

(2007) 12 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 40503 of 2001

Dr. Vijayashree Sabarad Nee Patil

APPELLANT

Vs

Gulbarga University, State of Karnataka and Vikram
Gurulingappa, Lecturer in Kannada Dept of Kannada,
Gulbarga University

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 4 KarLJ 196 : (2008) 2 KCCR 764

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.N. Prasanna, for P.S. Rajagopal, for the Appellant; N.B. Bhat, for R-1 and 3, R.B. Venkataramana, HCGP for R-2 and S.M. Chandrashekar, for R-4, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Petitioner is an aspirant for the post of lecturer in Kannada, advertised for being filled up by the first respondent - Gulbarga University - in terms of the notification dated 23-6-2001 [Annexure-N] and who in fact is not selected, but the fourth respondent in this writ petition having been selected, quite naturally, being disappointed, feeling aggrieved, has come up with this writ petition, questioning the legality of the selection of the fourth respondent contending, inter alia, that the procedure adopted by the selection committee for selecting the most suitable candidate or more meritorious candidate is not a fair or proper procedure; that the method of awarding marks as adopted by the selection committee based on external factors also, vitiates the selection; that the selection committee has not made a proper selection on applying an objective criterion and a uniform method; that the selection of fourth respondent is an act which should be characterized as arbitrary, discriminatory, mala fide, biased etc., violative of Articles 14, 16(1) and 21 of the Constitution of India, etc.

2. In substance, the writ petitioner has challenged the appointment order dated

8-8-2001 [Annexure-Q to the writ petition] issued by the first respondent-university in the name of fourth respondent, which has snuffed out the aspirations of the petitioner. It is not only for quashing the appointment order in favour of the fourth respondent, but also for issue of a writ of mandamus to order the university to appoint the petitioner to the post, this writ petition is filed.

3. Gulbarga University - the employer - figures as first respondent, state of Karnataka figures as second respondent, Prof M.V. Nadkarni, the then vice-chancellor of the university figures as third respondent and the selected candidate himself being the fourth respondent to this writ petition.

4. Though emergent notices had been issued to the counsel for the university on 8-11-2001 this writ petition was admitted for examination on 21-1-2002 and ever since has been remaining before this court

5. Respondents on being notified, have entered appearance. First and third respondents are represented by Sri N.B. Bhat, learned government pleader is appearing for the second respondent-state and the fourth respondent is represented by Sri S.M. Chandrashekar. I have heard the learned Counsel for the parties.

6. On behalf of the respondents 1 and 3 a common statement of objection has been filed. Separate statements of objections have been filed on behalf of the second and the fourth respondents. All the respondents have supported the action of the university in selecting the fourth respondent, contending that the selection is valid, tenable and that there is no merit in the writ petition; that the petitioner is only a disgruntled candidate, who failed in the legal process on an earlier occasion and has become the petitioner in this writ petition more out of frustration on the failure on the earlier occasion and non-selection on this occasion also; that the petition is without merit and the selection made by an independent selection committee is an objective selection based on a reasonable and fair method evolved by the selection committee, which has been applied uniformly to all candidates; that the selection committee has evaluated the candidates on a scale as evolved by the selection committee for determination of the inter se merit of the candidates and the candidates have been ranked in that order of merit and the highest ranking and highest merited candidate having been selected by the committee and appointed by the university, the selection is perfectly valid, justified; that no interference is called for irrespective of the grievance of the petitioner or the grounds urged in the petition and have, therefore sought for dismissal of the writ petition.

7. It is also urged by the respondents that a selection of this nature by an expert body applying a fair and uniform norm is beyond the scope of judicial review of administrative action; that the selection being to a post of lecturer in a university, an exercise in selecting a suitable person for advancement of academic excellence, a matter for such action is best left to the wisdom and judgment of the university authorities and the selection committee -an expert

body - as identified by the university; that in the absence of any mala fides or discriminatory treatment meted out by the university or the selection committee, there is absolutely no scope for interference with the such selection and therefore the writ petition should be dismissed.

8. It is in the background of these pleadings, the learned Counsel for the parties have advanced their arguments. On rule being issued and on the filing of the statement of objections, the respondent-university has also placed the record relating to the selection process as evolved by the university and actual marking system as had been devised by the university.

