

(1988) 11 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2150 of 1983

Samarendranath Sengupta

APPELLANT

Vs

National Newsprint and Paper Mills Ltd., Nepanagar

RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

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

Citation : (1989) MPLJ 346

Hon'ble Judges : K.K. Adhikari, J; Faizanuddin, J

Bench : Division Bench

Advocate : R.C. Khare with A.K. Pathak, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

K.K. Adhikari, J.

The order in this petition shall also govern the disposal of Misc. Petition No. 3116 of 1986 (Dr. Mehboob Khan vs. Dr. Harisingh Gour Vishwa Vidyalaya through its Vice-Chancellor and others), since identical questions are involved in these two petitions and common arguments were advanced. These two petitioners challenge the selection and the appointment of Dr. R. S. Kasana as a Professor of Physics in the Dr. Harisingh Gour Vishwa Vidyalaya, Sagar (hereinafter referred to as the University), vide Annexure P-4 dated 3-3-1986.

The petitioner Dr. Rameshwarnath (in M.P. No. 1075/86) joined the University as a Lecturer in Physics in the year 1965 and was confirmed on that post in the year 1967. Subsequently, he was promoted as a Reader in the Department of Physics in the year 1979 and confirmed on the said post in the year 1981. Between the years 1980 to 1984, the petitioner was sent on deputation by the Government of India as a Professor of Physics in the University of Batna, Algeria.

The petitioner Dr. Mahboob Khan (in M. P. No. 3116/86) also belongs to the Department of Physics of the University, having joined as temporary Assistant

Professor on a stopgap arrangement in the year 1967 and subsequently was appointed as such by the Executive Council in the year 1973. His appointment to the post of Assistant Professor was made permanent under the provisions of clause VI of the Statute 31, framed under the Madhya Pradesh Vishwa Vidyalaya Adhiniyam, 1973 (hereinafter referred to as the Act of 1973) with effect from 16-3-1975, on which post, he was later on confirmed.

The University is a body corporate whose affairs are governed by the Act of 1973 and the statutes and Regulations framed thereunder. It appears that two posts of Professors and one Post of Reader fell vacant in the Department of Physics and, therefore, the respondent/University advertised the said posts for appointment on 5-12-1984 vide Ann. P-1 but the same could not be filled up and, therefore, the respondent/University readvertised the same vide Annexure P-2 on 6-7-1985. In pursuance to the advertisement, both these petitioners, along with others, applied for the posts of Professor in Physics. The petitioner Dr. Mehhoobkhan, in addition also applied for the post of Reader in Physics.

For the purposes of selection, the respondent/University constituted a selection committee in exercise of the powers conferred under sub-section (2) of Section 49 of the Act of 1973 which provides for the appointment to the teaching posts in the University. The selection committee so constituted interviewed nine candidates who had applied for the post of Professor in Physics on 30-1-1986 and selected the respondent No. 2, Dr. R. S. Kasana on the basis of his merit, qualification and experience. Accordingly, the Executive Council on the basis of the merit list recommended by the Selection Committee appointed Dr. R. S. Kasana as a Professor in Physics in the Department of Physics of the respondent/University, on probation for a period of two years which was liable to be extended by a further period of one year, vide order dated 3-3-1983. (Annexure P-4). It is this order which is being challenged by the petitioners in these two petitions.

The learned counsel for the petitioners made a two-fold submission namely:

- (i) that the selection committee was illegally constituted u/s 49(2) of the Act of 1973 and, therefore, any selection made by it was invalid and,
- (ii) that the selection committee did not perform its statutory duty u/s 49(4) of the Act of 1973.

Elaborating his submission regarding the illegality in the constitution of the selection committee, the learned counsel for the petitioner submitted that Shri V. C. Mishra, who participated in the deliberations of the selection committee was not a duly appointed Rector on the day the selection committee interviewed the prospective candidates for appointment of the Professor or the Reader. According to the learned counsel, a Rector is appointed u/s 15B of the Act of 1973 by the Vice-Chancellor with the prior approval of the Chancellor and the State Government and his term of office is co-terminous with the term of the Vice-Chancellor as provided under sub-section (3) of Section 15B of the Act of 1973 read with Statute I-A as approved by the Co-ordination Committee on

