

(1999) 01 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 507 of 1989 (G)

Rajendra Kumar Sharma

APPELLANT

Vs

Jiwaji University, Gwalior and Others

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 49(2)(ii), 49(4)

Citation : (1999) 1 MPJR 461

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

Advocate : Mr. Jitendra Maheshwari, for the Appellant; J.P. Gupta with Mr. Raghubir Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Shrivastava, J.

Heard the learned counsel for the petitioner as well as the learned counsel representing the respondent University.

Perused the record.

The petitioner, who was an aspirant for the appointment on the post of Lecturer in the Jiwaji University, Gwalior, in the subject of Bio-Chemistry, has approached this Court by means of the present writ petition feeling aggrieved by his rejection and the appointment of the respondent No. 2 on the said post on the basis of the recommendations of the statutory Selection Committee and has prayed for a direction for the quashing of the order of appointment dated 21/23.12.1988, Annexure P-2, whereunder the respondent No. 2, Yogesh Kumar Jaiswal, had been appointed by the Executive Council of the University as Lecturer in the subject of Bio-Chemistry in the time-scale of pay of Rs. 2200-75-2300-100-4000 on a two years period of probation.

It may be noticed that the petitioner has impleaded Jiwaji University, Gwalior,

through its Vice-Chancellor, as the respondent No. 1 and Shri Yogesh Kumar Jaiswal and Dr. Mrs. Nalini Saxena as respondent No. 2 and 3 respectively. The statutory Appointing Authority, which had issued the appointment order which is sought to be quashed, has not been impleaded as a respondent.

The writ petition had been filed on 12.4.1989. On that date a Division Bench of this Court directed that the writ petition be listed on the question of admission on 1st May 1989 after providing an opportunity to the learned counsel representing the respondent, University, to file a reply to the petition. Vide the order dated 2.5.1989 the application seeking an ad interim writ directing the University-respondent not to confirm the new appointee in the service pending the disposal of the writ petition, was rejected.

The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The respondent-University had invited applications on prescribed forms through an advertisement dated 13th November 1987 published on 25th November 1987 for appointment on the various posts of Professors, Readers and Lecturers indicating that the essential qualifications and the scales of pay shall be as per University Grants Commission Rules. The number of vacancies for the posts of Lecturers so far as the subject of Bio-Chemistry was concerned was disclosed in the advertisement to be two only.

In response to the aforesaid advertisement the petitioner had submitted an application seeking appointment on the post of Lecturer in the subject of Bio-Chemistry and was called for interview before the Statutory Selection Committee. On 18.9.1991 the respondent-University filed in this court a list of candidates who had applied for the post of Lecturer in the subject of Bio-Chemistry, who had been called for interview. This list shows that 24 applicants had been called for the interview, which including the petitioner as well as the respondents No. 2 and 3. In the aforesaid list, so far as the qualifications are concerned, it had been indicated that the petitioner had to his credit a First Division in Higher Secondary School, B.Sc. and M.Sc. So far as Shri Yogesh Kumar Jaiswal, respondent No. 2 was concerned, it had been indicated that he had passed the High School Examination in First Division, Intermediate Examination in Second Division, B.Sc. and M.Sc. in the First Division. In addition to the above, it had also been indicated that he had done Research work at M.Sc. level and also Research work leading to Ph.D. Degree. So far as Dr. (Miss) Nalini Saxena, respondent No. 3 was concerned, it had been indicated that she had to her credit First Division in High School Examination, Intermediate, B.Sc. M.Sc. and had also to her credit a Ph.d. Degree which she had obtained in the year 1985. It was also noted that she had to her credit Awards, Scholarships, Fellowships, publication of papers, Research Experience etc.

It may further be noticed that Shri Yogesh Kumar Jaiswal, the respondent No. 2, was enrolled in the Benaras Hindu University where he was undergoing the Research work for obtaining a Ph.D. Degree. His thesis entitled, "Age Related Changes in the Chromatin Conformation and Gene Expression in the Rat" had

been submitted on 4th August 1988 and the Research Degree Committee (Faculty of Science) had in its meeting held on 3rd October, 1989 had recommended to the Academic Council for the award of the Degree of Doctor of Philosophy (Ph.D.) to him. The Banaras Hindu University on the recommendation of the Academic Council had awarded the Ph.D. Degree to Yogesh Kumar Jaiswal in the year 1988. The Degree, a photostat copy whereof has been filed on the record as Annexure P-9, indicates that Shri Yogesh Kumar Jaiswal had been admitted to the degree of "Doctor of Philosophy" in the subject of Zoology of the Banaras Hindu University in the year 1988 and the title of the thesis was - "Age Related Changes in the Chromatin Conformation and Gene Expression in the Rat".

