

(2019) 01 RAJ CK 0242
In the Rajasthan High Court
Case No : Civil Writs No. 10075 Of 2016

Dr. Ujala Nyola

APPELLANT

Vs

University Of Rajasthan And Ors

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 142, 226

Citation : (2019) 01 RAJ CK 0242

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ujala Nyola, Ajit Maloo

Final Decision : Allowed

Judgement

Under challenge is the communication dated 22.3.2016, whereby the petitioner's representation, pursuant to the order dated 4.11.2015 passed by this Court in SB Civil Writ petition No. 2694/2014, ventilating her grievance with regard to her non appointment on the post of Assistant Professor (Botany) with University of Rajasthan, has been rejected.

The facts of the case are that under the advertisement dated 1.11.2012, the University of Rajasthan (here-in-after 'UOR') invited applications for appointment to various posts of Assistant Professors, Associate Professors and Professors in 42 odd of its Departments. Included in the advertisement were vacancies on the post of Assistant Professors in the Department of Botany, of which 8 were reserved, as notified, for the Other Backward Classes-Non Creamy Layer (OBC-NCL). The petitioner having the requisite eligibility submitted an application for consideration for appointment to the said post in the OBC NCL category. She was shortlisted and called for interview on 10.10.2013. Prior thereto she furnished to the Verification Committee, which scrutinized the documents of the applicants, her research publication of 2009 in a Journal recognized by the Department of Botany. The Verification Committee made an endorsement in that regard on the application form. She was then interviewed. The select list for appointment to the

post of Assistant Professor (Botany) was declared. The petitioner with 65.75 aggregate marks on the prescribed parameters of the University of Rajasthan Ordinances was not selected as Assistant Professor (Botany), but placed at No.2 in the waiting list for the OBC-NCL category.

The petitioner in the circumstance sought details of her evaluation and of others in terms of University of Rajasthan Ordinances by the Selection Committee. She therefrom found that while evaluating her at 65.75 marks out of 100, the Selection Committee had arbitrarily allowed her a weightage of only 1.50 marks for securing 60% marks at the Secondary School Examination which in fact ought to have been 1.88 in terms of Appendix III Table II (a) of UOR Ordinance and also denied her 1 mark for her research performance despite her research paper having been published in a journal recognized by the Department of Botany, UOR.

Aggrieved the petitioner approached this Court in SBCWP No. 2694/2014. The petition was disposed of vide the Court's order dated 4.11.2015 noting that the issue agitated in the petition being one of fact it would be appropriate to allow the petitioner to make a detailed representation in regard thereto to the Vice Chancellor, University of Rajasthan. He was on its receipt, if advised to constitute a Committee for its consideration and decide the representation within a period of 3 months.

In view of the Court's aforesaid order dated 4.11.2015, the petitioner filed a detailed representation addressed to the Vice Chancellor ventilating her grievance with regard to her non selection / non appointment to the post of Assistant Professor (Botany) for reason of being wrongly given a weightage of 1.50 marks for securing 60% marks at the Secondary School Examination instead of 1.88 marks as warranted in terms of Appendix III, Table II (a) of the University of Rajasthan Ordinances and also for being denied 1 mark for a research paper publication in a Journal recognized by the Department of Botany, as was verified by the Verification Committee through an endorsement on her application form itself immediately prior to the interview by the Selection Committee on 10.10.2013. The said representation has been rejected by the Registrar, University of Rajasthan by the impugned communication dated 22.3.2016 pursuant to the report of the Committee constituted by the Vice Chancellor and approved by him. The reason set out for the rejection of the petitioner's representation is that grant of weightage of 1.50 marks to the petitioner for 60% marks in Secondary School Examination while evaluating her academic performance was non-discriminatory as such was the weightage given to another similarly situate candidate with 60% at the Secondary School Examination who appeared at the interview for appointment to the post of Assistant Professor (Botany). The further reason recorded is that the petitioner not having submitted her Research Papers published in recognized journals alongwith her application form, the last date of which was 15.2.2013 and instead in-fact having indicated 'Nil' in column 25 of the application form relating to the

candidate's Research Papers, she had no case for being awarded 1 mark for her research paper publication as claimed by her under the head of 'Research Performance based on Quality Publications'.

Inevitably the petitioner challenges the order dated 22.3.2016 in this petition.

