

**(2018) 10 CAL CK 0092**  
**In the Calcutta High Court**  
**Case No : Fma 823, 1285 Of 2013**

**Mriganka Mondal @APPELLANT@Hash Dr. Asitabha Das & Ors**

---

**Date of Decision :** 12-10-2018

**Acts Referred:**

**Citation :** (2018) 10 CAL CK 0092

**Hon'ble Judges :** Dipankar Datta, J

**Bench :** Single Bench

**Advocate :** Bikash Ranjan Bhattacharya, Dibyendu Chatterjee, Madhuparan Kanrar, Siddhartha Roy, Amitava Choudhuri, Sanghamitra Nandy

**Final Decision :** Dismissed

---

## Judgement

,,,,

Dipankar Datta, J." ,,,,

1. Intending to recruit a Librarian, Kalyani University (hereafter the University) issued an employment notice dated December 17, 2010 (hereafter the" ,,,,

said notice). The minimum qualifications which aspiring candidates were required to possess were specified therein, reading as follows:" ,,,,

â??Minimum Qualifications for Librarian ,,,,

(i) A Masterâ??s Degree in Library Science/Information Science/documentation with at least 55% marks or its equivalent Grade of B in the UGC ,,,,

seven points scale and consistently good academic record set out in the UGC Regulations published in the Gazette of India on 18.09.2010. ,,,,

(ii) At least thirteen years as Deputy Librarian in a University library or eighteen yearsâ?? experience as a College Librarian. ,,,,

(iii) Evidence of innovative library service and organization of public work. ,,,,

(iv) Minimum API score of 400 in Research & Academic Contribution (as per Appendix III, Table VIII(c) of the said UGC Regulation). [Refer" ,,,,

Additional Information (d)].,,,,,

(v) Desirable: A M.Phil./Ph.D. degree in Library Science/Information Science/documentation/achieves and manuscript-keeping.â??,,,,,

2. Power of the University to relax the stipulations regarding qualifications in case of candidates possessing exceptionally good academic records,,,,,

and/or outstanding capabilities of teaching/research/administration, if so recommended by the Standing Committee on specific grounds, was reserved.",,,,,

The applications of the aspiring candidates were required to reach the University on or before January 17, 2011.",,,,,

3. Only 4 (four) candidates responded to the said notification including Sri Mriganka Mondal (hereafter Mriganka) and Dr. Asitabha Das (hereafter,,,,,

Asitabha). Mriganka, while applying for the post of librarian, was working as the librarian of North Bengal University (hereafter the NBU) whereas",,,,,

Asitabha was working as the Deputy Librarian of the University. The selection process that followed at the instance of the University, after receipt of",,,,,

applications from the 4 (four) aspiring candidates, culminated in Mriganka being selected and appointed on the post of librarian of the University.",,,,,

Learning of Mrigankaâ??s selection and issuance of appointment letter in his favour on March 1, 2012, Asitabha objected to the same vide his",,,,,

representation dated March 2, 2012. Since such representation did not yield any result, Asitabha invoked the writ jurisdiction of this Court by",,,,,

presenting W.P. 5641 (W) of 2012 on March 20, 2012 seeking, inter alia, orders of cancellation of the appointment and joining letter of Mriganka, and",,,,,

declaring the post of librarian of the University as vacant and to fill up the same upon constituting a proper selection committee as per Government,,,,,

notification. ....

4. The writ petition was vehemently opposed by the University as well as Mriganka by filing counter affidavits. Upon exchange of affidavits, the writ",,,,,

petition came up for consideration before a learned Judge of this Court. On a contested hearing, His Lordship allowed W.P. 5641 (W) 2012 with costs",,,,,

of Rs.34,000/-, to be borne by the University, by a judgment and order dated August 8, 2012. The appointment of Mriganka was set aside, the post of",,,,,

librarian was declared vacant and liberty was granted to the University and its officers to fill up such post in accordance with law. On the prayer of,,,,,

Mriganka, the learned Judge stayed the operation of the order for 3 (three)

weeks." ,,,,

5. It is this judgment and order dated August 8, 2012 that left the University and its officers as well as Mriganka deeply aggrieved; hence, separate" ,,,,

appeals were carried therefrom by the University and its officers (FMA 1285 of 2013) and by Mriganka (FMA 823 of 2013).,,,,

