
(2010) 07 AHC CK 0434
In the Allahabad High Court

Jai Narain Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0434

Hon'ble Judges : Ferdino Inacio Rebello, C.J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. To dispose of the controversy arising in this appeal, a few facts may be set out which are as under:

In pursuance to the sanction granted by the Director of Higher Education, U.P. Allahabad by letter dated 27.7.1989 with effect from 1.8.1989 for two posts - one of Assistant Accountant and the other of Stenographer, for Hindu Kanya Mahavidyalaya, Sitapur, an advertisement was published in May, 1990 for selection on the said posts. On 10.1.1991, the respondent No. 3, i.e. the Committee of Management issued letter fixing final date of interview, scheduled to be held on 29.1.1991, for the Selection Committee to be constituted for making selection on the posts in question, to the District Inspector of Schools and also to the District Employment Officer. However, it was reported from the office of the District Employment Officer, Sitapur that the post of District Employment Officer is lying vacant since June, 1990 and an officer from Lucknow used to come for disbursement of salary. On 29.1.1991, the Selection Committee consisting of Authorised Controller, Principal and the District Inspector of Schools met in absence of the District Employment Officer and held selection. In pursuance to the said selection, the respondent No. 3 sent a letter to the Regional Higher Education Officer, Lucknow for approval of appointment of the appellant on the post of Assistant Accountant and one Shri Rudra Pal Singh for the post of Stenographer. However, the latter declined to approve the selection on three counts vide decision taken on 7.3.1991. Consequently, the respondent

No. 3 submitted a detailed reply dated 13.5.1991 and tried to remove the objections raised by the Regional Higher Education Officer and justified the selection proceedings. Being not satisfied on some count, the Regional Higher Education Officer has passed the order dated 5.7.1991, impugned in the writ petition, whereby he had disapproved the selection of the appellant on the ground that the selection Committee was not constituted in accordance with para 21.03(6)(b) of the First Statutes of Kanpur University as the District Employment Officer or an officer nominated, by him, had not participated in the selection process. Feeling aggrieved, the petitioner had preferred a writ petition, bearing writ petition No. 6803(S/S) of 1991.

2. On 13.1.1992, learned Single Judge has admitted the petition treating the averments made in para 5 thereof as uncontroverted on the ground of counter affidavit having not been filed by the State. Thereafter, by order dated 2.11.1992, this Court had passed an interim order restraining the respondents to hold fresh selection to the post for which the selection had already been held and now, the writ petition has been finally disposed of by the order under appeal directing the respondents to constitute a selection Committee de novo to consider the candidature of the writ petitioners for appointment after getting the names of other candidates from the employment exchange.

3. Learned Single Judge accepted the argument, advanced on behalf of the respondents on the ground that the Selection Committee was not legally constituted, in as much as the District Employment Officer was not present in the selection when the Selection Committee considered the candidates. The short issue, therefore, is whether the selection done by a Committee where one member was absent, can be said to be nonest and illegal, thereby, vitiating the entire selection process. For that purpose, we would like to refer relevant statute of the university, being statute 21.03(6)(b) which reads as under:

21.03(6)(b) : the Selection Committee for the appointment to the remaining posts referred to in Clause (1) or Clause (3) either by direct recruitment or by promotion shall consist of-

- (i) the Head of the Management or a member of the management nominated by him who shall be the Chairman;
- (ii) the Principal of the College;
- (iii) the District Inspector of Schools;
- (iv) the District Employment Officer or an Officer authorised by him in this behalf.

4. From the above statute, therefore, it becomes clear that the Selection Committee consists of four persons as set out therein. Admittedly, on the date of the selection, there is no dispute that the District Employment Officer was not present nor an officer authorised by him was there. It has also come on record that at the relevant time, the post of District Employment Officer was vacant. In other words, the District Employment Officer could not have participated in the

proceedings nor could he nominate any other officer to take part in the proceedings. In this background, we proceed now to consider the rival contentions.

5. On behalf of the appellant, learned Counsel submits that mere absence of one member, by itself, will not vitiate the proceedings in the instant case, more so when the post of District Employment Officer was vacant and neither he nor an officer, authorised by him, could participate in the proceedings. The learned Counsel has relied upon the judgment of Hon''ble Supreme Court in the case, reported in *Ishwar Chandra Vs. Satyanarain Sinha and Others*, and also a judgment of learned Single Judge of this Court in *Fateh Bahadur Singh v. The Regional Higher Education Officer, Lucknow* and Anr. 2006 (24) LCD 440 and submitted that considering the ratio of the judgment, particularly in *Ishwar Chandra's* case (*supra*) that if there was no rule or regulation for fixing a quorum, the meeting could not be vitiated on the ground of all the members of the committee being not present in the selection process and the selection, so held, shall be legal.

