

(2019) 05 DEL CK 0332

In the Delhi High Court

Case No : Civil Writ Petition No. 7267 Of 2016, Civil Miscellaneous Application
No. 29931 Of 2016

Jai Singh Chauhan

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 DEL CK 0332

Hon'ble Judges : Rajendra Menon, CJ;Jairam Bhambhani, J

Bench : Division Bench

Advocate : Saqib, Paramjit Singh Patwalia, Anurag Ahluwalia, Kartikeya Rastogi,
Gaurav S. Patwalia

Final Decision : Dismissed

Judgement

Rajendra Menon, CJ

1. The petitioner has filed this petition claiming to be a public spirited person and the prayer made in the writ petition reads as under:-

â??(a) Call for records of the case pertaining to the selection and appointment made by the respondents No.1 and 2 to the post of Secretary (DARE)

cum DG (ICAR) in pursuance of the advertisement published in the Employment News on dt.19-25 December 2015.

(b) issue writ, order or direction in the nature of quo warranto thereby declaring that the respondents no.1 and 2 had no authority to select and appoint

the respondent no.4 to the post of Secretary (DARE) cum DG (ICAR); and

(c) issue writ, order or direction in the nature of declaration thereby further declaring the appointment of respondent no.4 as Secretary, DARE cum

DG, ICAR vide appointment letter dt.19.02.2016 as illegal and non est in law;

(d) pass such other order and further orders as this Honâ?ble Court may deem fit and proper in the interest of justice to the respondents no.1 and 2 to

consider for appointment of suitable eligible person from amongst the candidates shortlisted and duly recommended by the Search cum Selection

Committee to the post of Secretary, DARE cum DG, ICAR at the earliest in a time bound manner;â??

2. It is the case of the petitioner that an advertisement was issued by the Ministry of Agriculture and Farmersâ? Welfare, Government of India in the

Employment News dated 19th / 25th December, 2015 wherein applications were called for appointment to the post of Secretary, Department of

Agricultural Research and Education (â??DAREâ?) cum Director General, Indian Council of Agricultural Research (â??ICARâ?). The educational

qualification and experience indicated in the advertisement read as under:-

â??Educational Qualifications and Experience:

(i) The person is expected to have a Ph.D. degree in agriculture or allied sciences.

(ii) He should have at least 25 years experience in the field of agricultural research/education, out of which at least 5 years experience should be in research management position.

(iii) The person should be in the pay scale of Additional Secretary to the Government of India if employed under Government or in the scale of Vice-

Chancellor of a University in UGC pay-scales or in an equivalent pay scale if employed in University.â?? (emphasis supplied)

It is further submitted that the last date for receiving the applications and nominations was 18th January, 2016.

3. A two-fold objection was raised with regard to appointment of respondent No.4 made to the said post: firstly, that he did not have the 25 years

experience in the field of agricultural research, out of which 5 years should have been in the research management position, as required under the

advertised qualification and experience; and secondly, that he did not submit any application before the cut off date on 18th January, 2016 instead his

name was included based on the recommendations made by one of the members of the Search-cum-Selection Committee during the course of its

proceedings later.

4. Taking us through the official memorandas (â??O.M.â?s) dated 25th October, 1994, 5th December, 2003 and 30th July, 2007 the learned counsel

appearing for the petitioner Sh.Saqib vehemently argued that the Search-cum-Selection Committee was constituted in accordance with the requirement of these circulars; and the Committee was therefore strictly to follow the mandate of the advertisement. There could not be any deviation from mandate of the advertisement and in this case as there are apparent deviations from the advertisement in the matter of respondent No.4 not fulfilling the requisite qualification and having not even submitted the application in time. Therefore, the contention is that a writ of certiorari be issued and his appointment be annulled.

