

**(2007) 10 KAR CK 0022**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 3741 of 2007**

Dr. Shivanand

APPELLANT

Vs

The State of Karnataka

RESPONDENT

**Date of Decision :** 25-10-2007

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16 (1)

**Citation :** (2008) 3 KarLJ 426 : (2007) 4 KCCR 358 SN

**Hon'ble Judges :** N.K. Patil, J

**Bench :** Single Bench

**Advocate :** Prashanth and Gangadhar J.M, for the Appellant; S.Z.A. Khureshi, AGA for R1, H. Subramanya Jois, Vagdevi Associates, for R2 and L. Govindraj, for C/R3, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.K. Patil, J.—In the instant case, petitioner has questioned the legality and validity of the impugned Notification dated 22nd February 2007 bearing No. Aa.Ku.Ka.67.PTD.07 vide Annexure A and the insertion Notification of even number and even date vide Annexure B as the same are illegal, void and inoperative. Further, petitioner has sought for a direction, directing the respondents 1 and 2 to consider the case of petitioner and to appoint him as Director of the fourth respondent - institute as per Government Notification dated 29th November 2006 bearing No. IGICH/DRC/2/2006-07, in the interest of justice and equity.

2. The brief facts of the case are as follows:

The grievance of petitioner in the instant writ petition is that, pursuant to the Notification issued by the Director of Medical Education, Member secretary, Selection Committee, Indira Gandhi Institute of Child Health dated 29th November 2006, bearing No. IGICH/DRC/2/2006-07 vide Annexure G, petitioner, being fully qualified and eligible to be appointed as "Director" of fourth

respondent -Institute and had not suffered any disqualification, filed his application for appointment to the post of "Director" to the fourth respondent Institute. The applications received in response to the said Notification were processed under the Chairmanship of the second respondent herein. Thereafter, six candidates were called for interview and were finally short-listed to three candidates placing the petitioner at the top of the list in the order of merit, by awarding him 67 marks out of 100. The third respondent herein, who was also the applicant, was awarded 50% and placed second and below the petitioner by the Selection Committee. The said fact is evident from the proceedings of the Selection Committee dated 24th January 2007 vide Annexure H. There afterwards, the recommendations of the Selection Committee was placed before the Governing Council to re-consider the same in its meeting held on 19th February 2007. As could be seen from the proceedings of the Governing Council meeting held on 19th February 2007, the Governing Council abdicated its responsibility and passed the resolution authorizing the second respondent to take a decision with regard to the appointment of "Director" to fourth respondent - Institute. The second respondent has now selected and appointed the third respondent purely as an act of favoritism totally ignoring the fact that, petitioner was more meritorious than the third respondent and especially when, the Selection Committee of which, he himself was the Chairman had placed the petitioner at the top of the merit list. The Governing Council by passing the resolution, authorizing the second respondent to appoint suitable person to the post of Director was wholly unauthorized and impermissible, violating the doctrine of delegates non potest delegare and the consequential appointment made by second respondent is wholly without authority of law and hence, the same is liable to be set aside.

3. The case of second respondent is that, petitioner, by proceeding on a fundamentally erroneous assumption that, his claim/case for Selection has been ignored, has presented the instant writ petition and quite unfortunately presuming further that, the Governing Council of the fourth respondent - Institute "abdicated its responsibility in selecting a suitable candidate for appointment as the Director of the said Institute". Therefore, presuming without any basis therefore, petitioner has quite loosely employed vituperative expression that, the Selection and appointment of the third respondent is purely an act of favoritism and based on extraneous considerations and that, the Governing Council has surrendered to the dictation of the answering respondent. It has also been alleged that, petitioner has been picked and chosen to be screened out and subjected to hostile discrimination solely with the object of favoring third respondent by second respondent, and by so alleging, petitioner has sought to attribute arbitrariness, capricious and whim in the Selection and appointment of third respondent. The Selection in question has been made on a rational basis and upon an objective consideration of the relative merits of the respective candidates, as also the provisions of the Rules of Recruitment governing such a Selection and keeping in view the paramount consideration of

the Institute and the public at large. Therefore, the writ petition filed by petitioner is merit-less and therefore richly commend summary rejection.