6. Upon hearing an application for stay filed by the University in its appeal, a coordinate bench by an ad-interim order dated August 28, 2012 had" ,,,,

continued the order of stay passed by the learned Judge until further orders. A subsequent order dated April 25, 2013 of the coordinate Bench" ,,,,

continued such order of stay till the disposal of the appeal. This allowed Mriganka to continue on the post of librarian of the University. ,,,,

7. The appeals, in due course, were placed before us for hearing. We have heard Mr. Bhattacharya, learned senior advocate for Mriganka, Mr." ,,,,

Chaudhuri, learned advocate for the University, and Ms. Nandy, learned advocate for Asitabha at length. We have also considered the materials on" ,,,,

record as well as the written notes of arguments submitted by Mriganka. ,,,,

8. In the Gazette of India dated September 18, 2010, the University Grants Commission (Minimum Qualifications for Appointment of Teachers and" ,,,,

other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010" ,,,,

(hereafter the UGC 2010 Regulations) were published. Regulation 2 provided that the minimum qualifications for appointment and other service ,,,,

conditions of, inter alia, university librarians, as a measure for the maintenance of standards in higher education, shall be as provided in the annexure to" ,,,,

the UGC 2010 Regulations. While reiterating the same in clause 3.2.0 of the annexure, the minimum qualifications for appointment on the post of" ,,,,

librarian were laid down in clause 4.5.0. Clause 4.5.1 provided as follows: ,,,,

â??UNIVERSITY LIBRARIAN ,,,,

i. A Masterâ??s Degree in Library Science/Information Science/documentation with at least 55% marks or its equivalent grade of B in the UGC ,,,,

seven points scale and consistently good academic record set out in these Regulations. ,,,,

ii. At least thirteen years as a Deputy Librarian in a university library or eighteen yearsâ?? experience as a College Librarian. ,,,,

iii. Evidence of innovative library service and organization of published work. ,,,,

iv. Desirable: A M.Phil./Ph.D. Degree in library science/information science/ documentation/archives and manuscripts-keeping.â??,,,,

Appendix III appended to the UGC 2010 Regulations, to the extent relevant, laid down as follows:",,,,

MINIMUM APIS AND OTHER NORMS FOR THE DIRECT RECUIRTMENT OF LIBRARIAN POSITIONS IN UNIVERSITY,,,,

DEPARTMENTS/COLLEGES (TO BE CONSIDERED ALONG WITH OTHER SPECIFIED ELIGIBILITY QUALIFICATION,,,,

STIPULATION IN THIS UGC REGULATION),,,,,

AssistantÂ,,,,

S.No. of Minimum University Deputy Librarian (university,,,,

I,"API score (Research

and Academic

Contribution â?

Category III)",---,"Consolidated API

score

requirement of

300 points","Consolidated API

score requirement of

400 points

II,"Selection Committee

criteria/weightages

(Total Weightage =

100)","a) Teaching /

compute and

communication

skills by a Lecture

demonstration

(30%)

b) Record of Library

management skills

(20%)

c) Interview

performance (50%)", "a) Library

related

Research /

Theme papers

(3 Nos)

Evaluation:

(50%)

b) Library

automation

skills and

Organizationa

I Plans (20%)

c) Interview

performance

(30%)", "a) Library Research

papers (Five)

evaluation (60%)

b) Organizational track

record of innovation

library service and

vision plan (20%)

c) Interview

performance (20%)

1) The said notice required the candidates to have consistently good academic record and that Asitabha did not have a better academic record than,,,,

Mriganka (all along Mriganka qualified examinations taken by him being placed in the first division whereas Asitabha could scrape through at the,,,,

higher secondary and graduation level examinations);,,,,

2) Asitabha lacked the locus standi to challenge the selection;,,,,

3) Asitabha having participated in the selection process and the result of selection not having been palatable to him, he cannot turn around and question" ,,,,

the jurisdiction of the Standing Committee to select the most suitable candidate; and,,,,

4) Mriganka had left a permanent job at the NBU on the basis of the letter of appointment issued by the University and the Court may refrain from,,,,

exercising discretionary jurisdiction bearing in mind the harsh consequences that are likely to follow if relief claimed were granted.,,,,

17. The learned Judge dealt with each of the contentions raised by the University and Mriganka, which we shall presently note and examine, and" ,,,,

express our views thereon.,,,,

18. Referring to the UGC 2010 Regulations, the letter of the Deputy Secretary dated October 19, 2010 as well as the said notice dated December 17," ,,,,

