

(1993) 12 AP CK 0026
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 725 of 1992

K.V.L. Kameswari

APPELLANT

Vs

Andhra University and Others

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Andhra University Act, 1925 — Section 34A
Constitution of India, 1950 — Article 226

Citation : (1994) 1 ALT 123

Hon'ble Judges : V. Sivaraman Nair, J; S.V. Maruthi, J

Bench : Division Bench

Advocate : R. Venugopal Reddy, for N.C. Das, for the Appellant; T.S. Harnath, SC for Respondents 1 and 2, Y. Suryanarayana, for Respondent No. 3, M.R.K. Choudary, for Respondent No. 4, S. Ramanadham and N. Rama Mohana Rao, for the Respondent

Judgement

S.V. Maruthi, J.—This Writ Appeal arises out of the judgment of the learned single Judge dismissing the Writ Petition No. 17522 of 1989 filed by the appellant.

2. The learned single Judge disposed of two Writ Petitions viz., W.P.No. 17522 of 1989 and W.P.No. 8614 of 1990 by a common judgment. The present Writ Appeal, was, however, filed against the judgment in W.P.No. 17522 of 1989 and no appeal was preferred in W.P.No. 8614 of 1990. Therefore, so far as W.P.No. 8614 of 1990 is concerned, the judgment has become final.

3. The appellant Dr. K.V.L. Kameswari filed the above two Writ Petitions under the following circumstances: In W.P.No. 17522 of 1989, the appellant sought for a declaration that the entire procedure adopted in making the selections in pursuance of the advertisement No. TS. 2/88 dated 25-10-1988 made by the 1st respondent is illegal, void and unconstitutional and to quash the selections made to the posts of Readers and Lecturers in the Department of Hindi.

4. In W.P.No. 8614 of 1990 the appellant-petitioner sought for the following reliefs:

- (1) to cancel the M.A. degree awarded in 1979 by Andhra University to Respondent No. 4;
- (2) to cancel the Ph.D., degree awarded by the Patna University in 1979 to R.4;
- (3) to cancel the appointment of R.4 as Reader in Hindi made in Executive Committee proceedings dated 9-5-1990;
- (4) to cancel the appointment of R.5 as Lecturer in Hindi made in 1972; and
- (5) that she should be appointed as Reader in Hindi with retrospective effect.

5. The appellant was holding the post of Research Scientist-A which is equivalent to the post of Lecturer. She had several publications to her credit and she had teaching experience of six years. She is a brahmin married to a Scheduled Casts gentlemen. She took her M.A. degree in Hindi in the year 1976 from Andhra University, Visakhapatnam. She also obtained Ph.D., degree in Hindi from Andhra University in the year 1980. She also did Post Doctoral Research during the year 1981-84. She was appointed as a Research Scientist-A in the Department of Hindi in Andhra University in the year 1984 and she has been working as such till 8-12-89. She was also appointed as a Research Scientist by the University Grants Commission which is equivalent to the post of a Lecturer in the Department of Hindi in Andhra University. She has various experiences both in teaching, research, translation, publication of books, attending Seminars and Conferences, including World Conference radio talks and participation in Hindi Work Shop. The 1st respondent advertised in the year 1988 inviting applications for appointment to the post of professors, Readers, Lecturers in various Departments of Arts., Science etc. in Advertisement T.S. 2/88 dated 25-10-88. The appellant applied for the posts of Reader and Lecturer in Hindi. The qualifications prescribed for appointment to the posts of Reader and Lecturer are as follows:

"Reader:

Good academic record with a Doctoral Degree or equivalent published work, evidence of being actively engaged in (i) Research or (ii) Innovation in teaching methods or (iii) Production of teaching materials.

About five years experience of teaching and/or research provided that atleast three of these years were Lecturer or in an equivalent position.