Appointments by direct recruitment to the post of Assistant Professors in the UOR including in the subject of Botany are covered by the Ordinance 141-E of the University of Rajasthan Ordinances which reads as under:-

Ordinance 141-E

Qualifications for direct recruitment

I.

(1) Assistant Professor

(i) Good academic record with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited foreign university.

(ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) for lecturers conducted by the UGC, CSIR or similar tests accredited by the UGC like SLET/SET.

Notwithstanding anything contained in clause (ii) candidates who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET / SLET / SET for recruitment and appointment of Assistant Professor or equivalent positions.

Without prejudice to the above, NET / SLET / SET shall not be required for such Masters Programmes disciplines for which NET / SLET / SET is not conducted.

(iii) Besides fulfilling the above qualifications, candidates for the post in the specialized field of remote sensing and geographical information system should also possess a Post Graduate Diploma / equivalent degree or higher degree in the field of remote sensing geographical information system from a University / Govt. Institute / recognized institute.

Appendix III Table II and Appendix III, Table II (a) to the University of Rajasthan both also relevant to address the issue agitated in this petition, read as under:

Appendix III, Table-II

Minimum Scores for APIs for direct recruitment of teachers / Librarian cadres and weightages in Selection Committees to be considered alongwith other specified eligibility, qualifications stipulated in these Ordinances

Assistant Professors / equivalent cadres (stage 1)

Associate Professors / equivalent cadres (stage 4)

Professor / equivalent cadre (stage 5)

Minimum API Scores

Minimum qualification-as stipulated in these
ordinances

...

....

Selection

a) Academic

....

...

committee

Record (30)

....

weightages

b) Research

....

Performance

(20)

.....

c) Assessment

.....

of Domain

Knowledge and

Teaching Skills

(30%)

.....

(d) Interview Performance (20%)

.....

Appendix III, Table-II (a)

Weightage Scores for Academic Background for Direct Recruitment of Assistant Professors and equivalent teaching positions

Aggregates performance Examinations

750

50-60

60-70

70-80

80-90

90-100

Secondary / High School

or equivalent

Nil

1.50

1.88

2.25

2.63

3.00

Sr.

Secondary / Hr.

Secondary / Intermediate or equivalent

Nil

3.00

3.78

4.50

5.25

6.00

Graduation

Nil

4.50

5.60

6.75

7.88

9.00

Post Graduation

Nil

6.00

7.50

9.00

10.50

12.00

Total

30.00

The petitioner appearing in person submitted that weightage for her Secondary School Examination, where she scored 60% marks, ought to have been 1.88 marks and not 1.50 marks as 60% was common to the two categories i.e. for those who secured 50-60% marks and those with 60-70% marks at the Secondary School Examination. The petitioner submitted that this Court in the case of Dr. Swati Sharma Versus State of Rajasthan & Ors. (SBCWP No. 18191/2013) and other connected matters decided on 14th November, 2013 held, and more importantly on the admission of counsel for the respondent - University, that a candidate who secured 60% marks at the Secondary School Examination and thus fell both in bracket 2 and 3 as 60% marks overlapped the two brackets, was entitled to the higher weightage of 1.88. It was submitted that this admission / finding of the court entails of necessity that the petitioner was entitled to a weightage of 1.88 marks for her 60% marks in the Secondary School Examination performance and not 1.50 marks which was wrongly given to her by the Selection Committee in assessing her overall merit at the interview held on 10.10.2013 for the post of Assistant Professor (Botany). The petitioner further submitted that indeed while submitting her application form in 2012, in para 25 thereof relating to Research Activities she stated 'Nil', but it was so for the reason that she did not at the relevant time have the copies of her research paper publication, even though the said research paper was published in 2009 in a journal recognized by the Department of Botany, University of Rajasthan. It has been submitted that the petitioner's action in so doing was in some measure actuated by Note to para 25 in the application form which provided that two reprints of each research paper publication be attached, as far as possible, with the application form.

