
(1997) 06 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 640 and 698 of 1988

Dr. T. V. Moorthy and Dr. K.K.R. Bhardwaj and Others

APPELLANT

Vs

H.P.K.V.V. and Others

RESPONDENT

Date of Decision : 02-06-1997

Acts Referred:

Himachal Pradesh University of Agriculture Horticulture and Forestry Act, 1986 —
Section 12(1)

Citation : (1997) 3 ShimLC 329

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Virender Verma, for the Appellant; D.C. Jishu, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—First of the petitions is in challenge of appointment of the 3rd Respondent as Dean of the Ist Respondent University. The Petitioners are all Professors and Heads of Departments in the University. The qualifications for the appointment of Dean are found in Statute 3.11. They read as follows:

1. B Sc (Agri)/B V. Sc. II Class and M. Sc./M.V. Sc. II Class followed by Ph D. in any filed of Agriculture and Veterinary and Animal Sciences.
2. 10 years* post doctoral teaching/research experience in relevant filed out of which at least 5 years experience should be as Professor/equivalent.
3. A significant contribution or accomplishment, in the field of Research/Education as evidenced by publications.
4. Good knowledge of educational systems prevalent in the world:

Provided that the above qualifications shall not apply to those who are in service from Himachal Pradesh.

The composition of Selection Committee is also set out in the same Statute in

column 4 as follows:

1. Vice-Chancellor-Chairman

2. Three Scientists or educationists with experience of work in Scientific educational or administrative capacity from outside the University, two to be nominated by the Chancellor and one to be nominated by the Vice-Chancellor. - Members

3. One Nominee of the ICAR -Member.

2. The applications were called for by an advertisement issued by the University for the post of Dean and as per their advertisement the last date for receipt of applications was 9-5-1988, The applications were screened on 12-8-1988 and interviews were held on 13-9-1988. The 3rd Respondent who was acting as Assistant Professor was promoted under the Personal Promotion Scheme w.e.f. 1-7-1983. Under that Scheme, the post which was being held by the person concerned was upgraded by the University w. e. f the date on which he became eligible to hold the post of Professor. Thus, the 3rd Respondent can be said to have become a Professor from 1-7-1983.

3. Under the qualifications prescribed in Statute 3.11 the person concerned should have at least 10 years" post doctoral teaching/research experience in the relevant field out of which at least 5 years experience should be as Professor/ equivalent. It is contended by the Petitioners that on the date on which the applications were called for or on the last date prescribed for receipt of applications, the 3rd Respondent had not completed the period of five years as required by the Rules and consequently he was not eligible for being considered to the post of Dean.

4. The second contention urged by the Petitioners that the Selection Committee comprised one Dr. M.R. Thakur as one of the three Scientist -Members Admittedly, he was a Member of the Board of Management of the Ist Respondent University as he was the Vice-Chancellor of Dr. Y. S. Parmar University of Horticulture and Forestry at Solan He was a Member of the Board of Management ex-officio. The contention of the Petitioners is that he cannot be considered to be a Scientist or educationist contemplated in Statute 3.11 to be from "outside the University" as he was already a Member of the Board of Management of the University, he cannot be considered to be an outsider. Thus, according to the Petitioners the Selection Committee was not validity constituted one and the 3rd Respondent was not eligible for being considered for the post of Dean.

5. In the second writ petition similar contentions arise with respect to the post of Director of Research for which also the qualifications are same, prescribed under the same Statute 3.11. The composition of the Committee prescribed in the Statute is also the same. The relevant dates on which applications were called for and the last date for receipt of applications are also the same The 3rd in that writ petition, though a different person, was made a Professor under the personal

Promotion Scheme w.e.f. 1-7-1983, the same date on which the 3rd Respondent in the other petition became a Professor. Thus, the 3rd Respondent was in the eye of law a Professor from 1-7-1983. Here again the same question arises for consideration as in C.W.P. No. 640 of 1988.