2010, His Lordship held that the University acted illegally. The Government while creating the post of librarian had made it abundantly clear that the" ,,,,

latest guidelines of the UGC have to be followed and the University admittedly had ignored the UGC guidelines.,,,,

19. There is no reason for us to differ with the learned Judge on this score. It could be true that the University Act and the Statutes had not been,,,,

amended to bring the same in conformity with the UGC 2010 Regulations; however, that is a fault/omission of the University. The UGC 2010" ,,,,

regulations were published at least 5 (five) months prior to the said notice. The State Government while conveying approval of creation of the post of,,,,

librarian and granting permission to recruit, vide the letter dated October 19, 2010, required such post to be filled up in terms of the latest UGC" ,,,,

guidelines which, obviously, would mean the UGC 2010 Regulations. Having regard to the terms of the said letter dated October 19, 2010, it was" ,,,,

obligatory for the University to bring about uniformity in the qualifications for recruitment by amending the University Act and the Statutes in line with,,,,

the UGC 2010 Regulations. Mr. Chaudhuri could not explain why the terms of the UGC 2010 Regulations relating to appointment on the post of,,,,

University librarian had been incorporated in the said notice by reference, if such regulations had not been adopted by the University. Such" ,,,,

incorporation presupposes that the UGC 2010 Regulations had duly exercised the consideration of the University whereafter, consciously, such",,,,,

incorporation was made. The University cannot take advantage of its fault/omission to make amendments in the University Act and the Statutes to,,,,

sustain the appointment of Mriganka. In that view of the matter, the learned Judge was perfectly justified in returning the finding referred to above.",,,,,

20. Failure on the part of the University to insist on the requirement of obtaining a minimum API score of 400 incurred the frown of the learned Judge,,,,

on the ground that the said notice itself envisaged that such score had to be obtained by an aspiring candidate for recruitment on the post of librarian.,,,,

His Lordship placed reliance on the decision of the Supreme Court reported in (1990) 3 SCC 655 : District Collector & Chairman, Vizianagaram",,,,,

Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi. In paragraph 6 thereof, the Supreme Court sounded a caution in",,,,,

respect of appointments being made in disregard of qualifications mentioned in an advertisement. According to the Supreme Court, making an",,,,,

appointment in such disregard amounts to a fraud on public unless the qualifications are relaxable.,,,,

21. True it is, the said notice contained a clause relating to relaxation which we have noted above but such relaxation could be granted if so",,,,,

recommended by the Standing Committee and that too on specific grounds. We have not been shown and it does not appear from the materials on,,,,

record that the Standing Committee, on specific grounds, had recommended relaxation of the API score qua Mriganka. The learned Judge did not",,,,,

discuss the point of power of relaxation that was available to the University; however, since the API score had not been relaxed and in the absence of",,,,,

any recommendation made by the Standing Committee on specific grounds, we have no hesitation in concluding that Mriganka was not even eligible to",,,,,

be considered for appointment on the post of librarian.,,,,

22. Dealing with the objection of Mriganka that he had a better academic record than Asitabha, the learned Judge was of the opinion that although",,,,,

Mriganka had fared better than Asitabha upto the graduation level, from the Master's level and above Asitabha stole a march over Mriganka.",,,,,

Asitabha had even a Ph.D. degree to his credit which Mriganka lacked. According to the learned Judge, in the absence of any rule laying down the",,,,,

parameters of consistent good academic record, Asitabha as a beginner was not that serious but at the stage of maturity he left Mriganka trailing",,,,,

behind.,,,,,

23. It is not entirely correct to say that there is no indication of what would constitute "consistent good academic record". We are of the opinion,,,,

that clauses 3.2.0, 3.3.0 and 3.3.1 of the UGC 2010 Regulations do shed some light on what good academic record would constitute and we find that",,,,,

Asitabha indeed qualifies in that behalf and not Mriganka. Both Asitabha and Mriganka had more than 55% marks at the Master's level but it has,,,,

not been shown to us that they have cleared either the National Eligibility Test (NET)/the State Level Eligibility Test (SLET). The bio-data of the two,,,,

candidates, available at page 127 of the paper book filed in FMA 1285 of 2013, suggests so. However, Asitabha having a Ph.D. degree to his credit",,,,,

was not required to clear NET/SLET. Viewed from such angle also, Mriganka was not even qualified to apply for the post of librarian.",,,,,