The respondent-University in its return counter affidavit filed on 7.11.1989 had asserted that the Selection Committee which had made the recommendations for the appointment on the posts in question consisted of Dr. K.K. Tiwari, the Vice-Chancellor; Dr. R.K.S. Chouhan, Dean; Dr. C.V. Ramakrishana and Professor M.S. Kanungo. It was pointed out that Professor M.S. Kanungo had been nominated by the Kuladhipati u/s 49 (2) (iv) of the M.P. Vishwavidyalaya Adhiniyam. Dr. C.V. Ramakrishana was nominated by the Academic Council u/s 49 (2) (iii) of the Act. The recommendations of the Selection Committee were unanimous.

It may further be noticed that on 22nd July 1988 the Government of India, Ministry of Human Resource Development (Department of Education) had issued a circular indicating that the Government of India had taken a decision for the revision of pay scales of teachers in Universities and colleges with effect from January 1, 1986, providing for financial assistance to the State Governments to adopt and implement the scheme. The aforesaid scheme applied to Jiwaji University, respondent No. 1, also. The revised scales of pay were to be effective from January 1, 1986. Under the scheme the recruitment to the posts of Lecturers, Readers and Professors in the Universities and Colleges had to be on the basis of merit through all India advertisement and selection providing that Lecturers, who fulfill the criteria prescribed in that scheme were to be eligible for promotion to the posts of Readers.

The significant thing which stood provided in the scheme was that the minimum qualifications required for appointment to the posts of Lecturers, Readers and Professors had to be those prescribed by the University Grants Commission from time to time. It was indicated that generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master's Degree in the relevant subject with atleast 55 percent marks or its equivalent grade, and good academic record. It was also provided under the scheme that in order to encourage research, in continuation of Post-graduate studies, at the time of their recruitment as Lecturers, possessing Ph.D. or M.Phil. degree will be sanctioned three and one advance increments respectively in the scale of pay of Rs. 2200-4000 alongwith the benefit of corresponding years of service for the purpose of promotion.

In the present case, there is no dispute that the appointment on the post in

question had to be made taking into consideration the norms fixed by the University Grants Commission as the appointment was being made in the time scale of pay of Rs. 2200-4000.

The petitioner has asserted that he had to his credit M.Sc. degree in the subject of Bio-Chemistry which was the relevant subject and had secured 65.5% marks in aggregate, while Shri Yogesh Kumar Jaiswal had passed the M.Sc. in the subject of Zoology securing 64.6% marks in aggregate. The contention is that the post-graduate degree in the subject of Zoology could not be the relevant subject so far as the appointment on the post of Lecturer in the subject of Bio-Chemistry was concerned. It has further been urged that the Statutory Committee which had been constituted for the selection, which consisted of Dr. Krishnakant Tiwari, Dr. R.K.S. Chouhan, Professor M.S. Kanungo and Dr. C.V. Ramakrishana could not be deemed to be a validly constituted committee and no action could be taken on its recommendations which were liable to be ignored. In this connection the contention urged is that Professor M.S. Kanungo was a Professor of Zoology and not of Bio-Chemistry and could not be nominated as an expert. The Selection Committee is said to be illegally constituted on a further ground to the effect that two experts nominated under clause (iii) and (iv) of sub-section (2) of section 49 of the Madhya Pradesh Vishwavidyalaya Adhiniyam 1973, for short, "the Act", were not present in the meeting of the Selection Committee which had made the recommendations. Professor M.S. Kanungo could not be deemed to be an expert in Bio-Chemistry within the meaning of section 49 (2) (iii) read with the provisions of section 49 (4) of the Act, and the Selection Committee had to be taken to be consisting of only one expert, that is Dr. C.V. Ramakrishana. In the circumstances, it is urged that the recommendations could not be acted upon being violative of the provisions of section 49 (4) of the Act. It was also urged that the Dean of the faculty of Biology could not be appointed as a member of the Selection Committee in contravention of section 49 (2) (ii) of the Act.