The petitioner submitted that the Registrar, University of Rajasthan vide letter dated 10.5.2012 addressed inter-alia to all heads of the University's Teaching Departments had required the list of reputed journals of the subject/s concerned for consideration of the Academic Council such that at the time of assessing the quality of the publications of the candidates during their appointments / promotions, the selection committee would be facilitated in considering the value of research publications relied upon by each of the candidate seeking promotion / appointment. In response to the aforesaid letter, the Department of Botany, University of Rajasthan furnished a list of recognized journals on the subject of Botany and included therein at Sr. No. 139 the Journal of Phytological Research. The petitioner submitted that her research of paper 'Taxonomic Significance of Seed Coat Structure and Spermoderm Patterns in Four Species of Vigna (Fabaceae) alongwith one Shri KC Sharma was published in the said journal of Phytology in 2009 itself :- The journal Phytol.Res. 22(1) : 37-42, 2009. The said research paper was furnished to the Verification Committee duly constituted for the purpose prior to the petitioner appearing at the interview before the Selection Committee and the said Verification Committee endorsed the said fact on the petitioner's application form. The research paper thereon constituted valid material before the Selection Committee for assessment of her comparative merit for consideration for her appointment to the post of Assistant Professor (Botany). The petitioner submits that yet the said research paper was arbitrarily and illegally not considered by the Selection Committee resulting in denying of 1 mark for her valid research publication. She was instead wrongly marked zero on the head of Research. According to the petitioner this illegal and arbitrary omission of the Selection Committee is also in the cross-hair of the judgment of this Court in D.B. Special Appeal (Writ) no. 1676/2014 - University of Rajasthan Versus Vinita Nair; decided on 9.2.2015 where counsel for the University admitted that the Selection Committee for appointment to the post of Assistant Professors, pursuant to the advertisement dated 1.11.2012, had awarded 1 mark for research to the respondent Vinita Nair as she had to her credit when she appeared before the Selection Committee one publication in a journal of repute recognized by the concerned Department. The petitioner submitted that in this view of the matter, the impugned order dated 22.3.2016 as also the foundational report of the Committee appointed by the Vice Chancellor, University of Rajasthan and approved by him is vitiated.

Mr. Ajit Maloo appearing for the respondents has reiterated, in defence to the petitioner's submissions, the reasons set out by the Committee constituted by the Vice Chancellor and approved by him as also reflected in the impugned order dated 22.3.2016 under the hand of the Registrar, University of Rajasthan. He justified the rejection of the petitioner's representation for the aforesaid reason. Mr. Ajit Maloo submitted that in her application form, the petitioner had mentioned 'Nil' against column 25 relating to the applicant's Research Activities. Nor any research paper published asserted was even submitted to the competent authority prior to the last date of submission of application form i.e. 15.2.2013.

Mr. Ajit Maloo submitted that the subsequent alleged submission of research paper by the petitioner before the Verification Committee and its acceptance as reflected from the endorsement of the application form, prior to the petitioner's interview by the Selection Committee, was of no consequence. The Selection Committee was obliged, Mr. Ajit Maloo submitted, only to evaluate the petitioner on her application and the documents in support thereof submitted alongwith on or before the last date of the submission of application. Mr. Ajit Maloo submitted that the Verification Committee had no statutory role. Its endorsement of the petitioner's research paper on her application form could not lawfully supply any deficiency in the application form. The role of the Verification Committee was limited to verifying the documents submitted by the candidate alongwith the application form and did not extend to the inclusion of any document submitted before it in support of the candidate's application. Mr. Ajit Maloo submitted that in the event any additional document submitted by the petitioner prior to or at the time of interview was to be accepted and considered, even when such document was not reflected in the application form or filed on or before the last date for submission of the application forms, it would be wholly illegal and discriminatory against the other candidates. Reliance was placed by Mr. Ajit Maloo on the judgment of the Apex Court in the case of T. Jayakumar Versus A. Gopu and another (2008) 9 SCC 403 to submit that curing of a defect after the last date of submission of application form was unjustifiable and denial of appointment for a post, after refusal to permit removal of a lacunae in the application form, cannot be interfered with by the Courts.

