection Committee with a view to make appointment for the post of the Principal of Lal Bahadur Shastri Degree College, Mughalsarai, Varanasi, met on 9.8.1981 and recommended the following candidates in order of preference :

1. Dr. Fateh Bahadur Ojha (respondent No. 5)
2. Dr. Salik Tewari (petitioner).
3. Dr. Chhabi Nath Pandey.

3. The minutes of the meeting of the Selection Committee for appointment of the Principal indicate that the selection was to be made for the said post and the

Members of the said Selection Committee Messrs A. P. Chaube as nominee of the Management, Dr. V. S. Misra (Expert). Dr. A. D. Pant (Expert) and Dr. Hari Shankar Srivastava (Expert) were present. Ten candidates were called, including the petitioner, for interview out of which eight candidates participated in the interview. The Selection Committee interviewed all the eight candidates and recommended M/s. Dr. Fateh Bahadur Ojha, Dr. Salik Tewari and Dr. Chhabi Nath Pandey in order of merit. The candidature of Shri Govind Prasad could not be considered in spite of his very brilliant academic record as according to the qualifications laid down in the Statutes of the Gorakhpur University, he did not have Master's Degree or an equivalent degree of any University in one of the subjects taught in the college. The condition of consistently good academic record had been waived in view of Ph. D. Degree.

4. In pursuance of the recommendation of the Selection Committee, the Management appointed Dr. Fateh Bahadur Ojha (respondent No. 5) as the Principal of the College in question. Even prior to the approval of the Vice-Chancellor. Dr. Salik Tewari, the petitioner, filed a civil suit against the Management as well as against Dr. Fateh Bahadur Ojha in which an order of interim nature was granted which was later on vacated.

5. The selection of Dr. Fateh Bahadur Ojha (respondent No. 5) was challenged more or less on three grounds, firstly, that the Selection Committee was not properly constituted because Shri A. P. Chaube, a retired Principal, was allowed to sit in the Selection Committee who has Influenced the proceedings of the Selection Committee : secondly, Dr. V. S. Misra-another Member of the Selection Committee, is alleged to be a relation of Dr. Fateh Bahadur Ojha and thirdly, that Dr. Fateh Bahadur Ojha did not fulfill the prescribed qualifications and the Selection Committee committed a manifest error of law in waiving the minimum qualifications.

6. Statute 11.13A of the University deals with the minimum qualifications for the post of the Principal of an affiliated College to the University which reads as under :

"11.13A. In the case of any College affiliated to the University, the following shall be the minimum qualifications for the post of its Principal :

(i) Degree College :

(a) A consistently good academic record (that is to say, the overall record of all assessments through the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 per cent) Master's degree, or an equivalent degree of a foreign University in one of the subjects taught in the College or in a subject allied or inter connected therewith : and

(b) A doctorate degree in one of the subjects taught in the College, with 7 years experience of teaching degree classes ;

Provided that if a candidate possesses 15 years" or more experience of teaching Degree Classes or 10 years" or more experience of teaching postgraduate classes or if he is or has been a confirmed Principal of four years or more standing of any Degree College, the Selection Committee may relax the requirement of doctorate degree.

In Statute 11.13A of the Gorakhpur University First Statute (hereinafter referred to as the said Statute) (1) in clause (1) after the existing proviso, the following proviso shall be Inserted, namely ;

Provided further that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard it may relax any of the qualifications prescribed in sub-clause (a).

(ii) in clause (2) after the existing proviso, the following proviso shall be inserted, namely ;

Provided further that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard it may relax any of the qualifications prescribed in sub-clause (a).:

7. The comparative qualifications of Dr. Fateh Bahadur Ojha and the petitioner are given below :

Dr. Fatch Bahadur Ojha

Dr. Salik Tewari

High School? IInd Div. (47.3%)

High School?1st Div. (64%)

Inter-IIInd Div.(41.4%)

Inter-IIInd Div. (57%)

B.A.? IInd Div. (50%)

B.A.? IInd Div. (57%)

M.A.? IInd Div. (49.3%)

M.A. (Eng.)? IInd Div. (57%)

M.Ed-Ist Div. (64.5%) Ph.D.

