
(2013) 12 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) 1443 of 2012, C.M. Application 3149 of 2012

Jose Meleth

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 32

University Grants Commission Act, 1956 — Section 2, 26, 26(1), 3

Citation : (2013) 12 DEL CK 0081

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Jayant Tripathi, for the Appellant; Sumeet Pushkarna and Sh. Gaurav Sharma, Advocates for Resp. No. 1, Sh. Rakesh Munjal and Sh. Rakesh Kumar Garg, Advocate for Resp. No. 2, Sh. Shashank Shekhar for Sh. Amitesh Kumar, Advocate for UGC., Sh. R. Venkataramani and Sh. Maneesh Goyal, Advocate for Resp. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner in these proceedings under Article 226 of the Constitution of India, seeks a writ of quo warranto declaring that the fourth respondent (Dr. S. Sivakumar, hereafter referred to as "Sivakumar") is not entitled to hold his position as a Research Professor at the Indian Law Institute, New Delhi (hereafter the "ILI") as he, in the words of the petitioner, "... fraudulently obtained the post by making false statements and fraudulent misrepresentation before the selection committee ..." The petitioner alleges that Sivakumar's appointment was contrary to statutory rules as he did not have the requisite qualifications in terms of the advertisement issued by the ILI inviting applications for the post of Research Professor and in terms of the Universities Grants Commission Regulations ("UGC Regulations") for appointment. The brief facts are that in response to an advertisement issued in 2005, Sivakumar, and other candidates, applied to the post of Research Professor in the ILI. Sivakumar submitted his application on 03.10.2005. The advertised eligibility considerations

were that the candidate had to be an eminent scholar with "good academic record" or have a doctoral degree in law or equivalent, "published work of high quality and master's degree in Law with at least 55% of marks or its equivalent grade" and "10 years post graduate teaching/research in universities/colleges and other institutions of higher education." There is no dispute that Sivakumar completed his law graduation in 1990 and subsequently completed his LLM from the University of Kerala, proceeding then to complete his Ph.D. in 1999. After processing the application, and conducting a selection process, Sivakumar was offered appointment to the post of Research Professor, and he took charge after the appointment order was issued on 20.02.2006. The present petitioner alleged for the first time that Sivakumar was not entitled to hold the post on 19.05.2010 by a representation to the ILI. Later, on 01.02.2012, he preferred a writ petition under Article 32 of the Constitution of India, which was later withdrawn on 24.02.2012, though the Supreme Court granted liberty to him to approach this Court. Consequently, he preferred the present writ petition.

2. It is contended that Sivakumar had made a fraudulent statement while applying for the post that he had sufficient experience in post graduate teaching, (one of the essential advertised qualifications) though in reality, alleges the petitioner, the documents issued by the institutions in which Sivakumar claims to have taught at earlier clearly demonstrate that he did not have the requisite experience as stated by him. The Petitioner argues that although in Annexure I to his application, Sivakumar had stated that he had postgraduate teaching experience of 11 years and 1 month (8 years and 9 months in Kerala Law Academy College, Thiruvananthapuram, 5 months in National University of Juridical Sciences, Kolkata, and 1 year and 11 months in Hidayatullah National Law University, Raipur), he had no such teaching experience and falsely represented before the selection committee. For this, the petitioner relies on responses received from the three institutions under the Right to Information Act, 2005, which have been brought on record. As regards the National University of Juridical Sciences, the petitioner argues that Sivakumar did not teach any post-graduate course in that University, and in fact, committed a breach of contract; as regards the Hidayatullah National Law university, Raipur, the petitioner argues that Sivakumar was working at the university only on an ad hoc basis; as regards the Kerala Law Academy, the petitioner argues that Sivakumar did not teach any postgraduate course, and the term of his employment was 6 years, 11 months and 19 days, as against his claim of 8 years and 9 months postgraduate teaching experience. In view of these facts, the petitioner argues that various fraudulent representations were made, which misled the selection committee into confirming his appointment as a Research Professor. This, at any rate, justifies disciplinary proceedings and removal from the post occupied by Sivakumar.