4. It is the further case of second respondent that, mere placement of petitioner at Sl. No. 1 in the panel prepared by the Selection Committee would not confer on him any indefeasible right to be appointed nor would the same in any way denude, whittle down, abridge or take away the power and discretion of the Selection Committee to select the best candidate, as it might decide, keeping in view the interest of the Institute and all the public at large and that is what has actually been done in the instant case. Regarding the allegation of petitioner that, the fourth respondent has abdicated its responsibility in selecting a suitable candidate, it is the case of second respondent that, the same has no legal or factual foundation and the Selection has been made by the Selection Committee, the ultimate decision having been entrusted to answering respondent, who is the ex-officio Chairman of the Institute, the Minister concerned and also the member of the medical fraternity and that, the case of petitioner has not been ignored as inaccurately projected by him, but, on the other hand, the Selection Committee has rightly selected three candidates and forwarded the recommendation to the Governing Council and the Governing Council in turn, after due deliberation in the matter, has authorized the second respondent to take a final decision in respect of appointment of "Director" to fourth respondent - Institute and no error or illegality as such has been committed nor petitioner has made out any good grounds for interference in the matter.

5. Learned senior counsel appearing for petitioner vehemently submitted that, the resolution passed by the Governing Council, authorizing the second respondent, who himself was a Chairman, in respect of appointment of "Director" to fourth respondent - Institute is wholly without any authority, impermissible and is in clear violation of the doctrine of "delegates non potest delegare". The appointing authority as per the existing Statute is the Governing Council alone and they do not have any right as such to authorize the second respondent and hence, the said authorization is unsustainable. Further, he vehemently submitted that, it is the brainchild of the petitioner that, the fourth respondent - Institute has been functioning extensively well and that, the said Institute is a newly established Institute and that, petitioner has served the Institute so well and improved the same remarkably by bringing funds which was required to administer in the best interest of the Institute and the general public. Therefore, he submitted that, Petitioner is fully eligible and qualified to be appointed as "Director", he being head and shoulder above the third respondent in the order of merit and is also conversant and competent to administer the funds brought to the Institute. Therefore, because of these Herculean efforts, it is just and appropriate that, petitioner should not be deprived of the responsibility to administer the said funds to make way for a less meritorious candidate. Further, he submitted that, the respondents 1 and 2 have wrongfully refused to perform the duty cast on them in refusing to appoint the petitioner to the post of "Director" to fourth respondent - institute. The power to appoint the

"Director" is a power coupled with a duty and can be exercised only in the best interest of the Institute and also to appoint the best candidate available in response to the Notification. Therefore, it is just and necessary to compel respondents 1 and 2 to appoint the petitioner as "Director" to fourth respondent - Institute, in the interest of justice and equity, failing which it would result in grave miscarriage of justice and utter violation of doctrine of equality guaranteed under Articles 14 and 16(1) of the Constitution of India.

6. Further, learned senior counsel strenuously submitted that, petitioner has got an excellent academic career, secured several awards from different Institutes both at national and international levels for the research papers submitted by him, written several books, and particularly contributed to a great extent on HIV/AIDS in Children and to adolescent medicine and has written several books on ARI in children and presented lot of papers, and has written chapters to books such as i) Manual for the Management of HIV/AIDS in children" National guidelines; ii] Complications of Enteric fever"; iii] Management of Malaria - National guidelines for Pediatricians; iv] Management of Typhoid fever, v] Manual for management of HIV/AIDS in children" National guidelines etc. Therefore, taking into consideration all these aspects coupled with the academic excellence, the Selection Committee has rightly placed the petitioner on top of the list at Sl. No. 1 and that petitioner has got an excellent track record. Due to his achievements in academic curriculum and administrative skill, his services have been utilized for a period of nearly four years as "Director" in the fourth respondent - Institute. Therefore, he submitted that, petitioner was all along head and shoulder above the third respondent who is now appointed and according to the Selection Committee itself, petitioner topped in all respects including the interview and excelled in all fields and therefore, the second respondent has committed grave error in not selecting the best candidate before him, viz. the petitioner and in appointing the third respondent, who is less meritorious in all respects.

