
(2010) 11 AHC CK 0345
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44774 of 2001

Rakesh Kumar Tiwari

APPELLANT

Vs

Deen Dayal Upadhyay Gorakhpur University and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Citation : (2011) 2 ADJ 246

Hon'ble Judges : Rajesh Dayal Khare, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—Heard Sri W.H. Khan, learned Senior Advocate, assisted by Sri Gulrez Khan for the Petitioner, Sri G.K. Singh, appearing for Respondent No. 6 and Sri B.D. Mandhyan appearing for the Respondent University.

2. Counter-affidavits on behalf of the University as well as on behalf of Respondent No. 6 have been filed to which rejoinder affidavits have also been filed. Supplementary counter-affidavits on behalf of the University as well as Respondent No. 6 have been filed to which rejoinder affidavits have also been filed. Pleadings being complete between the parties, with the consent of the parties, we proceed to decide the writ petition finally.

3. Brief facts of the case, as emerge from pleadings of the parties are; an advertisement being Advertisement No. 4/2000 was published by the Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur (hereinafter referred to as the "University") in the newspaper inviting applications for the post of Lecturer in different departments including four posts of Lecturer (Physics). Out of four posts, one post was for general category. According to the advertisement, which has been filed as Annexure-1 to the writ petition, last date for submission of the application was 31st August, 2000 through registered post only. The Petitioner being qualified for the post of Lecturer (Physics), submitted application as general category candidate. Interview letter dated 5th November, 2001 was issued to the Petitioner to appear before the selection committee on 20th November, 2001. The selection committee interviewed the Petitioner as well as

Respondent No. 6. The Respondent No. 6, who claimed to have submitted an application in response to the advertisement, did not fulfil the requisite qualification at the time of submitting application. The case of the University is that on an application submitted by Respondent No. 6, the Vice Chancellor passed an order on 6th November, 2000 directing that Respondent No. 6 be also interviewed by the selection committee and in pursuance of the direction of the Vice Chancellor, the selection committee interviewed the Respondent No. 6 and in the panel, which was prepared by the selection committee, the name of Respondent No. 6 was at Serial No. 1 and the Petitioner was at Serial No. 2. The recommendations of the selection committee were accepted by the Executive Council and consequently appointment letter was issued to Respondent No. 6. The Respondent No. 6 joined on 19th December, 2001 as Lecturer in the department of Physics of the University. The Petitioner filed the present writ petition praying for following reliefs:

(i) issue a writ, order or direction in the nature of certiorari quashing the selection and consequential appointment, if made, of Respondent No. 6 on the post of Lecturer in Physics in Deen Dayal Upadhyay Gorakhpur University, Gorakhpur declared on 13.12.2002 and published in "Rashtriya Sahara" dated 14.12.2001, Gorakhpur Edition. Respondent No. 1 and 5 may also be directed to produce the entire records in this regard.

(ii) issue a writ, order or direction in the nature of mandamus commanding the Respondent Nos. 1 and 5 not to give appointment to Respondent No. 6 on the post of Lecturer in Physics in Deen Dayal Upadhyay Gorakhpur University, Gorakhpur.

This Court while entertaining the writ petition, passed following order on 21st December, 2001:

Sri Dilip Gupta has accepted notice on behalf of Respondents No. 1, 2 and 4 and may file counter-affidavit within three weeks. Issue notice to Respondents No. 3, 5 and 6 returnable at an early date.

Until further orders, the appointment on the post of lecturer shall be subject to the decision of the writ petition.

Learned counsel for the Petitioner, in support of the writ petition, raised following submissions:

(i) The Respondent No. 6 had neither passed the NET (National Eligibility Test) nor was Ph.D. on the last date of submission of the application form, i.e., 31st August, 2000 and he being not eligible, was not entitled to face the selection committee. The qualification of NET was obtained by Respondent No. 6 much after the last date of submission of application form by certificate dated 9th July, 2001. It is submitted that Respondent No. 6 being not eligible, could not have been included in the panel and the consequential appointment is illegal.

