
(1982) 07 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1532 of 1980

Pukhraj Purohit

APPELLANT

Vs

University of Jodhpur

RESPONDENT

Date of Decision : 22-07-1982

Acts Referred:

Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974
— Section 2(iii), 4

Citation : (1982) WLN 231

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—The petitioner, in this writ petition, has challenged the selection of respondent No. 4, 5, and 6 for post of Branch Librarian in the University of Jodhpur. The names of these respondents were recommended by the Selection Committee. Petitioner's case is that this Selection Committee was constituted contrary to Section 4 of the Rajasthan Universities' Teachers and Officers (Special Conditions of Service) Act, 1974 as amended by Act No. 24 of 1976.

2. It was argued by Shri Vyas, the learned Counsel for the petitioner, that the post of Branch Librarian is covered by the definition of the word, "officer" as defined in Section 2(iii) of the Act, of 1974 which reads as under:--

Officer" means the Registrar, the Deputy Registrar, the Assistant Registrar, the Librarian of a University and, includes any other "officer" by whatever name designated, and, declared by the Statute to be an officer of that University.

The contention of Shri Vyas in this respect can be expected now and to precise in exact form used by him in his written arguments.

3. The aforesaid definition of the word, "officer" clearly shows that the definition of this word, "officer" is very wide and covers all sorts of officers from the non-teaching posts irrespective of the fact whether their pay scales are lower than or

equal to that of the Assistant Registrar. For the appointments of a "Teacher" and an "Officer" in any University of Rajasthan excepting those mentioned in Section 3(3) of the Act, it is mandatory that the recommendation for such a post can only be made by a Selection Committee constituted u/s 4 of the Act and non-compliance of the same would make such selections null and void.

4. u/s 3 of the aforesaid Act No. 24 of 1976 (hereinafter called the Act) no teacher and no officer in any University in Rajasthan shall be appointed except on the recommendations of the Selection Committee constituted u/s 4. u/s 3(2) of the aforesaid Act every appointment of a "teacher" or an "officer" in any University made in contravention of Sub-section (I) shall be null and void. Sub Section (3) of Section 3 of the aforesaid Act states that the appointment of a "teacher" or an "Officer" as a stop-gap arrangement can be made for a period not exceeding six months. Section 3(3) further states that the provisions of Section 3(1) read with Section 3(2) shall not apply in the following class of cases.--

(i) to the appointment of a part-time teacher

or (ii) to the appointment of a "teacher" for the pay-scale lower than that of the lecturer.

or(iii) to the appointment of an "officer in the pay scale lower than that of Asstt. Registrar.

5. Shri Vyas submitted that the aforesai(sic) ingredients of Sub-section (3) of Section 3 read with ingredients of Section 2(iii) would show that the interpretation of the word "officer" has been made applicable even to those persons of non-teaching staff whose pay scale is even lower than that of Assistant Registrar and so far the other posts having the pay-scale equivalent to that of the Assistant Registrar is concerned they are officers for whom Selection Committee is required to be constituted as required u/s 3 of the Act.

6. The learned Counsel for the petitioner further contends that in Section 4 (1) (v) of the Act it has been specifically provided that for every selection of an "officer" in the University there shall be constituted a Committee consisting of such other persons as members specified in Col. (2) of the Schedule for the selection of the teachers and "officer"s mentioned in col. (1). In the schedule appended with the Act there are only two categories of persons for whom the Selection Committee is required to be constituted u/s 4 and those categories of persons are, namely, (i) teachers and (ii) officers as stated above.

7. In the Schedule at item No. 1, 2, 3 of Col. (1) various posts of teachers have been mentioned for whom such other persons as members specified in col. (2) of the schedule are mentioned. Item No. 4, 5, and 6 of Col. (1) of the schedule relate to the non-teaching posts including the Registrar, the Deputy Registrar, the Assistant Registrar or any other "officer" having the pay-scale equivalent but not lower than that of the Assistant Registrar.

8. According item No. 4, all the non-teaching posts having a pay-scale equivalent to that of the Assistant Registrar are deemed to be the posts covered by Section 3(1) r.w. Section 3(2) of the Act.

9. The post of a Librarian, Deputy Librarian, Assistant Librarian or Junior Technician in the Library are also the non-teaching posts and there is no third category of the posts under the head Librarian.