9. Through a memo placed before the court on 20-11-2006, learned Counsel for the first respondent has placed before the court a copy of the proceedings of the meeting of the board of appointments for selection of lecturer in Kannada held on 3-8-2001 at the university indicating the persons who constitute the selection committee and also copies of the record of the proceedings of the selection committee, particularly for evaluating the inter se merit of the candidates interviewed, the manner in which their inter se merit has been evaluated and the norms on which the selection committee had evaluated the candidates for awarding marks in the interview on a scale of 100 total marks with reference to which marks have been awarded to the candidates under different heads, such as their academic attainments, their creative abilities and their overall personality and aptitude for taking up the job or perform in the job and marks earmarked for each of such head.

10. This writ petition itself has been heard for a period of time and on an earlier occasion, when the matter was inconclusive, this court has passed an order as under on 2-8-2007:

Though the matter is heard in full, prima facie, it appears that selection and appointment of R4 as a lecturer in the Department of Kannada at the Gulbarga University pursuant to the post being notified in the year 2001 is not one in contravention of any statutory provision nor revealing any arbitrary action on the part of the respondent - university, Sri, Prasanna, learned Counsel for the petitioner requests the matter to be taken up next week to ascertain the present position of the petitioner and also to make sure that the then existing statutory provisions were also fully complied with etc.,

List next week.

The matter was heard further and subsequently on 30-8-2007, the following order has come to be passed:

This writ petition is by a person who had aspired to the post of lecturer in Kannada notified for being filled up by the Gulbarga University in terms of the Notification issued in the year 2001.

The selection process was gone through by the Gulbarga University, putting in place a Board of Selectors who evaluated the performances and attainments of

the applicants, ranked them merit-wise and recommended appointment of the person who topped the merit list prepared by them. Accordingly, the respondent No. 4 has been appointed.

Petitioner being an aspirant and aggrieved by the selection of respondent No. 4 which in turn amounts that the petitioner is kept out, has approached this court contending, inter alia, that the petitioner had vast teaching experience of about 22 years in the very University; that she was a more suitable candidate; that the selection of respondent No. 4 is not proper etc.,

While in support of the submission, Sri Prasanna, learned Counsel for the petitioner had drawn a comparison to the provisions of the Karnataka State Universities Act, 2000, particularly Section 53(6) of the said Act where under weightage is given to past experience, points out that in the selection procedure followed for selecting the candidate by selection committee, no weightage had been given to the experience and this is a flaw in the method of selection.

While an examination of the provisions of Section 49(6) of the Karnataka State Universities Act, 1976 which held the field on the date of the Notification dated 21/23.6.2001 on the date of the appointment which was on 8.8.2001 and the selection procedure was required to be governed by these provisions of statute which reads as under:

49. Appointment of Teachers, etc.,-

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(6) The Board shall interview, adjudge the merit of each candidate in accordance with the qualification advertised and prepare a list of persons selected arranged in the order of merit IT shall forward the list to [the Syndicate] who shall make appointments in accordance with the same, [In the case of difference between the Board and the Syndicate, the matter shall be referred to the Chancellor whose decision shall be final].

Explanation:- Nothing in this Sub-section shall be construed as requiring [the Syndicate] to make appointments in accordance with the list where he is of the opinion that it does not satisfy the provisions of this Act or the statutes relating to such appointments].

It is not very clear as to what exact procedure was required to be followed in making selection nor as to whether any statute governed the process of selection nor even whether the University had issued any guidelines to the Board of Selectors to follow any particular procedure,

Sri Prasanna, learned Counsel for the petitioner would submit that inspite of best

efforts on behalf of the petitioner, he is unable to locate or find any statute or guidelines in this regard. Sri MS Hiremath, learned Counsel for the respondent - University would submit that the procedure was being regulated by the Board of Selectors and they could evolve their own method and procedure.

The University has placed before the court the entire records relating to the selection.