(ii) The Respondent No. 6 had not even made any application pursuant to the

advertisement No. 4/2000; his application was entertained under an order passed by the Vice Chancellor without any basis and the order of the Vice Chancellor permitting Respondent No. 6 to be interviewed was illegal. It is submitted that undue favour was shown to Respondent No. 6 in permitting him to participate in the selection.

(iii) Inclusion of name of Respondent No. 6 in the panel recommended by the Selection Committee being illegal, he being not qualified and having also not applied in pursuance of the advertisement, the Petitioner, whose name was included at serial No. 2 in the panel is entitled for selection and appointment.

4. Sri G.K. Singh, learned Counsel appearing for Respondent No. 6, refuting the submissions of learned Counsel for the Petitioner, contends that Respondent No. 6 had required all requisite qualifications before the date of interview, i.e., on 20th November, 2001 and when he appeared before the selection committee he was fully eligible and possessed of all requisite qualifications. He further submits that Respondent No. 6 had appeared in the National Eligibility Test (NET) in December, 2000 where he was declared selected. It is submitted that the Vice Chancellor permitted the candidature of Respondent No. 6 to be considered due to the reason that University required best talent for the post of Lecturer (Physics) and there was no illegality committed by the Vice Chancellor in permitting Respondent No. 6 to be considered. It is further submitted that Respondent No. 6 having joined the post of Lecturer and worked for about 8 years, it will not be just to set-aside the selection at this stage. Sri Singh further submits that on the basis of the experience, which has been acquired by Respondent No. 6 as Lecturer (Physics), Respondent No. 6 appeared in the selection for the post of Assistant Professor (Reader) in Madan Mohan Malviya Engineering College, Gorakhpur and was selected and also joined in July, 2009 and at present he is working as Assistant Professor (Reader) in Madan Mohan Malviya Engineering College, Gorakhpur and is on two years leave from 3.7.009 to 2.7.2011.

5. Learned Counsel for the University in its counter-affidavit has supported the selection of Respondent No. 6. It has been stated by the University in the counter-affidavit that on the application moved by Respondent No. 6, the Vice Chancellor has directed the Registrar to accept the application of Respondent No. 6 on the basis of which interview letter was issued to Respondent No. 6. It has been stated that Respondent No. 6 was the best qualified person.

6. Sri B.D. Mandhyan, learned Counsel for the University submitted that Vice Chancellor had jurisdiction to permit the Respondent No. 6 to appear before the selection Committee even though he did not fulfil the qualifications on the last date of application since the Vice Chancellor had to select the best suitable candidate for the post of Lecturer. He further submitted that the Petitioner having registered for Ph.D. in the University had also obtained B.Ed. Degree in the year 1996. It is submitted that the Petitioner was guilty of obtaining B.Ed. and Ph.D. Degree in the same academic year side by side. It is further submitted by Sri

Mandhyan that even if the name of the Petitioner was at serial No. 2 in the panel, he is not entitled for appointment on the post of Lecturer and the University is to take fresh steps for selection on the post of Lecturer Physics , if need be. He submits that even if it is held that Respondent No. 6 was not qualified to hold the post of Lecturer even then the post of Lecturer (Physics) had to be re-advertised for the purpose of fresh selection. The Respondent No. 6 alongwith counter-affidavit has brought on the record the letter dated 9.7.2001 declaring the Petitioner having cleared the National Eligibility Test (NET) as Annexure-1 to the Counter-affidavit.

7. Learned Counsel for the parties have relied on several judgments of the Apex Court as well as this Court in support of their respective submissions, which shall be referred to while considering their submissions in detail.

8. The main submission, which has been pressed by learned Counsel for the Petitioner, is that Respondent No. 6 being not eligible on the last date of submission of the application form, he could not have been permitted to appear in the selection held on 20th November, 2001. There is no dispute of fact between the parties that the last date for submission of the application form was 31st August, 2000. The qualification for appointment on the post of Lecturer is governed by the First Statute of the University. Statute 11.01, which governs the appointment on the post of Lecturer, provides as under:

11.01. (6) For appointment to the post of Lecturer only those candidates shall be eligible who, besides fulfilling the minimum academic qualifications prescribed for the post of lecturer, have qualified in a comprehensive test, if any, to be conducted as per scheme of University Grants Commission.