10. The learned Counsel for the University of Jodhpur argued that the post of the Branch Librarian is not that of an "Officer" as defined u/s 2(iii) r.w. item No. 6 column (1) of the Schedule where the posts of Deputy Librarian, Assistant Librarian or Junior Technician in the Library or any other officer in the Library having his pay in a scale not lower than that of the Lecturer has been mentioned.

11. Contrary to it, Shri Vyas submitted that all those posts in item No. 6 column (1) of the Schedule are neither specifically mentioned in Section 2(3) of the Act nor they have been declared by any statute framed under the Jodhpur University Act but by virtue of the definition of the word, "officer" as stated above in Section 2 (iii) read with Section 3(3) and Section 4 (v) of the Act, all these are non-teaching posts for whom the number of experts to participate for the selection of these officers have been mentioned in item No. 2 of Clause (2) of the Schedule.

12. The contention of the petitioner is further strengthened by the act of the University itself including the Syndicate as well as the Vice-Chancellor. This is apparent from the following documents on record.

13. Annexure P/17 dated the 30th October, 1976 is resolution of the Syndicate in which it has been reported that the Vice-Chancellor had appointed the experts for the Selection Committee as required u/s 4 of the Rajasthan Universities' Teachers and Officers (Special Conditions of Service) Act 1974 "Act No. 18 of 1974) hereinafter called the "Act" Under the head "Officers" the following posts have been mentioned in the said Resolution, namely, (1) Librarian (2) Deputy Librarian (3) Branch Librarian and by the same Resolution the recommendation of the Selection Committee constituted u/s 4 of the Act for the appointment of the Branch Librarian has been approved in which the name of the petitioner finds place at Section No. 2 at p. 5% of the typed paper book.

14. As the petitioner's name had been recommended by the Selection Committee duly constituted u/s 4 of the Act and approved by the Syndicate by its order dated the 30th October, 1976 (Annexure P/17) the petitioner had been given a temporary appointment for the post of a Branch Librarian against the leave vacancy of Shri K.L.B. Rai for a period till Shri Rai returns from leave. Previously the word Professional Assistant had been used in Annexure P/7 but thereafter on 12th January, 1977 a corrigendum had been issued and the word "Branch Librarian" instead of Professional Assistant" was substituted.

15. As Shri K.L.B. Rai was not returning within a period of six months and the

period of the arrangement was likely to remain till Shri Rai returns and hence an objection had been raised that the period of appointment of the officers in the University on temporary basis cannot except the period prescribed under Sub-Section (?) of Section 3 of the Act and hence the same may be reconsidered, in these cases in which the period of the temporary appointment is more than the period prescribed u/s 3(3) of the Act relating to the officers covered under the Act. It is noteworthy that at Item No. 7 of the list of the officers against their posts finds the name of the petitioner as a Branch Librarian and the Syndicate in its meeting held on 11th August, 1979 considering the provisions of Section 3(3) resolved that no officiating arrangement should be made against vacant posts covered by the Act. It had been further resolved that when it is necessary to fill up as per provisions of Section 3 (3) of the Act by making appointment upto a period of six months as stopgap arrangement.

16. In this very resolution it had further been resolved by the Syndicate that the aforesaid ad hoc appointment will be purely temporary and terminable at any time without assigning any reason or when a person selected by a duly constituted Selection Committee joins.

17. In pursuance of the aforesaid Resolution of the Syndicate the appointment of the petitioner had further been made by the order dated the 28th September, 1979 (Annexure P/10) in which it had been specifically made clear that the said appointment is being made for a six months with effect from 13th August, 1979 or till a candidate duly selected by the Selection Committee joins whichever is earlier. The order clearly speaks of the fact that the appointment of the petitioner as a Branch Librarian has been made on a stop-gap arrangement in pursuance of the decision of the Syndicate taken at the meeting held on 11th/12th August, 1979 (Annexure P. 11)

18. Thereafter, the Syndicate in its meeting held on 16th/17th April, 1980 (Annexure P/12) again considered the report with reference to the Syndicate Resolution No. 118 dated the 12th August, 1979 relating to stopgap arrangements made on the post mentioned there for a period of six months with effect from 13th August, 1979. It is noteworthy that the post of a Branch Librarian has again been included as the post of officer in the University and the Syndicate has further considered the question of the continuance of the incumbents appointed against the above posts as no statutory Selection Committees for posts No. 2 to 8 were convened which include the post of Branch Librarian as stated above.