M.A.(Sanskrit)? 1st Div. (64%) Ph.D.

Teaching Exp.? 13 years.

Teaching Exp.? 13 years.

8. As far as the first point raised by the petitioner that the Selection Committee was not constituted properly is concerned, the same did not find favour with the Chancellor because Dr. A. P. Chaube, a retired Principal, was allowed to sit in the Selection Committee as a nominee of the Management. The counter-affidavit filed before this Court indicates that after Dr. A. P. Chaube retired as the Principal, he was made the Deputy Manager of the Institution and in the capacity of being a Member and nominee of the Management, his presence cannot be said to have vitiated the proceedings of the Selection Committee. The learned Chancellor was of the view that if it is assumed that Dr. A. P. Chaube was not a Member of the Management and thus could not act as the nominee of the Management, even then the defect is to be cured in view of the provisions of Section 66 of the Act.

9. As far as the contention of the petitioner that Dr. V. S. Misra was related to Dr. Fateh Bahadur Ojha is concerned, it was denied before the Chancellor as well as before this Court that Dr. V. S. Misra, an Expert, was related to Dr. Fateh Bahadur Ojha in any manner whatsoever. The Chancellor was perfectly justified in observing that a candidate appearing before the Selection Committee without raising any objection with regard to the constitution of the Selection Committee cannot subsequently take up a plea that the Selection Committee was not properly constituted. Although a vain effort has been made by the petitioner by annexing an application contained in Annexure-1 to the writ petition addressed to the Chairman of the Selection Committee wherein an objection was alleged to have been taken about the presence of Dr. A. P. Chaube and Dr. V. S. Misra in the Selection Committee but in the counter-affidavit filed before this Court, it was vehemently denied that any such objection was ever raised by the petitioner. In any proceedings such factual dispute cannot be adjudicated upon particularly when it was not raised before the Chancellor that such an objection about the constitution of the Selection Committee was taken up by the petitioner.

10. As far as the third ground that Dr. Fateh Bahadur Ojha lacked the minimum qualifications and the said minimum qualifications could not be waived is concerned, the same requires adjudication by this Court. A perusal of the comparative merits of Dr. Fateh Bahadur Ojha and the petitioner indicates that the petitioner as well as Dr. Fateh Bahadur Ojha both possess Ph.D. Degree and while the petitioner held Master's degree in two subjects Dr. Fateh Bahadur Ojha held Master's degree and M.Ed, degree. Both have held 13 years' experience of teaching. However, Dr. Fateh Bahadur Ojha did not possess consistently a good academic record since he obtained 47.3% marks in High School, 41.4% marks in intermediate. 50% marks in B.A. 49.3% marks in M.A. and 64.5% marks in M.Ed., but the Selection Committee found it desirable to waive the minimum qualifications of having consistently a good academic record in the case of Dr. Ojha in view of his Ph.D. degree.

11. The learned Chancellor was of the view that the Selection Committee acted within its power to grant the said relaxation, because according to the

amendment in the relevant Statute 11.13A which came into force from October 1, 1980. i.e., before 9.8.1981 whereby. Selection Committee had been empowered to relax any of the qualifications prescribed in sub-clause (a) in view of the high standard of research work of a candidate as evident either from his thesis or from his published work. The Selection Committee was the best Judge to decide the suitability of the candidates and when it has relaxed the requirement of "consistently a good academic record" in the matter of Dr. Fateh Bahadur Ojha. It can no longer be said that he did not possess the prescribed qualifications.

12. The learned Chancellor was also of the view that the approval given to the appointment of Dr. Fateh Bahadur Ojha did not suffer from any illegality and hence he rejected the representation preferred by the petitioner.

