

(2012) 01 SHI CK 0127
In the High Court Of Himachal Pradesh
Case No : CWP No. 1066 of 2010-B

Monica Tomar

APPELLANT

Vs

Dr. Yashwant Singh Parmar University of Horticulture and
Forestry, Solan, Monica Sharma, Rajinder Singh Jaryal and
Shalini Verma

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 01 SHI CK 0127

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—The petitioner has obtained her Ph.D. Degree in the subject of Mycology and Plant Pathology in the year 2004. She has qualified National Eligibility Test (NET) in the year 2006. Respondent No. 1-University has issued an advertisement bearing No. 7 of 2008 whereby applications were invited for filling up five posts of Assistant Scientists/Assistant Professors/Assistant Extension Specialist. Three posts were to be filled up in Mycology and Plant Pathology Department, one post in Forest Plant Protection (Pathology Discipline) and one post in RHRSS Tabo (Plant Pathology Discipline). The last date of receipt of applications was 6th September, 2008. Petitioner and private respondents submitted their applications for considering their candidatures for the post of Assistant Professors in the respondent/University. The petitioner was interviewed on 22nd and 23rd October, 2009 vide Annexures P6-A and P6-B. The respondent/University has selected and appointed respondent No. 2 as Assistant Professor in the subject of Mycology and Plant Pathology, respondent No. 3 in RHRSS Tabo (Plant Pathology Discipline) and respondent No. 4 in Forest Plant Protection (Pathology Discipline) on the basis of the recommendations made by the Selection Committee. The petitioner has confined her challenge only to the appointment of respondent No. 2, Monica Sharma to the post of Assistant Professor in the subject of Mycology and Plant Pathology.

2. Mr. Ajay Mohan Goel, learned counsel for the petitioner has strenuously argued that respondent No. 2 did not fulfill the minimum essential educational qualification of Ph.D. in the subject of Mycology and Plant Pathology and thus she could not be appointed to the post of Assistant Professor in the subject of Mycology and Plant Pathology. He has further argued that the respondent-University at no given time has equated the degree of Ph.D. obtained by respondent No. 2 from Germany; vis-?-vis in the subject of Mycology and Plant Pathology. He has further argued that the Screening Committee constituted by the respondent-University has found the respondent No. 2 eligible for the post of Assistant Professor in the subject of Biotechnology as well in the subject of Mycology and Plant Pathology. He also contended that the petitioner was fully eligible and qualified and should have been considered for appointment ignoring the candidature of respondent No. 2. He lastly contended that his client has been kept at No. 1 in the waiting list for appointment to the post in question.

3. Mr. Onkar Jairath, Advocate and Mr. Dilip Sharma, Senior Advocate appearing on behalf of respondents No. 1 and 2 respectively have strenuously argued that respondent No. 2 was possessing the minimum essential educational qualifications for the post of Assistant Professor in the subject of Mycology and Plant Pathology.

4. I have heard learned counsel for the parties and gone through the pleadings and record carefully.

5. The detailed procedure has been provided under Chapter-IV of the Statutes of respondent-University regarding Classification, the Manner of appointment and qualifications of the teachers of the University. Statute 4.5 provides the detailed procedure for appointment of teachers in the respondent-University. The Vice-Chancellor has to get the post(s) advertised with qualifications as prescribed. All the applications received alongwith bio-data of the candidates are required to be compiled and placed before the Screening Committee constituted for the purpose by the Vice Chancellor. The Screening Committee, after scrutinizing the qualifications of the candidates, is required to prepare a list of candidates recommended to be called for interview and place it before the Vice-Chancellor for his approval. The candidates finally approved by the Vice-Chancellor are to be called for interview and after interviewing the candidates or considering them in absentia, as the case may be, the Selection Committee has to make its recommendations for each post separately. Thereafter the Vice-Chancellor has to submit the recommendations of the Selection Committee for approval of the Board. The period of validity of any panel prepared by the Selection Committee and approved by the Board is one year from the date of approval. In sequel to the procedure laid down under Statute 4.5 the post of Assistant Professor in the subject of Mycology and Plant Pathology was advertised vide Annexure P-5. The minimum educational qualification prescribed as per the Statute for the post of Assistant Professor or equivalent was that the candidate should be Ph.D. in the concerned subject relaxable to M.Sc. with consistently good academic record, i.e.