The petitioner has further contended that Professor M.S. Kanungo was Ph.D. Supervisor of the respondent No. 2. From this fact the petitioner inferred that Prof. Kanungo must be carrying a bias in favour of the respondent No. 2 and his mind must have been swayed in favour of that respondent. The presence of Professor M.S. Kanungo as a member of the Selection Committee with a bias as indicated above, according to the petitioner, vitiated in law, the entire selection proceedings.

The respondent-University in the affidavit filed on its behalf on 13th February 1990 had indicated that the experts nominated in terms of section 49 (2) (iv) of the M.P. Vishwavidyalaya Adhiniyam 1973, in the Selection Committee in question for appointment of the Lecturers in the subject of Bio-Chemistry were- (1) Professor M.S. Kanungo, Benaras Hindu University, Varanasi, (2) Prof. B.K. Bachawat, Delhi University, Delhi and (3) Prof. A.S. Mukherjee, Calcutta University, Calcutta.

Exercising the jurisdiction envisaged under the University Grants Commission Act 1956 the University Grants Commission had made regulations wherein the minimum qualifications for University Lecturers were also prescribed. The minimum qualifications prescribed for appointment to the post of Lecturer in the regulation is to the following effect-

Schedule II (See Regulation-2)

Minimum qualifications prescribed for appointment to post of Lecturers.
University Lecturers-

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

Having regard to the need for developing interdisciplinary programmes, the degree in (a) and (b) above may be in relevant subjects.

Provided that if the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is very high standard, it may relax any qualifications prescribed in (b) above; provided further that if a candidate possessing a doctor's degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record (weightage being given to M.Phil, or equivalent degree of research work of quality) may be appointed provided he has done research work for atleast two years or has practical experience in a research laboratory/ organisation on the condition that he will have to obtain a Doctor's degree or give evidence of research of high standard within eight years of his appointment, failing which he will not be able to earn future increment until he fulfils these requirements.

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Explanation - For determining "good academic record" the following criteria shall be adopted.

University Lecturers-

- (i) A candidate holding a Ph.D. degree should possess atleast a second class Master's degrees; or
- (ii) without a Ph.D. degree should possess a high second class Master's degree and second class in the Bachelor's degree; or
- (iii) A candidate not possessing Ph.D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's degree.

The University Grants Commission had issued a letter dated 13th June 1983 to the Registrar, Jiwaji University, Gwalior, bringing to his notice that the University Grants Commission had framed the regulations defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University and it was requested to adopt the regulations in the statutes/ordinances as may be considered necessary. The regulations were to come into effect from 1st July 1983. The qualifications and the conditions for appointment of lecturers are provided in Ordinance No. 4 framed under the provisions of M.P. Vishwavidyalaya Adhiniyam 1973. The relevant extract from the Ordinance No. 4 is being reproduced below-

3. Lecturers -

(a) A Doctorate's degree or research work of an equally high standard; and

(b) Good Academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign university.

Having regard to the need for developing interdisciplinary programmes, the degree in (a) and (b) above may be in relevant subjects.

Provided that if the selection committee is of the view that the research work of a candidate as evident from his thesis or from his published work is of very high standard, it may relax any of qualifications prescribed in (b) above.

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

Explanation - For determining "good academic record" the following criteria shall be adopted-

Lecturers-

(i) A candidate holding a Ph.D. degree should possess atleast a second class Master's degree; or

(ii) A candidate without a Ph.D. degree should possess a high second class Master's degree and second class in the Bachelor's degree; or

(iii) A candidate not possessing Ph.D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's degree.

The provisions contained in section 49 (2) (ii) of the Act require that the Head of

the University Department in the subject concerned if he is Professor or where the head of the University Department in the subject concerned, is not a Professor or when the selection is to be made for the post of a Professor, the Dean of the Faculty concerned had to be one of the member of the Selection Committee. Section 49 2 (iii) of the Act provides that one expert in the subject, not connected with the University in any manner whatsoever is to be nominated by the Academic Council. The provisions contained in section 49 (2) (iv) of the Act requires that three eminent educationists, not connected with the University in any manner whatsoever, at least two of whom are experts in the subjects, shall be nominated by the Kuladhipati. The proviso to section 49 (4) of the Act stipulates that no recommendation shall be made unless at least two experts nominated under clause (iii) and (iv) of sub-section (2) are present in the meeting in which such recommendation is to be decided upon.

