
(1996) 01 GUJ CK 0029
In the Gujarat High Court

Prabhakar J. Badheka and Another

APPELLANT

Vs

J.K. Modi and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 35

Citation : (1997) 1 GLR 527

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard learned Counsels for the parties. Challenge in this writ petition has been made by the petitioners to the order dated 8-2-1983 of the Tribunal constituted under the Gujarat Secondary Education Act, 1972 made in Application No. 291 of 1982. In Application No. 291 of 1982, the petitioners have challenged the appointment of respondent No. 2 on the post of Head Master of Shree S.V. Virani High School at Rajkot. The facts relevant in this writ petition are briefly stated. The Head Master of the school retired on 21-11-1980 on reaching the age of superannuation. To fill up that post, the management of the school invited applications from the persons who worked as Secondary Teachers as well as from experienced Higher Secondary Teachers. In response to the said advertisement, number of applications including that of respondent No. 2 have been received. The Selection Committee has interviewed and found respondent No. 2 as meritorious to be appointed to the post of Head Master. This appointment has been challenged by six persons including the present petitioners before the Tribunal constituted under the Gujarat Secondary Education Act, 1972. The Tribunal under its judgment dated 18-10-1982 accepted Application No. 61 of 1981 and appointment of respondent No. 2 as Head Master was declared to be invalid and inoperative in law on three counts. The first count given was that the applicant was not called for interview and as such he has been deprived of his right of consideration for appointment. It has next been held that, even if the applicant has not given the application, then too, the management had failed to obtain his consent in writing that he did not intend to

apply for the post. The last count given was that the Selection Committee was not properly constituted as required under the amended provisions of Rule 64(2) of the Grant-in-Aid Code. After the decision of the Tribunal, the Selection Committee of five members was constituted and the case of the petitioner was considered for appointment to the post of Head Master of the institution, but the Selection Committee has recommended for the appointment of respondent No. 2. On the recommendation of the Selection Committee, respondent No. 2 was appointed. The petitioner, as stated earlier, has challenged that appointment before the Tribunal again and vide the impugned order the appointment was held to be valid.

2. Learned Counsel for the petitioners had challenged the validity of the order of the Tribunal, referred above, on the ground that the Selection Committee was not properly constituted again and that Shri Antani has wrongly been taken as one of the members of the Selection Committee. Referring to the provisions of Section 35, Sub-section (3), the Counsel contended that Shri Antani was not the member of the Management Committee of the School. He was only the Secretary of the School, that is, an employee of the School. Under Clause (1) of Sub-section (3) of Section 35, only the representative of management should have been nominated as a member of the Selection Committee by the management. It has next been contended that Shri Antani and Shri Swadiya who were members of the Selection Committee on the previous occasion when selection of respondent No. 2 was made, they should not again have been included as members of the Selection Committee. An application has been given by the petitioner to the Selection Committee before it met objecting to the inclusion of the aforesaid two persons as members of the Selection Committee. The learned Counsel for the petitioners contended that Shri Antani and Shri Swadiya have acted mala fide in the present case. Respondent No. 2 has been favoured by these two persons in his selection. Lastly, learned Counsel for the petitioners contended that the Tribunal has wide powers in the matter of the challenge made before it to the appointment of a teacher on the recommendation of the Selection Committee. Relying on the decision of this Court in the case of Maganbhai Bhikhabhai Mistri Vs. Olpad Taluka Azaddin and Others, , learned Counsel for the petitioners contended that the Tribunal has committed an error in holding that it is not open to it to question the evaluation made by the Selection Committee. Learned Counsel for the petitioners has further contended that the Tribunal has proceeded on a wrong assumption that the objective and subjective tests adopted by the Selection Committee for selecting best candidate could not be a question of challenge before the Tribunal. The Tribunal is not sitting in appeal against the decision of the Selection Committee.

3. On the other hand, Shri Mishra learned Counsel for the respondents has supported the order of the Tribunal. Relying on the decision of the Supreme Court in the case of Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, , Shri Mishra contended that in the matter of selection of teachers by Selection Committee, this Court has only limited judicial power of review.