5. It is submitted that for an appointment to such an important post a candidate who does not have the requisite experience of 25 years in the field of agriculture research and education, out of which 5 years should have been in the research management position, the recommendation made by the Search-cum-Selection Committee is unsustainable. Learned counsel for the petitioner took us in detail through the circulars, the bio data of respondent No.4 and argued that he never submitted the application in pursuance to the advertisement till 18th January, 2016; and that his name was placed before the Search-cum-Selection Committee on 22nd January, 2016 by one of the members. Even his bio data was collected much thereafter and since the selection was based on an illegal procedure, the same was not sustainable. The counsel further argued that in response to the advertisement, 36 applications were received out of which 8 candidates were shortlisted and their names were placed for consideration before the Search-cum-Selection Committee. During the course of deliberations of the Search-cum-Selection Committee, one of its members introduced/nominated the name of respondent No.4; and in spite of the fact that respondent No.4 did not possess the experience as required and laid down in the advertisement, his name was recommended and approved. It was therefore, inter alia contended that the procedure followed for appointment is patently illegal and arbitrary in nature; and for this reason, this writ petition has been filed under Article 226 of the Constitution challenging the appointment in public interest.

6. The respondents have filed a detailed counter affidavit as also an additional affidavit. They have tried to justify the action and also challenge the locus standi of the petitioner in raising the issue in a purported public interest

litigation invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. It is the case of the respondents that the petitioner is a rank outsider; a resident of the State of U.P.; is a non-official member of Management Committee of the Indian Grassland and Fodder Research Institute, Jhansi, U.P.; and his wife is working as a Subject Matter Specialist in Krishi Vigyan Kendra. The petitioner, on his own showing, is running a Society in the name of "Society of Extension Education" since last about 10 years. This society has one Dr.A.K.Singh, Deputy Director General, Agriculture and who was a contender for the post in question as one of its Vice Presidents. Serious objections are raised by the respondents contending that Dr.A.K.Singh who was one of the candidates for the post that is subject matter of the present petition, has filed this writ petition through the petitioner who is acting as his proxy. Even though the petitioner has tried to refute all these contentions but the petitioner does admit in para 5 of the petition that he is running the Society in the name of "Society Extension Education"; however in the rejoinder the petitioner comes out with an explanation to say that he is only sponsoring certain awards in this Society in the name of his late father.

7. That apart, respondents have also relied upon the OM and argued that the OM contemplates a provision for constitution of the Search-cum-

Selection Committee and the procedure to be followed in the matter of issuance of advertisement. The learned senior counsel appearing for the

respondent Sh.Paramjit Singh Patwalia emphasized before us the duties and responsibilities of a Search-cum-Selection Committee constituted for

appointment to such high post of the level of Secretary to the Government of India; and argued that in this case, the appointment is challenged only on

the alleged ground that certain experience requirements are not met and, therefore, the appointment is unsustainable.

8. The learned Senior Counsel argued that there is a significant difference between an ordinary "Selection Committee" and a specialized

"Search-cum-Selection Committee". It was emphasized that an ordinary Selection Committee is expected to select and prepare a list of

candidates strictly in terms of the rules and norms prescribed and to place it before a Selection Committee, whereas a Search-cum-Selection

Committee has wide and inherent powers to search and even recommend

candidates most suitable for the job and also make a selection from the persons searched and/or recommended. Such power would not be circumscribed by a literal interpretation of the criteria as regards qualification or experience prescribed in the advertisement. He emphasized that Committee was not constrained or restricted to "select" a candidate only from amongst those "searched" by some other Committee not only from those who had applied by the deadline. It would be open to the members of the Search-cum-Selection Committee to suggest or recommend names in the course of their meetings or deliberations; and to choose from among all names available before it. It was argued that in this case, the Search-cum-Selection Committee was constituted to appoint an officer of the rank of Secretary in the Department of Agriculture. He was a top-most officer, to advise the Government on various issues of agricultural research and education and, therefore, a very high powered Search-cum-Selection Committee was constituted. The Search-cum-Selection Committee consisted of the Cabinet Secretary; the Additional Principal Secretary to the Prime Minister; one Sh.P.Balaram, Former Director, IISc, Bangalore; Dr.T.Ramaswami, Former Secretary, Department of Science & Technology; Dr.V.L.Chopra, Former D.G., ICAR; and Dr.P.L.Gautam, Ex-Chairman, Protection of Plant Varieties & Farmers Rights Authority.