7. To substantiate the said submission, learned senior counsel appearing for petitioner placed reliance on the judgment of this Court in the case of Shankar Rao Vs. Chancellor, Karnataka University, and drew my attention to paragraph 22 of the said judgment and submitted that, whatever power that office is invested with has necessarily to be found only within the four corners of that Statute and the Board has to consist of experts or specialists (professors) in that particular branch or subjects and in the absence of any procedural irregularity or want of qualification or existence of disqualification in the selected candidate, the State creates a right in favour of a candidate selected by the Board and in academic matters, the opinion of such experts who are more familiar with the subjects and persons has to take precedence. Further, he placed reliance on another judgment of the Division Bench of this Court reported in Dr. Mrs. G. Durga Nageswari Vs. University of Agricultural Sciences, and specifically drew my attention to paragraphs 7 and 9 of the said judgment and submitted that, whether the Board can select a lower ranked person in preference to a person placed above him by

the Selection Committee without assigning reasons for such preference and in this regard, it is necessary that, the Selection Committee should recommend the names in the order of merit and when the Selection Committee has done so, there must be some basis to alter the merit as fixed by the Selection Committee as otherwise, the exercise of the power would be arbitrary and come into conflict with the right to equality and injunction against arbitrariness in State action prescribed in Article 14 of the Constitution of India and the right to equality and equality of opportunity in matters relating to employment under the State guaranteed under Articles 14 and 16(1) of the Constitution. With reference to paragraph 9 of the said judgment, he submitted that, whenever a Selection - Committee constituted for making Selection on the basis of performance of the candidate at the interview recommends the names in the order of merit, the power of the Board of Regents to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that any person placed lower is the best, it can do so but it has to record reasons and if the person placed below is appointed without assigning any reason, there is no other alternative than to hold that, such a Selection and appointment is arbitrary and violative of Articles 14 and 16 (1) of the Constitution. Further, he relied upon the Apex Court Judgment reported in Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, and specifically referred paragraph 7 and submitted that, the competent authority cannot pick and choose the candidates out of the list when petitioner has got excellent academic career and has been selected by the Selection Committee and placed at the top of the list. Therefore, he submitted that, the impugned Notification issued vide Annexure A and the insertion Notification vide Annexure B are liable to be set aside at the threshold.

8. Further, learned senior counsel appearing for petitioner relied on the judgment reported in 1981 (1) Kar.L.J. 94 Page. 36 and submitted that, the application of criteria or conditions of eligibility without disclosing the criteria or conditions of eligibility to the candidates would be arbitrary and opposed to rights under Articles 14 and 16(1) of the Constitution of India and the rights guaranteed under Articles 14 and 16(1) of Constitution of India to the citizen are in the nature of injunction to the State and such a right cannot be lost by acquiescence. Further, he strenuously submitted that, the masons assigned by second respondent for appointing the third respondent that, he belongs to depressed class and that, petitioner has already worked as "Director" for nearly four years is not valid and that was not the criteria when the impugned Notification dated 29th November 2006 vide Annexure G came to be issued by the competent authority. Therefore, he submitted that, at any stretch of imagination, the impugned Notifications vide Annexures A and B cannot be sustained and the same are liable to be set aside and as a consequence thereof, respondents 1 and 2 are to be directed to consider the case of petitioner for his appointment as "Director" to fourth respondent - Institute strictly in response to the Notification dated 29th November 2006 vide Annexure G in trio interest of justice and equity.

9. Further, in reply to the submission made by learned Counsel for respondents 2, 3 and 4, learned senior counsel appearing for petitioner submitted that, the competent authority cannot adopt any other policy other than one stated in the Notification issued and that, Selection should be done strictly in compliance and consonance with the Notification and as per the existing Regulations of the Statute regulating the making of appointment of a candidate as it affects the right to equal opportunity guaranteed under Articles 16(1) of the Constitution of India. Further, relying upon another decision of this Court in the case of D. Ramakka v. District level Recruitment Committee, D.K. and Ors. reported in 1980 (2)Kar.L.J. 384, he submitted that, the petitioner who holds the top rank in the Selection list cannot be denied and the candidate placed lower in list cannot be preferred for appointment as held in the said case.

10. Per contra, learned Counsel appearing for respondents 1 to 4, inter alia, contended and substantiated that, the Selection and appointment of third respondent as "Director" to fourth respondent - institute is in strict compliance of the relevant provisions of the Statute, which governs such appointment and no error or illegality or material irregularity as such has been committed by the competent authority.