Provided that a candidate:

(1) Who has passed University Grants Commission or Council of Scientific and, Industrial Research or Junior Research Fellowship Examination; or

(2) who has been awarded Ph.D. Degree upto December 31, 1993; or

(3) who has submitted thesis for Ph.D. Degree upto December 31,1992; or

shall not be required to qualify in such a comprehensive test.

9. Alongwith the counter-affidavit filed by Respondent No. 6, the qualifications possessed by him have been brought on the record. In paragraph 10 of the counter-affidavit, it has been stated that Respondent No. 6 appeared in the National Eligibility Test (NET) on 31st December, 2000. Copy of the advertisement has been filed as Annexure-2 to the writ petition. The advertisement No. 4 of 2000 had fixed the last date of receiving the application as 31.8.2000. Relevant portion of the advertisement is quoted as below:

Five copies of application on prescribed form should reach the Registrar latest by 31.8.2000 through registered post only

10. The Petitioner has specifically pleaded in paragraph 5 of the writ petition that the Respondent No. 6 was neither qualified nor did he apply through the registered post by 31.8.2000. It is useful to refer to the averments of paragraph 5 of the writ petition, which are to the following effect:

5. That Respondent No. 6 was neither qualified nor did he apply through the Registered Post by 31.8.2000. Both these requirements were condition precedent for being called for interview. Respondent No. 6 has not acquired National Eligibility Test (N.E.T.) qualification upto 31.8.2000 and did not possess a certificate to that effect by the said date.

11. The University has filed a counter-affidavit, replying the averments of the writ petition in paragraph 6 of the counter-affidavit. It has been pleaded by the University that on the application moved by the Respondent No. 6, the Vice Chancellor has directed the Registrar to accept the application of the Respondent No. 6 and as such, the interview letter was issued to him. The form was filled by the Respondent No. 6 before the Selection Committee was held on 20.11.2001. The pleadings of the University in paragraph 6 of the counter-affidavit are as follows:

6. That the contents of paragraph No. 5 of the petition are incorrect and denied. In this behalf it may be stated that on the application moved by the Respondent No. 6, the Vice Chancellor has directed the Registrar to accept the application of the Respondent No. 6 and as such, the interview letter was issued to him. The form was filled by the Respondent No. 6 before the Selection Committee was held on 20.11.2001. So far as qualification of Respondent No. 6 is concerned, it may be stated that he was fully qualified for the post. Infact the Academic record of Respondent No. 6 of much better than that of the Petitioner.

12. The Petitioner had further pleaded in paragraph 8 of the writ petition that the Respondent No. 6 was called by the Registrar on 20.11.2001 itself and an application was got filled by him and he was interviewed on 20.11.2001. Although paragraph 8 has been denied by the University and averments have been made that the application of Respondent No. 6 was accepted much earlier than that the date of meeting of selection committee but no date has been given for receipt of the application. A counter-affidavit has also been filed by the Respondent No. 6, in which the paragraph 5 of the writ petition has been denied in paragraph 10 of the counter-affidavit but in reply to the averments that Respondent No. 6 did not apply through registered post before 31.8.2000, it has not been stated that the application was made by the Respondent No. 6 through registered post before 31.8.2000. A copy of the application form filled by the Respondent No. 6 on 20.8.21000 is said to have been received in the office of the registrar on 22.8.2000. There is neither any seal of receipt on the application nor any detail has been given as to whom the application was got received.