3. The petitioner also argues that Sivakumar is liable to be removed from his post for another reason, i.e. he was not qualified to be appointed to the post of Professor as per the UGC (Minimum Qualifications Required for the Appointment

and Career Advancement of Teachers in Universities and Colleges) Regulations, 2000 (hereafter "2000 UGC Regulations"). The petitioner submits that as per these regulations, the minimum qualifications to be appointed to the post of Professor in law are that the candidate shall be/have: (i) an eminent scholar with published work of high quality, (ii) actively engaged in research; (iii) 10 years' experience in postgraduate teaching and/or (iv) experience in research at the University/National level institutions including experience of guiding research at doctoral level; or (v) an outstanding scholar with established reputation who has made a significant contribution to knowledge. The petitioner argues that Dr. Sivakumar:

certainly did not have any of the above qualifications at the time of his appointment and therefore, his appointment is contrary to statutory rules.

4. To substantiate this submission, it is argued that the Sivakumar's application shows that: (i) He was not an eminent scholar with published work of high quality. No document was submitted by him at the time of interview to show that he was an eminent scholar with published work of high quality; (ii) He was not actively engaged in research. No document was submitted by him at the time of interview to show that he was actively engaged in research; (iii) He had no sufficient experience in postgraduate teaching. In fact, in the application, he made a fraudulent and misleading statement that he had 11 years and 9 months experience in postgraduate teaching; (iv) He had no experience in research at the University/National level institutions including experience of guiding research at doctoral level; (v) He was not an outstanding scholar with established reputation who has made significant contribution to knowledge. No document was produced by him to show that he was an outstanding scholar with established reputation who has made significant contributions to knowledge at the time of the interview.

5. The petitioner contends that he had also sent a representation to the Director of the ILI on 19.05.2010, on which no action has yet been taken (as is clear from the response to a query under the Right to Information Act, 2005, by the ILI dated 10.10.2011, (No. ILI/RTI/2011/4469).

6. In response to the allegations levelled by the petitioner, Sivakumar's counsel firstly urged that the present proceedings are motivated. It was submitted that the writ petition, as it claims a writ of quo warranto, cannot be maintained, because Sivakumar's selection and appointment was not to a statutory post. Without any locus standi, the petitioner cannot, it was argued, claim quashing of the appointment, since he was not a candidate. It was further argued that Sivakumar's selection was within the rules, and made after presentations from each of the five candidates regarding their teaching and research experience. Learned counsel submitted that due to the petitioner's complaints, Sivakumar was asked to submit authenticated/attested documents to prove the desired teaching/research experience as mentioned, and he did so by making the following documents available to the Selection Committee: (a) a Kerala

University Order dated 03.10.1994, appointing Sivakumar as a lecturer; (b) a certificate dated 25.02.2005 issued by Dr. N. Narayanan Nair, Secretary of the Kerala Law Academy College, noting the period of service of Dr. Sivakumar from 01.08.1994 to 19.05.2003; (c) a Kerala University Order dated 01.01.2001 granting recognition to Sivakumar as a Research Guide for Ph.D. students. (d) a certificate dated 18.10.2003/19.10.2003 issued by the Registrar, WB National University of Juridical Sciences showing Prof. Sivakumar having joined it since 20.05.2003; (e) an Office Order dated 20.10.2003 issued by the Vice-Chancellor, Hidayatullah National Law University showing the appointment of Sivakumar as an Associate Professor with effect from that date.

7. Based on these documents, learned counsel argued that the documents sought to be relied upon by the petitioner by way of an RTI application from the Kerala Law Academy is contrary to the document provided by Sivakumar to the Selection Committee, and cannot be made the basis for any decision. It is argued that these RTI responses were manipulated, and are, therefore, to be ignored. Further, learned counsel argued that the UGC has no role to play in the selection process, and as such, the selection criteria are determined by the advertisement for these posts. For this learned counsel placed reliance on a letter from the UGC dated 13.01.2010, where the UGC indicated that it would have no role to play in the process of selection. Moreover, it was argued that the 2000 UGC Regulations were adopted in May, 2006, whereas the post was filled up in 2005 itself, and thus, the question of application of those regulations does not come into the picture.

8. Finally, it was submitted that the ILI is an institute engaged in research-based teaching, which is different from other universities, and thus, norms of the UGC may have to be looked at differently when it comes to the ILI. In this light, learned counsel also submitted that the application submitted by Sivakumar clearly reveals that he was an eminent scholar with published work of high quality, and that he had an established reputation as an individual who has made a significant contribution to knowledge of law. Accordingly, given Dr. Sivakumar's track record, learned counsel submitted that his selection by the ILI as a Research Professor was not only within the terms of the advertisement issued, and the bye-laws of the ILI, but merited.