11. Learned Senior counsel appearing for second respondent submitted that, the Selection of suitable candidate for appointment at "Director" to fourth respondent - Institute has been made purely within the parameter of the Statute and not on the basis of favoritism or any extraneous considerations nor on the basis of any caste, creed or religion. The said Selection has been made by the Chairman of the Governing Council after due deliberation in the matter, taking into consideration the interest of the Institute and to give an opportunity to an equally well qualified meritorious candidate to serve the Institute, and specifically taking into consideration the academic excellence, administrative skill and also bearing in mind to give opportunity to another equally qualified and eligible candidate to serve the Institute in particular and public in general and that, the respondents have not picked and chosen the petitioner as sought to be made out in the instant case nor there is any hostile discrimination in the Selection and appointment made in the instant case. On the other hand, the Selection in question has been made on a rational basis and upon an objective consideration of the relative merits of the respective candidates as also the provisions of the Rules of Recruitment governing such selection and appointment. To substantiate the said submission, he placed reliance on the judgment of the Division Bench of this Court in the case of Dr. Mrs. G. Durga Nageswari Vs. University of Agricultural Sciences, , which is also relied upon by learned senior counsel for petitioner and vehemently submitted that, in fact, the reliance placed by the learned Counsel for petitioner is very much applicable to the case of respondents with regard to appointment of third respondent than the petitioner. He submitted that, the power of the Governing Council to choose the best among them means normally it should be proceeded in order of merit arranged by the Selection Committee and if it is of the view that, any person placed lower is best, then, it

can do so, but, after recording reasons. If the reasons are recorded, then it can be safely said that, the provisions of Articles 14 and 16(1) of the Constitution of India are complied with. In the instant case, the second respondent has recorded valid, cogent and convincing reasons for appointing the third respondent and the said decision taken by second respondent is not in his individual capacity as the said respondent has been duly authorized by the Governing Council after due deliberation in the matter.

12. Further, learned Counsel appearing for second respondent placed reliance on the judgment of the Apex Court reported in Punjab National Bank Vs. R.L. Vaid and Others, (paragraphs 5 and 6) and another judgment of the Constitution Bench of the Apex Court reported in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, (paragraph 13) and submitted that, as held by the Constitution Bench of Apex Court, when there is no allegation about mala fides against the experts who constituted the present Board, it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Further, he submitted that, in the instant case, the Governing Council consists of great scholars in their respective field and academicians and they, after participating in the proceedings held on 19th February 2007 consisting of eleven members including second respondent, after due deliberation in the matter and after critical evaluation of the entire relevant material available on record, the Governing Council has authorized the second respondent - Chairman of the Governing Council to take a decision in this regard and there is no mala fides in the matter. Further, placing reliance on another Apex Court decision reported in The State of Haryana Vs. Subash Chander Marwaha and Others, (paragraphs 7 and 10) (iii and iv in "held"), submitted that the decision taken by second respondent in appointing the third respondent is purely on merits and the same is not based on any caste, creed or favoritism and that the said appointment is made in the best interest of the fourth respondent - Institute in particular and public at large and no error or illegality as such has been committed nor petitioner has made out any good grounds to interfere in the impugned Notifications.

13. Learned Counsel appearing for third respondent, Sri. L. Govindaraj placing reliance on the directive principles of State policy, drew my specific attention to Articles 38 and 46 of the Constitution of India and submitted that, the appointment of the third respondent is made on the basis that, the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life and the State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations and also that, State shall promote with special care the educational and economic interests of the weaker sections of the people, and in

particular, of the Scheduled Castes and the Scheduled tribes, and shall protect them from social injustice and all forms of exploitation. Therefore, having regard to these aspects of the matter, the second respondent, after recording valid reasons, has chosen to select and appoint the third respondent by choosing the best among the three selected candidates. Further, with regard to the contention of the learned Counsel for petitioner that, petitioner stands at the top of the list, he submitted that, merit is not the only criteria for Selection of a candidate and various other broader aspects of the matter are also to be borne in mind and therefore, the second respondent, taking into account all these factors into consideration has decided to appoint the third respondent as "Director" to the fourth respondent - Institute and no error or illegality as such has been committed in the said appointment.