13. In the supplementary counter-affidavit filed by the Respondent University, it has been stated that the Respondent No. 6 applied in pursuance of the

advertisement and the application form was received in the office of the University on 22.8.2000. When the advertisement clearly provided that application should be received only by registered post, there was no occasion for the Respondent No. 6 to submit the application personally in the office of the University. The averments made in paragraph 6 of the counter-affidavit of the University categorically stated in reply to the paragraph 5 of the writ petition that on the application moved by the Respondent No. 6 the Vice Chancellor directed the Registrar to accept the said application. The University further stated that form was filled by the Respondent No. 6 before the selection Committee was held on 20.11.2001. The said averments clearly indicate that the Respondent No. 6 did not submit the application before 31.8.2000 through registered post and the same was submitted before holding of the selection by the selection committee on 20.11.2001. From the pleadings on the record and the submission made by learned Counsel for the parties, we are satisfied that the Respondent No. 6 did not submit any application in accordance with the advertisement No. 4 of 2000 by registered post and the application form was filled by the Respondent No. 6 in pursuance of the direction issued by the Vice Chancellor, permitting the Respondent No. 6 to fill up the form and appear before the Selection Committee. Neither the order passed by the Vice Chancellor permitting the Respondent No. 6 to appear before the selection committed on 20.11.2001 nor the date of passing of the order of the Vice Chancellor has been brought on record. In any view of the matter from the pleadings on the record, it has to be accepted that the Respondent No. 6 did not apply in accordance with the mode prescribed in the advertisement No. 4 of 2000 and his application was taken under the order of the Vice Chancellor passed just before holding of the selection Committee on 20.11.2001.

14. Now comes the issue as to whether the Respondent No. 6 was qualified and eligible for the post of Lecturer as per the advertisement No. 4 of 2000. As noted above, the last date for submitting the application form was 31.8.2000. It is well settled that the eligibility of a candidate for submitting application in response to advertisement, is the last date of receiving the application in case no date for eligibility is provided for. A candidate, who was not eligible to submit an application on the last date of the application is not eligible to participate in the selection. The apex Court in *Mrs. Rekha Chaturvedi v. University of Rajasthan and Ors.* 1993 SCC Supp. (3) 168, had occasion to consider the similar issue. University of Rajasthan invited applications by advertisement dated 12.10.1983 for the post of Assistant Professors. The last date of submitting the application was November 14, 1983. The Respondents No. 5 and 11 were awarded Doctorate degree on December 14, 1984 and January 4, 1985 and did not have the minimum qualification on the last date of application. The said Respondent Nos. 5 and 11 however, had attained the qualifications before the date of selection. The selection was challenged before the apex Court. The issue was considered as to whether the eligibility has to be tested on the last date of the application or on the date of selection. The apex Court held that the eligibility had to be looked

into on the last date of the application and not on the date of selection. Following was laid down in paragraphs 7 and 10

7. It is on record that Respondent Nos. 5 and 11 were awarded doctorate Degree on 14.12.1984 and 4.1.1985 respectively which is of course irrelevant since the qualifications had to be judged with reference to the last date for submitting the applications for the posts.

10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad and Anr. v. B. Sarat Chandra and Ors.* (1990) 4 SLR 235 and *The District Collector & Chairman, Vizianagaram (Social Welfare Residential School Society) Vidanagaran and Anr. v. M. Thpura Sundari Devi* (1990) 4 SLR 237.

15. Another case on which reliance has been placed by learned Counsel for the Petitioner is *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, In the aforesaid case, selection was held for the post of Junior Engineer. Last date for submitting the applications was 15.7.1982. The applications were submitted by both, the Appellants and the Respondents. The Appellants had appeared in B. E. (Civil) Examination and had been awaiting the result which was published on 21.8.1982. Interview commenced from 24.8.1982. The Appellants were declared selected which selection was challenged but the writ petition was