9. Before addressing the questions that arise in this writ petition, some background is important. First, it is established that the ILI was granted Deemed University status on 29.10.2004, u/s 3 of the University Grant Commission Act, 1956 (vide Government Notification No. F.9-9/2001-U.3), and hence, UGC Regulations are applicable to the ILI. The 2000 UGC Regulations were framed by the UGC u/s 26(1) of the UGC Act, 1956. These regulations prescribe the minimum qualifications required for appointment of teachers in universities and intuitions affiliated to the UGC, i.e. the ILI in this case. This is clear from Section 1(ii) of the 2000 UGC Regulations, which states that these regulations:

shall apply to every university established or incorporated by or under a Central

Act, Provincial Act or a State Act, every institution holding a constituent or an affiliated college recognized by the Commission, in consultation with the University concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a University u/s 3 of the said Act.

(emphasis supplied)

10. In 2005, by an advertisement (DAVP 1439(4) 2005), the ILI, through its Registrar, advertised for the post of Research Professor, in the following terms:

Applications are invited latest by 17.10.2005 in the prescribed form for filling up of the following posts in the Indian Law Institute.

(1) Research Professor (2 posts)-UR: 16400-450-20900-500-22400. Age limit up to 62 years.

Essential Qualifications: An eminent scholar with good academic record or Doctoral degree in law or equivalent published work of high quality and master's Degree in Law with at least 55% of marks or its equivalent grade and 10 years of experience of post graduate teaching/research in universities/colleges and other institutions of higher education.

(emphasis supplied)

11. In his application form, Sivakumar entered the following details as against the heading "Teaching Experience at University or Degree Colleges", in Annexure I: (1) Undergraduate and postgraduate classes taught as a permanent lecturer at the Kerala Law Academy, between 01.08.1994 and 19.05.2003, for a period of 8 years and 9 months. (2) Undergraduate and postgraduate classes taught as a permanent lecturer at the National University of Juridical Sciences, between 20.05.2003 and 19.10.2003, for a period of 5 months. (3) Undergraduate and postgraduate classes taught as a permanent Associate Professor at the Hidayatullah National Law University, since 20.10.2003, for a period of 1 year and 11 months. Thus, the application records, under Entry 17, a total of 11 years and 2 months of teaching experience.

12. As against the heading "Research Experience", Sivakumar claimed that he worked for 4 years and 9 months as a "recognized research guide" on "Additional Duty" (i.e. the "Nature of the Assignment") at the University of Kerala; 1 year and 10 months as a "Project Coordinator" on "Additional Duty" at the Hidayatullah National Law University. Further, in his "Academic Profile" attached to his application, Sivakumar entered details of twelve research publications, four book reviews, eleven papers presented internationally, along with three papers submitted and presented (though not personally present), various papers presented nationally, a list of other publications, including four book contributions, programmes organized by him and academic assignments taken.

Points for consideration

13. Two questions arise for consideration on this case. First, whether the petitioner has the locus standi to agitate this matter, and secondly, if so, do the facts warrant the issuance of a writ of quo warranto.

14. Addressing the first question, the proposition that a writ of quo warranto lies for violation of statutory provisions/rules is no longer res integra. As the Supreme Court noted in *Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others*, :

20. From the discussion and analysis, the following principles emerge:

(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.

(b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

(c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

Indeed, that a writ of quo warranto may be issued for appointments contrary to statutory rules is an established principle of law under Article 226 is clear from the decisions in *The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another*, and recently in *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others*, .

15. The rules alleged to be violated in this case, i.e. the 2000 UGC Guidelines, were framed by the UGC under its governing statute, i.e. Section 26(1) of the UGC Act, 1956, and thus, possess statutory flavour. Specifically, Section 26 states that:

[t]he Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction.

16. Therefore, the 2000 UGC Regulations presently under consideration strictly trace their authority to Section 26 of the UGC Act, and as the Supreme Court recognized in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, , that:

10... if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute.

(emphasis supplied)

17. Similar conclusions have been reached, in varying contexts, by the Madhya Pradesh High Court, in *Kashi Prasad Vs. District Central Co operative Bank Ltd , Tikamgarh and Others*, ("It is well settled that where a statute authorises either the Government or any other authority to frame rules and the rules are so

framed, the rules would have the force of statute... "). Further, the letter of the UGC (D.O. No. F.3-1/2000(PS), dated 4th April, 2000) introducing the 2000 Regulations specifically notes that:

[t]he Regulations issued by the UGC are mandatory in nature and all the universities are advised to strictly comply with them. It shall be necessary for the universities and the management of colleges to make the necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate these Regulations.