14. Learned Counsel appearing for fourth respondent - Institute submitted that, the appointing authority has recorded valid reason for selecting and appointing the third respondent as "Director" to the fourth respondent - Institute and it is well settled principles of law laid down that, after due deliberation in the matter, the appointing authority can authorize one of the members of the Governing Council to select a candidate from the selected list keeping in view the other relevant factors and the criteria being not only securing highest marks. In the instant case, the Governing Council had every right to give authorization to the second respondent and the said proposition is directly covered by the judgment of the Division Bench of this Court reported in Annamalai and Another Vs. Narayanaswami Pillai and Another, Learned Counsel for fourth respondent relying upon paragraph 21 of the aforesaid judgment, submitted that, the "best person" within the meaning of the clause need not necessarily to the person ranked first in the list of recommendations made by the Committee. If it were so, no further action by the board of Regents at all would be necessary. The Board is expected to apply its own mind and select a person whom it considers to be the best among those recommended by the Selection Committee. Therefore, he submitted that, the third respondent comes within the description of the word "qualified persons" and therefore, the Selection and appointment of third respondent as "Director" to the fourth respondent - Institute is just and proper and no error or illegality as such has been committed nor the same affects Articles 14 and 16 of the Constitution of India. Therefore, he submitted that, the writ petition filed by petitioner is liable to be dismissed as devoid of merits.

15. Learned Additional Government Advocate appearing for first respondent - State submitted that, the impugned Notification and the consequential insertion Notification issued are in strict compliance of the relevant provisions of the Statute as the same are issued, taking into consideration the paramount interest of the fourth respondent - Institute in particular and public at large and also in order to afford equal opportunity to the equally well qualified candidate, viz. the third respondent. He further submitted that, after due deliberation in the matter, the Governing Council consisting of academicians, who are appointed as per the Statute, has authorized the second respondent to make appoint the best



candidate among the three selected candidates consisting of petitioner, third respondent and another candidate and that, merit is not the only criteria for appointment among the selected candidates. Further, he submitted that, the decision taken by the second respondent to select and appoint third respondent as "Director" to fourth respondent - Institute is, after taking into consideration the fact that, petitioner has already served as "Director" for a period of nearly four years and after rendering his excellent service, has retired on 31st August 2005 and even thereafter, he has been appointed as "Director" for a period of eleven months temporarily and after expiry of the said period, the impugned Notification has been issued and Selection has been made strictly in compliance with the relevant provisions of the Statute. He further submitted that, in spite of petitioner's retirement in 2005, he has been permitted to function as "Director", having regard to his experience and expertise in the field and his interest has been substantially safeguarded. Therefore, in the interest of institute, continuing the same person, again and again and depriving the other person who is equally qualified and having an excellent academic career is not fair and further the competent authority has specifically taken into consideration the fact that, the third respondent comes from the depressed section of the society and reaching such a highest level is difficult and therefore opportunity to such persons should not be deprived and due to sincere and hard work, he has reached the said stage and that, it is for the first time in the history of the Institute that such a highest post is being considered from the depressed class and that, the said decision is taken in the interest of justice and equity. Further, he submitted that, the competent authority, after recording valid reasons in the proceedings of the original records dated 22nd February 2007 bearing No. /3046/2007, has appointed the third respondent and no error or illegality as such has been committed in taking the said decision. Therefore, he submitted that, the writ petition filed by petitioner is liable to be dismissed as devoid of merits.

16. After hearing learned Counsel appearing for the parties on 24th October 2007 and 25th October 2007 for considerable length of time, after perusal of the grounds urged by petitioner and the stand taken by respondents in their respective statement of objections, after careful evaluation of the entire original records made available by learned Additional Government Advocate, and after considering the rival submission made by learned Counsel appearing for the parties, the points that arise for consideration in the instant case are as follows;

[I] WHETHER the Appointing Authority/Governing Council has power to authorize second respondent to take a final decision with regard to appointment of "Director"?

[II] WHETHER the impugned Notification issued by Government dated 22th February 2007 vide Annexure A and consequential insertion Notification of even date vide Annexure B are sustainable in law?

Re-point [I] : At the outset, it is relevant to know the meaning of the word "authorization". The dictionary meaning of the word "authorization" is "the

power or right to give orders or make decisions". Webster Dictionary defines "authorization" as "the act of delegating, or investing with authority to act for another; the appointment of a delegate or delegates." The word "authorization" is synonymous to the word "delegation". In the instant case, there is "delegation" of power by the other members of the Governing Council to the Chairman of the Council. The Chairman of the Governing Council, in the instant case, is a learned member, he himself being a Doctor by profession, social worker, politician and then Minister for Medical Education, holding responsible office in Government. The Governing Council, in their true wisdom and after due deliberation in the matter, have thought it fit, to authorize the Chairman to take a final decision in the matter and the Chairman, being a versatile person, has, by taking a pragmatic approach, selected and appointed the third respondent as "Director". It is significant to note that, such authorization is permissible, which is made after taking into consideration all the relevant factors. Therefore, the authorization given to second respondent is just and reasonable and there is no error, illegality or arbitrariness in the decision taken by the said respondent nor the same hits Articles 14 and 16(1) of the Constitution of India. Hence, the decision taken by second respondent, upon authorization by the Governing Council, is not in his individual capacity but the same is on behalf of himself and on behalf of other members of Governing Council. Therefore, I hesitate to interfere in the decision taken by second respondent.