24. Law is well settled that the writ court, or for that matter, an appellate court hearing an intra-court appeal does not sit in appeal over the decision of",,,,,

experts/selectors comprised in a board appointed by a university based on whose opinion/recommendation the university ultimately proceeds to make,,,,

appointments.,,,,,

25. We may, at this juncture, refer to the Constitution Bench decision reported in AIR 1965 SC 491 : University of Mysore & anr. v. C.D. Govinda",,,,,

Rao & anr. In such decision, while considering a challenge to the judgment of the relevant high court interfering with the selection and appointment of",,,,,

a candidate on the post of Reader, the Supreme Court had the occasion to strike a note of caution that when appointments made by universities on the",,,,,

recommendations made by board of appointments to the post of teachers are challenged, normally the Court should be slow to interfere with the",,,,,

opinion expressed by the experts; what the High Court should consider is whether the appointment made by the chancellor on the recommendation of",,,,,

the board contravenes any statutory or binding rule or ordinance (emphasis supplied), and in doing so, the High Court should give due regard to the",,,,,

opinion expressed by the board and its recommendations on which the chancellor has acted.,,,,,

26. To a limited extent therefore, judicial review is permissible; and that is,

whether the experts/selectors while selecting one and not selecting others",,,, for appointment have adhered to the statutory or binding rules relating to appointment. We read this decision as authorizing the high courts, while",,,, hearing a challenge to an appointment made on the recommendation of a board of experts/selectors, to examine whether the decision making process",,,, suffers from the vices of "illegality", "irrationality" and "procedural impropriety", being the grounds on which administrative action is",,,, subject to control by judicial review. It is not and cannot be the law that the recommendation for appointment having been made by a body of",,,, experts/selectors, and the courts having no expertise on the subject, it would be an absolute "no-entry" field for the courts. Within the limits of",,,, judicial review, such administrative action can always be tested. A mere assertion that the impugned action does suffer from any or all the said vices",,,, would not be sufficient for the court to interfere; the party alleging has to establish before the court that the impugned action does attract such vices",,,, by placing relevant evidence.,,,,

27. By an order dated June 22, 2018, we had called upon Mr. Chaudhuri to produce the records of selection. Some documents (photo copies) were",,,, produced on the next day (July 3, 2018) which, according to Mr. Chaudhuri was all that was given to him by the University.",,,,

28. We cannot help expressing our displeasure and dismay at the casual manner of preservation of records by the University. The original records",,,, according to Mr. Chaudhuri, were not available. Most of the documents contained in the file were on record before us and hence are of no additional",,,, assistance.,,,,

29. We had called for the records to see the manner of allotment of marks by the selectors to each of the 3 (three) candidates. The records placed",,,, before us did not indicate how the Standing Committee proceeded to determine who amongst the 3 (three) candidates was most suitable for",,,, appointment on the post of librarian. There was no earmarking of marks for academic qualifications, experience, API score, and interview, and hence",,,, the 3 (three) candidates have not been allotted any marks. Only on alleged consideration of the bio-data and the performance at the interview",,,, Mriganka was recommended for appointment.,,,,

30. We were not shown that the process adopted by the Standing Committee

finds support from any provision of the University Act and the Statutes.,,,,

The recommendation of the Standing Committee that Mriganka is more suitable calling for his selection appears to have been made in a rolled-up.,,,,

manner without any degree of clarity and transparency. The process completely lacked objectivity. One would have thought that the Executive.,,,,

Council of the University, being the authority having the final say in the matter, would intervene; alas, such council continued abegging. We have no",,,,

hesitation to hold that the process of selection of Mriganka has been tainted by all the three vices that would make such process thoroughly vulnerable.,,,,

to challenge and tainted to such an extent that there can be no second opinion about its invalidity.,,,,

31. The contention of Mriganka that Asitabha could not be categorized as a person aggrieved having locus standi to question the former's.,,,,

selection and appointment was rejected by the learned Judge as totally lacking in substance.,,,,

32. We entirely share such view. Asitabha perceived himself to be better qualified than Mriganka, who was his rival for appointment as the University",,,,

librarian. According to him, the manner in which the Executive Council decided to appoint Mriganka was not in accordance with law. Certainly," ,,,,