On the issue of giving weightage of 1.50 marks not 1.88 to the petitioner for having secured 60% marks in her Secondary School Examination, it has been submitted that all candidates seeking appointment as Assistant Professor (Botany) were treated similarly and none with 60% marks at the Secondary Level Examination given weightage of 1.88 in terms of Appendix III Table II (a) to the University of Rajasthan Ordinances. All applicants seeking appointment as Assistant Professor (Botany) with 60% marks at the Secondary School Examination were allowed weightage of 1.50 marks. Specific reference has been made to the case of one Indu Singh Sankhla at Sr. No. 18 in the select list for appointment to the post of Assistant Professor, who also with 60% marks in the Secondary School Examination given a weightage of 1.50 marks on that count. Mr. Ajit Maloo submitted that the Selection Committee, qua those seeking appointment to the post of Assistant Professor (Botany), on its then current interpretation of Appendix III Table II(a) to the University of Rajasthan Ordinances consistently marked those with percentages falling in the two overlapping brackets with a lesser of the two possible weightages. Such consistent conduct of the Selection Committee cannot be impugned for alleged lack of fairness, discrimination or malafide. The petitioner has thus not been prejudiced by allowing her a weightage of 1.50 for having secured 60% marks at the Secondary School Examination and consequently on that ground no case for impugning her non selection / appointment to the post of Assistant professor

(Botany) as agitated can be made out, submitted Mr. Ajit Maloo.

Estoppel against the petitioner has also been set up by Mr. Ajit Maloo on count of the fact that the petitioner challenged the methodology of her evaluation by the Select Committee only subsequent to having appeared in the interview before it and failed. He then submitted that though in the case of Dr. Swati Sharma (supra), the Court indeed held that overlapping of marks in two different brackets under Appendix III Table II (a) for allocation of weightage on the basis of performance in various stages of education was undesirable, in such a situation an interpretation favourable to the candidates ought to prevail and they be given the benefit of a higher weightage on marks which over-lapped two brackets i.e. 50-60, 60-70, yet the Court also recorded that not so doing had not entailed any disadvantage to the candidates concerned. Mr. Ajit Maloo submitted that the petitioner has been unable to show any prejudice in being allowed a weightage of 1.50 marks on her percentage of 60% in the Secondary School Examination in view of the fact that all candidates similarly placed with a percentage at the Secondary School Examination overlapping two brackets were given lesser of the two possible weightages. Reliance has also been placed by Mr. Ajit Maloo on the judgment of the Division Bench of this Court in D.B. Civil Writ Petition No. 20344/2013 (Dr. Rashmy Nair & Ors. Versus State of Rajasthan & Anr.) and other connected matters, where noting the overlapping in the brackets relevant for grant of weightage in Appendix III Table II (a), the Court held that as a common standard in applying Appendix III Table II having been followed and the candidates accordingly evaluated. "It was not desirable for this Court to interfere in the decision of the experts."

Mr. Ajit Maloo also relied on the judgment of the Apex Court in the case of Basavaiah (Dr.) Versus Dr. H.L. Ramesh and others reported in (2010) 8 Supreme Court Cases 372 to submit that in respect of appointments to various posts in Universities, the Court should show deference to the recommendations of the Expert Committee and when no malafides have been alleged, should not interfere in such matters, as if sitting in appeal. The same proposition has been also asserted, Mr. Ajit Maloo submitted by the Division Bench judgment of this Court in the case of Kanhya Lal Sain Versus Registrar Examination, RHC reported in 2016 (2) RLW 1370 (Raj.) [It would however be important to note here that Kanhya Lal Sain related to expert opinion with regard to correct answers at a public examination).

Mr. Ajit Maloo submitted that a similar pragmatic view of the matter be taken by this Court too, moreso in the context of the fact that the appointment to all 8 posts of Assistant Professor (Botany) reserved for OBC-NCL have been made as early as 2013 and those appointed holding the said posts since then. No vacancy presently obtains on the post in issue to which the petitioner could at all be appointed, Mr. Ajit Maloo submitted. Mr. Ajit Maloo however admitted that indeed following the observations of this Court in Dr. Swati Sharma's case (supra), the syndicate allowed for higher weightage to the candidates for academic

performance where the percentage obtained by them overlapped two brackets in Appendix III Table II(a). He however sought to clarify that yet that view of the syndicate was subsequent to the interviews held for appointment to the post of Assistant Professor (Botany) which had in the meantime been completed and appointments made.

Heard. Considered.