The respondent-University in its counter affidavit has asserted that Bio-Chemistry is the chemistry of living organisms, plants and animals and is an integral part of the curriculum of Zoology, Botany and Medical Sciences etc. Professor M.S. Kanungo, it is claimed, is an expert in Bio-Chemistry and is an internationally famous Gerontologist. The selection-committee in question, it is asserted, was a single selection committee which had been entrusted with the job of submitting recommendations for appointment to the posts of Professors, Readers and Lecturers also. The Dean, it is claimed, is superior in rank to the Head of the Department. Professor M.S. Kanungo, it is asserted, had been nominated by the Kuladhipati u/s 49 (2) (iv) of the Act as an expert in the subject. Dr. C.V. Ramakrishana was another expert who had been nominated by the Academic Council u/s 49 (2) (iii) of the Act. The requirement of quoram stipulated u/s 49 (3) of the Act was satisfied as Dr. K.K. Tiwari Vice-Chancellor; Dr. R.K.S. Chouhan, Dean; Dr. C.V. Ramakrishana and Professor M.S. Kanungo were present in the selection committee. It is further claimed that the respondent No. 2 had brought his thesis before the Selection Committee and it had been perused by the Selection Committee and was found to be a work of high order. The allegations in regard to bias alleged against Professor M.S. Kanungo have been denied. It has further been asserted that the Selection Committee had been duly constituted and the petitioner having appeared before the Selection Committee and having taken a chance of his being selected cannot be heard now after his rejection by the selection committee to challenge the recommendations of the Committee on the grounds as urged.

The learned counsel for the petitioner has strenuously urged that the selection proceeding and the recommendation of the alleged Selection Committee stand vitiated in law on account of the inclusion of Professor M.S. Kanungo as one of its members and further his being biased.

The charge of malafide or even bias against an authority or person is more easily made than made out or proved. The burden of proving malafides and bias very heavily on the person who alleges it and the very seriousness of such allegation

demands proof of a higher order of credibility. While making an allegation of bias against a person, what is really sought to be emphasised is that the person concerned against whom bias is alleged really does not hold an opinion but it is the opinion which holds him.

While it may be difficult to obtain information and evidence regarding activities carried on with foul motives inference can however, be drawn from proved facts which should be clear and unambiguous. The allegations of bias or malafides against persons who are not parties to the writ petition cannot be entertained as they cannot have any opportunity to reply to the allegations of the petitioner. The burden of establishing the charge of bad faith is on him who seeks to invalidate or nullify any act or order but malafides or bias need not be proved by direct evidence alone. However, vague assertions of mala fides or bias are of no consequence. It is necessary that in case the plea is raised clinching evidence has to be brought to the notice of the Court besides giving opportunity to the person concerned against whom mala fide or bias is pleaded to meet such allegations. Where such a person against whom a plea of bias or mala fide is raised has not been impleaded as a party eo-nominee in the petition such a plea cannot be allowed to be raised. It must be remembered that possibility of suspicion of malafides or bias would not be a sufficient ground to justify an order nullifying an action, on the ground of malafides or bias. There must be real and substantial ground to sustain the suspicion which cannot be taken to be a substitute for proof.

In this connection the observation of the Apex Court in its decision in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, may be usefully noticed. In the aforesaid case, it was observed, "Malafides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. The determination of a plea of mala fide involves two questions, namely (i) whether there is personal bias or an oblique motive and (if) whether the administrative action is contrary to the objects, requirement and condition of a valid exercise of administrative power." The Apex Court laid considerable emphasis on the fact that an action taken must, therefore, be proved to have been made mala fide for such consideration. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances in a given case.

While considering the requirement of impleading the person against whom allegations of mala fide or bias are made or the effect of non-rejoinder of such a person it was observed that "It is settled law that the person against whom mala fides or bias was imputed should be impleaded eo-nominee as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made".

It may be noticed that in the aforesaid case the persons against whom the

allegations of mala fide had been made had not been impleaded as respondent-eo-nominee. On the effect of such non-rejoinder the Apex Court observed. "On this ground alone the High Court should have stopped enquiry into the allegations of malafides or bias alleged against them".

The contention of the petitioner in regard to the question relating to mala fides has to be examined in the aforesaid background.