18. The fact that the UGC Regulations are mandatory, and not recommendatory, on the statutory authority vested in the UGC u/s 26 further lends credence to the proposition that the 2000 Regulations carry the force of statute, and are thus, liable to be enforced through a writ of quo warranto. In fact, this question of locus standi in cases of writs of quo warranto for the violation of UGC Regulations came before the Madras High Court in D. Ganesan Vs. State of Tamil Nadu and Others, , where the petitioner questioned the appointment of an individual to the post of Principal of Dr. Ambedkar Government Law College by way of a writ of quo warranto, on the ground that the UGC Regulations applicable (i.e. the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2001, which are, in principle, identical to the 2000 UGC Regulations in question in this case) were violated. In setting aside the appointment in that case, the Court held that the writ petition was maintainable:

19. Contending that a public interest litigation does not lie in service matters, the counsel for the third respondent relied upon the decision of the Supreme Court in Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, . But the said decision goes against the third respondent, as seen from the principles of law summarised in para 34 of the decision, which read as follows:-

34. From the discussion and analysis, the following principles emerge:

- (a) Except for a writ of quo warranto, PIL is not maintainable in service matters.
- (b) For issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.
- (c) Suitability or otherwise of a candidate for appointment to a post in Government Service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

20. The present writ petition is not a public interest litigation. It is filed for the issue of a Writ of Quo Warranto. The appointment of the third respondent is contrary to the UGC Regulations 2010, which has been adopted by the Tamil Nadu Dr. Ambedkar Law University and accepted by the Bar Council of India in the Rules of Legal Education, 2008. The adhoc rules framed by the Government should only be read in tune with UGC Regulations 2010. Therefore, the writ petition is maintainable and the appointment of the third respondent is liable to

be set aside. Accordingly, the writ petition is allowed and the order in G.O.Ms. No. 241, Law (LS) Department, dated 17.6.2011, promoting the third respondent to the post of Principal of the Government Law College is set aside. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

19. The petitioner in the opinion of this court, despite being an outsider, possesses the necessary locus standi to question an appointment in violation of the UGC Regulations, which have the force of statute.

20. On merits, it is useful to extract the relevant portion of the 2000 UGC Regulations, i.e. Clause 1.3.1, the violation of which is alleged in this case:

1.3.1 Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law.

1.3.1 Professor:

An eminent scholar with published work of high quality, actively engaged in research, with 10 years of experience in postgraduate teaching, and/or experience in research at the University/National Level institutions, including experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

The advertisement (DAVP 1439(4) 2005), through which the post of Research Professor was announced, followed this minimum requirement, and echoes Clause 1.3.1. Therefore, no question of an inconsistency between the requirements advertised by the ILI and the 2000 UGC Regulations arises. Nor is it disputed that the relevant clause applicable to the present case is Clause 1.3.1 that prescribes the necessary requirements for appointment as a Professor in Law. Though the post currently under consideration is titled "Research Professor", as the ILI is a research, rather than teaching-based institution, the norms of the UGC apply uniformly across the board to all Professors in Law appointed in institutions to which the UGC Regulations apply, i.e. the ILI in this case. While a particular institution may, based upon its internal peculiarities, choose to lay a different emphasis on particular requirements inter se candidates, the fact remains that all minimum qualifications prescribed in the 2000 UGC Regulations must necessarily be complied with. Indeed, neither learned counsel for Mr. Sivakumar nor the ILI have advanced the argument that the UGC Regulations are inapplicable on this count.

21. Clause 1.3.1, which is controlling in this case, provides two parallel paths: either one is to be "an eminent scholar with published work of high quality, actively engaged in research, with 10 years of experience in postgraduate teaching, and/or experience in research at the University/National Level institutions, including experience of guiding research at doctoral level, OR An

outstanding scholar with established reputation who has made significant contribution to knowledge." The disjunctive "or" within Clause 1.3.1 allows for either of the two requirements to be met. While some requirements are subject to an objective inquiry (i.e. whether the minimum requirement of 10 years of experience of teaching/research), other factors (i.e. whether the candidate is an eminent scholar with published work of high quality, or an outstanding scholar with established reputation who has made significant contribution to knowledge) are subjective, in that the primary decision lies with the Selection Committee, and the scope of judicial review in this regard is limited. Thus, as the Supreme Court recognized in *Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others*, , the

15.... suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules.