19. For the reasons mentioned in the said Resolution the petitioner along with incumbents mentioned therein had been given a fresh appointment as a stop-gap arrangement for a period of six months with effect from 13th February, 1980 or till regularly selected candidate is available whichever is earlier.

20. This very Resolution of the Syndicate has further issued a direction to the Vice-Chancellor in view of the aforesaid Resolution that the Vice-Chancellor

should take early action to fill the above posts through regular selections.

21. However, Shri Vyas submitted that the post of a Branch Librarian whose pay-scale is equivalent to that of an Assistant Registrar is the post covered u/s 3(1) (2) read with Section 4(i) (ii) (iii) of the Act including the Selection Committee not constituted u/s 4 of the Act for the post of Branch Librarian is null and void and the order of the Syndicate based on the said recommendation automatically falls on the grounds.

22. The contention of the petitioner that the post of a Branch Librarian is covered by Section 2(iii) read with Section 4 and 5 along with Schedule appended to it is further strengthened by the amendment made in statute No. 13 by inserting statute 13(ii) in the following manner

The qualifications emoluments and conditions, of service of Registrar, Deputy Registrar, Assistant Registrar and any other person not below the pay scale of Assistant Registrar of the University as detailed in "Schedule to the Act 18 of 1974" shall be prescribed by Ordinances.

23. The reference of the Schedule of the Act no. 18 of 1974 as amended by Act No. 24 of 1976 would show that under the category of non-teaching staff the post of a Branch Librarian is equivalent to that of the post of the Assistant Registrar in so far the pay scale is concerned and both these posts are of non teaching staff covered by the schedule to the Act No. 24 of 1976 and hence it is covered by the word officer as stated above.

24. Except the aforesaid provisions there is no provision either under the Jodhpur University Act. No. 1962, or Rajasthan University Teachers and Officers Act No. 24 of 1976 empowering the Vice-Chancellor to constitute the Selection Committee in the manner in which it has constituted.

25. During the arguments, my attention was drawn to the order passed by this Court on 8th January, 1981 which this Court upon the application moved for and on behalf of the petitioner had directed the University of Jodhpur to keep the relevant record ready at the time of hearing.

26. Certain arguments were reserved for and on behalf of the petitioner relating to the unconstitutional constitution of the Selection Committee in the present case and the right to raise these points was reserved after the inspection of the relevant record, particularly in relation to the participation of Shri M.S. Maheshwari as well as Shri S.N. Sahai.

27. After inspection of the report on 9th April, 1982, the petitioner has sent the following submissions as additional contention in his written arguments.

28. The petitioner had apprehended to have been selected for the post of a Deputy Librarian. Now after the inspection of the record, the petitioner has come to know that the Selection Committee constituted for the post of Deputy Librarian had recommended the name of the petitioner for the post of a Deputy

Librarian in the University of Jodhpur and the Syndicate had approved the name of the petitioner for the post of a Deputy Librarian in the order of merit at Section No. 2 by its Resolution dated 7th July, 1980. Against the post of Deputy Librarian there was only one vacancy and the petitioner's name in the order of merit was at No. 2 and hence the petitioner could not get the chance for the post of a Deputy Librarian.

29. It is an admitted position that the post of a Deputy Librarian is equivalent to the post of Deputy Registrar and when the Syndicate had approved the selection of the petitioner for the post of a Deputy Librarian then it can safely be inferred that under no circumstances his name could have been rejected for the post of even a Branch Librarian.

30. In para No. 37(a) of the writ petition the petitioner has disclosed the names of those persons who had participated in the interview as members of the Selection Committee for the post of a Deputy Librarian, which are as under:

1/- Shri Rajendra Jain - Vice Chancellor - Chairman

2/- Shri A.B. Mathur - Director of College Education - Member

3/- Shri N.N. Gidwani - Member

4/- Miss Hira Kapasi - Member.

41. It is noteworthy that Shri N.N. Gidwani and Miss Hira Kapasi participated as experts of the subject as required under the Rajasthan Universities' Teachers and Officers (Special Conditions of Service) Act 1974 as amended by Act No. 24 of 1976. For the post of Deputy Librarian two subject experts are required to participate, whereas for Branch Librarian only one subject expert is required to participate.