A perusal of the record, particularly the proceedings of the Meeting of the Board of Appointment for selection of lecturers in Kannada, held on 3.8.2001 in the Gulbarga University, indicates that they had evolved a method where under they had assigned total of 100 marks apportioned in respect of different aspects of a candidate such as,

[a] Merit at qualifying examination - 30 Marks [b] Candidates having M. Phil - 5 Marks [c] Candidates having Ph. D - 5 Marks [d] Holding a diploma - 5 Marks [e] Publication of works - 15 Marks [f] Candidates securing Awards such as gold medal subject to 2 marks for each medal - 10 Marks [g] performance at the interview - 30 Marks

Total - 100 Marks While it is the discretion of the University and its Selection Board to assess the performance of suitable candidate and can evolve its own norms, any norm evolved and pressed into service should be a fair one and applied uniformly to all the applicants.

The apportionment of the marks while, prima facie, indicates loading of marks in favour of academic attainments which by itself may not be an objectionable norm, covering 55 marks by themselves, what appears to be a little odd is the method of awarding 30 marks to merit at qualifying examination.

It is indicated that the manner of awarding 30 marks to merit at qualifying examination is that the difference between 50% of the marks and the highest percentage of marks at the qualifying examination was assigned 30 marks. That means if amongst the applicants, a person with 60 marks in the qualifying examination is a person having highest marks, he will get full 30 marks and persons with lower marks getting proportionate marks between 0-30 i.e., person with 50 marks gets "0" marks and person with 60 marks gets 30 marks. This appears to be a rather queer method of evaluating the merit at qualifying examination if not to be characterised as arbitrary at the first blush.

Learned Counsel for the University is unable to explain as to whether such method had been evolved any time earlier or had been pressed into service in any other similar selections or whether it is a unique method evolved and applied only in the present selection.

The Gulbarga University is directed to place an affidavit of the Vice-Chancellor of the Gulbarga University as also Sri Srikanth Bhat, a representative from Madras University who were the members of the Selection Committee explaining the rationale in following such awarding of marks and as to whether they had found

that such method was being evaluated with any satisfactory result elsewhere or they had innovated it for the first time etc.,

The affidavit may explain the background to the evolution of such method of marking. The affidavits may be placed before this court within four weeks from today.

Though Sri MS Hiremath, learned Counsel for the respondent - University requests three weeks time, an outer limit of four weeks is granted for such purpose.

Furnish a copy of this order to the learned Counsel for the University.

List for further hearing on 27.9.2007.

11. Thereafter, Sri N.B. Bhat, learned Counsel appearing for the first university had requested for further time to place the affidavits of the members of the selection committee and the university has now placed before the court two affidavits, one sworn to on 6-10-2007 by Prof M.V. Nadkarni, Vice-chancellor of the university for the period 18-2-1999 to 17-2-2002, and another affidavit sworn to on 12-11-2007, by Dr. Srikrishna Bhat Arthlkaje, who was a member of the board of appointment for the post of lecturer in Kannada, purporting to be by way of response to the order passed by this court on 30-8-2007.

12. In contents and substance, the two affidavits are not very different. The deponents of these two affidavits, purporting to explain the rationale behind the selection committee adopting the norms/procedure of evaluating the academic excellence for the purpose of awarding 30 marks earmarked for such purpose on a scale of 100, have indicated that a particular weightage formula [described as weighting formula in the affidavits] was evolved in the specific context of selection of lecturer. It is indicated that as there was no requirement of prior teaching experience as an essential or necessary qualification as per the notification, it was thought fit by the selection committee that weightage should be given to academic excellence. It is also indicated that at the same time, the selection committee was not prepared to give a total go-by to experience aspect and that was also taken into consideration by earmarking some marks for attainments of publication of literary works and the performance in the interview, which, according to the committee was reflective of the experience of the candidate.

13. If the publication of the works and the performance should be taken as reflective of the past experience, then the committee has earmarked 15+30 marks towards the aspect of past experience. It is obvious that the balance marks are earmarked towards academic excellence, though under different heads, such as merit at the qualifying examination being 30 marks, higher academic attainments like MPhil, five marks, for PhD five marks, for holding diploma five marks, and obtaining of awards such as gold medals, being two marks for each medal, subjective of total 10 marks. It is indicated in the

affidavits that the committee was of the view that more importance should be attributed to the academic qualifications, particularly to the comparatively better academic attainments, and having regard to the fact that the minimum marks that had been indicated by the university in the qualifying examination was 55%, though in some special cases, it has been relaxed to 50%, the selection committee thought that such being the starting point for eligibility criterion, higher academic performance, in the sense, securing marks over and above 55% or 50%, should be given credit to as a better academic attainment and as the selection was amongst candidates to be interviewed, the limiting factor was taken to be the highest academic attainment amongst the candidates and on such premise, 30 marks earmarked for academic excellence was sought to be given to such candidate, as discussed earlier and as indicated in the affidavits. While the candidate who had highest academic excellence, in the sense highest marks in the qualifying examination was given 100% of these 30 marks for academic attainment, the candidate at the lowest level was given "O" [zero] mark.