29-6-1984. The learned counsel submitted that Shri V. C. Mishra was appointed Rector by the Vice-Chancellor vide Notification dated 1-7-1983 (Annexure P-6) for a period of one year with effect from the date on which he assumes the charge of the office. His term of appointment as per the Notification referred to hereinabove, expired on 1-7-1984. Thereafter, by Notification dated 16-8-1984, (Annexure P-7), the Vice-Chancellor made the term of Shri V. C. Mishra as a Rector, coterminous with the term of the Vice-Chancellor, with effect from 2-7-1984. The Vice-Chancellor, Shri M. B. Malhotra was relieved on 16-8-1985 and according to the Notification dated 16-8-1984, the term of Shri V. C. Mishra which was co-terminous with the term of the Vice-Chancellor also came to an end on 16-8-1985. The successor Vice-Chancellor Shri K. K. Dave assumed the office on 17-8-1985 but did not appoint Shri V. C. Mishra as Rector till 8-4-1986 when a Notification appointing Shri V. C. Mishra was issued vide Annexure P-9 with effect from the date of issuance of the order making his term coterminous with the term of the Vice-Chancellor. Thus, according to the learned counsel, Shri V. C. Mishra was not a Rector in the University between the period 17-8-1985 to 8-4-1986 and therefore, Shri V. C. Mishra could not have participated in the deliberations of the Selection Committee held on 30-1-1986 for the selection of the posts of Professors or Readers, as a Rector who is an ex officio member of the selection committee and hence his participation therein has made the constitution of the Selection Committee illegal and the selection made by it, invalid and, therefore, the appointment of Dr. R. S. Kasana as Professor of Physics deserves to be quashed.

Addressing this Court on the second question on relating to non-performance of statutory duty cast upon the selection committee u/s 49(4) of the Act of 1973, the learned counsel submitted that the said provision casts a statutory duty on the selection committee to "investigate" the data furnished by a candidate to find out the validity of the statements made by the candidate. It was submitted that Dr. R. S. Kasana furnished incorrect particulars regarding his teaching, research and D.Sc. work experience which rendered him disqualified under condition No. 10 of the advertisement (Annexure P-2) for selection and appointment as Professor in Physics, It was submitted that the selection committee did not "investigate" the teaching and research experience of Dr. R. S. Kasana though a statutory duty was cast upon it to verify and find out the truth. According to the learned counsel, as per advertisement, (Annexure P-2), the teaching experience required was about 10 years, but Dr. R. S. Kasana had only 8 years" teaching experience till August 1985, although it was stated to be 12 years by him, while his research experience was only of 12 years, yet he mentioned it to be 14 years. The learned counsel referred to the averments made in the return by the respondent/University to the effect that it had no reason to doubt the statement made by the candidate. According to the learned counsel for the petitioner this did not absolve the duty cast upon the selection committee to "investigate" as provided u/s 49(4) of the Act. It was contended that it was the duty of the selection committee to have verified the statement

made by Dr. R. S. Kasana on the basis of the testimonials and the certificates and not merely relied on the chart showing the bio-data of the respective candidates. This action also, according to the contentions of the learned counsel for the petitioners, rendered the selection and the appointment thereof invalid and hence it requires to be quashed.

The respondents Nos. 1 and 3 and the respondent No. 2 have submitted separate returns denying the allegations made in the petition. In addition the respondents have raised a preliminary objection as regards the maintainability of the petition, as according to the respondents, the petitioners have a right of representation u/s 12 as also u/s 55 of the Act of 1973. It has also been contended that even assuming that the selection committee was not properly constituted, the defect, if any, is curable u/s 58 of the Act of 1973 which states that no act or proceeding of any authority, committee or body of the University shall be invalid merely by the reason of any defect in appointment of a person acting as a member thereto and/or any irregularity in its procedure not affecting the merits of the case. Reliance was placed on a decision of the Supreme Court in B.K. Srinivasan and Others Vs. State of Karnataka and Others, . The respondent No. 2 Dr. R. S. Kasana, in his reply to the rejoinder filed on behalf of the petitioner admitted that there had been a calculating mistake in computing the teaching experience, but has averred that even otherwise, he has a teaching experience of more than 12 years and further contended that vide the advertisement Annexure P-2, the requirement relating to the teaching experience was about ten years and hence he fulfils the qualification that was necessary for the purpose of appointment as a Professor.

Replying to the preliminary objection as regards the maintainability of the petition, the learned counsel for the Petitioner contended that the selection committee is not a statutory body constituted for the purposes of selection as it is not a permanent committee of the University. It was also urged that the functions of the selection committee are merely to recommend the suitable candidates for appointment to the teaching posts to University and any recommendations made are not binding on the Executive Council which finally appoints and fills up the posts. The learned counsel in support of his contentions placed reliance on a Single Bench decision of this Court in Anuradha Shomeshwar Gupta vs. Ravishankar University, Raipur and others, 1982 MPLJ 180. In view of this it was urged that the provision of Sections 12 and 55 of the Act of 1973 were inapplicable since these relate to statutory committees. It was submitted that no right is conferred to make a representation u/s 12 of the Act of 1973 and, therefore, the same cannot be said to be an alternative remedy available to the petitioners so as to exclude interference by this Court under Article 226 of the Constitution of India.