Asitabha did have the locus standi to challenge Mriganka's selection and appointment. We wonder, who else other than Asitabha could be",,,,

considered to be an aggrieved person on facts and in the circumstances.,,,,

33. The learned Judge was right in distinguishing the decision reported in AIR 1973 SC 964 : Dr. Umakant Saran v. State of Bihar & ors., by",,,,

observing that in the case before His Lordship it was nobody's case that Asitabha did not have the requisite qualification and that, on the contrary," ,,,,

his case was that he was more qualified than Mriganka who had been appointed throwing all rules and fair play to the wind.,,,,

34. One of the points raised by Asitabha, which was not dealt with by the learned Judge, relates to lack of experience of Mriganka as indicated in the",,,,

said notice. According to Asitabha, Mriganka did not have 13 years of service as Deputy Librarian in a university library or 18 years's service as a",,,,

college librarian. From the bio-data [page 127 (supra)], it appears that Mriganka had worked as assistant librarian in the university from July 30, 1994",,,,

to April 12 2007 and as librarian of NBU with effect from April 13, 2007.

Apparently, there is nothing on record to suggest that the combined of" ,,,,  
service of Mriganka as assistant librarian and librarian was sufficient to bring him  
within the zone of consideration. Be that as it may, since the learned" ,,,,  
Judge has not given any decision on this point and Asitabha has not preferred a  
cross-objection, we refrain from given any opinion either way based" ,,,,  
on our own understanding of the relevant materials.,,,,

35. The learned Judge negatived the third contention raised by Mriganka that  
Asitabha having appeared before the Standing Committee without,,,,  
demur, cannot question the jurisdiction of such committee in interviewing the  
candidates. We are of the view that having appeared before the Standing" ,,,,  
Committee knowing fully well that in terms of the University Act and the Statutes  
it was the Selection Committee which should have interviewed the,,,,  
candidates and not the Standing Committee, Asitabha is estopped to question  
the Standing Committee's jurisdiction. If any authority is needed, we" ,,,,  
may refer to the decision reported in (1976) 3 SCC 585 : Dr. G. Sarana v.  
University of Lucknow & ors. We, thus, do not approve of the reasoning of" ,,,,  
the learned Judge on this aspect.,,,,

36. We would, however, like to add a caveat here. Of course, by his appearance  
before the Standing Committee Asitabha may have forfeited his right" ,,,,  
to question the jurisdiction of such committee to interview the candidates but did  
not forfeit his right to question the manner of selection by such,,,,  
committee or approval thereof by the Executive Council. This aspect of the  
matter shall be dealt with a little later while dealing with the contentions of,,,,  
Mr. Bhattacharya.,,,,

37. The last contention of Mriganka urging the writ court not to interfere on  
equitable consideration was also spurned by the learned Judge by,,,,  
assigning a reason with which we cannot disagree. His Lordship held that sight  
cannot be lost of the fact that Mriganka from the very beginning was,,,,  
aware that the requisite qualification was not in his possession and, and,  
therefore, the hardship was not an unforeseen one; it was foreseeable and" ,,,,  
having acted rashly in ignoring it, the Court cannot come to Mriganka's  
rescue." ,,,,

38. From the aforesaid discussions, it would appear without any iota of doubt  
that Mriganka was the real beneficiary of an illegal selection process." ,,,,

Not interfering with the process on the ground of hardship would have resulted in

allowing Mriganka to reap the benefits of such illegal process. The,,,,

question that naturally arises is, why the court of law should be blind to such illegal process to sustain the selection and appointment of Mriganka and",,,,,

thereby save him from hardship? We have not been given a plausible answer by Mr. Bhattacharya. The jurisdiction of the writ court is not exercised,,,,

on considerations of compassion, grace or charity. The learned Judge was left with no other option but to interdict and we approve the same.",,,,

39. Now, we shall deal with the additional arguments advanced by Mr. Bhattacharya.",,,,

40. The first point is this. Asitabha consciously appeared before the Standing Committee and, therefore, cannot raise the question of the Standing",,,,,

Committee exercising authority to select a suitable incumbent for appointment on the post of librarian. The point is sought to be developed also by,,,,

arguing that the Standing Committee is the appropriate committee for selecting incumbents for appointment on non-teaching posts and the post of,,,,

librarian being a non-teaching post, the Standing Committee did exercise authority duly. If Asitabha felt that the post of librarian falls within",,,,,