Lecturer/Pandits/Research Associate/Community Organiser/Case Analysts/Technicians: (Other than Education, Special Education, Musif, Physical Education, Health Education and Sports),

- a. A Doctorate's Degree or Research work of an equally high standard; and
- b. Good academic record, with atleast second class (C in the seven point scale) Masters Degree in a relevant subject from an Indian University or an equivalent degree from a Foreign University.

Having regard to the need for developing inter disciplinary programmes, the degree in (a) and (b) above may be in relevant subjects. Provided that if the Selection Committee is of the view that research work of a candidate as evident either from his thesis or from his published work, is of very high standard, it may relax any of the qualifications prescribed in (b) above;

Provided further that if a candidate possessing a Doctor's degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record (weightage being given to M. Phil or equivalent Degree or research work of quality) may be appointed, provided he has done research work for atleast two years or has practical experience in a research laboratory/ organisation on the condition that he will have to obtain Doctor's degree or give evidence of research of high standard within eight years of his appointment failing which he will not be able to earn future increment until he fulfils these requirements."

6. Pursuant to the above advertisement, the appellant applied both for the post of Reader as well as Lecturer. She was interviewed for the same in July, 1989. The Selection Committee constituted for the purpose interviewed nearly 40 candidates for the posts of Readers and Lecturers in Hindi. Having come to know that while preparing the panel for the purpose of appointment to the above posts her name was not included in the panel, she filed YV.P.No. 1/322 of 1989. In the said Writ Petition, she challenged the constitution of the Selection Committee u/s 34-A (1) of the Andhra University Act, 1925. She also claimed that she having married a scheduled caste gentlemen, she should have been selected as a candidate belonging to the Schedule Caste category and a post ought to have been reserved for a scheduled caste candidate. She also contended before the learned single Judge that the selection made by the Selection Committee was arbitrary as the Selection Committee while interviewing her for the post of Reader examined her only for a few minutes and when she appeared for the interview for the post of Lecturer in Hindi and as well as for Correspondence courses, the Committee did not put her any questions and therefore the interview was nothing but a farce. She also alleged that for none of the posts makes were awarded by the members of the Committee either individually or in lumpsum and in such circumstances it gives raise to arbitrariness. She further alleged that the Committee did not award marks separately for qualifications, research experience and other achievements comparatively when they are the prescribed qualifications. Though she was a common candidate for three posts, she alleged that the other candidates were not common and therefore marks have to be awarded for each interview on comparative basis which was not done which rendered the selection a nullity.

7. The respondents filed counter-affidavits denying the allegations made by the appellant-petitioner.

8. The Writ Petition came up before a learned single Judge who dismissed the same. While dismissing the Writ Petition, the learned Judge held that the

petitioner does not satisfy the requirements for the post of Reader in Hindi as she does not possess five years experience in teaching. The learned Judge pointed out that she taught M. A. classes for one year and the subject was Hindi Grammar. The other five years teaching experience relates to teaching B.Com., graduates Hindi in contact classes. It was held that the rule clearly lays down that a candidate should have five years experience of teaching and/or research provided that atleast three of these years were as a Lecturer or in any equivalent position. Since the appellant does not have the required teaching experience, she is not qualified to be selected as a Reader. As regards the post of Lecturer, the learned Judge held that she was interviewed and there was no justification for doubting the selection process. On the question of constitution of the Selection Committee, the learned Judge held that absence of a member of a Selection Committee does not vitiate the process of selection, unless there is mandatory rule which requires the presence of that particular member. The learned Judge held that in the present case, Section 34-A of the Andhra University Act contemplates of Selection Committee consisting of Vice Chancellor, nominee of the university Grants Commission, three experts from outside the University to be nominated by the Vice-Chancellor, of whom, atleast two shall be present in the Selection Committee, chairman of the Board of Studies and the Dean of academic affairs shall be the Secretary of the Selection Committee. The learned Judge held that there was no provision in the section which contemplates that the presence of the U.G.C. nominee is mandatory. According to him, the only mandatory clause was that out of the three experts from outside the University, atleast two of them shall be present. Therefore, the learned Judge held that non-participation of the U.G.C. nominee, though he had been invited to participate in the selection, does not vitiate the selection process. Aggrieved by the same, the appellant has filed the present appeal.