Equality of opportunity in public employment is mandated by Article 16 of the Constitution of India. Unreasonableness and arbitrariness in actions / omissions of public authorities has been banished by Article 14 of the Constitution of India. Appointment to public posts, it is well settled, have to be fair and transparent. When put to challenge despite founded on expert opinion such appointments have to be evaluated on the touchstone of statutory compliances, absence of malafides, palpable arbitrariness and adherence to law declared by the Courts. In this view of the matter, there can be no escape, when facts of a case warrant, from the Court addressing issues of non appointment to a public post agitated before it on the grounds recorded above. In the aforesaid background relating to the scope of the court's jurisdiction to interfere with issue of appointments to public posts - including that to Universities, it would be useful to recapitulate the relevant facts.

The petitioner applied for the post of Assistant Professor (Botany) pursuant to the advertisement dated 1.11.2012. She was shortlisted entailing the obvious conclusion that she was eligible. And that is not in issue. Indeed in her application form, the petitioner did against column no. 25 relating to Research Activities state 'Nil'. Note (b) to column 25 however provided that two reprints of each paper, as far as possible, be attached. This makes it evident that even where a candidate seeking appointment to the post of Assistant Professor (Botany) did indicate in the application form information relating to research activities, it was not mandatory to attach alongwith the application form the research papers reflecting such research activity. Besides a bare look at the advertisement dated 1.11.2012 does not indicate that the application forms of necessity were required to be accompanied by supporting documents on which evaluation of merit in terms of governing University of Rajasthan Ordinances was to be done by the Selection Committee. In-fact a Verification Committee was constituted to verify the documents relied on by the candidates prior to their evaluation for appointment to the posts in issue by the Selection Committee. The job of Verification Committee, as the nomenclature indicates and as per the case of the respondent-University itself was to ascertain that the documents on which the claim to appointment was being buttressed by each of the candidates were in order. That Verification Committee admittedly accepted the petitioner's research paper as published in the Journal of Phytology, as recognized by the Department of Botany, University of Rajasthan and endorsed the said fact on the petitioner's application form - which has been annexed to this petition and so reflects. In the aforesaid factual scenario, I am of the considered view that there was no

occasion whatsoever for the Selection Committee to overlook the petitioner's research publication in a Journal included in the list of those recognized by the Department of Botany, University of Rajasthan in response to the Registrar, University of Rajasthan's letter dated 10.5.2012.

There is no merit in the respondent-University's case that merely because the petitioner's research paper published in a recognized journal was in the first instance not detailed in her application form, it could not be considered - even when its authenticity or relevance was otherwise not in doubt. A three Judges Bench of the Apex Court in (2005) 9 SCC 779 - Dolly Chhanda Versus Chairman, JEE & Ors. held that indeed the general rule is that while applying for any post, the requisite eligibility should be supplied as on the last date fixed in the brochure inviting the application and unless there is an express provision to the contrary no relaxation in this regard is permissible. But it was also categorically held by the Apex Court that where the benefit of a weightage or reservation is sought and necessary certificates pre-existing the last date of the application form have been produced even subsequently, as the matter merely relates to the submission of proof and not to substantive eligibility, no rigid principle of exclusion on this account of late submission can be applied. The foundational principle for so holding by the Apex Court was on count of the facts that submission of proof with regard to the right to any weightage or reservation pertains only to the domain of procedure. The Apex Court reached its aforesaid conclusion on the state of law referred culled from its previous judgment in the case of Charles K. Skaria Versus Dr. C. Mathew (1980) 2 SCC page 752 where in para 20, the Court held, on the facts before it, that proof of having obtained a diploma for additional 10 marks was distinct from the factum of having got the requisite diploma before the cut off date. The primary question, in such a situation, the Apex Court held was "Has the candidate in fact, secured a diploma before the final date of application" and even though it would have been prudent to produce evidence of the requisite Diploma alongwith the application (as was in the said case specifically required by the prospectus) "that was secondary". The Apex Court further held in Charles K. Skaria (supra) that academic excellence through a diploma for which extra mark was to be granted could not be denuded or overlooked only because the proof of having acquired it was produced later, albeit before the date of actual selection. It was held that "the emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor

because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the hand mad but the mistress and form not as subservient to substance but as superior to the essence." (underlying mine)

The facts of the case of the petitioner are far superior to that of Charles K. Skaria (supra). In Charles K. Skaria (supra) the prospectus specifically required that attested copies of the statement of marks and other documents be attached with every application. Yet despite the specific and positive requirement of annexing documents to the application (which was absent from the advertisement dated 1.11.2012), the Apex Court held that the mere failure to attach the requisite certificates and documents with the application was of no event if such documents -valid qua the date of last date of submission of application - were subsequently filed / submitted before the interview.

