
(1988) 02 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3548 of 1984

H.K. Purohit

APPELLANT

Vs

The University of Jodhpur and Others

RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Citation : (1988) 1 RLW 328 : (1988) 1 WLN 305

Hon'ble Judges : S.M. Jain, J;Milap Chand Jain, J

Bench : Division Bench

Judgement

S.M. Jain, J.—In this write petition the petitioner challenges the selections of respondents Nos. 3 to 8, made by the University of Jodhpur to the posts of Assistant Registrars. By advertisements, latest being of March 31, 1984, the Registrar, University of Jodhpur invited applications for the post of Assistant Registrar three permanent and one plan post. The qualifications laid down were: Bachelors degree from a recognised University and experience of about seven years in supervisory capacity in a University, Board of Secondary Education, Educational Institution of repute or college of postgraduate. Out of 116 applications who applied for the said posts, 24 were called for interview and only 18 attended the same. The selection committee made three separate recommendations on September 16, 1984. Three persons namely, Shri K.L. Paliwal, Shri S D. Khilnani and Shri B.N. Agarwal were recommended for the three non-plan posts and the name of Shri L.C. Jain was included in the reserve list for the non-plan post. Shri T.P. Singh was recommended for the plan State post. The recommendations were accepted by the Syndicate and in consequence the respondents Nos. 3 to 7 were appointed on the posts of Assistant Registrar. Respondent No. 8 was subsequently appointed on 3rd January, 1986. His name was included by the Selection Committee in the reserve plan post. The petitioner had also applied for the post, but his name was not recommended Therefore, he filed the present writ petition in this Court challenging the selection and appointment of the respondents Nos. 3 to 8 on the post of Assistant Registrar.

2. The petitioner's main contention is that the selection made by the selection committee was without any application of mind and further that the record of the Selection Committee was not placed before the Syndicate and, therefore, the approval accorded by the Syndicate to the said selection was mechanical and was without application of mind.

3. First, we take the appointments of respondents Nos. 3 to 5 who were recommended by the Selection Committee to the permanent non-plan posts. They are Shri K.L. Paliwal, Shri S.D. Khilnani and Shri B.N. Agarwal. Their bio-data vis-a-vis the petitioner is given below:

_____	Name of the candidate	Date of birth	Experience as Supervisory	Qualification on 16-9-1984	Experience and year of about w.e.f. passing
_____	1	2	3	4	5
_____	(1) Shri K.L. Paliwal	15-4-28	38 years	22-9-69 B.A. 1953	(2) Shri S.K. Khilnani 14-9-39 26 years -do- B.A. 1967 10 month LL.B. 1974
_____	(3) Shri B.N. Agarwal	30-6-40	21 years -do-	M.A. 1962	(4) Shri H.K. Purohit 7-3-32 31 years 21-4-77 M.A. 1960 6 months (Phil) M.A. 1974 (Pol. Sc.)

The counsel for the petitioner could not point out any error or infirmity regarding the selection of Shri K.L. Paliwal and Shri B.N. Agarwal. His grievance was mainly against Shri S.K. Khilnani. The counsel has argued that the experience gained by Shri Khilnani was not in supervisory capacity and he did not have to his credit a supervisory capacity for about seven years. Counsel has urged that Shri Khilnani was not eligible for the post of Assistant Registrar. Having considered the submissions made by the learned Counsel for the petitioner, we are not impressed by the same. The undisputed facts about Shri Khilnani are that he worked as Section Officer (Examination Section) from 7-4-1973 to 28-5-1975 (2 years and 1/2 month); as Section Officer (Secrecy) from 17-9-1975 to 6-2-1976 (5-1/2 months); P.A. to the Registrar from 29 5-75 to 16-9-1975 and 6-2-1976 to 13-2 1979 (about 4 years) and as Secretary to the Vice Chancellor from 14-7-1979 to 17-11-1984 (5 years 4 months). Even if, his experience as P.A. to the Registrar is excluded, still the period, to his credit for computing the experience gained by him in supervisory capacity is far above 7 years. Shri Khilnani, in his return to the writ petition, has specifically stated that while working as Secretary to the Vice Chancellor he had to supervise the work of the Ministerial Staff, drivers Class IV staff, Rakshaks. There is no dispute that the work carried out by him as Section officer was certainly in a supervisory capacity. The question whether an employee worked in a supervisory capacity or not is a question of fact and depends upon the nature of the office and the type of work which he was required to perform. The answer depends not on the label placed on the post but on the nature of the duties actually performed. The University has treated the experience gained by Shri Khilnani on these posts as an