14. It is also indicated in the affidavits that the selection committee considered two other alternatives for the manner of assigning marks for performance in the qualifying examination and they found that the other two methods were not any superior to the method they proposed to adopt and therefore the other two alternatives were shelved. The contents of the affidavit in this regard reads as under:

4. The weighing formula in the present case was evolved in the specific context of the selection of a lecturer. No prior teaching experience was required as a necessary qualification as per the Notification. What mattered most was the academic excellence. Therefore, a weight of 30 marks was assigned for the qualifying examination, plus 5 marks each for M Phil and Ph D and any diploma, and 10 marks gold medals etc, together 55 maximum marks for the academic qualifications criteria Experience was not ignored but taken in to account indirectly, as reflected in the performance at interview and in the publication record A more experienced candidate is expected to be more eloquent and confident, more knowledgeable and also have more publications. Mere experience by itself has no meaning, unless reflected in terms of these criteria Experience thus has been given weightage indirectly as reflected in the publication record [15 maximum marks] and performance in the interview [30 maximum marks].

5. The Honorable High Court is correct in interpreting that according to our weighing formula, a highest scoring candidate with a 60 per cent on the aggregate in the qualifying examination gets 30 marks, and a candidate obtaining 50 per cent would get zero marks, as far as the criterion of performance in the qualifying examination is concerned, I respectfully submit that this is not queer, A selection after all requires comparison in academic excellence. The highest score obtained was, therefore, taken as a reference point

with which other candidates were compared A candidate with 50 per cent score, assigned a zero, as far as the performance in the qualifying examination is concerned, is reasonable. This is because actually 55 per cent was the minimum necessary as per the University Notification, but relaxed in certain exceptional cases, but in no case the minimum was to be less than 50. Thus, 50 per cent is the barest minimum, and in terms of this criterion [performance in the qualifying examination] at least such a candidates score is not positive, as the relative scale ranged from 0 to 30. Not that such candidate is Judged as no good at all, because her/his case is considered on other counts too up to a maximum of 70 marks.

6. There were two alternatives to this way of assigning marks for performance in the qualifying examination. If the above method of assigning full 40 marks to the difference between the highest obtained percentage [say, 60], and the minimum required 50 per cent points, is called A, let us call the two other methods as B and C. Method B would consider the theoretical maximum of 100 per cent marks as 30, in which case, a person scoring 60 per cent is assigned 18 marks, and the person scoring the minimum qualifying per cent of 50 would get 15 marks. Method C would consider the full difference between 100 per cent and the qualifying minimum of 50 per cent as 30, in which case, a person scoring 60 per cent would get only 6 marks and the one scoring only 50 per cent would get zero marks. In both B and C, the, performance in a competitive merit based selection, the methods B and C undermine the relative difference between the highest scoring candidate and others, and water down the whole criterion of performance in the (sic) and the weight given to it. On the contrary, method A does justice to the criterion and was, therefore, applied.

7. The weighing formula was evolved in the context of selecting a lecturer. in the cases of higher posts, such as Professor, the weights would have been higher for publication record and performance in the interview.

8. The weighing formula was finalized during the selection committee meeting after due deliberation and discussion, before the candidates were called in for interview. The committee consisted of very eminent experts, well experienced in such matters like selection for academic posts. When a very large number of candidates were to be compared with each other, reliance on an objective scheme like this became inevitable.

9. The methodology followed by us is not unique or applicable only in one case. Variants of this have been followed in several universities and academic institutions. Ours can only be a broad model to follow, may be with some flexibility left to the best judgment of the selection committees about the exact weights to different criteria, depending on the post in question. In most cases, selection committees do follow some objective procedure decided before the candidates are called in, so as to avoid the risk of too much subjectivism, even if such procedures are not spelt out by statutes.