9. The main contention of the learned Counsel for the appellant is that u/s 34-A (1) of the Andhra University Act (hereinafter referred to as "the Act"), the Selection Committee for the purpose of appointment of Professors, . Readers and Lecturers shall consist of (1) the Vice-Chancellor; (2) nominee of "the University Grants Commission; (3) three experts from outside the university to be nominated by the Vice-Chancellor of whom atleast two shall be present in the Selection Committee; (4) Chairman of the Board of Studies concerned and (5) Head of the Department concerned. But, under the proviso no person shall participate in the meetings of the Selection Committee for any appointment, if he or his near relative is a candidate for that appointment. Under the second proviso no teacher holding a post lower in rank than the one to which the appointment is to be made, shall be a member of the Selection Committee. In the instant case, according to the respondents, the University addressed a letter to the U.G.C. on 16-6-1989 inviting the nominee of the U.G.C. and reply was received on 11-7-1989; whereas the selections were held in July, 1989. Therefore, from the facts disclosed by the respondents 1 and 2, it is clear that the nominee of the U.G.C. was not present in the Section Committee and therefore the selection

made in the absence of the nominee of the U.G.C. is void. Counsel submits that u/s 34-A (1) of the Act, the presence of the nominee of the U.G.C. is mandatory and in the absence of the nominee of the U.G.C. in the selections proceedings, the selections made by the Committee are liable to be set aside. Counsel submits further that the selection process is arbitrary as no marks were allotted to the candidates. Therefore, unreasonableness is a writ large on the face of the selection and hence the selections are liable to be set aside.

10. To consider the question, whether the absence of the nominee of the University Grants Commission in the Selection proceedings makes the constitution of the Selection Committee constituted for the purpose is invalid, consequently making the entire selections void, it is necessary to refer to Section 34-A of the Act which reads as follows:

"34-A: Constitution of Selection Committee:

(1) There shall be constituted a Selection Committee in regard to the appointment of Professors, Readers and Lecturers which shall consist of the following namely:-

(1) the Vice-Chancellor;

(2) nominee of the University Grants Commission;

(3) three experts from outside the University to be nominated by the Vice-Chancellor of whom atleast two shall be present in the Selection Committee;

(4) Chairman of the Board of Studies concerned;

(5) Head of the Department concerned;

Provided that no person shall participate in the meetings of the Selection Committee for any appointment, if he or his near relative is a candidate for that appointment;

Provided further that no teacher holding a post lower in rank than the one to which the appointment is to be made, shall be a member of the Selection Committee.

(2) The Dean of the Academic Affairs shall be the Secretary of the Selection Committee. If there is no such Dean, the Registrar shall be the Secretary."

11. Submission of Counsel for the appellant, as we understand it, is that u/s 34 - A (1) of the Act, the Selection Committee shall be constituted to consist, among others, of a nominee of the University Grants Commission as well. But the University Grants Commission had not appointed its nominee to be a member of the Selection Committee and, therefore, the Selection Committee was not validly constituted. The argument was not that the duly constituted Selection Committee which consisted also of a nominee of the University Grants Commission did not, at the relevant time, consist of University Grants Commission nominee and therefore, the proceedings were bad. The provisions of Section 34-A which have