6. With reference to the first question, there is no difficulty in rejecting the contention of the Petitioners as it is found that there is a legal fiction in the Personal Promotion Scheme by which the post itself is upgraded. It is not as if the person concerned is being promoted on a particular date to a higher post so that it could be contended that he gets experience in the higher post only from the actual date of promotion. On the other hand it is seen that the post which he was holding earlier has been upgraded and thereby he was having experience in that post which stood upgraded w.e.f. an earlier date. Thus, we have no difficulty in holding that the 3rd Respondent in each of these cases was having experience as Professor w.e.f. 1-7-1983. However, on the date on which the applications were called for or on the last date for receipt of applications neither of them had completed the period of five years as required by the Statutes. Contention of the learned Counsel for the Respondent-University is that no specific date has been fixed in the Advertisement calling for applications as to the date on which a person concerned should be qualified. According to him the relevant date is the date on which the applications were screened and the question of eligibility was considered. It is submitted that screening of the applications was made on 12-8-1988 on which date the 3rd Respondent in each of these cases had become qualified having completed five years period by then. This contention cannot be accepted in view of the judgment of the Supreme Court in *Mrs. Rekha Chaturvedi v. University of Rajasthan and Ors.* 1993 (1) SLR 544. The relevant passage in the judgment reads as follows:

5. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz, even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for

making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad and Anr. v. B. Sarat Chandra and Ors.* (1990) 4 SLR 235 and *The District Collector and Chairman, Viziunagaram (Social Welfare Residential School Society) Viziunagaram and Anr. v. M. Tripura Sundari Devi* (1990) 4 SLR 237.

7. As regards the second contention, we have no hesitation to reject the contention of the Petitioners that Dr. Thakur was not entitled to be in the Selection Committee for the post of Dean or for the Post of Director of Research. No-doubt, he is a Member of the Board of Management but that is by virtue of his being Vice-Chancellor of Anr. University. u/s 12(1) of the Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986 the Board of Management for the Ist Respondent-University are as follows to the extent relevant here:

Ex-Officio Members : (i) Vice-Chancellor;

(ii).Vice-Chancellor of Dr. Yashwant Singh Parmar University of Horticulture and Forestry, Solan;

8. The Rule relating to composition of Selection Committee refers to three scientists or educationists with experience of work in scientific educational or administrative capacity from outside the University. The purpose of the Rule is for selecting a person for the post of Dean or Director of Research. The expression "outside University" in this Rule, does not mean that any person connected with the University in any capacity should be excluded from the Selection Committee. Learned Counsel for the Petitioners placed reliance on the judgment of this Court in *Dr. Het Ram Kalia v. H.P. University* ILR 1977 (HP) 17. The question in that case was whether the Selection panel for recommending the names of three persons for the post of Vice-Chancellor could comprise a person who was in some way connected with University. The expression used in the relevant Statute, namely, 12 is * two of whom shall be persons not connected with the University" That expression is certainly much wider than the expression "outside the University". We should also bear in mind the context in which the expression is used. In that case the Court held that Justice Lal was connected with the University as contemplated by Clause (2) of the Rule and therefore he could not have been nominated as a Member of the panel for selection of Vice-Chancellor. That ruling will not apply in the present case.

9. When a person is made by the Statute itself an ex officio Member of the Board of Management it cannot be said that he is unfit to be in the Selection Committee just because he is a Member of the Board of Management when it is found that

he is scientist and that he has sufficient administrative capacity from outside the University We are thus convinced that the inclusion of Dr. Thakur in the Selection Committee is not invalid and he was validly a Member of the Selection Committee.

10. However, now a question arises whether the appointment of 3rd Respondent in each of these cases is to be quashed at this stage when a period of 9 years had already elapsed When these writ petitions were filed in November 1988 there was no interim order restraining the 3rd Respondent in each of these cases from functioning as Dean and Director of Research, respectively. In such a situation the ruling of the Supreme Court in *Mrs. Rekhs Chaturvedi v. H.P.U.*, will certainly apply We have already referred to that judgment earlier. In that case after holding that the Respondent therein was not qualified and his appointment was tainted with patent illegality and on that ground the selections in question were liable to be quashed, the Court said that they would not interfere with the Selection inspite of the illegality in view of the fact that several years had elapsed from the date appointment and the date of consideration by the Supreme Court. The relevant paragraph in the judgment reads as follows:

6. However, for the reasons which follow, we are not inclined to set aside the sections in spite of the said illegality. The selected candidates have been working in the respective posts since February, 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceed to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should be taken into not consideration, as that would be arbitrary and result in discrimination It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said

date In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

D. The University/Selection Committee must mention on its proceedings of selection the reasons for making relaxations, if any. in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.

11. In this case also we find that the 3rd Respondent in each of these cases has worked as Dean and Director of Research respectively for 9 years by now and they should not be disturbed at this stage However, we wish to direct the University to follow strictly the guidelines given by the Supreme Court in the judgment as extracted above. We add that the University should hereafter mention in the advertisement calling for applications that the requirement of qualifications must be satisfied on a date to be specified therein expressly.

12. with the above observations , these write petition are dismissed. There will be no order as to costs