13. Relying upon the decision of the Hon''ble Supreme Court in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, . Mr. A. N. Tripathi, learned counsel for the petitioner submitted that where the statute of the University was clear and unambiguous, the Court which is always reluctant to interfere into the decisions of the academic bodies cannot ignore the provisions of law which have been flouted. The contention that some of the persons who were appointed and worked for seven years were not given due weightage by the Hon''ble Supreme Court in Dr. J. P. Kulshreshtha. (supra) and the Hon''ble Supreme Court directed for holding fresh selection among those candidates who were qualified for the Readership in the light of the interpretation of Ordinance No. 9 and the Hon''ble Supreme Court also held that a good academic record meant more than 54% marks and, therefore, the appointments of those Readers who worked for seven years were quashed by the Hon''ble Supreme Court. The learned counsel also drew the attention of this Court to the decision of this Court in Dr. Preet Singh v. Dr. S. K. Mangal (1992) 2 UPLBEC 1425. wherein the degree of M.Ed. was held as teachers'' training qualification and not an M.A. degree in respect of the subject concerned which is contemplated under the statute. Similar view was taken by a Division Bench of this Court in Writ Petition No. 8551 of 1993, V. P. Singh v. V. P. Higher Education Service Commission and others, decided on 28.5.1995, relying upon the decision of the Hon''ble Supreme Court in Dr. Preet Singh, (supra). Reliance was also placed on a decision of Division Bench of this Court in Dr. D. K. Gupta v. Committee of Management and others. Writ Petition No. 15504 of 1990, decided on 10.3.1995 and connected writ petitions, wherein it was observed that relaxation can be granted only in respect of any one qualification prescribed and not both and since Dr. D. K. Gupta had neither obtained 54% or 50% marks in each of the separate examinations, therefore, it could not be said that he held consistently a good academic record. In Dharmendra Kumar Gupta D. State of U. P. and others (1991) 2 UPLBEC 1037 this Court observed that the candidates having less than 54% marks even if called for interview are not entitled to be appointed. Similar observations are made in several decisions of this Court in Dr. P. S. Malik v. Chancellor. Meerul University and others. 1982 UPLBEC 577 : Framed Kumar Gupta v. Vice-

Chancellor. Rohilkhand University, Bareilly and others 1982 UPLBEC 353 : Ansarulul Hasan Siddiqui v. Rohilkhand University and others. 1984 UPLBEC 257 and Ram Niranjana Maurya D. Governor of U. P. (Chancellor, Gorakhpur University). Lucknow and others (1989) 1 UPLBEC 513.

14. It was urged by Shri Tripathi that the power under Article 226 of the Constitution should be exercised to effectuate the regime of law and not to abrogate it. The High Court acting under Article 226 of the Constitution cannot ignore the law nor can it overrule it. The power under Article 226 of the Constitution is created to serve the ends of justice and not to transgress it.

15. The contention of Mr. A. N. Tripathi appears to be that as admittedly respondent No. 5 did not possess consistently a good academic record while the petitioner not only possessed a good academic record but also possessed Ph.D. degree having 13 years' experience of teaching, he could not have been Ignored when respondent No. 5 only secured 47.3% marks in High School, 41.4% marks in Intermediate, 50% marks in B.A. and 49.3% marks in M.A. and has been selected for the reason that he was a Ph.D. The Selection Committee even in its proceedings did not Indicate that the research work of respondent No. 5 was of such a high standard that the minimum qualification of consistently a good academic record could be waived.

16. On the other side. Mr. R. N. Singh, appearing on behalf of Dr. Fateh Bahadur Ojha submitted that before the appointment of the respondent as the Principal of Lal Bahadur Shastri Degree College. Mughalsara, Varanasi. he was working as a permanent lecturer in the Department of Education of Gorakhpur University where he taught the students of B.Ed. Classes for 12 years and also possessed one years' experience in teaching post-graduate classes. He had to resign from the post of Lecturer as soon as he joined the post of the Principal of the College on 17.9.1981. The learned counsel urged that respondent No. 5 is working as the Principal of the said College for about 17 years and if his appointment will be quashed at the fag end of his service, when he is at the verge of reaching the age of superannuation, he shall suffer irreparable injury while the petitioner who is a Senior Lecturer in English in the said College, i.e.. Lal Bahadur Shastri Degree College. Mughalsara, Varanasi. will not suffer any loss.