55% marks in Master's level. The same qualification has been reiterated in Annexure P-5. The petitioner has obtained her Ph.D. Degree in the subject of Mycology and Plant Pathology from the respondent-University as per Annexure P-3. A bare perusal of Annexure P-3 makes it abundantly clear that the Degree of Doctor of Philosophy has been awarded to the petitioner in the subject of Mycology and Plant Pathology. The Screening Committee met on 4th February, 2009 and has found the petitioner as well as respondent No.2 eligible to be called for interview. The interviews were held on 22nd and 23rd October, 2009. 25 candidates were called for interview as per the reply filed by the respondent-University for filling up the posts in the discipline of Mycology and Plant Pathology, but only 11 candidates appeared before the Selection Committee. According to the respondent-University, more particularly, as per averments contained in para-12 of the reply, since respondent No. 2 was fulfilling the eligible criteria in the discipline of Biotechnology and Mycology and Plant Pathology, the Screening Committee had recommended her to be called for interview keeping in view her educational qualifications as well as other essential requirements.

6. Respondent No. 2 has also filed the detailed reply, which is at page No. 89 of the paper book. Mr. Dilip Sharma, learned Senior Advocate has relied upon Annexures R-2/5-A, R-2/6, R-2-8, R-2/13 and R-2/14 to substantiate that his client was fulfilling the minimum essential qualifications of Ph.D. in the subject of Mycology and Plant Pathology.

7. The petitioner has filed rejoinder to the reply filed by respondent No. 2. The petitioner has placed on record the merit list prepared by the Selection Committee vide Annexure PR-2.

8. It is clear from Annexure PR/2 that respondent No. 2 has been selected being at Sr. No. 9, as Assistant Professor in the discipline of Mycology and Plant Pathology and the petitioner is at Sr. No. 7 of the merit list and has been put in waiting list at Sr. No. 1. Respondent No. 2 has already been appointed by the respondent-University. It is well settled that it is for the academic bodies to go into the gamut of educational qualifications. The scope of judicial review in equating the degrees, that too, at the highest level, i.e. Ph.D. is very limited. The Courts can interfere only in those cases where steps prescribed have not been followed in equating the degree or prima facie it is established that the degree is not equivalent, the Court can interfere in the interest of justice.

9. Their Lordships of Hon'ble Supreme Court in Sanchit Bansal and Another versus Joint Admission Board and Others, (2012) 1 SCC 157 have held that the scope of judicial review in educational/academic matters is very limited and the process of evaluation, ranking and selection of candidates to suit specialized courses, is within the exclusive domain of professional experts in charge, being technical matters in academic field. The role of courts is very limited. Courts' interference is permissible only when there is: (i) violation of any enactment, statutory rules and regulations, (ii) mala fides or ulterior motive to assist or

enable private gain to someone or cause prejudice to anyone, and (iii) where procedure adopted is arbitrary and capricious. Their Lordships have further held that where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact, it is arbitrary and capricious. Their Lordships have held as under (paras-27-28):-

Thus, the process of evaluation, the process of ranking and selection of candidate for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and the courts will not interfere in such processes. The courts will interfere only if they find all or any of the following: (i) violation of any enactment, statutory rules and regulations; (ii) mala fides or ulterior motives to assist or enable private gain to some one of cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.

An action is said to be arbitrary and capricious, where a person, in particular, a person in authority does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact. To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation. When an action or procedure seeks to achieve a specific objective in furtherance of education in a bona fide manner, by adopting a process which is uniform and non-discriminatory, it cannot be described as arbitrary or capricious or mala fide.