In Ram Kumar Gijroya Versus Delhi Subordinate Services Selection Board (2016) 4 SCC 754, the question of law which arose before the Apex court was whether a candidate who appears and submits the OBC certificate after the last date of the application, is eligible for the benefit of reservation under the OBC category or not? The Court answered the said question in the affirmative holding that a pre existing eligibility of a candidate has to be considered if proof with regard thereto is furnished before third party interest is created. And once it was not in doubt that the candidate was an OBC, the mere delay in submission of OBC Certificate was of little consequence to deny him the right of reservation provided for in the recruitment process. Here two substance prevailed over procedure for the Apex Court.

This is also so in the instant case where the petitioner had furnished before she was interviewed by the Selection Committee the proof of having published in 2009 a research paper in a Journal recognized by the Department of Botany, University of Rajasthan and which publication was thus wholly relevant for evaluating her merit with reference to Appendix III Table II(a) of the UOR Ordinance pursuant to the advertisement dated 1.11.2012 for appointment to the post of Assistant Professor (Botany).

I also do not find much force in the "Holy Cow" contention of Mr. Ajit Maloo that as the Selection Committee for appointment to the post of Assistant Professor (Botany) was constituted of experts, its conclusions should not be interfered with in the exercise of the court's extraordinary equitable discretionary jurisdiction under Article 226 of the Constitution of India. Indeed the Apex Court has held that an expert opinion should not be ordinarily interfered with by the Court in such jurisdiction. Yet the Apex Court only commends due regard to the expert opinion but does not elevate such regard to a pedestal of worship, as it is equally well settled and recognized by the Courts that it is their fundamental duty to address legal issues relating to violation of statutory rules, potential equality and palpable perversity and non adherence to declared law when they arise even in situations where experts are engaged in the decision making. In the case of

Institute of Chartered Financial Analysts of India & Ors. Versus Council of the Institute of Chartered Accountants of India & Ors. (2007) 12 SCC 210, the Apex Court held as misconceived the submission of the counsel for the respondent that the decision having been taken by an expert it did not deserve, only for that reason to be interfered with by the Court. It was held by the Apex Court that interpretation of law is the obligation of the superior courts and even the action of an expert is not beyond the pale of judicial review, where the statutory authority transgresses its jurisdiction - on one or the other count which require the court's intervention.

Further in MC Gupta versus (Dr.) Versus Arun Kumar Gupta (Dr.) 1979 (2) SCC 339, the Apex Court held that even though broadly it would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be, yet the decision of the expert body, if it were to contravene the rules and regulations binding upon the experts for making the selection and recommending the selectees for appointment, could be interfered with under Article 226 of the Constitution of India. In so holding, the Apex Court only affirmed its earlier view in the case of State of Bihar Versus Dr. Asis Kumar Mukherjee {1975 AIR 192} that the area of enquiry when expert decisions were under challenge was as to whether any case of breach of fundamental right or an illegality akin to an error of law was made out to vitiate the appointments under challenge.

Besides the above, it is also to be noted that the Court when exercising its jurisdiction under Article 226 of the Constitution of India cannot be a silent spectator to otherwise disastrous consequences of an unintended mistake. Invoking the equitable maxim *Falsa Demonstratio Non Nocet*, the Apex Court in Jangbir Versus Mahavir Prasad Gupta 1977 AIR 27 held, albeit in a different factual context, that a mistake has no consequence if the correct situation can be inferred in a given situation. Aside of the Apex Court's enunciation on the maxim of *Falsa Demonstratio Non Nocet*, I am of the considered view that a mistake in the application form cannot be fatal to a candidate, if from even extraneous material prior to or at the time of interview of a candidate the correct factual situation as to his/her eligibility and / or merit is ascertainable. It is contrary to public interest that a more meritorious candidate is excluded in public employment to the benefit of a less meritorious candidate. None can have a vested interest in an inadvertent mistake of another and demand that it be perpetuated irrespective of a correct and relevant fact otherwise obtaining on record.