17. Further, in one of the recent decisions of the Apex Court in the case of *Ishwar Singh Vs. State of Rajasthan and Others*, , the Apex Court regarding "delegation" has observed that, it does not imply, or point, to, a giving up of authority, but rather the conferring of authority upon someone else. Further, at paragraph 10 of the said judgment, it is stated that "In Collins English Dictionary the word "delegate" has been stated to be a person who is chosen to vote or make decisions on behalf of a group of other people. If you delegate duties, responsibilities or power to someone, you give them those duties, those responsibilities, or that power so that they can act on your behalf. If you are delegated to do something you are given the duty of acting on someone else's behalf by making decisions, voting or doing some particular work". (emphasis supplied). Regarding "delegation of authority of power", the Apex Court has observed that, it does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.

18. Further, the Constitution Bench of the Apex Court, in the case of *Bachhittar Singh Vs. The State of Punjab*, has held that, "Thus the order passed by the Chief Minister, even though it is on a matter pertaining to the portfolio of another Minister, will be deemed to be an order of the Council of Ministers. So deemed its contents would be the Chief Minister's advice to the Governor, for which the Council of Ministers would collectively responsible" (emphasis supplied). Further, in the said judgment it is observed that, "constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or

Rajpramukh, is to act with the aid and advice of his Council of Ministers...". In the instant case, the Governing Council has authorized the second respondent to take a final decision regarding the appointment of "Director" to fourth respondent - Institute and the second respondent, being the Chairman of the Governing Council has taken a conscious decision in appointing the third respondent. Therefore, I am of the considered view that, the ratio of law laid down in the aforesaid judgment squarely applies to the case on hand and hence interference in the impugned Notification at Annexure A, is uncalled for.

19. Further, It is not in dispute that, under the Statute and Regulations of the Fourth respondent -Indira Gandhi Institute of Child Health, Bangalore, Regulation 2(f) defines "Director" as the Convenor of the Committee and the "appointing authority" in relation to the post of "Director" is the Governing Council. The Governing Council consists of academicians in the field. After due deliberation in the matter, taking into consideration various aspects of the matter, the Selection Committee has forwarded the final list of three eligible candidates, consisting of petitioner, third respondent and another candidate to the Governing Council and recommended the said names in the order of their merit. The Governing Council, again, consisting of scholars and academicians in the field, in its meeting held on 22nd February 2007 has taken a unanimous decision to authorize the second respondent to take a final decision with regard to appointment of best candidate among the three finally selected candidates. It is well settled principles of law laid down by the Apex Court and this Court in catena of judgments that, the Appointing Authority has got every right and power to give authorization or authorize second respondent, after due deliberation in the matter and after considering the merit. From the decision taken by the second respondent, it emerges that, the said respondent, keeping in view the interest of the Institute in particular and the public at large and also to give equal opportunity to the equally qualified candidate who participated in the Selection proceedings, has selected and appointed third respondent. It is significant to note that, as per the Notification dated 29th November 2006 vide Annexure G, condition No. 13 stipulates that, the Selection Committee shall decide its own procedure for conducting Selection. Petitioner, having accepted this condition and participated in the Selection proceedings, it is not now open for him, at this juncture, when he has not been appointed as "Director" to the fourth respondent - Institute and third respondent is appointed, to take the objection that, the Governing Council has no power to authorize second respondent and come up before this Court invoking the extra ordinary jurisdiction of this Court. The Selection Committee is expected to prepare the list of selected candidates in order of their merit and recommend the said list of qualified and eligible persons to the Governing Council. The Governing Council has got every right to authorize the second respondent to take a final decision, as rightly pointed out by learned Counsel for fourth respondent, relying upon the judgment of the Division Bench of this Court reported in Annamalai and Another Vs. Narayanaswami Pillai and Another, Therefore, the Selection Committee makes recommendation of the selected

candidates to the Appointing Authority, Governing Council as per the Statute in the case on hand and the Governing Council in turn, can authorize one of its members to take a final decision. The Division Bench of this Court has held that, the "best person" within the meaning of the clause need not be necessarily a person ranked first in the list of recommendations made by the Selection Committee. If it were so, no further action by the Board of Regents at would be necessary. The Board is expected to apply its own mind and select a person whom it considers to be the best among those recommended by the Selection Committee.