15. The affidavits necessarily indicate that there was no statutory provision governing the method of selection nor the university had issued any specific guidelines about the method and manner in which the candidates should be evaluated and in the absence of either, the committee thought it fit to evolve its own method and the method which they had applied for evaluating the comparative merit of the candidates interviewed by them was evolved just prior to the candidates being called for interview and on the spot. Though it is indicated that it is neither unique nor a one time method, and with certain variances, such methods have been followed in several other universities and academic institutions, neither the learned Counsel for the university nor the learned Counsel for the selected candidate could come up with a like situation in terms of any statutory provision or as a procedure adopted by other selection committees governing such selection in any other university or in any other institution.

16. It is rather difficult to understand the logic and rationale of the method of awarding 30 marks as adopted by the selection committee in respect of comparative evaluation of the academic merit of the candidates based on their performance in the qualifying examination. If at all it can be understood only by looking into the manner in which the selection committee has actually awarded marks to the candidates interviewed by them and not otherwise. To illustrate the same, taking example of fourth respondent - selected candidate - as against 30 maximum marks earmarked for being awarded in respect of this criterion, the selection committee has awarded full marks i.e. 100% of marks of 30 marks, for his academic performance in the qualifying examination, for having secured 72% marks in the qualifying examinations. As against the highest marks for this criterion, as awarded to the fourth respondent, the least marks under this criterion, so happens is in favour of the petitioner herself, who is given 4.31 marks as against maximum 30 marks for having secured 54% marks in the qualifying examination. While these two candidates stand at the extremes, and the basis and rationale adopted by the selection committee for awarding marks to these two candidates vis-a-vis their performance in the qualifying examination cannot be inferred in the absence of actual marks the other candidates have obtained in the qualifying examination, for which purpose, the university is unable to place the records before the court, it is not possible to understand as to what exact method that had been adopted by the selection committee while awarding marks in respect of 30 marks earmarked for the performance in the qualifying examination.

17. The selection committee, quite naturally on the basis of such evaluation, while recommended the appointment of fourth respondent - the highest merited candidate in the merit list - also recommended that if for any reason, the highest merited candidate does not accept or is not available, the appointment can be made in favour of the next merited candidate namely Ms Manjula.

18. While it is always within the domain of an expert body like the selection committee to evaluate the inter se merit of the candidates who appeared for

interview and it is left to their wisdom and judgment, not only as to the manner in which they evaluate the candidates but also as to what criteria is to be adopted for such evaluation and courts will not sit in appeal over the decision of the selection committee, an expert body, the selection and appointment being for a post under the State, the mandate of Articles 14 and 16 of the Constitution of India operates on the state and all such selections should necessarily pass the test on the touchstone of Articles 14 and 16 of the Constitution of India. It is by now well settled that while Articles 14 and 16 of the Constitution of India, per se, frowns upon positive discrimination by the state on the ground of caste, race, community, sex, religion etc., it is also open for the state to make a classification i.e. to group persons who are similarly situated and to treat them differently from those who are left out of the group, having regard to the object for which the executive function is performed or for the performance of which, the power is exercised, i.e., there should be a correlation between fixing a criterion and the object sought to be achieved by the action. While understanding the scope and ambit of the concept of discrimination it is also, now well settled that non-arbitrariness and fair procedure is part of Article 14 of the Constitution of India, of which Article 16 is a specie. An irrational act on the part of the state and its officers performing on behalf of the state, is now accepted to be an action arbitrary in nature and therefore violates the concept of equality before laws. Fairness in state action is one facet of Article 14. Therefore of Article 16 also. While courts do not sit in appeal over on the decisions taken by the administrative authorities, the decision taking process itself should be a fair one, should be non-arbitrary and should be one conforming to the statutory provisions, if such statutory provisions regulate the procedure.