dismissed. The submission before the High Court as well as the apex Court was that Appellants were not eligible by the last date of application. The writ petition by certain candidates challenging the selection was dismissed on 27.5.1983, which was not appealed against. Certain other writ petitions were filed by four candidates challenging the selection. The writ petition was dismissed following the earlier judgment, against which Letters Patent appeal was filed, which was allowed by the Division Bench. The Division Bench held that the 33 Respondents could not have been allowed to appear in the interview for the reason that they had not acquired the eligible qualifications by the prescribed date. The Division Bench however, did not set aside the appointments of the said 33 Respondents but directed that the said Respondents should be treated as junior to all those selected persons who were fully qualified by the prescribed date. The judgment of the Division Bench was taken in appeal before the apex Court. The case was heard by the Bench of three Hon'ble Judges. Judgment of the Court was delivered by Dr. T.K. Thommen, J., who took the view that the Appellants did possess the qualification prior to the date of interview hence, they were qualified. Dissenting opinion was expressed by R.M. Sahai, J. that Respondents were not qualified as they did not possess the required qualifications by the last date of the applications. However, by majority opinion, the appeals were allowed. The said judgment is reported in Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, Review petition filed by the Appellants was dismissed subject to clarifications on the legal issues. The three Judges' Bench deciding the review petition reversed the majority view taken in earlier case of Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, The three Judges Bench held that the view expressed by Justice R.M. Sahai that Respondents were not eligible they having not acquired the qualifications by the last date of the applications, was correct and the said view was approved. Following was laid down in paragraph 6 by the apex Court.

The Review petitions came up for final hearing on March 3, 1997. We heard the learned Counsel for the review Petitioners, for the State of Jammu and Kashmir and for the 33 Respondent So far as the first issue referred to in our order dated 1st September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by the Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law, the proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be allowed to appear for the interview, other

similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi (Smt.) v. University of Rajasthan and Ors.* 1993 Suppl. (3) SCC 168. The reasoning in majority opinion that by allowing the 33 Respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible Justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 Respondents could not have been allowed to appear for interview.

16. The aforesaid judgment in the case of *Ashok Kumar Sharma (supra)* fully supports the submissions of learned Counsel for the Petitioner. It is not even disputed that the Respondent No. 6 did not have qualifications on the last date of the application i.e. 31.8.2000. Sri G.K. Singh, learned Counsel appearing for the Respondent No. 6 submitted that since the Respondent No. 6 was appointed and had worked for more than seven years as a Lecturer, it is not a fit case in which appointment be set aside. Reliance was placed on the judgment of the Apex Court in *Dr. M.S. Mudhol and Anr. v. S.D. Halegkar and Ors.* 1993 (2) ESC 245 SC. In the aforesaid case, legality of Respondents to occupy the post of Principal in a private aided school was under consideration. Writ of Quo warranto was filed in the year 1990 challenging the assumption of the office of the Principal since 1981. The apex Court in the aforesaid case laid down following in paragraph 7:

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st Respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the Court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the Petitioners to such a writ.

17. In *Rekha Chaturvedi's* case (*supra*) also the Apex Court did not set aside the selection since the selected candidate had joined and were working for the last 8 years. The apex Court in the said case laid down following in paragraph 13:

6. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, "it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith.

18. In both the aforesaid cases selection was not set aside due to the reasons as indicated therein. In *Dr. M.S. Mudhol and Anr. v. S.D. Halegkar and Ors.* (supra) writ of quo warranto was filed after 9 years. In *Rekha Chaturvedi's* case (supra) selection Committee had relaxed the minimum qualifications in exercise of discretionary powers vested in it under the University Ordinance, apart from the fact that they had been working for the last 8 years. In the present case, the Respondent No. 6 was appointed by the University on 19.12.2001. The writ petition was filed in this Court on 20.12.2001 i.e. next day of appointment and this Court on 21.12.2001 passed an order that appointment on the post of Lecturer shall be subject to the decision of the writ petition. The appointment of Respondent No. 6 was thus challenged the very next day of appointment and had been made subject to the result of the writ petition. In view of the order passed in the writ petition on 21.12.2001, the working of the Respondent No. 6 was subject to the result of the writ petition and the mere fact that Respondent No. 6 had worked for more than seven years, cannot be a reason for saving the illegal appointment of the Respondent No. 6. In view of the foregoing discussions, it is held that selection and appointment of Respondent No. 6 is unsustainable and deserves to be set aside. However, looking to the fact that Respondent No. 6 on the basis of his experience as Lecturer in the University, has been selected on the post of Assistant Professor in Madan Mohan Malaviya Engineering college in July, 2009 and is working as Assistant Professor therein, we observe that the selection and appointment of Respondent No. 6 on the post of Assistant Professor in Madan Mohan Malaviya Engineering college shall not be affected on the ground that selection and appointment of Respondent No. 6 on the post of Lecturer Physics in the University dated 19.12.2001 is being set aside. This clarification is necessary to protect the interest of the Respondent No. 6 in so far as his selection and appointment as Assistant Professor in Madan Mohan Malaviya Engineering college is concerned.