22. The limited inquiry to be conducted by the Court while considering a writ of quo warranto is not whether Sivakumar was the more qualified candidate for the post, but rather, whether he was disqualified by Clause 1.3.1, i.e. whether his credential fell below the minimum statutory bar imposed by the UGC Regulations.

23. The Court is cognizant of the fact that Sivakumar's application, under the details filed against Entry 17(A), indicates that he has a total of 11 years and 1 month of postgraduate teaching experience, and under Entry 17(B), indicates that he has research experience of 6 years and 7 months, in addition to the details of his research activities provided in Annexure II to the application, wherein various research publications and papers presented at international conferences are recorded, from 1992 till the year of the application process, i.e. 2005.

24. Under the various responses from the institutions that Dr. Sivakumar has been employed in, under the RTI Act, the following details emerge:

a. The RTI response from West Bengal National University of Juridical Sciences, in a letter dated 03.02.2010, stated that Dr. Sivakumar did not teach any postgraduate course, and further, that he was employed as a "lecturer" from 20.05.2003 to 19.10.2003.

b. The RTI response from Hidayatullah National Law University, in a letter dated 15.02.2010, states that Dr. Sivakumar was employed as an Associate Professor on an ad hoc basis from 20.10.2003 till 18.02.2006, and did teach postgraduate courses.

c. The RTI response from Kerala Law Academy, in a letter dated 26.03.2010, states that he was employed as a "lecturer" from 01.06.1996 till 19.05.2003, and did not teach any postgraduate course.

25. These facts are contested by Dr. Sivakumar, who has produced several documents on record to contradict these facts. First, a letter from the Kerala Law Academy dated 01.08.1994, was produced before the Court stating that

Shri S. Sivakumar ... is appointed as a Lecturer under this Educational Agency on a pay of Rs. 2,200/- p.m. in the scale of Rs. 2200-75-2800-100-4000 in the Kerala Law Academy College, Thiruvananthapuram from 1.8.1994 ...

26. This is corroborated by a letter, dated 01.08.1994, from the Principal of the Kerala Law Academy College to the Registrar of the University of Kerala

forwarding ... documents [specifically, the office order No. Staff/Approval/94, dated 15.7.1994] relating to the Lecturer appointed in this college for favour of approval of the University.

This is followed by a letter from the University of Kerala, dated 03.10.1994, No. Ac.F.I. 1/3159/94, stating that:

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As per the recommendations of the Standing Committee on Teaching/Non-teaching staff of Private College held on 31.8.1994, sanction has been accorded for the appointment of Sri S. Sivakumar as Lecturer in the Law Academy Law College Thiruvananthapuram being approved with effect from 1.8.1994 ...

This is also corroborated by two certificates dated 20.08.1997 and 13.03.1998, stating that Sivakumar was a full-time lecturer since 01.08.1994. Finally, Dr. Sivakumar has produced a letter dated 25.02.2005 stating that "[o]n accepting his resignation letter he has been relieved from our service with effect from 19.5.2003."

27. These letters, if accepted facially, (and the validity of which has not been impugned by the petitioner), clearly contradict the Kerala Law Academy's RTI response that Dr. Sivakumar taught from 01.06.1996 till 19.05.2003. Rather, these letters and certificates indicate that Dr. Sivakumar was appointed on 01.08.1994. Moreover, Dr. Sivakumar has produced a letter dated 15.05.1999, from the Controller of Examinations, University of Kerala addressed to him, stating:

I am forwarding for first valuation files nos. 1832 to 1838 answer books in Rule ____ Law ____ of II year/LLM Degree Examinations April 1999. Kindly value the answer books and forward the mark sheets to the Chairman before 2.6.99 ...

28. Again, taking this letter to be true facially, and no reason to suspect its authenticity has been brought forward by the petitioner, this letter contradicts that statement in the RTI response from Kerala Law Academy that Sivakumar did not teach any postgraduate course, since the letter directs Sivakumar to correct LLM Degree (i.e. postgraduate) papers. The Court is aware that a precondition to working as examiner would be that the concerned member of the teaching staff would be entitled to either set the paper, or at least to teach the subject or course. Indeed, another request to mark postgraduate papers has been brought on record in the form of a letter from the Controller of Examinations dated 10.06.2002, for the Administrative Law course for the April/May, 2002, LLM

Degree Examinations. Indeed, this claim is reinforced substantially by another certificate, which has remained unchallenged in these proceedings, by Dr. V. Sobha, Former Professor and Head, Department of Environmental Sciences, University of Kerala, dated 19.06.2012, stating that:

Dr. S. Sivakumar, Lecturer, Kerala Law Academy Law College, Thiruvananthapuram had been engaged in teaching the paper on Environmental Legislations for M.Sc. (Environmental Sciences) and M. Phil (Environmental Sciences) courses in the Department of Environmental Sciences, University of Kerala from August, 1995 to March, 2003.