9. It was argued that when such a high level committee constituted by the Government had gone into the issue of selecting the candidate, in the absence of any allegations of mala fides, bias or prejudice by any member of the Search-cum-Selection Committee, a public interest litigation at the instance of a motivated outsider like the petitioner, should not be entertained. It was emphasized before us that for appointment to the post of Secretary in the Department of Agriculture and the Director General, ICAR there are no recruitment rules or procedure laid down. The appointment to the post is done on the basis of an executive decision taken from time-to-time and, therefore, in this case, the high powered Search-cum-Selection Committee was constituted, with the Prime Minister himself being In-charge of the Department of Personnel and Training and Head of the Appointments Committee of the Cabinet, who approved the constitution of the eminent members of the committee. The committee met on 3rd December, 2015 and after detailed discussion, it was decided to issue the

advertisement, invite applications/nominations for the post in question. The advertisement was issued; the last date for receiving the applications were fixed on 18th January, 2016. Respondent No.3 vide its communication dated 20th November, 2016 forwarded the applications received. 37 applications were received and they were considered by the Search-cum-Selection Committee in its meeting held on 22nd November, 2016. 36 applications were received before the cut off date. One application was received late.

10. The Committee in its meeting held on 22nd December, 2016 requested the members to suggest names of other persons they may consider suitable. One of the members suggested the name of respondent No.4, who at that relevant time was holding the post of Director-cum-Vice Chancellor, Indian Agricultural Research Institute (IRAI), one of the country's premium agricultural institutes. His bio-data was called for. 8 candidates, including respondent No.4, were shortlisted; they were called for interaction on 18th February, 2016. All the candidates appeared for interaction on 18th February, 2016. It was found that respondent No.4 had 28 years of experience, including 4 years spent for Ph.D. in the field of agricultural research and 4 years experience in research management position. It is submitted that the Committee, after considering all aspects of the matter which have been detailed not only in the counter affidavit but also in the additional affidavit filed on 31st October, 2017, recommended respondent No.4 for appointment. The recommendation was placed before the Appointments Committee of the Cabinet, which approved the appointment whereafter he was appointed to the post.

11. It is the case of the respondents that even though respondent No.4 did not apply in pursuance to the advertisement but based on the discretion and powers available with the Search-cum-Selection Committee, one of the members nominated his name on 22nd January, 2016. His bio-data, experience etc. were thoroughly evaluated. He was called for interaction along with other candidates and after evaluating the inter se merit of all the candidates, the recommendation was made. It is argued by learned senior counsel appearing for the respondent/UoI and respondent no. 4 that in this case, the only objection of the petitioner is with regard to the experience of respondent no. 4 and his nomination without any application in pursuance to the

advertisement.

12. The learned counsel argued that considering the total lack of locus standi of the petitioner to file the writ petition, his conduct and evident lack of bona-fides; and the nature of appointment made by such a high-powered committee, in the absence of there being any allegation of mala fides, bias or nepotism, interference in the matter in a public interest litigation should not be done. It was argued that this Court should not and cannot sit in appeal over the decision of such a high-powered Search-cum-Selection Committee. It was vehemently argued that a reasoned decision taken by the Committee based on due consideration of all relevant factors does not call for any interference, particularly at the instance of a person like the petitioner in a public interest litigation.

13. Inviting our attention to the law laid down by the Supreme Court in the case of Basavaiah (Dr.) vs. Dr.H.L.Ramesh & Ors., (2010) 8 SCC 37,2

Ram Sarup vs. State of Haryana & Ors., (1979) 1 SCC 168, J.C. Yadav & Ors. vs. State of Haryana & Ors., (1990) 2 SCC 189 and Krishan Kumar,

Asstt. Secretary, Market Committee, Bhiwani District, Bhiwani (Haryana) vs. Haryana State Agricultural Marketing Board, Panchkula, (1997) 4 SCC

577, it was argued that no case for interference in a public interest litigation is made-out.