In the aforesaid view of the matter when a petitioner seeks to nullify an order passed by a statutory authority in the exercise of its discretionary jurisdiction, it is all the more necessary to implead the authority concerned in his personal capacity also so that he may be in a position to effectively reply to the allegations of malafides levelled against him. The deliberate omission of the petitioner to implead the authority eo-nominee in his personal capacity whose order is sought to be attacked on the ground of mala fides clearly indicates that the petitioner has no courage to confront the said authority with the allegations of malafides made against him so as to create a situation where the correctness of the assertions may not be verified. It must be remembered that the allegation of mala fides alone are not sufficient to fault the impugned action of the Executive Council of the respondent No. 1 which is quite high up in the hierarchy of the, authorities under the scheme of the Act.

In the circumstances the omission on the part of the petitioner to implead eo-nominee, Professor M.S. Kanungo, whose action is sought to nullify the selection in question is fatal.

In present case, the petitioner has not chosen to implead Professor M.S. Kanungo as a respondent-eo-nominee. The allegation of bias made against him is also based on an inference. This inference is drawn from the mere fact that Professor M.S. Kanungo was a supervisor for the Research work of the respondent. Professor M.S. Kanungo was only a member of the selection committee. The recommendations of the committee were unanimous. In such a situation it seems to me that the recommendations of the selection committee, consisting of four members, taking into account the educational qualifications and the research work to the credit of respondent No. 2, as indicated in the list to which a reference has already been made hereinabove, could not be held to be vitiated in law on account of bias as claimed by the petitioner and his plea in this regard is not at all acceptable.

So far as the question in regard to the inclusion of Professor M.S. Kanungo as an expert in the Selection Committee is concerned, what I find is that the curriculum of studies prescribed for the post-graduate course of studies in the subject of Zoology and Bio-Chemistry are over-lapping. It is in this view of the matter that while prescribing the minimum qualifications it had been made clear that the degree should be in the relevant subject. The use of the expression "relevant" is significant. There is nothing on the record which could indicate that the Master's degree to the credit of the respondent No. 2 was not a Master's

degree in the relevant subject. There is further nothing on the record which could lead an inference that Professor M.S. Kanungo did not have the expertise in the relevant subject. The emphasis on the expression "relevant subject" in the Ordinance points out in unmistakable terms that the name of the subject mentioned in the Master's degree was not conclusive and decisive and it had to be ascertained as to whether the Master's degree was in the relevant subject.

In the present case taking into consideration the facts and circumstances brought on record it cannot be said that either the respondent No. 2 did not have a Master's degree in the relevant subject or that Professor M.S. Kanungo did not have an expertise in the relevant subject so as to be treated as an expert to be included in the Selection Committee in question. It seems to me that the expression "subjects" as used in section 49 (2) (ii), (iii) and (iv) has to be read together with the regulations framed by the University Grants Commission u/s 26 read with Section 14 of the University Grants Commission Act, 1956, whereunder while laying down the minimum qualifications prescribed for appointment to a post of Lecturer it stands indicated that the candidate must possess a Doctorate degree or Research work of equally high standard and good academic record with atleast second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University, clarifying that having regard to the need for developing interdisciplinary programmes, the Doctorate degree or the Master's degree may be in the relevant subject.

A person nominated as an expert as contemplated under the provisions of section 49 (2) of the Madhya Pradesh Vishwavidyalaya Adhiniyam 1973 could very well be an eminent education having expertise in the relevant subject. The relevancy of the subject in which such an educationist has his expertise had to be determined taking into account the course of studies which had to be undergone by a student while preparing for the post-graduate examination in the subject of Bio-Chemistry, in the present case, as the appointment was sought to be made for filling a post of Lecturer for imparting education in that subject.

As has already been noticed hereinabove, the relief sought for in the writ petition is in regard to the quashing of the appointment granted to the respondent No. 2. Considering the nature of the relief sought for by the petitioner it is obviously for the issue of a writ of quo-warranto.

The first contention in this regard urged and pressed by the learned counsel for the petitioner is that respondent No. 2 was not eligible for being appointed on the post of Lecturer as he did not possess the requisite educational qualifications and therefore, he had no jurisdiction to hold the office of the aforesaid Lecturer in the University.