29. Furthermore, a certificate dated 24.12.2012 from Prof. S. Nagappan Nair, a Guest Faculty at the Kerala Law Academy, also confirms that he taught the paper "Legislative Process" to LLM students at the college with Dr. Sivakumar from 1994 to 2003; a fact which is confirmed further by the Preliminary Minutes of the 9th Meeting of the Syndicate of the University of Kerala on 21.08.1996, which records in Appendix XI, as regards Item No. 75 on the Agenda (i.e. "University Department of Environmental Science-Approval of the Panel of names on Guest Lectures and their Remuneration Regarding") the name of Sivakumar at Serial No. 12 for the teaching of M. Sc. and M. Phil courses, i.e. both post-graduate courses.

30. As regards Sivakumar's tenure at the National University of Juridical Sciences in Kolkata, he has brought on record a "Certificate of Service" from Dr. Surajit C. Mukhopadhyay, dated 17.05.2012, stating:

This is to certify that Dr. S. Sivakumar was a teaching faculty in the West Bengal National University of Juridical Sciences, Kolkata from 20.5.2003 till 19.10.2003 as Assistant Professor in Law.

He taught both LLB and LLM students of this university during his stay at this university.

31. This letter, thus, contradicts the RTI response that claim that Dr. Sivakumar did not teach any post-graduate courses.

32. As far as the tenure at Hidayatullah National Law University goes, the details entered by Sivakumar in his application, as regards his appointment from 20.10.2003 till 18.02.2006 as an Associate Professor who did teach post-graduate courses, is borne out by the RTI response itself, as also by a certificate by the Registrar of the University dated 18.02.2006, that confirms his appointment from 20.10.2003. Likewise, with respect to the details entered by Dr. Sivakumar under Entry 17(B), against the heading "Research Experience", the petitioner has produced no document to contradict the claims that Dr. Sivakumar was, for a period of 4 years and 9 months, a "recognized research guide" on "Additional Duty" at the University of Kerala, and for a period of 1 year and 10 months a "Project Coordinator" on "Additional Duty" at the Hidayatullah National Law University. Neither have any of the other details provided by Dr.

Sivakumar in his "Academic Profile" attached to his application (i.e. various publications and conferences) been contradicted by the petitioner. Thus, his cumulative 6 years and 7 months of research experience at those two universities remains established.

33. Having regard to the above background and the documentary proof available before the Court, the limitations upon the Court's authority to review such actions is important and requires to be recollected. In its Article 226 jurisdiction, the Court must not become the "primary decision maker" (Union of India and another Vs. G. Ganayutham (Dead) by LRs.,), but rather, remain deferential in its assessment. In Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, it was reiterated that the Court is concerned only with eligibility and legality of appointments to public offices, not suitability of individual candidates, in proceedings under Article 226 of the Constitution of India. Other decisions (R.K. Jain Vs. Union of India and Others, ; Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., , Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, , and Ashok Kumar Pandey Vs. The State of West Bengal and Others,) have declared that there can be no public interest litigation in service matters. Thus, barring clear cases where a writ of quo warranto can be issued, Courts cannot take upon themselves the task of a "merits review" of appointments to public or such like offices (Centre for PIL and Another Vs. Union of India (UOI) and Another, .

34. In this case, the Selection Committee constituted under the bye-laws of the ILI was properly seized of the matter, and tasked to fill the position of a Research Professor. In doing so, the Committee requested for various details (as were submitted by Sivakumar and four other candidates), and the candidates appeared before the Committee in order to make their presentations on their research and teaching experience. Based on this, and on an appreciation of the evidence before the Committee, the decision was taken to appoint Sivakumar as a Research Professor. Indeed, the petitioner does not claim, nor is there any material on record, to indicate that the Selection Committee did not apply its mind to the facts present before it, or that any extraneous or irrelevant considerations played a part in the decision-making process, such that the interference of this Court is warranted under Article 226. Rather, the claim is that the facts presented before the Selection Committee were false, and that the minimum statutory requirements, or more accurately, the requirements in the UGC Regulations, were not met. This point was recognized by the Supreme Court in Centre for Public Interest Litigation and Anr. (supra) where the Court noted that:

42... judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable...