19. While in the instant case, it is common ground that no statutory provision governs the selection process to be adopted by the selection committee for the purpose of selecting a person to the post of lecturer in the university under the enabling provisions of statutory, the university had constituted a selection committee, an expert body, for such performance. It is also the common case that the selection committee can evolve its own procedure, which, in the instant case, in fact a procedure as evolved by the selection committee and as indicated in the affidavits, should nevertheless be a fair procedure, reasonable and rational procedure. While the main object of the procedure evolved by the selection committee, is to assess the comparative merit of the candidates appearing before it, could have been straightaway accepted, if the committee was going by the inter se academic performance of the different candidates who had appeared before them, the evolved procedure also should be a rational one, in the sense, it should be a reasonable, fair procedure, which ensures equality of opportunity to all candidates and does not by the adoption of such procedure itself, give any candidate an undue advantage and puts any candidate to a disadvantage. As it appeared from the procedure followed by the committee that such was not the case in the present situation and as noticed by this court in the order dated 30-8-2007, the university was given an opportunity to explain this through

affidavits of the members of the selection committee and the affidavits have been placed before the court and examined. It is in this context, further submissions have been made by Sri M.N. Prasanna, learned Counsel for the petitioner, Sri S.M. Chandrashekar, learned Counsel for the fourth respondent and Sri N.B. Bhat, learned Counsel for the university and the vice-chancellor.

20. It is submitted by learned Counsel for the petitioner that while all other procedure of awarding marks can still pass the muster, awarding 30 marks on the basis and the method as evolved by the selection committee in respect of academic performance of the candidates in the qualifying examination does not stand to reason, it has no rationale and on the other hand, it is an irrational method. Learned Counsel for the petitioner submits so for the reason that when such candidates have already been evaluated for their performance in the qualifying examination, by the academic body, which had conducted the examination and had indicated such performance by giving them marks as placed before the selection committee by each of the candidates, the selection committee has devised its own method of re-evaluating such performance of the very candidate in the qualifying examination on a different scale and re-evaluating them and assigning marks inter se on the basis of such re-evaluation, and learned Counsel submits that in this process undue favour or advantage is shown in favour of a candidate, who had the highest marks in the qualifying examination by giving him/her full 100% marks, though the university or the academic body which had evaluated the performance of such candidate in the qualifying examination itself has not given such person 100% marks, a candidate like the petitioner, who perhaps was the lowest ranking in the ladder, in the sense, had obtained least marks in the qualifying examination amongst the candidates interviewed, is given the least marks to her great disadvantage. Learned Counsel for the petitioner submits that while re-evaluation may not necessarily distinguish the ranking of the candidates in any other manner than the ranking as per their performance in the qualifying examination, it has an outweighing effect on the performance of the candidates under other heads, as same rationale is not applied to the marks awarded to the candidates under other heads. Submission is that awarding 30 marks in respect of performance in the qualifying examination by applying the norms or yardstick as devised by the selection committee, has the effect of either effacing or distorting the performance of the candidates under other heads.

21. It is submitted that when the overall ability of the candidates is evaluated on a scale of 100 marks and as large a chunk as 30 marks is awarded on a basis which has no rationale for evaluating the inter se merit of the candidates under this head, it affects the selection procedure and the selection itself. It is for this reason, learned Counsel for the petitioner submits that the entire selection is vitiated due to the selection committee having adopted such an unusual, unprecedented, irrational method in awarding 30 marks for the inter se evaluation of the performance of the candidates in the qualifying examination.

22. All these arguments addressed by the learned Counsel for the petitioner are countered by Sri Chandrashekar, learned Counsel for the fourth respondent, submitting that the court generally cannot sit in appeal over the selection made by an expert body and therefore no interference is warranted when the selection committee had evolved a procedure or method with at most bona fides and with the object of selecting a most meritorious candidate as against the available candidates and the norm as evolved, is applied uniformly to all candidates and the very fact that even after applying such norm or method, the inter se evaluation or the ranking of various candidates remain in the very order, of marks obtained by them in the qualifying examination is in itself proof of the fact that that it does not result in any distortion or unequal evaluation and therefore scrutiny should stop at this and should not proceed further. It is submitted that the method of selection cannot be examined by adopting a microscopic approach to the selection process as evaluated by expert body and due deference should be shown by courts to the wisdom of the expert body in verifying and applying the methodology and should not interfere with it so long as the methodology does give prominence to the academic excellence. Sri Chandrashekar submits the fact that the candidate who had high attainments at the qualifying examination has been selected is proof of the correctness or validity of the method evolved by the selection committee and therefore the selection procedure should be left undisturbed.