14. It was further argued that even if respondent no. 4 did not fulfil some of the criteria in the advertisement, strictly, as canvassed by the petitioner,

looking into his past experience and the fact that he has already worked now for more than 3-½ to 4 years in the position, in the absence of any mala

fides or allegations of nepotism or bias against any persons including members of the Search-cum-Selection Committee, interference in the matter

should not be made.

15. We have heard learned counsel for the parties at length and have perused the record.

16. This is a petition filed by the petitioner under Article 226 of the Constitution in the form of a public interest litigation and he is challenging

appointment to the post of Secretary in the Department of Agriculture Research and Education, Ministry of Agriculture and Farmers Welfare who

also holds the post of Director General in the ICAR. It is an appointment to a very high post and the appointment, as indicated hereinabove, have been

made on the basis of the recommendation of a high-powered Search-cum-Selection Committee consisting of 6 eminent persons as detailed in the preceding paragraphs; the recommendations were approved and considered by the Appointments Committee of the Cabinet headed by the Prime Minister of India; and as emphasized by the learned Senior Counsel for the respondent, there is no allegation of mala fides or bias against any person including the members of the Committee. It is in the backdrop of all these factors that we are required to consider whether it is a fit case where interference should be made by us in exercise of our extraordinary jurisdiction under Article 226 of the Constitution, that also in a public interest litigation at the instance of an outsider.

17. As far as the locus standi of the petitioner is concerned, the petitioner in para-4 of the writ petition indicates that he joined service under Uttar Pradesh Government and was introduced to activities of the ICAR for the first time while he was working as Junior Engineer in the UP PWD Department posted at Kanpur Agriculture University. He further claims to be running a society in the name of "Society of Extension Education" for more than 10 years.

18. From the objections raised by the respondents, it is apparent that the petitioner is a member of the Society, even though he refutes the same now in his rejoinder by saying that he is only associated with the Society in the matter of grant of certain award in the name of his late father. However, the petitioner does not dispute the fact that Dr.A.K.Singh is the Vice President of the Society and he was one of the candidates who was aspirant for appointment to the post in question. That apart, his wife Mrs.Neelam Chauhan is working as Subject Matter Specialist in Krishi Vigyan Kendra and she is shown to have some interest in the affairs of the ICAR.

19. In view of all these facts, we are of the considered view that the very interest of the petitioner in the lis in question is very doubtful and the petitioner's conduct of filing the writ petition for extraneous consideration or reasons to help somebody cannot be refuted. It is in the backdrop of these facts that we are required to consider the allegations made.

20. The appointment is challenged primarily on two grounds; one that respondent No.4 does not have the requisite experience of 25 years in the field of agriculture out of which 5 years is required to be in a research management

position. Even though respondents do state that in the strict sense this requirement may not be fulfilled by the respondent No.4 but we find from the material that has come on record that respondent No.4 has done Ph.D in Agriculture Science, has 28 years of experience which includes 4 years spent on the Ph.D. The Search-cum-Selection Committee considered his name and approved his appointment. Once a high powered Search-cum-Selection Committee has approved the appointment of a person, in the absence of any allegation of mala-fides the question would be as to whether this Court can sit in appeal over the decision of such a high powered committee and substitute its decision for that of the Committee. In this regard in the case of Dr.Basavaiah (supra) in paras-20 to 23, the Supreme Court has decided the issue in the following manner:-

20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

(Emphasis supplied)

22. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in Central College, Bangalore in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] in which the Constitution Bench unanimously held that normally

the courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against

the experts who had constituted the Selection Board. The Court further observed that it would normally be wise and safe for the courts to leave the

decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.

23. We have been called upon to adjudicate a similar matter of the same University almost after half a century. In a judicial system governed by

precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity.

The ratio of the Constitution Bench has not been properly appreciated by the learned Judges in the impugned judgment.â??