been extracted, make it absolutely clear that the Selection Committee shall be constituted and shall consist. among others, of a nominee of the University Grants Commission as well. In the presence case, the University addressed a letter to the University Grants Commission on 16-6-1989 requesting it to nominate a member for the Selection Committee. The interview was actually conducted on 5-7-1989. The University Grants Commission sent its reply thereto, which was received on 11-7-1989. It is clear therefore, that the Selection Committee was not duly constituted in compliance with Section 34-A of the Act which provides, in mandatory terms, that such Committee shall be constituted so as to consist of a nominee of the University Grants Commission. The question is not one of prescription of quorum for the meeting of the Committee, but of fundamental defect in constitution of the Committee which did not consist of one of the various components. The facts pleaded by the respondents make it absolutely clear that the Selection Committee was not duly constituted, because, the letter requiring the University Grants Commission to send its nominee, was sent only as late as on 16-6-1989, whereas the interview was to be conducted on 5-7-1989 and U.G.C. responded to that letter only on 11-7-1989. It is clear from the above, that the constitution of the Committee was not in compliance with the mandatory provisions Section 34-A of the Act. If that be so, irrespective of absence of any provision for quorum, the constitution of the Committee has to be held to be invalid.

12. It is, however, relevant to note that the petitioner who is expected to know the provisions of Section 34-A of the Act, having appeared before the Committee knowing that its constitution was not in compliance with Section 34-A of the Act, cannot raise her objection at this stage of these proceedings. She took the chance of being selected by the Committee and chose to raise objections, only when her hopes turned into disillusionment. We are not satisfied of the bona fides of the petitioner in raising the objection since petitioner participated in the proceedings of a Committee which she knew was not constituted according to law.

13. We may also refer to the observation of this Court in *Dr. (Mrs.) M. Thaha v. National Institute of Rural Development* 1992 (1) An.W.R. 547 wherein it was held that-

"The appellants were well aware who the members of the Committee were. They also knew that the appointment will be by direct recruitment. They appeared for interview before the Committee and subject themselves to its jurisdiction for the purpose of selection. When they failed to get selected and some other person was selected, they filed the Writ Petitions questioning the selection. The appellants did not raise any objection before the Committee against its composition though they knew fully well who the members of the Committee were. They appeared voluntarily before the Committee and had taken a chance of having a favourable recommendation. In such a case, as was held by the Supreme Court in *G. Sarana Vs. University of Lucknow and Others*, . it is not

open to the appellants to turn round and question the constitution or composition of the Committee."

14. The next question to be considered is whether the selection process adopted by the Selection Committee was arbitrary. From the records furnished by the respondents 1 and 2, it is seen that the meeting of the Selection Committee for selection of candidates for the post of Lecturer in Hindi, A.U. College of Arts and Commerce, Andhra University, Waltair, was held in the Vice-Chancellor's room at 11.30 a.m. on Wednesday, 5th July, 1989. The minutes of the meeting disclose that the members of the Selection Committee consisted of six members, which includes the Vice-Chancellor. The nominee of the University Grants Commission was absent and the other members were present. The Committee interviewed as many as 47 candidates who appeared out of the total candidates of 61. The remarks drawn by the Committee are as follows:

"Considering the qualifications, experience and also considering the performance of the candidates in the interview, the Selection Committee recommends the following in the various panels for appointment as Lecturer in Hindi as per roster. O.C. Panel:

1. Dr. R. Sri Sarraju (S.No. 43).
2. Dr. S.A.S.N. Varma (S.No. 3).
3. Dr. S. Krishna Babu. (S.No. 15)

B.C. Panel:

1. Mr. Syed Maharun. (B.C.B) (S.No. 50).
2. Dr. M. Vijayalakshmi. (B. "C") (S.No. 60).
3. Mr. K. Sarveswara Rao (B.C. "D") (S.No. 36).

S.C. Panel:

1. Sri V. Krishan (S.No. 14). P.R Panel:

1. Dr. S.A.S.N. Verma (S.No. 3).
2. Sri V. Kamalakar. (S.No. 10).

Sd. Sd. Sd. Sd. Sd."

15. Except the above, the minutes of the Selection Committee does not disclose any other particulars. The minutes indicate that no marks were allotted to any one of the candidates. There were also no other particulars of the candidates with reference to their research experience, doctorate degrees, class obtained in Post-Graduation degree and at the graduation level and the number of publications to their credit, which are necessary for assessing the relative merit of the candidates. The basis for selecting the candidates was not disclosed by the minutes of the meeting.