32. In writ petition the petitioner has disclosed the names of the following persons who constituted the Selection Committee for the post of a Branch Librarian

1. Shri Rajendra Jain - Vice Chancellor

2. Shri A.B. Mathur - Director College Education

3. Shri Mohan Swaroop Maheshwari, Lecturer, University of Jodhpur

4. Shri S.N. Sahai - Librarian

5. Miss Heera Kapasin - a subject expert.

33. From both the lists of the Members participating in the interview of a Deputy Librarian as well as a Branch Librarian it would be clear that three members out of the four who participated in the Selection for the post of a Deputy Librarian had also participated as members of the Selection Committee for the post of a Branch Librarian, namely, the Vice-Chancellor Shri Rajendra Jain as Chairman,

Shri A.B. Mathur, Director of College Education and Miss Heera Kapasin the subject expert.

34. Under the aforesaid circumstances the rejection of the name of the petitioner even for the post of a Branch Librarian when already recommended by Selection Committee and approved by the Syndicate for the post of Deputy Librarian on the face of it speaks of certain extraneous consideration and arbitrariness on the part of the answering non petitioners in rejecting the candidature of the petitioner even for the post of Branch Librarian.

35. I have extracted the above, precisely, submission of the petitioner.

36. Shri H.M. Parakh, who appeared for the University controverted the above submission. According to him, the petitioner is not at all governed by the provisions of the Act and the writ petition is based upon misconception. The Act applies to teachers and officers as defined in the Act in as much as it has been provided by Section 3 of the Act that no teacher or officer shall be appointed except on the recommendations of the Selection Committee constituted u/s 4. Now "Officer" has been defined by Section 2(3) of the Act, and it means the Registrar, Deputy Registrar, Assistant Registrar, Librarian of a University, and includes any other officer by whatever name designated declared by the Statutes to be an officer of that University. A perusal of the definition of "officer" will show that the petitioner does not fall within any of the categories mentioned. He has not been declared to be an officer of the University by the Jodhpur University Statutes. Thus, he is under a misconception when he mentions that he is governed by the provisions of the Act. His submission is that his pay is equivalent to that of an Assistant Registrar, and, therefore, he maybe governed by the provisions of the Act. That is solely based upon a misconception. The Act applies to all the three Universities and who so ever falls within the definition of "officer" according to the Statutes of a particular University is governed by the provisions of the Act Further, a perusal of Section 4(v) will show that reference to Schedule is for other persons as members of the Selection Committee specified in the Schedule. Thus, the Schedule does not change or alter the definition of "Officer" as given in Section 2(3) of the Act, and in order to make the Act applicable a person must be an officer. Further a perusal of clause (vi) in the Schedule also does not better the position of the petitioner. Clause 6 mentions

"Deputy Librarian, Assistant Librarian or Junior Technician in the Library, or any other officer in the Library having his pay in a scale not lower than that of the Lecturer.

It has been specifically submitted by the University that the pay of a Branch Librarian is lower than that of the Lecturer, and so he does not fall within col. vi of the Schedule. Thus, the contention of the petitioner that he is governed by the provisions of the Act is untenable and the basis of his writ petition is thus knocked out.

37. Even for the sake of arguments even if the provisions of the Act are made

applicable to the petitioner, Section 7 of the Act specifically lays down that no proceeding or selection made by a Selection Committee shall be questioned on the ground of any defect in the nomination of a member of such Committee. Thus, no objection regarding constitution of the Selection Committee can be taken.

38. Further, the petitioner having appeared before the Selection Committee and he being well conversant with all the members who were there for selection of the Branch Librarian is estopped by his conduct from challenging the constitution of the Selection Committee as he has appeared before that Selection Committee. It has been further submitted that the case of the petitioner is that he had appeared before the Selection Committee previously also a number of times and thus he was fully aware of the constitution of the Selection Committee. He appeared before the Selection Committee previously also. He having acquiesced is estopped now questioning the constitution of the Selection Committee. In this case, the following cases has been perused on placing reliance upon by the respondent-University:--K.R. Bapna v. University of Udaipur and Ors. (1) 1971 WLN (UC) 214 G. Sarana Vs. University of Lucknow and Others, Swaran Lata Vs. Union of India and Others,