â??teacherâ?? category and it is the Selection Committee that selects incumbents for appointment as teachers, Asitabha ought to have stayed away",,,,,

from the interview held before the Standing Committee on March 8, 2011 in spite of his specific knowledge that he had been asked to appear before",,,,,

the Standing Committee. He had taken a calculated chance to appear before the Standing Committee and has espoused a grievance only when he,,,,

turned out to be unsuccessful. In support of such contention, reference was made to the decisions of the Supreme Court reported in (2017) 4 SCC 357",,,,,

: Ashok Kumar & anr. v. State of Bihar & ors., (2014) 16 SCC 187 : Ranjan Kumar v. State of Bihar & ors. and (2016) 1 SCC 454 : Madras Institute",,,,,

of Development Studies v. Dr. K. Sivasubramaniyan.,,,,,

41. The next point urged by Mr. Bhattacharya is that Asitabha had obtained the benefit of Career Advancement Scheme (CAS) and has been,,,,

working as a librarian of the University. He is due to superannuate in April, 2019, whereas Mriganka has at least 6 (six) yearsâ?? service left before",,,,,

superannuation. In such circumstances, it is all the more necessary to interfere because, on the one hand, Asitabha has achieved his cherished goal of",,,,,

working as the librarian of the University and on the other, disturbing Mrigankaâ??

s appointment at this distance of time because of the fault of the",,,,,

University would be disastrous for Mriganka and may not be in the larger public interest.,,,,,

42. It was further argued that the UGC 2010 Regulations were ipso facto not applicable till the same were incorporated in the University Act and the,,,,

Statutes; as such, the University did not act illegally in not following the UGC 2010 Regulations. Reliance was sought to be placed on the decision of",,,,,

the Supreme Court reported in (2015) 6 SCC 363 : Kalyani Mathivanan v. Jeyaraj & ors. in this regard.,,,,,

43. On the aspect of equitable consideration, the decisions reported in (2016) 12 SCC 342 : Md. Zamil Ahmed v. State of Bihar & ors. and AIR 2001",,,,,

SC 1178 : Zila Sahakari Kendriya Bank Mariyadit v. Jagdish Chandra were relied on.,,,,,

44. Reliance was also placed by Mr. Bhattacharya on the decision reported in (2003) 7 SCC 238 : State Text Book Workersâ?? Union v. State of",,,,,

Bihar for the proposition that an advertisement for recruitment cannot contain the qualifications, which have no statutory support from the recruitment",,,,,

rules.,,,,,

45. In Dr. K. Sivasubramaniyan, the Supreme Court referred to the decision reported in 1986 Supp SC 285 : Om Prakash Shukla v. Akhilesh Kumar",,,,,

Shukla as well as the decisions reported in (2013) 11 SCC 309 : Ramesh Chandra Shah v. Anil Joshi, (2010) 12 SCC 576 : Manish Kumar Shahi v.",,,,,

State of Bihar and (1995) 3 SCC 486 : Madan Lal v. State of J&K to hold that a candidate having participated in the selection process without demur",,,,,

cannot turn back and challenge the same on becoming unsuccessful. In Ashok Kumar (supra) the Supreme Court upon consideration of the decisions",,,,,

in Manish Kumar (supra), Ramesh Chandra (supra), Dr. K. Sivasubramaniyan (supra) and Madan Lal (supra) as well as decisions reported in (2007)",,,,,

11 SCC 522 : Marripati Nagaraja v. The Government of Andhra Pradesh, (2008) 4 SC 171 : Dhananjay Malik v. State of Uttaranchal, (2009) 3 SCC",,,,,

227 : Amlan Jyoti Borrooah v. State of Assam, (2011) 1 SCC 150 : Vijendra Kumar Verma v. Public Service Commission, (2014) 10 SCC 521 :",,,,,

Chandigarh Administration v. Jasmine Kaur and (2015) 11 SCC 493 : Pradip Kumar Rai v. Dinesh Kumar Pandey, held that it is not permissible for",,,,,

the candidates to challenge the selection process after participating therein.