In the instant case, it is an admitted fact that the petitioner had a research paper published in 2009 in a recognized journal of repute recorded in the list of approved recognized Journals by the Department of Botany, University of Rajasthan well before the advertisement dated 1.11.2012 calling applications inter-alia for appointment to the post of Assistant Professor (Botany). And albeit the said research paper publication was not reflected in the petitioner's

application form, it was admittedly submitted to the Verification Committee prior to the interview of the petitioner by Selection Committee. The Verification Committee accepted it and the endorsement on the petitioner's application form - which was then placed before the Selection Committee - established. It is also an admitted fact that the counsel for the respondent University in the case of University of Rajasthan Versus Vinita Nair (supra) stated in court that the Selection Committee for the post of Assistant Professor philosophy relating to vacancies to the post also advertised on 1.11.2012 had awarded 1 mark to the respondent Vinita Nair in marking her for Research Performance as there was one publication to her credit. In this view of the matter, I am of the considered view that the petitioner was entitled to the consideration of her research paper published in 2009 and be marked accordingly for her research performance. That aspect has however arbitrarily been overlooked by the Select Committee and the said arbitrariness perpetuated by the Committee constituted by the Vice Chancellor following the order dated 4.11.2015 passed by this Court in SB CWP No. 2694/2014. Thereafter the Vice Chancellor has mechanically approved the decision of the Committee. The Registrar's communication to the petitioner accordingly under his impugned letter dated 22.3.2016 is thus wholly vitiated, unsustainable and liable to be set-aside on this count.

On the issue of the weightage to the petitioner on academic performance on the basis of her Secondary School Examination percentage in terms of Appendix III, Table II (a), it would be first appropriate to refer conclusively to the judgment of this Court in the case of Dr. Swati Sharma (supra) holding at page

31 that where there was a overlapping of a percentage in two brackets as in the case of percentage of 60, 70, 80 and 90, the candidates with such percentage were entitled to favourable interpretation and a weightage provided for in the higher bracket. There is nothing in the judgment of this Court in the case of Dr. Rashmy Nair (supra), on which Mr. Ajit Maloo relied, to hold to the contrary. In any event no ratio decidendi binding on this court on the issue of appropriate weightage in case of over-lapping percentage covering to brackets is deducible from Dr. Rashmi Nair (supra). The equitable view of the court in Dr. Swati Sharma (supra) on the issue is not even remotely displaced. I am also not impressed by the argument of Mr. Ajit Maloo that mere consistent application by the Selection Committee, for grant of weightage for academic performance on the basis of the Secondary School Examination marks, to those seeking appointment to the post of Assistant Professor (Botany) and grant of lower weightage despite of their overlapping mark also entitling the candidate for a higher weightage, entailed equalization and non-discrimination which excluded prejudice to the petitioner. For one, it is well settled that two wrongs do not make a right. A right when recognized by a court, stands and holds firm. It cannot be glossed over by consistent breach qua all. The court in Dr. Swati Sharma (supra) having held - more so on concession of counsel for the University of Rajasthan - that where a candidate's percentage overlapped two brackets for grant of weightage for academic performance, a beneficial

interpretation for the candidate be taken and he/she be given higher weightage, the petitioner was entitled for having secured 60% marks in Secondary School Examination to a weightage of 1.88 marks not 1.50 in the course of evaluation of her academic performance. It is so held.

Admittedly, except for recruitment of Assistant Professors in 5 subjects including Botany candidates, in respect of 35 odd other subjects for which Assistant Professors were recruited following the advertisement dated 1.11.2012, higher of the weightage marks were given when a candidate's percentage overlapped two brackets. The petitioner who also sought appointment as Assistant Professor (Botany) pursuant to the same advertisement dated 1.11.2012, cannot be denied similar beneficial interpretation of a higher weightage as her percentage in Secondary School Examination was 60 (Sixty) i.e. falling both in the lower bracket of 50-60 (weightage 1.50) and the higher bracket of 60-70 (weightage 1.88). It is well settled that the judgments of a Court only discover the state of affairs and do not make law consequent to which they always operative retrospectively unless specifically made prospective. That was not so in the case of Dr. Swati Sharma (*supra*). In any event the power to make a judgment prospective only appears in law to be with the Apex Court under Article 142 of the Constitution of India. The view of the Court in Dr. Swati Sharma's case (*supra*) therefore ought to have operated to the benefit of the petitioner before the Committee constituted by the Vice Chancellor following the court's order dated 4.11.2015 and she ought to have been held entitled to the benefit of weightage of 1.88 and not of 1.50 for having secured 60% marks in the Secondary School Examination.