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45..... We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction.

(emphasis supplied)

35. The question, thus, is whether Dr. Sivakumar satisfied the basic minimum requirements specified under Clause 1.3.1. If the documentary proof provided by the petitioner is to be believed, Dr. Sivakumar did not have the cumulative ten years' teaching or research experience required under the 2000 Regulations, whilst if Dr. Sivakumar's documentary proof is considered, that requirement is clearly satisfied. Specifically, as in this case, when questions of fact come before the Court, and contradicting versions of fact are presented, the Court must tread with caution. This was considered by the Supreme Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, :

47. Where a question of law is at issue, the Court may determine the tightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact.

36. The primary decision making authority in this case was the Selection Committee, which considered the certificates and other documentary evidence presented by Dr. Sivakumar, and reached the conclusion that he met the basic minimum requirements. While undoubtedly proceedings under Article 226 relax the rules of evidence and pleadings, and the Court may consider the evidence liberally, and despite the limits on judicial review observed above, the question of lack of eligibility undoubtedly lies within the realm of judicial review, the rigours attached to reaching a correct finding of fact cannot be washed away by not considering the details of the documentary evidence produced before the Court. Indeed, the limitations inherent in considering disputed questions of fact, under an Article 226 petition, stems not only from the limited nature of judicial review as regards findings of fact, but equally, and as importantly, from the fact that the:

12..... issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute." (*Arun Singh @ Arun Kumar Singh Vs. State of Bihar and Others*,)

37. At best, the present case represents a dispute as to whether the teaching/

research experience detailed by Sivakumar in his application is correct, and thus, meets the basic minimum requirements under Clause 1.3.1. Facially, and given that no reason to disbelief the documents produced by Sivakumar has been brought to light, as also the fact that a majority of the documents are contemporaneous with his appointment at the respective institutions, a clear and convincing finding that Dr. Sivakumar did in fact not possess the necessary qualifications does not appear from the record. The contradicting documents in the present case were sourced by the Petitioner much after the selection committee's recommendations and appointment of Sivakumar. Indeed, the nature of certificates issued and filed, by the Kerala Law Academy in 2010 in the present proceedings in some measure contradict the letters and certificates issued by it earlier. While there is no dispute that the said Academy issued the earlier letters which Sivakumar relies on much prior to the present case, and in the early 2000s and late 1999, the documents (supported by its affidavit of 17.02.2013) now seem to suggest that Sivakumar was working as a Guest Faculty. The Court no doubt had issued notice to the said Academy and it has filed its affidavit. However, the Court is conscious of the fact that subsequent explanations, in respect of previous documents issued in Sivakumar's favour, particularly in the course of proceedings, would not present an accurate picture. The Academy's equivocating documents, particularly the materials sought to be placed (perhaps with a view to discredit Sivakumar) should not be considered, because doing so would be needlessly entering into the arena of merits review, a prohibited zone. Not only does this Court, in the present proceedings, not have the benefit of testing the veracity of these documents through cross-examination, but as importantly, the findings of the Selection Committee, in the absence of any grave impropriety, are to be deferred to. The duty of the Court in such cases, as recognized in *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others*, is to consider "the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable ...", rather than engage in a roving inquiry to reconsider the decision reached by the Selection Committee in this case. Quite apart from reaching its decision through an arbitrary or irrational process, the public advertisement calling for applications to the post, the two stage application process (a written application, with documentary proof of the details, followed by an oral/visual presentation), and consideration by a specially constituted Selection Committee comprising judges, lawyers and academics (i.e. those versed in the field in which the appointment is to be made) all clearly establish a just and fair process of appointment, absent any irregularities or impropriety.

38. Considering the allegations levelled by the petitioner, it is also possible that while some of the documents may be proven true, others may not, and the cumulative research and teaching experience may meet the ten year threshold (since the 6 years and 7 months of research experience is not denied, but only the details as to the teaching positions held at the Kerala Law Academy and the National University of Juridical Sciences (and not the Hidayatullah National Law

University) are contradicted. Whether in such a case the cumulative total amounts to ten years, and whether this is sufficient to meet the threshold under Clause 1.3.1 is indeed a matter for the Selection Committee to decide and consider.