However, in Ashok Kumar (supra), the Court noted the decision reported",,,,,

in (1997) 9 SCC 527 : Raj Kumar v. Shakti Raj but did not apply the law laid down therein by observing that the "decision in distinguishable". In,,,,

Raj Kumar (supra), the Supreme Court after taking note of the law laid down in Madan Lal (supra) had held that the Government having committed",,,,,

glaring illegalities in the procedure of selection, the principle of estoppel by conduct or acquiescence had no application." ,,,,

46. In Ranjan Kumar (supra) too, the Supreme Court upon referring to various decisions reiterated that candidates participating in selection, fully",,,,,

aware of the process, cannot challenge the process on becoming unsuccessful." ,,,,

47. Law, as it follows from the decisions cited by Mr. Bhattacharya, is that a process of selection cannot be challenged by an unsuccessful candidate",,,,,

by pointing to certain irregularities here and there in the process of which he was aware, once the result is not to his liking. Relief, in such a case, is",,,,,

declined by applying the principles of estoppel, acquiescence and/or waiver. It is of utmost importance to note one common thread that passes through",,,,,

all the decisions, i.e., awareness of the unsuccessful candidate of the manner in which the selection process would be conducted and completed." ,,,,

Despite the process being likely to be conducted either in ignorance or deviation of a rule, which is binding on the employer, or the constitution of the",,,,,

selection committee is strictly not in accordance with the requirement of the governing rules/guidelines, the candidate being aware thereof approached",,,,,

the court and urged the Court to undo the irregularity after he had taken a chance of selection albeit unsuccessfully. There can be no doubt that such,,,,

litigation must be nipped in the bud.,,,,

48. Looked into all the aforesaid decisions cited by Mr. Bhattacharya, we do not find in any of these decisions that the learned Judges of the Court",,,,,

were assisted by the advocates appearing for the parties by citing the decision reported in AIR 1990 SC 434 : Dalpat Abasaheb Solunke v. Dr. B.S.,,,,

Mahajan. Paragraph 9 of the said decision is relevant and accordingly reproduced hereunder:,,,,

â??9. \*\*\* It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to,,,,

scrutinize 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. \*\*\*â??",,,,

49. In Raj Kumar (supra), the Supreme Court while dealing with the legality of a selection process that had been challenged by unsuccessful",,,,

candidates had observed as follows:,,,,

â??16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were",,,,

conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the",,,,

posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire,,,,

procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K and other decisions",,,,

referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and",,,,

challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the",,,,

selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955",,,,

Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in",,,,

accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we",,,,

consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the",,,,

Government are not correct in law.â??",,,,

(underlining for emphasis by us),,,,

50. Reading the decisions in Dalpat Abasaheb Solunke (supra) and Raj Kumar (supra) does suggest that the process of selection can be challenged on",,,,

the ground of illegality or patent material irregularity or mala fides vitiating the selection. This is also the conclusion we have reached above reading",,,,

the decision in C.D. Govinda Rao (supra).,,,,,

51. Disputes relating to selection and appointment invariably involve the question as to who can challenge such process, when, and on what ground(s)?" ,,,,

Obviously the beneficiary of an illegal act or process, being the appointee, will not challenge such act/process. Public interest litigation in service" ,,,,

matters is generally not maintainable, except in exceptional cases. More often than not, it is the persons aggrieved by their non-selection/non-" ,,,,

appointment, and consequent selection/appointment of others, who seek to pursue their remedy in accordance with law would approach the court to" ,,,,

have such process, which they perceive to have been tainted, invalidated. If the challenge is nipped in the bud on the basis of the authorities cited" ,,,,

which lay down the law that having participated in the selection process without demur the participating candidate forfeits his right to challenge the" ,,,,

process, does it not sort of extend an immunity from judicial scrutiny to such selection process even though the process might have been illegal? Our" ,,,,

understanding of the law on the subject does not persuade us to hold that an unsuccessful aspirant for a post can never challenge a selection process" ,,,,

after his participation therein. There could be cases where the selection committee selects a candidate, who lacks the essential eligibility criteria for" ,,,,

appointment, as in the present case. How would the eligible candidate know that an ineligible candidate would be preferred to him? There could be a" ,,,,

case where a candidate is selected, who had not applied within the last date for making the applications fixed in the advertisement. How would a" ,,,,

candidate, not selected, know before his appearance before the board of selectors that the selectee had not applied within time. Take the case of a" ,,,,

candidate who is selected by a board of selectors, one of whom is the close relative of the selected candidate and such relationship is not made known" ,,,,

to the other selectors. If the unsuccessful candidate does not have such vital information prior to his appearance before the board of selectors for an" ,,,,