Selections are questionable on the ground of some procedural illegality committed or the members of the Selection Committee have acted mala fide. I have given my thoughtful consideration to the submissions made by learned Counsel for the parties. The contention that Shri Antani could not have been taken as a member of the Selection Committee is devoid of any substance. The petitioner has not raised this objection before the Tribunal. It is now not open to the petitioner in the writ petition to raise any new point which has been raised before the Tribunal. When this point has not been raised, it cannot be said that the Tribunal has committed any error in passing of the impugned order. Sub-section (3) of Section 35 of the Gujarat Secondary Education Act, 1972 provides that Special Selection Committee shall consist of members including two representatives of the management of the school to be nominated by the management. Learned Counsel for the petitioners has failed to show any authority in support of his contention that only the persons who are the members of the management of the school could have been nominated and not the employees of the school or third persons. Clause (i) of Sub-section (3) of the Section 35 of the Act of 1972 nowhere puts any such requirement, but only requires that on the Selection Committee two representatives of the management of the school should be there. The representative may be the member or may be an employee or an outsider. In view of this fact, the first contention of the learned Counsel for the petitioners is not acceptable.

4. The second contention of the learned Counsel for the petitioners is that Shri Antani and Shri Swadiya could not be put on the Selection Committee as they were the members of the earlier Selection Committee in which selection of respondent No. 2 has been made and that selection was quashed by the Tribunal. I have gone through the judgment of the Tribunal passed in the earlier proceeding and it is not the direction of the Tribunal that the members who were there in the earlier Committee cannot be put in the new Selection Committee. But the Tribunal has directed that the management has to give a fresh advertisement in the paper within one month from its order inviting applications from all concerned and after constituting a Selection Committee consisting of five persons as mentioned in the Government Circular to interview the candidates who have made their application. The Selection Committee should have been of five members as provided under the Circular and it is not in dispute that it was a Selection Committee of five persons. Learned Counsel for the petitioners is unable to point out any provision under the Act of 1972 which put such condition. In the absence of such provision, I fail to see any justification in the grievance made on this count. The Tribunal has rightly held that the petitioners have failed to bring to its notice any law which prevents the members of the previous Selection Committee to sit again for the selection of a Head Master. The earlier selection of respondent No. 2 was set aside on the ground that the Selection Committee was not properly constituted. The Selection Committee was held to be defective, that is, of not of requisite number of members. The matter would have been different if those two persons have any bias against the petitioners or

the selection of respondent No. 2 made earlier should have been found to be by biased persons. That is not the case here. Though learned Counsel for the petitioners in the present case as well as before the Tribunal has raised the contention of enmity of these two persons against the petitioners, but that contention was not accepted by the Tribunal. It is relevant to note that the application which is alleged to be submitted by the petitioners before the Selection Committee objecting to the inclusion of Shri Antani and Shri Swadiya as members of the Selection Committee has not been produced in this petition. From the contention which was raised by the Counsel who appeared for the petitioner before the Tribunal with reference to this application, it is clear that the objection was only to the extent that members of the previous Selection Committee should not have sat for interview again. The Tribunal rightly held that the petitioner has failed to show any mala fides on the part of Shri Antani and Shri Swadiya against the petitioner or any favoritism was extended to respondent No. 2. Petitioner No. 1 before the Tribunal was examined and in his deposition he had admitted that Antani and Swadiya have no enmity against him. Referring to para 4 of the writ petition, learned Counsel for the petitioners contended that respondent No. 2 is a favourite of the management of the school. Though no material has been produced in support of this allegation, even if I proceed with this assumption, the ground that two representatives of the management of the school were included in the Selection Committee will not vitiate selection of respondent No. 2. It is not the case where selection was made by the management. It is the case where appointment was made by the management on the recommendation of the Selection Committee and the petitioners could not make out any case of mala fides against any of the members of the Selection Committee.