39. In fact, another aspect in this matter weighs heavily in favour of Sivakumar's appointment. After the ILI received the representation from the petitioner, and he withdrew the writ petition filed before the Supreme Court, a report was called for by the Chief Justice of India. This resulted in an examination of the records and materials gone into by the Selection Committee in 2006 (which had comprised Hon"ble Dr. Justice Arijit Pasayat, Hon"ble Mr. Justice M.J. Rao; Shri. G.E. Vahanvati, Attorney General; Professor Parmanand Singh and Professor K.N.C. Pillai). This Committee was headed by Hon"ble Dr. Justice Arijit Pasayat (Retired), and in its report of 04.04.2012, it stated that there was no infirmity in the decision taken and that Sivakumar was eligible to hold the post of Research Professor. On 13.12.2013, the Executive Committee of ILI accepted the said report. These materials were considered by this Court since the relevant records were produced by ILI during the course of hearing, and they demonstrate that the question of the alleged falsification of documents was specifically considered by the ILI and rejected.

40. Equally, the Court is cognizant of the fact that Clause 1.3.1 locates an alternative qualification, i.e. "[a]n outstanding scholar with established reputation who has made significant contribution to knowledge." This standard clearly incorporates a subjective determination by the Selection Committee based on objective factors/material placed before it. While learned counsel for the petitioner has urged that Sivakumar did not place any material so as to demonstrate his satisfaction of this criterion, and did not specifically apply under this head, this line of argument is unpersuasive. Not only did Sivakumar, in his "Academic Profile" attached to his application, enter comprehensive details which speak as to his contribution to the law, such as details of twelve research publications, four book reviews, eleven papers presented internationally, along with three papers submitted and presented (though not personally present), various papers presented nationally, a list of other publications, including four book contributions, programmes organized by him and academic assignments taken, but also, there is no requirement, either under the 2000 UGC Regulations or in the advertisement issued by the ILI, to specifically apply under that head. Rather, a fair reading of the text of Clause 1.3.1 leads to the inevitable conclusion that the Selection Committee may, in its wisdom, and on a consideration of the relevant factors, decide that a candidate falls under either of those heads. Sivakumar's publications and engagement with academia, from a reading of his academic profile, spans from 1992 to 2005 (i.e. the time of the application), while covering a variety of legal issues. The precise and detailed evaluation of these activities, i.e. Dr. Sivakumar's academic inputs and research, and whether it qualifies him as an "outstanding research scholar with established reputation who has made significant contribution to knowledge", however, is a

matter properly reserved for the Selection Committee's decision-making authority, which the Court cannot enter. Indeed, this breadth of authority granted to the Selection Committee is particularly apt given that it sits as an expert body to consider the suitability of the academic qualifications of the candidates, which this Court should not and, as a matter of law, cannot review on merits. Once it is admitted, and the petitioner does not dispute this fact, that the Selection Committee applied its mind to the relevant factors to determine the candidate which, in its opinion, was best suited for the post of Research Professor (i.e. purely as illustrative examples, his academic qualifications, previous research experience, quality of research publications, reviews etc.), and did not base its decision on irrelevant material, this Court's limited judicial review is satisfied. In fact, a Division Bench of the Supreme Court echoed this precise sentiment in *Rameshwar Dass Mehla Vs. Om Prakash Saini and Others*, , in considering a writ of quo warranto directed against the incumbent university librarian by Kurukshetra University:

5... It is also pointed out that the equivalence of the two qualifications is a question which pertains purely to an academic matter and courts would hesitate to express a definite opinion, particularly, when it appears to the experts that a candidate fulfils the qualification ...

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7.... We do not think the view taken by the selection committee can be the subject matter of the judicial review as was held by this Court in *Govind Rao's* case. In academic matters, particularly pertaining to qualifications, the view taken by the experts would be final. If this approach had been adopted by the High Court, the High Court could not have interfered with the action taken by the university in this case at all...

(emphasis supplied)

41. At the very least, the various details disclosed in the academic profile, which are detailed above, render Sivakumar eligible for the post of Research Professor under the second alternate criterion, and that being the case, his further selection lies at the discretion of the Selection Committee. In view of the above discussion, this Court holds that there is no infirmity in the appointment of Dr. Sivakumar as a Research Professor at the ILI. The petition, therefore, fails and is dismissed. The costs of these proceedings are quantified at Rs. 50,000/, which shall be paid in equal shares to the ILI and Dr. Sivakumar within four weeks.