experience in supervisory capacity and we have no material on record to take a different view. The counsel for the petitioner failed to show to us any relevant material having bearing on the selection of these respondents on the post of Assistant Registrar, which ought to have been placed, but not placed, before the Selection Committee or the Syndicate. The argument that the Selection by the Selection Committee and the consequent appointment of respondents Nos. 3 to 5 are vitiated for want of application of mind by these bodies, is devoid of any substance and is here by rejected.

4. We next consider the challenge to the selection and appointment of Shri T.P. Singh on the PLAN-STATE POST of Assistant Registrar. To appreciate the contention raised by the counsel for the petitioner it would be necessary to state a few facts concerning the petitioner vis-a-vis Shri T.P. Singh. The petitioner was initially appointed as an Upper Division Clerk in the University on August 27, 1963. Shri Singh, on the other hand, was appointed to the post of Upper Division Clerk on October 6, 1962. In the seniority list of Upper Division Clerks the petitioner occupied a higher position. On June 14, 1968 the University, ignoring the claim of the petitioner, promoted Shri Singh to the post of Senior Assistant. The petitioner filed a writ petition in this Court, being S.B. Civil Writ Petition No. 477 of 1968, challenging the aforesaid, promotion. The petition was allowed by the judgment dated March 10, 1970 and the appointments of Shri Singh and three other persons promoted as Senior Assistants were set aside. Shri Singh was then reverted to the post of Upper Division Clerk. The University, again, by its order dated April 7, 1973, promoted Shri T.P. Singh to the still higher post of Section Officer. A writ petition being S.B. Civil Writ Petition No. 1297/74, was filed by the petitioner in this Court on May 2, 1974. Subsequently during the pendency of the writ petition the University realising the weakness of its stand itself reverted Shri Singh first to the post of Senior Assistant and then to the post of Upper Division Clerk. Upon this writ petition filed by the petitioner in this Court was rendered infructuous. In the mean time the petitioner also was promoted as Section Officer on April 21, 1977. Apprehending that the experience gained by Shri T.P. Singh against the post of Section Officer will be taken advantage of by him when an occasion arises for appointment to the post of Assistant Registrar, the petitioner sought a further relief of declaration by this Court by amending his writ petition that the experience gained by Shri Singh on the post of Section Officer was illegal and that Shri Singh be restrained from taking any advantage of the experience gained by him by working on the post of Section Officer from April 7, 1973 to September 20, 1975 for any purpose what so ever. A learned Single Judge of this Court, by the judgment dated August 8, 1983, partly allowed the writ petition filed by the petitioner. He refused to grant the declaration in the wide terms sought by the petitioner, as he had approached the court after a delay of one year, but granted a limited declaration in favour of the petitioner to the effect that the experience gained by Shri T.P. Singh between April 7, 1973 and September 20, 1975 of the post of Section Officer shall not be availed of by Shri Singh vis-a-vis the petitioner. The learned Single Judge, however, made

further observations to the effect that Shri Singh would be free to utilise the experience gained by him qua other persons. The aforesaid judgment of the learned Single Judge was affirmed by a Division Bench of this Court by the order dated September 14, 1984. Shri Balia, learned Counsel for the petitioner, has urged that despite the declaration made by this Court that the experience gained by Shri Singh during the period from April 7, 1973 to September 20, 1975 on the post of Section Officer shall not be utilised or a vailed of Shri Singh vis-a-vis the petitioner, the Selection Committee while selecting Shri Singh on the post of Assistant Registrar took into account the aforesaid period sought to be ignored by this Court.