17. We have very minutely scrutinised the order of the learned Chancellor as well as the averments made by the parties in the writ petition. We are of the view that the contention of the petitioner that the Selection Committee was not properly constituted as one A. P. Chaube, a retired Principal, was allowed to sit in the Selection Committee who influenced the proceedings of the Selection Committee is totally misconceived, because the affidavit filed on behalf of the respondents as well as Shri A. P. Chaube himself before this Court indicate that after being retired from the post of the Principal Shri A. P. Chaube became the Deputy Manager of the Management Committee of the College with effect from 1.7.1981. He participated in the Selection Committee in question in his capacity as a nominee of the Management Committee- As far as the contention of the

petitioner that Shri V. S. Misra was related to Dr. Fateh Bahadur Ojha is concerned, that was denied by Dr. Ojha himself by filing an affidavit before this Court. The learned Chancellor was perfectly justified in rejecting the contention of the petitioner that the proceedings of the Selection Committee were vitiated due to the presence of Shri A. P. Chaube and Dr. V. S. Misra.

18. It is well-settled that a person who had raised no objection initially and appeared before the Selection Committee cannot challenge the constitution of the Selection Committee. As already pointed out by us, the contention of the petitioner that he had raised such an objection was repelled in the counter-affidavit and it was submitted that the alleged objection which the petitioner had raised by preferring the alleged application dated 9.8.1981 before the Chairman, Selection Committee was after thought and such an application was never addressed to the Chairman.

19. As far as the third ground of the petitioner is concerned, undoubtedly the same merits consideration and has substance, but whether the selection of respondent No. 5 can be quashed after 17 years of his selection when he had already joined as the Principal and is at the verge of retirement requires consideration.

20. The Hon'ble Supreme Court in *Raj Pal Verma and others v. Chancellor, Meerut University and others*. (1997) 3 UPLBEC 1573. dealing with this aspect of the matter observed just in the beginning of the judgment that was a classic case of "delay defeats justice" and in the concluding para of the judgment observed :

"The third respondent came to be appointed as late as in March, 1979 and 18 years have passed and we are informed that he is on the verge of retirement next year. Though he was not qualified for appointment at the first instance as he did not possess the Ph.D. degree in Ancient History, the subject to be taught, nonetheless, since the time has run out, we decline to disturb the appointment of the third respondent, the observation that there is deterioration of standards of rectitudes in Management of higher educational institution with the fond hope that the Executive would look into and meander the malady and restore the lost glory of the educational institutions. University is the centre of learning and the students look to the teacher as real Guru Devo Bhava with all respect, reverence in the heart as the true guide, mentor, friend and philosopher. Before parting with the matter, we are inclined to place on record our appreciation for the good cause espoused by the appellant as public interest litigant."

With the aforesaid observations the Hon'ble Supreme Court dismissed the appeal.

21. A Division Bench of this Court in *National Insurance Co. Ltd. Vs. Sarojini and Others*, , held that there will be no justification now to unsettle the career of an employee who has worked in this institution for the last about 20 years.

22. We are of the view that throwing away respondent No. 5 when he has

attained about 59 years of age from the post of the Principal of the College in question at this juncture when about 17 years back he joined the institution as the Principal after resigning from the post of Lecturer in the Gorakhpur University would be against the principles of equity. The petitioner till 1996 worked as a Senior Lecturer in the said College. He might have been promoted to the post of the Reader or he will very soon become the Reader and then Professor.

23. We after adjusting the equities between the parties are definitely of the view that this writ petition should be dismissed in the same manner as the Hon''ble Supreme Court dismissed the Civil Appeal preferred by Raj Pal Verma and others, (supra). The observations of the Hon''ble Supreme Court in the last para of the judgment which we have cited in the foregoing paragraph should be the guiding principle to be followed by those who administer the Universities so that the Court may be saved from deciding such cases in future.

24. The writ petition is accordingly dismissed.