23. It is also urged by learned Counsel for the fourth respondent that even on the concept of Article 16 of the Constitution of India, the mandate to the state is to provide equal opportunity and as it cannot be denied that the petitioner had been given an equal opportunity, the right guaranteed under Article 16 of the Constitution of India has been in no way denied and when once the court notices that the petitioner had been permitted to participate in the interview and her merit is evaluated by the selection committee, the compliance of Article 16 of the Constitution of India is complete and what happened thereafter in the process of actual selection by the selection committee, an expert body, is not a matter to which the court can examine on the touchstone of Article 16 of the Constitution of India, Learned Counsel also submits that when the selection committee has gone about its function in a bon fide and uniform manner and when the action is not in contravention of any statutory provision, there is no question of interference by court, particularly at this point of time when the selected candidate has been functioning in the post for the past six years and disturbance at this stage will definitely be to the detriment of the selected candidate, who perhaps has lost other opportunities having accepted the post

24. It is in support of such contentions, the learned Counsel for the fourth respondent has relied upon three decisions viz., 1) T.G. Chandrashekharappa v. The Secretary, Education and Ors. ILR 2006 KAR 4338, 2) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others,) Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, .

25. While there cannot be any two opinions with the principle of law that court will not sit in appeal over the judgment or decision of an expert body or even an administrative decision per se, it is not the same to say that the entire action is beyond the ken of Article 14 of the Constitution of India or Article 16 of the Constitution of India. So long as a fair and non-arbitrary procedure is not followed, the matters are not beyond the reach of judicial review and if it is found that the action is tainted by any discriminatory action, arbitrary action or an irrational action, the end result cannot be sustained, because of the suspect procedure through which it is arrived at. Such being the settled law, the decisions relied upon by the learned Counsel for the fourth respondent does not advance the submissions for which they have been relied upon, as the examination in the present writ petition is not as to the legality or correctness of the decision itself i.e. the selection itself, but the procedure followed for such selection.

26. Sri N.B. Bhat, learned Counsel for the respondent-university has fairly submitted that while courts can examine the selection procedure if it is contrary to any statutory provision or even on the touchstone of Articles 14 and 16 of the Constitution of India, unless it is factually found or legally not a permitted procedure, there should not be any interference and submits that the method as had been followed by the selection committee cannot be taken to be an irrational or arbitrary procedure; that the selection committee having bona fide taken decision to follow this method, being of the view that it is the superior method and also having examined the two other methods and having found merit in the method they have adopted now, there should not be any interference with such selection.

27. While all other aspects of the selection procedure can be said to pass the muster and even the test of Articles 14 and 16 of the Constitution of India, the method of awarding 30 marks to the academic performance at the qualifying examination definitely appear to be flawed and an irrational one. This is so because the selection committee has re-evaluated the ability or performance of the candidates, a performance which had already been evaluated by the academic body, which had evaluated and where the candidates had performed earlier by applying different scale as evolved by the selection committee.

28. If the selection committee were to adopt evaluation as had been done by the original evaluator, perhaps, there could not have been any fault found in such procedure. But the method of re-doing such evaluation and evaluating for the purpose of selection to assess the Inter se merit of the candidates for the purpose of selection, definitely has affected the process of selection. The method is found to be not a rationale method, for the reason that the method as evolved by the selection committee can work differently in different situations i.e. the inter se marks which the candidates can get as against the maximum for the purpose at the qualifying examination, depends on the company in which the candidate is grouped. If a candidate who scored, say, 75% at the qualifying examination and hence to be the person who has attained the highest mark in a