39. The petitioner has also challenged the appointment of Shri S.N. Sahay Librarian. Shri Sahay was appointed on 30th October, 1976. It will suffice to mention here that his appointment cannot be challenged after a period of more than 4 years. Further, the petitioner cannot challenge the appointment of Shri S.N. Sahay on the ground that he is not eligible for the post of Librarian, & thus he has no locus standi to challenge the appointment of Shri S.N. Sahay, Further, he will not be benefitted in any way by even quashing the appointment of Shri S.N. Sahay. In this connection reference has been made to the decisions of the Supreme Court in Dr. N.C. Singhal Vs. Union of India (UOI) and Others, wherein it has been observed as under:

Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than Ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them. Incidentally High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service qualification and, therefore, the promotions could not be struck down. Once the challenge on merits fails the second string to the bow need not be examined. Having said all this, appellant is least competent to challenge their promotions. In a slightly comparable situation this Court in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others,

The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to

challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded,

40. So far as the case of Shri Inder Raj Singhvi is concerned, it will suffice to mention here that the University bodies are competent to judge the merits of a person concerned, and this Hon''ble Court will be most reluctant to interfere with the decision of the Selection Committee. Selection has been made by the Selection Committee thoroughly and there are no allegations of any malafides or bias. Further, the Syndicate has approved the selection. Thus, it cannot be challenged on the ground of merit.

41. I have given thoughtful consideration to the above rival contention of the parties. I am of the opinion that so far as the plea of acquiescence is concerned, the petitioner cannot be estopped. It has not been brought on record that when the petitioner appeared before the Selection Committee, he was aware of the alleged infirmities and he appeared in spite of knowledge to take a chance. I have held in *Dr. Vimal Kumar Kabra v. State* (S.B. Civil Writ Petition No. 438/79, decided on 2nd March, 1979) that principle of estoppel or acquiescence for rejecting a writ petition by a candidate who is appearing before the Selection Committee or interview Board can be applied only if it is proved on record that he was well conversant or was having a knowledge of the infirmities of the Board or the Committee and appeared in spite of that consciously wilfully, voluntarily in order to take a chance. Shri Parakh has failed to produce so relevant record or facts to prove the above. This plea of Parakh is therefore, rejected.

42. I however, feel impressed by the submission of Shri Parakh that the Act of 1974 applies to teachers and officers. The word, officer, means Registrar, Deputy Registrar, Assistant Registrar, Librarian of University and include any other persons whatever declared by the Statutes to be an officer of the University. The petitioner has not been declared as "officer" by the Jodhpur University statutes. The mere fact that his pay is equivalent to that of Assistant Registrar, is not enough to apply the provisions of the Act to him.

43. It is also obvious that a perusal of Section 4 shows that reference to schedule is for other persons as members of the Selection Committee specified in the Schedule. This schedule does not change or alter, the definition of officer as given in Section 2(iii) of the Act. It is basic and fundamental requirement in order to make the Act applicable that a person must be an officer. The pay of the Branch Librarian is lower than that of Lecturer and so he does not fall within col. (vi) of the Schedule because col. (vi) of Schedule expressly States that any other officer in the Library or Assistant Librarian having his pay in a scale not lower than that of Lecturer. That being so, even on that ground Shri Vyas cannot succeed.

44. Shri Parakh has relied upon Section 7 of the Act to provide protective umbrella to all infirmities of the nomination of Selection Committee members. However, I am not inclined to enter in to this controversy because when the Act is not applicable the question of infirmities, in the nomination, does not arise.

45. I am also in agreement with the submission of Shri Parakh that University bodies are competent to judge the merits of the candidate and this Court is very reluctant to interfere with the decision of the Selection Committee unless malafides or extraneous considerations are proved or it is shown that there is some glaring and fundamental infirmity in it. I am convinced that none of these exceptional circumstances have been proved in respect of re-commendations of Shri I.R. Singhvi and Shri S.N. Sahay.

46. It is true that the petitioner, who was duly selected for the post of Deputy Librarian as per the record shown, has been rejected for the post of Asstt. Librarian or Branch Librarian, and this is an anomaly which should be remedied by the University at the earliest. The University should therefore, take steps to find out the ways and methods to undo injustice done to the petitioner and the anomaly created. But except expressing above desire, which it is expected would be acted by the University promptly, this Court is not at all in a position to issue a writ of mandamus either in favour of the petitioner or a quo warranto or prohibitive against the selected candidates, respondent Nos. 3 to 5.

47. With the above observations, which it is expected would be honoured by the University, the writ petition is dismissed without any order as to costs.