16. In this context, we may refer to the following observations of the Supreme Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, :

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. "The ideal in recruitment is to do away with unfairness.....They were the means by which equality of opportunity was to be united with efficiency.....By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved....."Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull", everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence."

17. It was also held that non-allocation of marks under various heads in the interview test was illegal. ".....Failure to allocate marks under each head or distinct test was an illegality".

18. We may also refer to another decision of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . In this case, one of the contentions urged before the Supreme Court was that the oral interview as conducted in the selection was a mere pretence or force, as it did not last for more than 2 or 3 minutes per candidate on an average and the questions which were asked were formal questions relating to parentage and residence of the candidate and hardly any question was asked which had relevance to assessment of the suitability of the candidate with reference to any of the four factors required to be considered by the committee. The Supreme Court answered the above argument as under:

".....We must therefore proceed on the basis that the interview of each candidate did not last for more than 2 or 3 minutes on an average and hardly any questions were asked having bearing on the relevant factors. If that be so, the oral interview test must be held to be vitiated and the selection made on the basis of such test must be held to be arbitrary....."

It was further observed that -

".....We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 14% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-

arbitrariness. We think that it would also be desirable if the interview, of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answer's given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee."

19. The next decision to be considered is Lila Dhar Vs. State of Rajasthan and Others, . wherein it was held that -

".....The rules themselves to not provide for the allocation of marks under different heads at the interview test. The criteria for the interview test has been laid down by the rules. It is for the interviewing body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the otherhand, the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and Courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless as we said, it is proved or obvious that the method of marking was chosen with oblique motive."

20. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . the Supreme Court held that -

".....Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification pertaining to experience, the entire process of selection of the 6th respondent was in contravention of the established norms prescribed by advertisement and power of the Selection Committee and procedure of fair and just selection and equality in the matter of public employment and to rectify resultant injustice and establish constitutional value this Court must interfere....."

21. In Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . the Supreme Court observed that-

"It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness....."

22. In R.S. Dass Ors. Vs. Union of India (UOI) and Others, . while dealing with Regulation No. 5 (4) of the Indian Administrative Service (Recruitment) Rules, 1954, which provide that the Selection Committee shall classify eligible officers

as "Outstanding", "Very good", "Good" or "Unfit", as the case may be, on an overall relative assessment of their service record, the Supreme Court held that -

"Under the amended Regulations the Committee is required to categorise officers in four categories on the basis of overall assessment of service record of officers. After categorisation the Committee is required to place the names of those officers first on the list who may be categorised as "Outstanding" and thereafter names of those officers shall be included who are found to be "Very Good". And only thereafter the names of those officers shall be included who may be categorised "Good". If in this process any senior officer is superseded the amended Regn. 5(5) does not require the Committee to record reasons for the supersession....."

Justice K.N. Singh observed that-

"In order to judge the merit the regulations provide for categorisation of eligible members of the State Civil Service on the basis of their service records which are scrutinised by the Committee consisting of high ranking Officers of the State Govt. and the Central Govt. The service records of all eligible officers whose names are included in the proposed select list and the records of even those who are not selected are again scrutinised by the State Govt. and the Union Public Service Commission and only thereafter final shape is given to the selection list. There are, therefore, adequate checks and safeguards at different stages by different authorities. But if any dispute arises with regard to the arbitrary exclusion of a senior member of the State Service the matter can always be investigated by perusing his service records and comparing the same with the service record of officers who may have been preferred and that would certainly disclose the reasons for the supersession of the senior officer. It is true that where merit is the sole basis for promotion, the power of selection becomes wide and liable to be abused with less difficulty. But, that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of select list under the regulation for Promotion to All India Service, ensures objective and impartial selection.....In this view, we find no good reasons to held that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the Courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power."