20. Further, when the Apex Court had an occasion to deal with the question of competency or authority to delegate the function of Selection of candidates to a member in respect of Agricultural Produce Market Committee, in the case of Navrattan Singh Chouhan and Ors. v. Mandi Director, U.P. and Ors. reported in AIR 1968 SC 82, it made a specific observation that, on merits, the Apex Court cannot share the view expressed by the High Court that the Committee appointed under Regulation 19 of the Service Regulations had no power to delegate the function of Selection of candidates to a member. Indeed, the High court should not have entertained the writ petition much less interfered with the Selection of candidates. If the dictum of the Apex Court, as aforesaid is taken into consideration, the Governing Council has got every right and power to authorize the second respondent to take a final decision and that, the said authorization is within the parameter of the relevant provisions of the Statute of the fourth respondent - Institute. However, it is not the case of petitioner that, the third respondent is incompetent or unqualified or ineligible for the present post, but, the learned senior counsel appearing for petitioner, placing reliance on the judgment of the Division Bench of this Court in Dr. Mrs. G. Durga Nageswari Vs. University of Agricultural Sciences, submitted that, the Governing Council has no right to delegate the power to the second respondent, he being the Chairman of the Governing Council itself and ex-officio Chairman of the Governing Council and therefore, the Governing Council ought not to have delegated the power to second respondent. The said submission does not stand to reason in view of the judgment of the Division Bench of this Court and the Apex Court as referred above and in the light of the fact and circumstances of the case. Therefore, the submission of the learned senior counsel that, the Governing Council has no power to authorize second respondent, holds no water.

Re. Point [ii]: It is not in dispute that, petitioner, third respondent and another candidate have filed their respective applications for appointment to the post of "Director" to the fourth respondent - Institute and subsequently, they have appeared before the Selection Committee, which consisted of academicians, scholars and learned persons and the Selection Committee in turn, has selected and recommended three eligible candidates out of six candidates. Further, it is also not in dispute that, petitioner stands at the top of the list securing 67 marks out of 100 and excels in all the fields including academic and other criteria/parameters fixed as per the Statute and also the interview. On the other hand,

the third respondent who has secured 50 marks out of 100, is ranked next to petitioner. It is definitely not disputed that, petitioner has accepted all the terms and conditions of the Notification dated 29th November 2006 vide Annexure G and more so, condition No. 13, which is crystal clear that, the Selection Committee shall decide its own procedure for Selection, and has applied and participated in the Selection proceedings. Therefore, it is not now open for the petitioner, at this distance of time, to say that, the Governing Council has no power to authorize the second respondent to take a final decision in respect of appointment of "Director" to fourth respondent - institute. It is significant to note, as rightly relied upon by learned senior counsel appearing for second respondent on the judgment of the Division Bench of this Court in the case of Dr. Mrs. Durga Nageshwari (supra) that, the Selection Committee constituted for making Selection on the basis of the performance of the candidate at the interview recommends the names in the order of merit, the power of the Board of Regents to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that, any person placed lower is best, it can do so but it has to record reasons. If reasons are recorded, then it can be said that, the provisions of Articles 14 and 16(1) are complied with. In the instant case, the second respondent has, in fact, recorded more than a couple of valid reasons for considering the case of third respondent by its proceedings dated 22nd February 2007 bearing No. 3046/2007 found at page 7 of the proceedings in the original records made available by learned Additional Government Advocate, wherein it is specifically referred that, it is a fact that, petitioner has served for more than four long years as "Director" and even after retirement in the year 2005, he has been continued till February 2007 and if the same person is continued as "Director" to the fourth respondent - Institute even after retirement, there would be no opportunity available for the other equally eligible and qualified candidates. Therefore, he opined that, third respondent has got the requisite qualification and is eligible and competent for the said post and further specifically pointed out that, when the petitioner on a previous occasion was appointed as "Director" to the fourth respondent - Institute third respondent was also one of the candidates contending for the said post. At that time, third respondent could not be accommodated and petitioner was selected and appointed as "Director". Further, the second respondent has made a specific reference that, third respondent belongs to depressed class of the society and doing his hard work in the Government Hospital and reaching such a highest level is not an easy task and therefore, taking into consideration the background of the third respondent, the educational qualification, competency, administrative skill, intelligence, his rich experience as "Superintendent" at Government Vani Vilas Hospital in the field and also the fact that, he is placed next to the petitioner and is equally eligible and entitled in all respects, in the interest of justice, has taken a decision to appoint the third respondent to the post of "Director" to fourth respondent - Institute. The second respondent has afforded an opportunity to the third respondent, for the first time, to extend/render his valuable services in the interest of the fourth