10. In the instant case, according to the advertisement, the candidate must be in possession of the educational qualifications in the concerned subject. The concerned subject/discipline in the present case is Ph.D. in Mycology and Plant Pathology. The expression "concern" as per Black's Law Dictionary, Sixth Edition means "to pertain, relate, or belong to, have connection with". The candidate to be appointed as Assistant Professor in the respondent-University is required to be in possession of essential minimum educational qualifications of Ph.D. in the concerned subject, i.e. Mycology and Plant Pathology. The petitioner, as noticed above, possesses the Ph.D. Degree in the subject of Mycology and Plant Pathology.

11. Respondent No. 2 has obtained her Ph.D. in Life Sciences or Natural Sciences/Biology with subjects Plant Pathology, Molecular Biology and Recycling-microbiology with the following subjects (as given at page No. 106 of the paper book):-

Plant pathology, Molecular biology, Recycling microbiology,

in the year 2008. The subjects of Molecular biology and Recycling microbiology cannot be treated as subjects falling under the expression "Mycology" and "Plant Pathology". According to Annexure R-2/5-A at page 107 of the paper book, the

certificate has been issued by the Vice President, Justus Leibig University, Giessen. The certificate issued by the Vice President is only a supporting document and not a proof that the degree awarded to respondent No. 2 in all respects is equated with Ph.D. in the subjects of Mycology and Plant Pathology.

12. Mr. Dilip Sharma, learned Senior Advocate has also placed reliance on Annexure R-2/6. The plain reading of Annexure R-2/6 only suggests that the degree of respondent No. 2 from the University in Germany has been equated with Doctor of Philosophy Degree in the correspondence field of an Indian University. However, there is a foot note that the original certificates and subject-wise eligibility will be verified by the admission giving University/Institute. This document has been issued by the Association of Indian Universities. Prima facie, it appears that this equivalence certificate was for seeking admission and not for seeking employment. Rather, it is clear that the subject-wise eligibility is to be verified by the admission giving University/Institute.

13. In this case, no subject-wise eligibility has been verified by the respondent-University except that the Screening Committee, which met on 4th February, 2009, has found respondent No. 2 eligible for the post in question.

14. Now as far as Annexures R-2/13 and R-2/14 are concerned, for the discipline of Plant Pathology, the qualification of Masters Degree in Agriculture/Botany/Life Sciences/Plant Protection with specialization in Plant Pathology/Mycology has been given and for the discipline of Agricultural Biotechnology, the qualification is Masters Degree in Biotechnology/Molecular Biology/Genetic Engineering/ Botany/ Plant Science/Life Science/Agriculture with specialization in Plant Biotechnology/ Life Sciences. The degree obtained by respondent No. 2 only indicates of Plant Pathology as one of the subject and there is no reference to the subject of Mycology as per even Annexure R-2/13 and R-2/14. The Screening Committee of the respondent-University has found respondent No. 2 eligible for the post of Assistant Professor in the discipline of Mycology and Plant Pathology as well as Biotechnology. This fact has been admitted by the respondent-University in its reply in paragraph 15. On what basis the Screening Committee has found respondent No. 2 eligible in the subjects of Bio-Technology as well as in the Mycology and Plant Pathology, is not discernable from the material placed on record by respondent No. 1-University and respondent No. 2. Respondent No. 2 was not possessing the Ph.D. Degree, as noticed above, in the subject of Mycology and Plant Pathology. She has also been recommended by the Screening Committee for the post of Assistant Professor in the subject of Bio-Technology. It further establishes that respondent No. 2 has not obtained the qualification of Ph.D. Degree in Mycology and Pathology, but has obtained the same in the subjects of Molecular Biology, Recycling Microbiology and Plant Pathology, which may be relevant for the purpose of Bio-Technology. According to McGraw-Hill Encyclopedia of Science & Technology, the term "Plant Pathology" means as under:-

The study of disease in plants; it is an integration of many biological disciplines

and bridges the basic and applied sciences.