group of 15 persons, who are competitors for selection to a post, such a person gets maximum 30 marks i.e. 10% of the marks earmarked under this criterion. But, if the same person is in a different group, where the person happens to have obtained least marks, the person does not get maximum marks, but gets some other marks. On the other hand, a person who, according to the evaluation by the university has obtained 50% marks in the qualifying examination, starts with "O" [zero] for the purpose of awarding marks as against 30 mark as a method evaluated by the selection committee. That means, a person who has not been awarded 100% marks by the original evaluate, irrespective of the marks that he had obtained in the original examination, stands a chance of getting 100% for the performance at the qualifying examination, if it so happens that even that possible percentage of 60 marks in the qualifying examination, such person is the highest ranked person in the qualifying examination amongst the candidates interviewed, the candidate who has got 50 marks in the very group gets "O" [zero] in terms of the method as evaluated by the selection committee, that means, his performance at the qualifying examination is reduced to zero. There cannot be any better illustration of irrationality. The method as adopted by the selection committee definitely is not a fair or reasonable yardstick for assessing the inter se merit of the candidates interviewed about their performance at the qualifying examination. If such distorted reevaluation can have a bearing on the ultimate outcome, then that it can have a bearing on the selection of most suited candidate for the post, the very selection procedure gets flawed. So long as the marks obtained, by applying such method in respect of assessment at the qualifying examination, can have a bearing or can have a tilting effect on the outcome of the overall performance, final selection cannot be sustained. It has also another irrationality, in the sense, that though the selection committee itself had, as per its own norms, sought to give due importance to other aspects, such as experience in the form of publication and performance at the interview by the candidates, earmarking 45 marks and had earmarked 55 marks for academic excellence, it is only this innovative method adopted by the selection committee in awarding 30 marks in respect of the performance at the qualifying examination, that distorts or projects a different picture of the inter se merit of the candidates. This method of reevaluation of the earlier performance of a candidate is confined to awarding 30 marks for the performance at the qualifying examination and not other heads. It is not applied in respect of other heads also. For this reason also, the method fails.

29. While it is no doubt that it is over six years the selection was made and the selected candidate might have put in long years of service etc., the selection made adopting a flawed procedure, particularly when it is challenged by the aggrieved candidate, cannot be sustained, as the writ petitioner had approached court immediately after the selection. In the present state of affairs, it is inevitable that such matters remain undisposed for some years before courts, when that cannot be a guideline for not reaching the conclusion and to enforce the conclusion that follow as a result of the examination of the merits of the

petition, particularly when it involves a constitutional right guaranteed to citizens.

30. While it is true that Articles 14 and 16 of the Constitution of India do not guarantee any person any appointment to any post, equal opportunity mandated on the state should be effectuated in letter and spirit and not to allow the process to be taken out of the purview of this constitutional mandate midway. A selection procedure is complete only when a suitable and merited candidate selected on the basis of a fair, non-arbitrary procedure and if the selection procedure governed by any statutory provision than by applying such statutory provision. If the selection process parts company with this requirement at any stage, before the final selection, it should be taken that it is still a violation of the mandate on the part of the state to ensure equal opportunity to all citizens or qualified persons.

31. While the writ petitioner before the court himself or herself be a candidate, who could have got selected, if the candidate selected cannot sustain his/her position, but when a selection is questioned before the court and demonstrated to be flawed by the procedure which does not pass the test of fairness under Articles 14 and 16 of the Constitution of India, such selection cannot be sustained, as non-interference would amount to providing immunity from the operation of constitutional mandate. Such can neither be the function of the courts nor the object of the judicial review of administrative action. A decision should be taken to its logical conclusion and therefore it is inevitable this writ petition is to be allowed and the selection of fourth respondent to the post of lecturer in Kannada in terms of notification dated 8-8-2001 [Annexure-Q to the writ petition], is to be quashed by issue of a writ in the nature of certiorari Writ petition is allowed accordingly. Rule made absolute.

32. A further question remains as to what should follow the result of this writ petition.

33. The possibility of the candidates getting over-aged being a real possibility, particularly due to lapse of time and such options which were before them being not available any more to them as of now, and the selection being flawed only because of a particular selection procedure that had been followed by the selection committee was not a rationale procedure or was an irrational procedure, it is only fair that the university is directed to cause a re-evaluation of the candidates by issuing notice to them, interviewing them afresh and making a proper merit based selection on the basis of any acceptable norms or even on the basis of any norm as has been evolved as of now.

34. Therefore, the university is directed to notify the candidates afresh the date of interview, go through the selection process and select the most merited and suitable candidate in accordance with the procedure, which is fair, reasonable or a procedure which is otherwise permitted in terms of any statutory provision governing the same. It is open to the university to make such alternative arrangement, as it deems fit, till a selection is made afresh in terms of the

directions issued in this writ petition for the purpose of maintaining continuity in imparting education to the students.