(Emphasis supplied)

21. From the aforesaid, it is clear that the legal position affirmed by the Supreme Court is that in such matters, Courts have a very limited role to play,

particularly when no mala fides have been alleged against the experts constituting the Search-cum-Selection Committee. The Hon'ble Supreme Court

holds that it would normally be prudent and safe for the Courts to leave the decision to academicians and experts. As a matter of principle, it is held

that Courts should not make an endeavour to sit in appeal over the decision of experts. The Courts must realize and appreciate their constraints and

limitations in academic and such like other matters. In this case, the respondents do admit that to some extent respondent No.4 may not in the strict

sense be fulfilling the experience requirements but looking into his overall performance in the field, a high level committee consisting of experts in the

field has approved his appointment, therefore this Court should not make any indulgence in the matter. In our considered view, the aforesaid

submissions of the senior counsel appearing for the respondents deserve to be accepted.

22. In the absence of any mala fides alleged against the Committee members, they are deemed to have conducted the proceedings in the manner

which is proper and legal and in accordance with the requirement of law and even if there were some shortcomings in the experience requirements, the

same was taken note of and approved because of the eminence, expertise and other considerations which weighed in favour of respondent No.4.

These are matters decided by experts and this Court is not required to sit in appeal over such a decision.

23. As far as respondent No.4 not submitting the application in pursuance to the advertisement before the cut off date is concerned, the Search-cum-

Selection Committee, as canvassed by the learned Senior Counsel, is not an ordinary Selection Committee. They are experts in the field, have

knowledge not only of the subject matter but also of who are the persons of proven eminence working in the field and who substantively fulfil the

requirements of the job to which selection is to be made; and if they nominate a person who may not have applied, looking to his eminence, expertise

and knowledge of the subject, in the absence of any mala fides in this regard alleged or proved, the wisdom of the experts is not to be taken lightly or

interfered with by this Court by reason of some irrelevant technicality, that too at the instance of a person whose locus to file this petition is doubtful

and who prima facie seems to be put-up by somebody else for assailing the selection process.

24. That apart, as canvassed by the learned Senior Counsel, even if there were some shortcomings in the requirements/qualification of respondent

No.4, the Supreme Court in the case of Ram Sarup (supra) in para-3 has laid down a proposition that the requirement of minimum experience in

holding a post even though not satisfied, the appointment would only be irregular and can be regularized if a person has subsequently worked and

acquired the necessary experience, and such appointment can be approved. The said principle would squarely apply in this case also.

25. Similarly, in the case of J.C. Yadav (supra) relied upon by the learned Senior Counsel, in para-12, with regard to qualification, the principle laid

down in the case of Ram Sarup (supra) has again been approved by the Hon'ble Supreme Court. Thereafter, in the case of Krishan Kumar (supra) in

the matter of recruitment and fulfilment of eligibility conditions, it has been held that once the person has worked on the post and has acquired the

requisite experience, the same can also be taken note of while considering the question of annulling his appointment when challenged after certain

period of time.

26. If we analyse the totality of circumstances in the present case, we find that (a) this is a public interest litigation wherein a writ of certiorari is

sought for in exercise of our extraordinary jurisdiction under Article 226 of the Constitution, that too by a person whose locus standi to file this writ

petition is highly questionable and doubtful; (b) that challenge to the appointment is made primarily on the ground that one of the essential conditions

with regard to experience is not fulfilled by respondent No.4 but the overall experience, knowledge and expertise of respondent No.4 has been

evaluated by eminent experts in the field in question who were members of the Search-cum-Selection Committee and they have found him suitable for

appointment to the post. Their wisdom and discretion exercised cannot be subject to interference by judicial review by this Court since this Court

cannot exercise appellate jurisdiction over the decision of the expert body. That apart, (c) there is no allegation of mala fides or bias against any

person or authority involved in the selection and appointment process; and once the authorities have taken a decision for appointment to such a high

post based on recommendations made by domain experts, we see no reason to interfere, exercising our extraordinary jurisdiction in a public interest

litigation.

27. Accordingly, finding no merit, the petition stands dismissed along with the pending application.