So far as this aspect is concerned, it may be noticed that the respondent No. 2 held the Master's degree in the subject of Zoology and had submitted his thesis entitled - "Age related Changes in the Chromatin Conformation and Gene

Expression in the Rat". The regulations framed by the University Grants Commission laying down the minimum qualifications for appointment on a post of Lecturer clearly stipulate that in case the Selection Committee was of the view that a Research work of a candidate as evident either from his thesis or from his published work was of a very high standard, it could relax any of the qualifications relating to having good academic record with atleast second class (C in the seven point scale) Master's degree in the relevant subject from an Indian University or an equivalent degree from a foreign University. The Regulations further provide that if a candidate possessing a doctorate degree or equivalent research work was not available or is not considered suitable a person possessing a good academic record (weightage being given to M.Phil, or equivalent degree of research work of quality) could be appointed provided he had done research work for atleast two years or had practical experience in a research laboratory/organisation on the condition that he will have to obtain a Doctor's degree or give evidence of research of high standard within eight years of his appointment, failing which he will not be able to earn further increment until he fulfills these requirements.

The aforesaid provisions vested the Selection Committee with ample jurisdiction to grant relaxation in the minimum eligibility criteria subject to the conditions indicated hereinabove.

In the present case, the respondent No. 2 had submitted his thesis on 4th August 1988. He had been offered the appointment accepting the recommendations of the Selection Committee on 21/23.12.1988 and he had been awarded Ph.D. degree for the year 1988 as has already been noticed hereinabove. It seems to me that the fact that the Benaras Hindu University had clearly mentioned in the Doctorate's degree awarded to the respondent No. 2 that it was being awarded for the year 1988 and further the fact that the thesis on which the Ph.D. degree had been awarded had been submitted for consideration on 4th August 1988, the award of the degree had to be taken to relate back to the date of submission of the thesis.

In a decision of the Allahabad High Court in the case of Sangamlal Pandey v. State of U.P. and others, reported in 1990 UPLBEC 706, rendered by a Division Bench, it had been held that in a case where the petitioner had appeared in the M.A. final examination on a date before the date of occurrence of vacancy but the result had been declared after that date, the result will date back to the date on which the petitioner had appeared in the last examination paper. In that case, the vacancy had occurred on 30th June. The petitioner had appeared in the last paper for M.A. Final Examination on 25.4.1997, the result had been declared by the University in the month of July, subsequent to the date of occurrence of the vacancy. In such a situation the Division Bench held that the declaration of the result by the University will relate back to the date on which the petitioner had appeared in the last paper for M.A. Final examination. The aforesaid decision was challenged before the Apex Court, but the SLP had been dismissed. The ratio of

the aforesaid decision stands clearly attracted to the facts and circumstances brought on record so far as the respondent No. 2 is concerned.

38-A. As has already been indicated hereinabove the recommendations made by the Selection Committee could very well be acted upon and there was no such jurisdictional defect going to the root of the matter which could lead to an inference that the Committee had been illegally constituted and its recommendations were void.

A Division Bench of this Court in its decision in the case of Dr. Rameshwar Nath v. Dr. Harisingh Gour Vishwa Vidyalaya Sagar and others, reported in 1989 Lab.L.C. 1978 had clarified that a defect, if any, in the constitution of the Selection Committee or the irregularity, if any, in the procedure, stands cured u/s 58 of the Act of 1973, which provides that no act or proceeding of any authority, committee or body of the University shall be invalid merely by reason of any vacancy in or defect in the constitution thereof, or any defect in the election, nomination or appointment of a person acting as a member thereto, or any irregularity in its procedure not affecting the merits of the case.

39-A. The ratio of the aforesaid decision stands clearly attracted and the omnibus curative clause as contained in section 58 of the Act clearly negatives the contention of the learned counsel for the petitioner especially considering the object behind the aforesaid provision which is to put beyond challenge defects of constitution of statutory bodies and defects which have not led to any substantial prejudice.

On a consideration of the totality of the circumstances as noticed hereinabove, I am clearly of the opinion that the recommendations of the statutory Selection Committee cannot be said to be vitiated in law as urged by the learned counsel for the petitioner on account of the defect either in the constitution of the Selection Committee or the nomination of the experts or any jurisdictional defect going to the root of the matter.

Further, the petitioner had himself faced the selection before the same Selection Committee which had made its recommendations in favour of the respondent No. 2 finding him to be more suitable as compared to the petitioner. In the circumstances, it seems to me, that the present one is not a fit case for the intervention of the equity and that too at the instance of the petitioner. I am clearly of the opinion that the present one cannot be said to be a case of usurpation of a public office in a wholly unauthorised manner so as to warrant an interference by this Court.

In view of my conclusions indicated hereinabove, no justifiable ground is made out for any interference while exercising the extra ordinary jurisdiction envisaged under Article 226 of the Constitution of India. This writ petition is accordingly dismissed.