6. On the other hand, on behalf of the respondents, learned Counsel brought attention of this Court to the language of the statute itself. It is submitted that the statute uses the expression, "shall" and once that being the position, the meeting must have proceeded in the presence of all the members. He placed reliance on the judgment of Hon''ble Supreme Court in *State of Andhra Pradesh and Anr. v. Dr. Mohanjit Singh and Anr.*, (1988) (Supp) SCC 562 as also the judgment of Hon''ble supreme Court in *M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others*, It is submitted, therefore, that the learned Judge was right in holding that the absence of one member of the Selection Committee vitiates the entire selection and consequently, directed to start the process of selection *de novo*.

7. In Black''s Law Dictionary, Ninth Edition, page 1370, the word, "quorum" has been defined as under:

quorum, N. (17c) Parliamentary law. The minimum number of members (usu. A majority of all the members) who must be present for a deliberative assembly to legally transact business.

8. There are two concepts - one constitution of a Selection Committee and the other, quorum. The first would contemplate that a Selection Committee is constituted in terms of the statute. The statute itself defines as to who shall constitute the Selection Committee. Thus, the subordinate legislation itself notifies the officers by post except in the case where an officer has to be nominated other than named in the statute. The Selection Committee, therefore, stood constituted by the statute itself. We are concerned here with statute 21.03(6)(b).

9. The District Employment Officer is one of the members of the Committee. However, he is authorised to nominate any other officer to participate in the

meeting. The Committee, therefore, is constituted by the subordinate legislation itself. There is only mention in the order of the Regional Higher Education Officer that only three officers mentioned at serial Nos. (i) to (iii) participated in the meeting. District Employment Officer was absent. Now, the question that arises is, whether in absence of a member, there was no quorum and in case there is no quorum, the selection process stands vitiated.

10. In Ishwar Chandra's case (supra), Hon"ble Supreme Court while dealing with this aspect, was pleased to observe as under:

5. ...If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid.

11. From this proposition, therefore, it follows that mere absence of a member does not make the meeting illegal in absence of any rule or regulation providing for fixing of quorum.

12. In Fateh Bahadur Singh's case (supra), a learned Single Judge of this Court was pleased to consider the statute of the very same university. In that case, the selection was disapproved on the ground that the District Inspector of Schools himself had not participated and the District Employment Officer or his representative had not participated in the selection. Learned Judge found that the District Inspector of Schools had, by a letter dated 11.6.1991, provided that whenever, he is out of headquarter, his functions are to be discharged by the Finance and Accounts Officer and as a matter of practice, that was being followed. Learned Judge further found that non-participation of the District Inspector of Schools under some compelling circumstances will not vitiate the selection. We may not be able to subscribe the view taken by learned Single Judge in so far as the District Inspector of Schools is concerned as there is no authority conferred on him to authorise another officer to attend the proceeding.

13. However, at the same time, learned Judge after considering the issue of quorum in the context of the judgment in the case of Ishwar Chandra (supra), observed that since the quorum is not provided in the rules or regulations or statute, there being the presence of the majority of the members constituting the quorum, the selection was not vitiated.

14. We may now examine the judgments, relied on behalf of the State, by the learned Counsel.

15. In Dr. Mohanjit Singh's case (supra), the Government Order required that the presence of at least one representative of the university and the representative of the Director of Higher Education in the Selection Committee meeting should be regarded as essential, for completing the quorum. In other words, in absence of any of these two persons, quorum would not be completed.

In other words, absence of any other person as long as the quorum is available would not vitiate the selection procedure. This judgment, therefore, would be of no assistance to the learned Counsel. Though, it is not the ratio but it can be considered that absence of non-essential member will not affect the quorum and the selection process will not be vitiated.

16. In so far as the case of M.V. Thimmaiah (supra) is concerned, the contention advanced was that the Divisional Commissioner was not present and, as such, the selection stood vitiated. It was found that the post of Divisional Commissioner was abolished by the State Government. In the circumstances, the question of participation of the Divisional Commissioner as member of the Selection Committee would not arise. Hon"ble Supreme Court has held that when the post of Divisional Commissioner was not there, that would not render the selection or would not make the Selection Committee non-functional as out of seven members, six members participated in the Selection Committee. In other words, the court held that there was sufficient quorum. This judgment too would not be of any assistance to the learned Counsel for the respondents as no contrary view has been taken by Hon"ble Supreme Court what was taken in the case of Ishwar Chandra(supra).

17. Considering the above, in the case in hand, except the District Employment Officer, all other members were present in the selection committee. The District Employment Officer could not participate as the post was vacant. That being the position, it cannot be said that there was no quorum and consequently, the selection was vitiated

18. We find that absence of one member would not vitiate the selection and it will not give authority to the Regional Higher Education Officer to constitute a quorum de novo to consider the candidature of the appellant, as directed by learned Single Judge.

19. Accordingly, the appeal is allowed and the impugned order dated 29.9.1999 is set aside. The appeal is made absolute in terms of the prayer Clause (i). We also make it absolute in terms of prayer Clause (ii)(a). The respondents are directed to consider the selection done by the Selection Committee, ignoring the point resulting in rejection of the appointment of the appellant here, in accordance with law, if the post is vacant.