19. Now comes the submission of the learned Counsel for the Petitioner that name of the Petitioner being at serial No. 2 in the panel and the appointment of Respondent No. 6 having been found to be illegal, he is entitled for selection.

University in its counter-affidavit in paragraph 12 has admitted that the Petitioner's name was recommended at serial No. 2 in the panel. The Respondent No. 6 having been found ineligible for the post of Lecturer, Physics he having not fulfilled the minimum qualifications on the last date of the application, inclusion of Respondent No. 6 in the panel being at serial No. 1 was wholly illegal and void. The name at serial No. 1 having been found to be wrongly included, it was the Petitioner, who was clearly entitled for selection and appointment, he being recommended at serial No. 2 in the panel. The proceedings of the Executive Council by which the said panel was approved has been brought on the record by Supplementary Counter-affidavit of Respondent No. 6 as Annexure S.C.A.3. The proceedings dated 13.12.2001 of the Executive Council at item No. 1 Jha had approved the recommendation dated 20.11.2001 of the selection committee for the post of Lecturer, Physics. The panel of three candidates in seriatim as approved by the Executive Council was as follows:

- (1) Dilip Kumar Dwivedi
- (2) Rakesh Kumar Tiwari
- (3) Nirvikar Prasad.

20. Thus, the name of the Petitioner was recommended and approved by the Executive Council at serial No. 2. Sri B.D. Mandhyan, learned Counsel for the University has placed reliance on the judgment of the Apex Court in the case of Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, In the aforesaid case, Aligarh Muslim University advertised the post of Lecturer in Chemistry. Both the Appellant and the Respondents applied. The Appellant Mohammad Sohrab Khan was M.Sc. in Chemistry and Merajuddin Ahmad, who was selected was M.Sc. in Industrial Chemistry. The writ petition was filed by M.S. Khan who was in the waiting list by the Selection Committee, on the ground that selected candidate did not possess the qualifications. The post advertised was of Lecturer in Chemistry and the selected candidate was not M.Sc. in Chemistry rather he was M.Sc. in Industrial Chemistry. The said submission was accepted and selection was set aside by the High Court vide its judgment dated 3.7.2006 reported in 2006 (3) ESC 2270. The writ Petitioner before the High Court had also prayed for a direction that he be appointed. The High Court laid down following in paragraph 7,10 and 16

7. We are sure that the authorities who prescribed the essential qualification for the post in question, as mentioned in the advertisement must also be the experts in regard thereto. In the matter of minimum qualifications and other requirements for a particular post the appointed candidate as well as the authorities who initiated and concluded the process of selection must sink or sail with the advertisement. If the Master's degree in industrial chemistry is as good as Master's degree in Chemistry for the post in question, then the same should have been indicated in the advertisement or in any case corrigendum should have been issued, which was not done. Even if it is assumed that a candidate

holding Master's degree in Industrial chemistry is as good as a person holding Master's degree in Chemistry to teach the subject of chemistry to the students of Diploma Engineering, appointment of a candidate holding Master's degree in Industrial Chemistry cannot be justified unless in the advertisement Master's degree in Industrial Chemistry is also included equivalent as essential qualification.

10. In view of the above, we hold that Degree of M.Sc. In Industrial Chemistry cannot be equated with the Degree of M.Sc. In Chemistry.

16. The prayer of the Petitioner that he should be appointed on the said post as he was placed in the waiting list by the Selection Committee cannot be accepted for the reason that we are permitting the University to reconsider the minimum qualification for the post in question.