With regard to Mr. Ajit Maloo's objection to the maintainability of the writ petition for reason of non impleadment of the successful candidates in OBC - NCL category appointed to the post of Assistant Professor (Botany) pursuant to the advertisement dated 1.11.2012, I am of the considered view that the argument is wholly untenable. The petitioner seeks no relief against any of the selected candidate on the post of Assistant Professor (Botany) in OBC category. She merely seeks an appropriate placement on select list on being fairly evaluated as per UOR Ordinance / UOR practice and be accordingly appointed on the post of Assistant Professor (Botany) pursuant to the advertisement dated 1.11.2012. It is for the respondents to put their house in order and ensure that the petitioner is given her rightful claim in terms of her merit determined as per the discussion here-in-above. That need not necessarily entail any prejudice to those already appointed as will be detailed here- under.

The upshot of the aforesaid discussion is that the impugned order dated 22.3.2016 of Registrar, University of Rajasthan as also the decision of the Vice Chancellor's committee on the petitioner's representation taken on 4.3.2016 as approved by the Vice Chancellor are quashed and set-aside.

It is no doubt true that under Article 226 of the Constitution of India petitions, ordinarily a writ of mandamus or direction of similar nature ought not to be

issued by the Court for appointment of the petitioner and only a direction for consideration of her case for appointment in terms of the findings of the Court should issue. The law however is not blind folded nor can fail to deal with situations where a mere direction for consideration for appointment would in the facts of a given case be only a chimera, not complete justice and in fact perpetuate injustice. Direction for appointment in special fact-situation can indeed be issued by the Court. In the instant case, the petitioner has been excluded from appointment to the post of Assistant Professor (Botany) on a misconstruction of Appendix-III Table II(a) by the University of Rajasthan Ordinances with regard to the weightage of marks as has been discussed at length hereinabove. She has also been arbitrarily denied contrary to the dictum of the Apex Court in the case of Charles K. Skaria (supra) and Dolly Chhanda (supra), the benefit of a research paper publication in a recognized journal for evaluation on her research performance despite the said research paper having been published in 2009 even prior to the advertisement dated 1.11.2012, submitted before the Verification Committee and accepted by it prior to the interview by the Selection Committee. The Committee constituted by the Vice Chancellor has perfunctorily rejected the petitioner's representation and the Vice Chancellor then approved it mechanically. In the aforesaid facts to direct the UOR and its Vice Chancellor only to reconsider the petitioner's case be an exercise in futility extending the undeserved suffering of the petitioner since the last about 5 years.

Equity in the facts of the case, would also discount an inevitable argument of no vacancy obtaining for the petitioner's appointment as Assistant Professor (Botany) as per her revised merit drawn as per the findings / directions earlier given in this judgment. In equity, a wrong doer cannot be allowed to set up its own very wrong impugned in defence. Instead all the 8 posts of OBC - NCL by appointment of Assistant Professor (Botany) have long been filled up at the time the petitioner was wrongly excluded, none of those appointed can now be removed for reasons of equity as they have worked for about 5 years. The respondents, in the facts and circumstances of the case, should therefore create a supernumerary post of Assistant Professor (Botany) in the Academic Year the other 8 OBC appointments to the post of Assistant Professor (Botany) were made pursuant to the advertisement dated 1.11.2012. And the petitioner be appointed to the said supernumerary post with all notional benefits.

In this view of the matter, I would direct that the petitioner's merit at the interview of 10.10.2013 for the post of Assistant Professor (Botany) pursuant to the advertisement dated 1.11.2012 be re-assessed adding thereto 0.38 (point thirty eight) marks on account of appropriate weightage for Secondary School Examination of 60% and further 1 (one) mark for research performance on account of one research paper published in a recognized journal in the manner as admitted by the counsel for the respondent-University in the case of Vinita Nair (supra). On such re-assessment, on the petitioner falling in merit higher than those already appointed to the post of Assistant Professor (Botany)

pursuant to the advertisement dated 1.11.2012, she be given appointment to the post of Assistant Professor (Botany) in OBC - NCL category by creating a supernumerary post, as directed above, alongwith all notional benefits.

This entire exercise, as directed above, be completed within a period of 4 weeks from the date of presentation of certified copy of this order.

Petition is allowed accordingly.