It was also held that

".....It is true that the service records contain remarks which some times may not be fully justified, but for that reason the scheme contained in the rules and regulations for promotion cannot be characterised unreasonable....."

It was further held that-

".....The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying different standards or criteria at different times as the services namely the character roll entries would indicate the category of the officers as adjudged by the authority recording annual confidential remarks....."

23. It was also observed that "there is no scope for applying different standard or test in preparing the list or to practise discrimination."

24. However, Justice Sabyasachi Mukharji observed that -

".....It has been emphasised that the categorisation is done on the service record. This has also been emphasised that such categorisation is done on the service record including confidential character rolls as maintained by senior officers holding high positions. It is, therefore, according to my learned brother, sufficient safeguards against arbitrary categorisation and misuse of power. I have my reservations on this aspect though I accede the position that in the absence of any other practicable solution, this is perhaps a sufficient safeguard and perhaps a practical way of facing a rather delicate task. It cannot be said now-a-days if one is aware of the facts and currents of life that simply because categorisation and judgment of the service record of officers are in the hands of senior officers is a sufficient safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers by all concerned....."

The learned Judge further observed as follows:

"I would therefore like to suggest to the Government and the authorities concerned that there should be some basis for the categorisation of the : officers and such basis should be objective and not merely subjective evaluation and further more such basis should be formulated in the form of guidelines. Objectivity in subjective evaluation of the worth of the different officers would go a long way to generate a feeling that justice has been done....." :

25. Oen of us viz., Justice V. Sivaraman Nair, sitting as a Judge of the Kerala High Court, in *Geetha v. Director, Rashtriya Sanskrit Sansthan* 1989 (2) All S.L.J. 197. held thus:

"Provision of an oral test or interview shall not be a device for random selection or rejection of eligibles. It must be evident from the records that there were overriding factors of relevance which resulted in the elimination of eligible candidates with marks, ranks or grades, awarded to them in the practical test. Elimination of eligible and qualified candidates can be justified only if it is manifest from the records, that the committee adverted to the relevant facts and circumstances and that an assessment was made in bonafide exercise of power with reference to the relevant and ascertainable standards. On a perusal of the materials produced by the respondents and the pleadings and arguments which were addressed before me, I am not in a position to hold, that the committee

applied its mind to the relevant guidelines evolved by it or ascertainable standards which are discernible from the records. I am, therefore, of the opinion, that the appointment of respondents 6 and 7 by elimination of the petitioners have to be set aside."

26. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, . it was held thus:

".....Boards of appointments are nominated by the universities and when recommendations made by them and the appointments following on them are challenged before Courts, normally the Courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the board and its recommendations on which the Chancellor has acted....."

27. In *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others*, . the Supreme Court held that-

"Giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in administrative action. The "fairness" or "fair procedure." in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration.

When there is nothing to show that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards a particular candidate and on the contrary he was placed second in the panel, that by itself indicates that there was proper consideration of his case and he had been treated fairly. When the Selection Committee consisted of experts in the subject for selection and they

were men of high status and also of unquestionable impartiality, the Court should be slow to interfere with their opinion."

28. In *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, the Supreme Court observed that-

"The shift now is to broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lites inter partes*. There need not be any struggle between two opposing parties giving rise to a "*lis*". There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration.

It was also observed that-

"When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation which the Chancellor has acted."

29. To the same effect is the decision of the Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, wherein it was held that "It is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the selection Committee can be interfered with only on limited grounds such as, illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved *mala fides* affecting the selection etc." The Supreme Court also observed that the plea that constitution of Selection Committee was defective cannot be raised for the first time in the appeal.

30. In *Dr. J.P. Kulshrestha v. Chancellor, Allahabad University* 1980 SC 623. the Supreme Court held that-

"It is a rule of prudence that Courts should hesitate to dislodge decisions of academic bodies. But university organs for that matter any authority in our system is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court out."