5. The Tribunal has decided the matter on merits. It is true that at two places the Tribunal has observed that it is not permissible to proceed as a Court of appeal upon the decision of the Selection Committee. At one place, the Tribunal has observed that it is not open to it to consider the question whether evaluation of the Selection Committee was not proper. The objective and subjective tests at the selection could not be a question of challenge before the Tribunal. From the judgment it is clear that the matter has been decided on merits. To certain extent, the Tribunal was right to observe that in the matter of selection of teachers by Selection Committee consisting of experts, normally the Court does not sit as an appellate Court. Selection of the candidates made by the Selection Committee is normally questionable only on limited grounds. Judicial review of decision of Selection Committee on the question of selecting the best candidate is limited and not wide. In such cases, it is difficult to accept that the power of the Tribunal in the matters of recommendations made by the Selection Committee for appointment is co-existent with the powers of the Selection Committee itself. The selection of teachers is to be made by the persons who are expert in the subjects and normally the decision taken by them should not be interfered with. In view of these facts, the observations made by the Tribunal

have to be taken into consideration in the contest in which the same have been made. It is not the case of the petitioners that in the matter of selection, the Tribunal has any power to substitute its own decision in place of the Selection Committee which consists of experts. I consider it to be proper at this stage to make a reference to the decision of the Supreme Court in the case of Dalpat Abasaheb Solunke, (supra). The Supreme Court in this case in para 9 has observed that it is needless to emphasise that it is not the function of the Court to sit in appeal over the decision of the Selection Committee 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. It is not disputed that in the present case the University has constituted the Committee in due compliance of the relevant statutes. The Committee consisted of expertise and it selected the candidates after going through all the relevant materials before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

6. Exactly, what the petitioners contended before the Tribunal and contending before this Court is that the Tribunal should have and now this Court assessed itself the comparative merits of the petitioners and respondent No. 2 which is not permissible either of the two. It is absolutely in the domain of the Selection Committee which consists of experts to select candidates after going through all the relevant material before it. The decision of the Selection Committee is permissible to be interfered with only on limited grounds. It is not the case of the petitioners that any illegality or patent material irregularity has been made in the constitution of the Committee, or its procedure vitiating the selection or proved mala fides in the selection. Whatever illegality is pointed out in the constitution of the Selection Committee, as already held earlier in the judgment, is not illegality or patent material irregularity in the constitution of the Selection Committee. It is not the case of the petitioners that the procedure adopted by the Selection Committee vitiates the selection. So far as the mala fides are concerned, as observed earlier in the judgment, the petitioner failed to make out any case.

7. Lastly, learned Counsel for the petitioners has contended that the petitioners are seniors to respondent No. 2, and as such the seniormost person should have been given appointment. A reference was made by the learned Counsel for the petitioners to Sub-section (5) of Section 35 of the Act of 1972. This provision has been reproduced by the petitioners in the writ petition and emphasis has been made on the proviso to the said Sub-section. This proviso provides that, for the purpose of selection, preference shall be given to the senior teacher serving in the school, if he is otherwise eligible and suitable. It is not disputed that the

appointment on the post of Head Master is to be made on selection. It is being the selection post, it is for the Selection Committee to evaluate the comparative merits of the candidates or to find out the best and meritorious candidate out of them. But, what the proviso contemplates is that a senior teacher should be given preference if he is otherwise eligible and suitable.

8. The question of giving preference may have arisen when two candidates were found to be of equal merits. In case proviso to Sub-section (5) of Section 35 is read and given effect to in the manner as it is argued by the learned Counsel for the petitioners, then, there is no question of selection. It will be only a case of appointment on seniority. That is not the requirement of the Act of 1972. It provides for appointment on the post of Head Master on selection. This proviso can only be given effect to where in the eventuality, as observed earlier, the candidates were found to be of equal merits. In such case, the seniority may have play the role. But it is for the Selection Committee to consider and not for the Tribunal or to this Court. As stated earlier, selection of the candidate is only questionable on the grounds as observed by the Supreme Court in its aforesaid decision and not on the grounds which have been made by the petitioners, and as such this writ petition fails and the same is dismissed. Rule is discharged. No order as to costs.