5. We have considered the aforesaid argument of Shri Balia and find force in the same. The bio-data of Shri T.P. Singh made available to the Selection Committee reads as under:

_____	Name of the	Date of	Qualification and	S. No.
_____	candidate	Birth	year of passing	Experience
				23.
Shri T.P. Singh	18-1-1933	High School	U.P. L.D.C. Board of Board, 1951, Secondary Education, III Division Ajmer 19-9-1958 to 5-10-1962 Intermediate U.D.C. University U.P. Board, 1935 of Jodhpur III Division 6-10-1962 to date M.A. Agra University Senior Assistant 1958, University of Pass Class Jodhpur 1-4-1966 to 9-3-1970 M.A. University S.O. (temp) University Jodhpur 1977 of Jodhpur II Division July 1970 to 19-9-1975 Assistant University Of Jodhpur 20-9-1975 to 26-4-1977 S.O. from 27-4-1977 to 31-12-1979 Sect. to V.C. 1-1-1980 to 5-1-1981 S.O. (Secrecy), Uni- versity of Jodhpur 5-1-1981 to date.	

Apparently, in the above bio-data, no mention what so ever is made to the effect that the experience gained by Shri Singh on the post of Section Officer for the period from April 7, 1973 to Sept. 20, 1975 shall not be taken into account. An affidavit of Shri Liyakat Hussain, Deputy Registrar, was filed before us stating therein that just before the selections for the post of Assistant Registrars were to commence on September 16, 1984, a copy of the judgment of this Court was made available to the Vice Chancellor. Maybe, Vice Chancellor was made aware of the observations made by this Court in the judgment dated August 8, 1983 but the material information is still wanting as to whether the directions of this Court regarding Mr. Singh's experience was also brought to the notice of the other two members who constituted the selection committee and whether his experience which this court directed to be excluded from consideration qua the petitioner was in fact excluded or not, by the Committee. The file of the Selection Committee was shown to us by the counsel for the University, during the course of arguments and we are quite unhappy by the way the proceedings of the Committee were maintained There is nothing on the record to show how the

interview proceeded. How, when, by whom the decision to call only 24 out of the 116 applicants was taken? Even the rough notes regarding the performance of the candidates who appeared before the Committee is not available. No regular minutes seems to have been drawn. The proceedings maintained are in hopeless condition. Except the letters of recommendation and a list of candidates called for interview, there is no other record to show how the selection proceeded. We are certainly not in a position to say whether the directions given by this Court in the judgment dated August 8, 1983 in favour of the petitioner were made available to all the members of the Selection Committee or not and whether the period of experience of Shri Singh which ought to have been excluded from computation was in fact so excluded or not, while considering the comparative merits of the petitioner and Shri T.P. Singh. In *B.S. Minhas v. Indian Statistical Institute and Ors.* the Supreme Court has said:

No minutes of the proceedings before the selection committee have been maintained and none were circulated amongst the members of the Council along with the agenda of the meeting nor were any such minutes placed before the Council meeting when the name of respondent No. 4 was approved by the Council. There is also nothing on record to show that the Council was at any time informed as to what names had been considered by the selection committee or that the name of the petitioner had been considered but respondent No. 4 was found superior. It is always desirable that in public bodies the minutes of the proceedings regarding selection should be properly maintained in order to obviate any suspicion or doubt and such minutes along with the relevant documents should be placed before the final authority entrusted with the task of selection for appointments, "(emphasis added).

In the present case what to say of properly maintaining the proceedings of the selection committee no minutes of the proceedings, at all were drawn. It is difficult for us to ascertain while considering the claim of Shri T.P. Singh as against the petitioner, the committee followed the directions given by this Court or not. The selection and the consequent appointment of Shri T.P. Singh made by the University on the post of Assistant Registrar, therefore, deserves to be quashed. At the same time we are not sure whether the petitioner could still be selected or not even if the aforesaid experience of Shri Singh was kept out of computation. We are also not in a position to know how the mind of the the Selection Committee would have worked to the case of Shri L.C. Jain and Shri K.D. Purohit, had the decision of the Committee with regard to the claims of the petitioner and Shri Singh been different. We have therefore, no alternative but to quash the selection and appointment of respondents Nos. 6 to 8 made by the University on the post of Assistant Registrar.

6. In this view of the matter we partly allow the writ petition and while upholding the selections and appointments of respondents Nos. 3 to 5 to the post of Assistant Registrar, we quash the selections of respondents Nos. 6 to 8 and their consequent appointments on the post of Assistant Registrar made by the

University. It would be open to the University to hold afresh selection for the said posts but in that selection the University must adhere to the directions given by the Court in the judgment dated 8th August, 1983 if the petitioner and Shri T.P. Singh both are candidates for the post,

7. No order as to costs.