31. From the decisions referred to above, it emerges that the object of process of

selection for entry into public service is to secure the best and most suitable person for job avoiding patronage and the relative merit should be determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. The assessment should be made on the basis of objective criteria, namely, educational qualifications, experience and the performance at the time of interview and other relevant factors necessary having regard to the nature of the post to which the appointment/recruitment is made. It is open to the interviewing body to choose the appropriate method of marking at the selection, keeping in view the requirement of service to which the selection is made. The merit should be judged on the basis of categorisation of candidates into "Outstanding", "Very good", "Good". In case of selection on the basis of interview, the candidate should be properly interviewed and relevant questions should be asked with a view to assessing their suitability with reference to the factors required to be taken into consideration. Elimination of eligible and qualified candidates can be justified if it is manifest from the records that the Committee adverted to the relevant facts and circumstances and that the assessment was made on bona fide exercise of power with reference to the relevant ascertainable standards. The selection should be based on merit and tested impartially and objectively. The machinery designed for the preparation of the select list should ensure objective and impartial selection. The authorities in our system are bound by the rule of law. The oral interview should satisfy the test of reasonableness and non-arbitrariness. The emphasis is more on "fairness" or "fair procedure" in the administrative action. If the above standards are satisfied, it is not open to the Courts to interfere with the decision of the academic bodies. The decision of the Selection Committee can be interfered with only in limited spheres, namely, illegality or patent irregularity in the constitution of the Committee or its procedure.

32. When appointments are made based on recommendations of experts nominated by the University, the High Court has only to see whether the appointment had contravened any statutory or binding rule or ordinance or the principle of fairness are duly complied with or whether the selection was conducted arbitrarily. The High Court should show due regard to the opinion expressed by the Experts constituting the Selection Committee and its recommendations in all cases where the Selection Committee acted fairly and on the basis of objective considerations which are discernible from the proceedings.

33. The Courts will interfere if the assessment is patently arbitrary or risk of arbitrariness is so high, that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness.

34. We may now examine whether the test of "fairness" or "fair procedure" in the instant case is satisfied. We have already referred to the proceedings of the Selection Committee. The minutes of the meeting neither refers to the qualifications of the candidates nor the basis of assessment adopted by the

Committee. Nothing is discernible from the records. The basis of selection of the candidate is not disclosed. No objective criteria, on the basis of which, the selection was made by the Committee was disclosed from the records. The selection process is writ large with the arbitrariness. Therefore, we have no other alternative except to interfere with the selection of the candidates. It is true that the appointment of respondent No. 3 was made on 8-5-1990. However, in view of our finding that the selection made to the post of Lecturer in University was arbitrary, the selection of 3rd respondent is liable to be set aside.

35. As regards the selection of respondent No. 4 is concerned, he was selected under B.C. panel. The appellant is not claiming appointment under B.C. category. Therefore, no relief can be granted as against Respondent No. 4. Respondent No. 5 was selected under S.C. panel. The appellant also not canvassed her claim for consideration as a candidate belonging to S.C. category. Therefore, no relief can be granted as against respondent No. 5 also. As regards 6th respondent is concerned, he was appointed as a reader. The appellant has not challenged the finding of the learned single Judge that she does not possess the qualifications required for appointment as a reader. Therefore, no relief can be granted as against respondent No. 6 also.

36. Appellant filed W.A.M.P.No. 1959 of 1992 for impleadment of respondents 3 to 6 herein and one Mrs. B. Mohini as respondents in the Appeal. This Court by order dated 3-2-1993 directed impleadment of respondents 3 to 6 and in respect of Mrs. B. Mohini no order was passed. Mrs. B. Mohini was appointed as a lecturer in Hindi in the School of Correspondence Course, Andhra University, Waltair. However, no argument was advanced against the appointment of Mrs. B. Mohini during the course of arguments. Further, today by separate orders in W.A.M.P.No. 1959 of 1992, we have dismissed the application filed by the appellant for impleadment of Mrs. B. Mohini as respondent in the appeal is concerned.