The expression "Mycology" as per McGraw-Hill Encyclopedia of Science & Technology means that part of biology which attempts to a field of microbiology concerned with the study of fungi, those microorganisms included in the division.

16. Now as far as Molecular Biology, which is one of the subjects of respondent No. 2 in Ph.D. is concerned, the same as per McGraw-Hill Encyclopedia of Science & Technology is that part of biology which attempts to interpret biological events in terms of the molecules in the cell. The subject matter merges indistinguishably with older and more traditional areas of biology, such as biochemistry and genetics. In a general way molecular biology may be described as that subject which grew out of the merging of biochemistry and genetics, since in this discipline special emphasis is placed on the molecular basis of genetics and of macromolecular replication.

17. The expression "Microbiology" as per McGraw-Hill Encyclopedia of Science & Technology is the science and study of microorganisms. These include the protozoa, algae, fungi, bacteria, viruses and rickettsiae. In the subjects read by respondent No. 2 for doing Ph.D., the subject Recycling Microbiology is entirely distinct from Plant Pathology and Molecular Biology.

18. Accordingly in view of the above discussion, it is clear that the qualification of Ph.D. obtained by respondent No. 2 was not in the concerned subjects of Mycology and Plant Pathology and thus, the Screening Committee has wrongly recommended her case to the Vice-Chancellor for calling her for interview. The respondent-University has not undertaken any exercise to see whether the respondent No. 2 was possessing the essential qualification of Ph.D. in the subjects of Mycology and Plant Pathology. The expression used in the statute and the advertisement is "in the concerned subject". Even the word equivalence does not find mention in the advertisement. The Selection Committee has also overlooked this vital aspect of the matter while selecting respondent No. 2 as Assistant Professor in the subject of Mycology and Plant Pathology.

19. The Selection Committee has awarded 10 marks to respondent No. 2 for obtaining the degree of Ph.D. and the petitioner has been awarded 14.76 marks. The petitioner to her credit has 13 publications, Review Articles 1, Popular Articles 7 and Paper presented in Symposia 10 and the respondent No. 2 has 6 Research Articles as per compilation placed on record by the Scrutiny Committee, dated 4.2.2009. The petitioner has obtained the Ph.D. Degree in the principal subjects of Mycology and Plant Pathology. Respondent No. 2 has only studied one subject of Plant Pathology as a principal subject.

20. There is no merit in the contention of Mr. Onkar Jairath, learned counsel appearing on behalf of respondent No. 1-University that the petitioner cannot challenge the appointment of respondent No. 2 after appearing in the interview. In the present case the bar of acquiesce will not apply since there is apparent an illegality committed by the Screening and Selection Committee by recommending

the name of respondent when she was not possessing the minimum essential educational qualifications in the concerned subject, i.e. Mycology and Plant Pathology. Their Lordships of Hon^{ble} Supreme Court in Ramesh Kumar Vs. High Court of Delhi and Another, have held as under (para 18):-

These cases are squarely covered by the judgment of this Court in Hemani Malhotra v. High Court of Delhi, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in All India Judges' Assn. (3) case had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact situation, the question of acquiescence would not arise.

21. The recommendation of the case of respondent No. 2 by the Screening Committee and the recommendations made by the Selection Committee are contrary to the University Acts and Statutes, framed thereunder. The selection of respondent No. 2 is arbitrary, thus violative of Articles 14 and 16 of the Constitution of India.

22. Accordingly, in view of the observations and discussions made hereinabove, writ petition is allowed. Selection and appointment of respondent No. 2 as Assistant Professor, Mycology and Plant Pathology is quashed and set aside. The respondent-University is directed to consider the case of petitioner for appointment to the post of Assistant Professor in the subjects of Mycology and Plant Pathology on the basis of panel prepared by the Selection Committee vide Annexure PR-2, dated 22.10.2009, within a period of four weeks from the date of production of certified copy of this judgment. The pending application(s), if any, also stands disposed of. No costs.