interview and if he has access to such information subsequent to the appointment and the selection of the appointee is challenged on the ground of" ,,,,

patent illegality or manifest bias, could the selection not be challenged and such challenge entertained on the ground that there has been a patent" ,,,,

illegality in the procedure of selection or even mala fides? Or should the door be closed on the face of such an unsuccessful candidate merely because" ,,,,

he had not raised any objection at the time of appearance before the board of selectors? If the latter question is answered in the affirmative, we have",,,,

no hesitation to hold that an illegal selection made by a selecting body would remain beyond the realm of judicial scrutiny. We are also of the view that",,,,

the decisions in C.D. Govinda Rao (supra), Dalpat Abasahed Solunke (supra) and Raj Kumar (supra) are authorities which permit interference with",,,,

the decision to appoint following an illegal selection process and in case of glaring illegalities, such as the present one, estoppel, waiver and",,,,

acquiescence may not have any application depending upon the facts that are presented and established before the court.",,,,

52. The decisions cited by Mr. Bhattacharya are clearly distinguishable on facts and hence do not assist him in any manner.",,,,

53. Reference to the decision in Kalyani Mathivanan (supra) does more harm than good for Mriganka. It has been laid down there that norms for",,,,

admission having bearing on the standard of education, State Legislation on this aspect would be subject to UGC Regulations and entry 66, list one of",,,,

the Constitution. Although it has been held therein that the UGC 2010 Regulations are not applicable to universities coming under the purview of State",,,,

legislature, it is hedged with a condition, i.e., such regulation would be applicable if the State Government wishes to adopt and implement the same",,,,

subject to the terms and conditions therein. In this particular case, the Deputy Secretary insisted on adherence to the latest guidelines of the UGC",,,,

which would obviously mean the UGC 2010 Regulations. Most importantly, the said notice stipulated that the UGC 2010 Regulations would be",,,,

followed. We, thus, hold on the authority of M. Tripura Sundari Devi (supra) that the University could not have departed from the UGC 2010",,,,

Regulations in conducting the selection process. Even it had intended to relax an essential qualification for which power was reserved, recourse to",,,,

such power could have been taken in the manner permissible. Even such power was not resorted to. The contention of Mr. Bhattacharya is",,,,

accordingly answered.",,,,

54. It has not been disputed by Ms. Nandy that Asitabha by virtue of CAS benefits accruing to him has been elevated to the status of a librarian in",,,,

2010 but, according to her, such elevation is personal to him. There is only 1 (one) sanctioned post of librarian, which is held by Mriganka. Being",,,,

designated as librarian and appointed on the post of librarian is not the same. It is Mriganka who has been recognized by all and sundry as the librarian,,,,,

of the university. She has argued that Asitabha's elevation should not be seen as a ground for upsetting the well-written and well-reasoned,,,,

judgment of the learned Judge.,,,,

55. The genuineness of the aforesaid submission was not disputed before us. We, thus, hold that extension of benefits of CAS to Asitabha cannot",,,,

clothe the University or Mriganka with any right to have the arrangement continued.,,,,

56. To recapitulate, we have found Mriganka ineligible to even apply for the post of librarian in terms of the UGC 2010 Regulations read with the",,,,

letter dated October 19, 2010 of the Deputy Secretary, as well as the said notice inviting applications from interested candidates. It is not a question of",,,,

a mere irregularity in the process of selection but palpable flaws which go deep into the roots of the process of selection and strike at the very,,,,

authority to select an ineligible candidate. The conferment of CAS benefits to Asitabha is far outweighed by the illegality in appointing Mriganka,",,,,

which, we feel reluctant to save considering public interest to which Mriganka's personal interest must yield.",,,,

57. We have already held above that compassion, grace or charity cannot colour the minds of the Court and hence saving the appointment of",,,,

Mriganka by applying the equitable doctrine does not arise.,,,,

58. For the reasons aforesaid, the judgment and order under challenge is upheld. The appeals stand dismissed, without order for costs.",,,,

59. We do not wish to bring the curtains down on Mriganka's appointment immediately. To give Mriganka space to arrest his gloomy future",,,,

which seems to be imminent, we direct that Mriganka shall step down as librarian by the end of October, 2018, whereafter the University shall",,,,

proceed to comply with the direction of the learned Judge.,,,,

60. Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer shall be retained with the records of FMA 1285 of 2013.",,,,