

(1983) 09 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3811 of 1983

Krishna Kant Jaiswal

APPELLANT

Vs

Vice Chancellor, Banaras Hindu University and Others

RESPONDENT

Date of Decision : 12-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 All 350

Hon'ble Judges : V.N. Khare, J;M.N. Shukla, J

Bench : Division Bench

Advocate : R.N. Singh and S.N. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Shukla, J.—The petitioner has challenged the appointment of the respondent No. 5, namely, Smt. Gita Dhar Nee Bamjai, as a Lecturer in the Department of Journalism Faculty of Arts, Banaras Hindu University. The main ground of attack is that the aforesaid respondent did not possess the minimum qualification for the post of Lecturer as per advertisement whereas the petitioner fulfilled these qualifications and if he had known that appointment would be made even without insisting on the fulfillment of these qualifications, he would have also applied for the post and taken his chance. Admittedly the petitioner was not an applicant in the field. He has, however, chosen to challenge the appointment of respondent No. 5 on the ground that if he (petitioner) had applied, he would have had good chance of being selected, and at all events the appointment of the respondent No. 5 who did not possess the required qualification, was apparently illegal.

2. A preliminary question arose as to whether the petitioner had any "locus standi" to file the present writ petition. It is true that public interest litigation has come to stay as one of the species of litigation in which redress may be found from the courts of law. However, this does not confer a general and

untrammelled right to indulge in frivolous litigation without any genuine cause of action and the necessity of seeking redress of some real grievance. Consequently, while recognising such litigation courts have taken care to add a word of caution that certain minimum conditions must be satisfied before the courts shall lend assistance to such litigant asking for relief. One of the facts which may deter the court from affording such assistance and entertaining such writ petition is that the petitioner has a personal axe to grind and the petition is founded on apparently selfish and personal motives. He should not be inspired by malice or a design to malign others or be actuated with the desire for propaganda. Motives of personal vendetta, political or otherwise, shall also be looked upon with eminent disfavour before the Court entertains such writ petition. The various factors which might stand in the way of entertaining such petitions were highlighted in paragraph 17 in the case of S.P. Gupta Vs. President of India and Others, where it was observed, "but we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold... We may also point out that as a matter of prudence and not as a rule of law, the court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party"

The ratio of that case was analysed and elaborated in a recent decision of Jammu & Kashmir High Court Bhim Singh & etc. v. D.D. Thakur AIR 1983 NOC 55.

3. On a perusal of the present writ petition it becomes obvious that it purports to be on behalf of a litigant subjected to personal grievance and injury. Where A and B are two contestants for certain posts whether one of them had actually applied or not, the conflict is entirely circumscribed and is, in fact, a contest between two individuals for appointment to a certain post, they do not assume the character of a determinate class or group of persons which is interested in continuing the litigation in public interest. Of course, every event and every grievance can be remotely attributed to some larger cause and be given a "public" character but too remote a factor of this kind will not clothe the controversy with the character of such "public interest" as to confer on the petitioner a "locus standi". The public character of the grievance must be transparent so as to admit of no doubt and where a controversy like the one in the present case aims and seeks an entirely personal relief, it cannot be given the character of public interest. On the facts of the present case we are also not satisfied that it is a "bona fide" application. The appointment to the post was made in September, 1979. The petitioner contributed an article with regard to that appointment in a newspaper which is Annexure-4 in October, 1981 and the

writ petition challenging that appointment was filed in this court on 14th April, 1983. Admittedly the petitioner never applied for this post and if he was really aggrieved by any such . appointment he would have rushed to seek his legal remedy. It appears that on account of some extraneous motive he chose to publish adverse comments in a newspaper and much later he chose to file a writ petition in this court. Thus, the very object of filing such writ petition appears to us somewhat questionable. Where such petitions are tainted by some oblique motive and not inspired by a bona fide and genuine object of vindicating a public cause, they must not be entertained.

4. Another curious factor of this case is that although respondent No. 5 has been criticised as not possessed of all the requisite qualifications for appointment to the post of lecturer, the petitioner himself does not satisfy those qualifications. Normally such petitions are filed by persons who themselves are eligible and qualified but are discarded in favour of some person who does not possess those qualifications. This is an extra ordinary case in which the petitioner and the respondent No. 5, if the allegations in the petition are to be assumed as correct, are tarred with the same brush, If the petitioner is an ineligible as the respondent No. 5, it is not open to the petitioner to challenge the appointment of the latter on the same ground. Surely, the new avenue of litigation which has been recognised as "public interest" litigation shall not be allowed to be abused. It must be strictly examined that such a person who invokes the jurisdiction of the court is himself above board; and his petition is not actuated by extraneous considerations.

5. In view of the above observations we are of the opinion that this is not a fit case for interference under Article 226 of the Constitution. The writ Petition is dismissed.