21. The matter was taken before the Apex Court and the appeals were disposed of upholding the order of the High Court giving liberty to the University to lay down the qualification necessary for filling up the aforesaid post. The apex Court laid down following in paragraphs 24,25,26,27 and 33:

24. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The Page 10 of 15 University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer Chemistry, for pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Masters Degree holder in the said subject would also be suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post.

27. The Selection Committee during the stage of selection, which is midway

could not have changed the essential qualification laid down in the advertisement and at that stage held that a Masters Degree Holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to pure Chemistry stream.

33. After analysing the present issue in the light of the abovesaid legal proposition laid down by this Court we hold that the High Court was justified in rejecting the candidature of Merajuddin Ahmad as against the said post which was advertised for pure Chemistry stream. However, with the appointment of Merajuddin Ahmad to the said post, the list recommended by the Selection Committee and approved by the other competent authority has lapsed.

22. It was contended that teaching in the University by a candidate having M.Sc. Industrial Chemistry is more suitable. Taking into consideration the stand taken by the University both High Court as well as the apex Court permitted the University to again determine as to what should be the exact qualifications for the post and in that context liberty was granted to hold fresh selection and prayer for appointing the wait listed candidate was refused. The above case is clearly distinguishable and does not help the Respondents in the present case. Reliance has been placed by the learned Counsel for the Petitioner on a judgment of the Apex Court in *Purushottam Vs. Chairman, M.S.E.B. and Another*, In the said case, the Appellant was selected in scheduled Tribe category but the employer having taken a decision that Appellant did not belong to "Halba" caste, denied appointment. The writ petition as well as review application was dismissed against which the appeal was filed. Following was laid down in paragraph 4 by the apex Court:

4. In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the Appellant inasmuch as there is no dispute that the Appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the Appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the Appellant, but on the erroneous decision of the employer himself. In that view of the matter, the Appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned

order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the Appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.

23. The Apex Court in the said case laid down that duly selected candidate illegally kept out of employment on account of unfit decision on the part of the employer, cannot be denied appointment on account of the fact that panel had expired in the meantime. In the present case, no statutory provision has been referred or relied by the Respondents limiting the life of the recommendation of the selection committee for any particular time more so selection of Respondent No. 6 in the present case was immediately challenged in this Court and the very next day order was passed by this Court that appointment shall be subject to the result of the writ petition. The judgment of the Apex Court in *State of U.P. Vs. Ram Sawrup Saroj*, also supports the submission of the counsel for the Petitioner. In the aforesaid case selection was made for the post of Civil Judge Junior Division by U.P. Public Service Commission. It was contended before the apex Court that select list prepared in November, 1996 had ceased to exist on expiry of one year and no appointment can be made from such select list. Repelling the submissions, following was laid down in paragraph 10 by the apex Court.

10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the Respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the Respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.

24. The last submission of Sri B.D. Mandhyan, learned Counsel for the University is that Petitioner in the same academic year had pursued his Ph.D. as well as B.Ed. suffice it to observe that the name of the Petitioner was recommended and approved by the Executive Council and it is not open for the University to raise any such objection. It is further to be noted that the Petitioner in his pleading in

this writ petition has stated that B.Ed. degree was never awarded to him. It is further on the record that on a complaint by one Anuj Kumar a notice was issued to the Petitioner in the year 2002 by the University which was duly replied by the Petitioner and the University being satisfied with the reply, did not pursue the matter any further.

25. In view of the foregoing discussions, the Petitioner has made out a case for grant of relief. The writ petition is allowed. Selection and appointment of Respondent No. 6 on the post of Lecturer in Physics in Deen Dayal Upadhyay University, Gorakhpur as approved by the Executive Council on 13.12.2001, is quashed. It is however, observed that the quashing of selection and appointment of Respondent No. 6 on the post of Lecturer in Physics shall have no effect on the subsequent selection of Respondent No. 6 as Assistant Professor in Madan Mohan Malaviya Engineering College, Gorakhpur. The Petitioner's name being recommended at serial No. 2 in the panel, which was approved by the Executive Council on 13.12.2001, the University may issue appointment order to the Petitioner in accordance with law.

26. The writ petition is accordingly allowed. The parties shall bear their own costs.