37. From the above, it follows that the Writ Appeal is liable to be dismissed against respondents 4, 5 and 6 and is to be allowed as against respondent No. 3.

38. The learned Counsel for the respondents contended that no appeal has been filed against the judgment in so far as W.P.No. 8614 of 1990 is concerned and that it has become final and therefore the judgment operates as *resjudkata*. In support of their contention, reliance was placed on the judgment of the Supreme Court in *Lonankutty Vs. Thomman and Another*, wherein it was held that -

"The appellant and respondent were two adjacent owners of lands. They filed two suits in respect of right to catch prawns on their respective lands. The trial Court decreed the appellant's suit partly by holding that the respondents had not acquired any right of easement over the appellant's land for the ingress and egress of water for fishing purposes but they had established such a right for agricultural purposes during the agricultural season. The trial Court issued an injunction restraining the respondents from taking or letting out water from or

through the appellant's land for fishing purposes. In the respondent's suit, the trial Court recorded similar findings and issued an injunction against the appellant restraining him from interfering with the respondent's easement right limited to agricultural season. Each party being partly aggrieved by both the decrees each filed an appeal against the two decrees. The appellate Court confirmed the decrees and dismissed the appeals. Respondents did not file any further appeal against the decree passed by the District Court in the appeals arising out of their suit. They filed a Second Appeal in the High Court only as against the decree passed by the District Court which arose out of the decree passed by the trial Court in the appellant's suit. Thus, the decision of the District Court rendered in the appeal arising out of the respondent's suit became final and conclusive. That decision, not having been appealed against, could not be re-opened in the second appeal arising out of the appellant's suit. The issue whether respondents had the easementary right to the flow of water through the appellant's land for fishing purposes was directly and substantially in issue on the respondent's suit. The issue was heard and finally decided by the District Court in a proceeding between the same parties and the decision was rendered before the High Court decided the Second Appeal. The decision of the District Court was given in an appeal arising out of a suit, which though instituted subsequently, stood finally decided before the High Court disposed of the second Appeal."

39. In *Sheodan Singh Vs. Smt. Daryao Kunwar*, . on the question of res judicata held that-

"Where the trial Court has decided two suits having common issues on the merits and mere are two appeals there from and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial Court's decision stands confirmed, the decision of the appeal Court will be res judicata and the appeal Court must be deemed to have heard and finally decided the matter. In such a case, the result of the decision of the appeal Court is to confirm the decision of the trial Court given on merits, and if that is so, the decision of the appeal Court will be res judicata."

40. The appellant filed W.P.No. 8614 of 1990 to cancel the M.A. degree awarded by the Andhra University to 4th respondent, namely, Surappadu in the year 1979 and also to cancel his Ph.D., degree awarded by the Patna University in the year 1979 and also to cancel his appointment as Reader in Hidni made on 9-5-90. She also sought for cancellation of the appointment of the 5th respondent viz., K. Seetha Lakshmi as Lecturer in Hindi made in the year 1978. As far as the present Writ Appeal is concerned, it arises, out of the judgment in W.P.No. 17522 of 1989, which was filed challenging the selections made pursuant to advertisement No. TS. 2/88 dated 25-10-1988, whereas W.P.No. 8614 of 1990 was filed for cancellation of the M.A. degree and Ph.D. awarded to Sri Surappadu and his selection as Reader made on 9-5-90 and also the appointment of Smt. K. Seetha Lakshmi as Lecturer made in 1978. Therefore, the issues in both the Writ

Petitions are not common. Hence the question of res judicata does not arise.

41. For the reasons mentioned above, the Writ Appeal is allowed as against respondents 1, 2 and 3. As regards other respondents, appeal is dismissed. The selection of 3rd respondent as Lecturer in Hindi is set aside. There will be no order as to costs.