respondent - Institute in particular and public in general. Therefore, the reasons assigned by second respondent is after taking into consideration all the relevant factors, educational, social and other factors and by taking a pragmatic approach and also keeping in view the relevant provision of the Statute and also the constitutional mandate of the Directive Principles of State Policy, as perfectly pointed out by learned Counsel appearing for third respondent, as referred above in preceding paragraphs. Therefore, I am of the considered view that, the said reasons recorded by second respondent seem to be appropriate, genuine and reasonable and I do not find any arbitrariness or illegality or favoritism as such by second respondent in selecting the third respondent as "Director" to fourth respondent - Institute. Further, with regard to contention of learned Counsel for petitioner regarding the alleged favoritism shown by second respondent in appointment of third respondent, it is pertinent to note, the very fact that, just previously, petitioner herein was appointed and continued for quite a long time as "Director" of the fourth respondent - Institute itself when also, third respondent was one of the candidates recommended by the Selection Committee, depicts that the Selection is not based on any favoritism or casteism. Therefore, the submission of learned Counsel for petitioner that, there is an act of favoritism in the Selection and appointment of third respondent, falls to the ground. Therefore, interference by this Court in the Selection and appointment made by the Chairman of the Governing Council, consisting of academicians, senior professors, educational luminaries and also in the decision taken by the Governing Council in authorizing the second respondent to take a final decision is not justifiable, nor I find any good grounds as such made out by petitioner to interfere in the impugned Notification and the consequential insertion notification/order issued and passed by the competent authority.

21. Further, regarding public employment, the Apex Court; in the case of State of Maharashtra Vs. Chandrabhan Tale, has held that, "Public Employment is property of the nation which has to be shared equally subject of course to the qualification necessary for holding the office or post, however, it should not be monopolized by any particular section of the people of this country in the name of efficiency, though efficiency cannot altogether be ignored". (emphasis supplied). If the aforesaid view expressed by the Apex Court regarding public employment and right to equal opportunity is taken into consideration, in the instant case, it is not the case of petitioner that, the respondent is unqualified, incompetent and ineligible. Therefore, the second respondents, after due deliberation in the matter, taking into account the relevant factors and to give opportunity to equally qualified person, who has satisfied all other requirements of such appointment and who is also one among the selected and recommended candidates by the Selection Committee and whose case was not considered earlier, has taken the decision to appoint the third respondent as "Director" to fourth respondent - Institute. More over, just because a candidate is meritorious and tops the ranking list in every selection, there need not be a conventional and traditional approach of selecting the same person again and again resulting in

monopolization without opening the doors for other equally eligible, competent and qualified candidates.

22. In the case of Lila Dhar Vs. State of Rajasthan and Others, , the Apex Court observed that, there cannot be any magic formulae in these matters and Courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless it is proven or obvious that the method of marking was chosen with oblique motive and the competitive examinations were the means by which equality of opportunity was to be united with efficiency.... By this means favoritism was to be excluded and the goal of securing the best man for every job was to be achieved.

23. With regard to the various judgments relied upon by learned senior counsel appearing for petitioner, in my considered view, there is no dispute, second opinion, or quarrel in respect of the law laid down in the said judgments. But, unfortunately, the facts and circumstances of the said cases are not squarely applicable to the case on hand nor the same can be made applicable to the present case.

24. In the light of the facts and circumstances of the case, as stated above, taking into consideration the factual and legal aspects of the matter, I do not find any justification or good grounds to entertain the instant writ petition by interfering with the impugned Notification and the consequential insertion order/ Notification.

25. Having regard to the facts and circumstances of the case, as stated above, I am of the considered view that, interference by this Court either in the appointment of third respondent to the fourth respondent - Institute or in the impugned Notifications is totally uncalled for. Hence, I decline to consider the prayers sought for by petitioner in the instant writ petition, exercising the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

26. Therefore, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.