Before discussing the rival contentions, it is necessary for this Court to consider the preliminary objection.

Section 12 of the Act of 1973 defines the powers of the Kuladhipati/Chancellor,

Sub-section (4) of Section 12 of the Act of 1973 is as under:

12(1) x x x x x

(2) x x x x x

(3) x x x x x

(4) The Kuladhipati may, by an order in writing annul:

(a) any proceeding of any officer, authority. Committee or body of the University constituted by or under this Act, which is not in conformity with this Act, the statutes. Ordinances or the Regulations; or

(b) any proceedings of any authority. Committee or other body which has been referred to him by the Kulpati under sub-section (7) of Section 15, if he is satisfied that such proceedings are prejudicial to the interests of the University:

Provided that before making such order he shall call upon the officer, authority, committee or body concerned to show cause why such an order should not be made and if any cause is shown within the time specified by him in this behalf he shall consider the same.

Under the aforesaid provision, the Chancellor has the power to annul the proceedings of any officer, authority, committee or the body of the University suo motu if such proceedings are not in conformity of the Act of 1973, The Chancellor can also exercise his powers if any such proceedings are referred to him by the Vice-Chancellor, There is no right conferred upon a person aggrieved otherwise than the officer or authority or committee or body of the University constituted under the Act of 1973 to make representations The above view further gets support from the fact that prior to the annulment the Chancellor has to issue a show cause notice to such officer, authority, committee or a body of the University and not to any individual or the person aggrieved- Such a provision, therefore, cannot be said to be an alternate remedy.

The argument of the learned counsel for the petitioners that the selection committee is not a statutory committee because of its being a recommendatory committee and that once the selection is made, its existence comes to an end, cannot be accepted. Section 49 of the Act of 1973, appears in Chapter IX of the Act of 1973 under the head. "Appointments to the teaching posts in the University". Section 49 is reproduced below:

49. (1) No person shall Be appointed:

(i) as a Professor, Reader or Lecturer; or

(ii) to any other teaching post of the University paid by the University.

except on the recommendation of a committee of selection constituted in accordance with sub-section (2):

Provided that if appointment to any of the teaching posts aforesaid is not expected to continue for more than "six months" and cannot be delayed without detriment to the interest of the Department or Institution maintained by the University, the Executive Council may make such appointment without obtaining the recommendation of the committee of selection constituted under sub-section (2) but the person so appointed, shall not be retained on the same post for a period exceeding "six months" or appointed to another post in the service of the University except on the recommendation of the said committee of selection:

Provided further that any such appointment purported to have been made under the preceding proviso prior to the 13th day of February 1974 and continuing on such date shall continue till the 30th day of June 1974 or the filling up of the post in accordance with sub-section (5), whichever is earlier.

The members of the committee of selection shall be:

(i) the Kulpati Chairman.

(i-a) the Rector.

(ii) Head of the University Department in the subject concerned if he is a 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.

(iii) one expert in the subject not connected with the University in any manner whatsoever to be nominated by the Academic Council.

(iv) three eminent educationists, not connected with the University in any manner whatsoever, at least two of whom are experts in the subject, nominated by the Kuladhipati.

(v) the Chairman of the State Public Service Commission or a member of the State Public Service Commission nominated by him.

(3) Four members of the selection committee shall form a quorum.

(4) The Committee shall investigate the merits of the various candidates, including any eminent person distinguished in scholarship who may not have applied, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts arranged in order of merit:

Provided that no recommendation shall be made unless at least two experts nominated under clauses (iii) and (iv) of sub-section (2) are present in the meeting in which such recommendation is to be decided upon.

(5) Out of the persons so recommended under sub-section (4) the Executive Council shall make the final selection:

Provided that where the Executive Council proposes to make the appointment otherwise than in accordance with the order of merit arranged by the committee,

the Executive Council shall record its reasons in writing and submit its proposal for sanction of the Kuladhipati.

It is apparent from the perusal of the above quoted provision,

(i) that the selection committee so constituted would consist of the Kulpati/Vice-Chancellor and the Rector, as ex officio members amongst others to be nominated;

(ii) that four members of the selection committee would form the quorum;

(iii) that the selection committee has to "investigate" the merits of the prospective candidates and to be arranged the names of selected candidates in order of merit; and

(iv) that the Executive Council would make the final selection from the merit list but if the Executive Council proposes to make the appointment otherwise than in accordance with the order of merit, it has to record its reasons, which shows that the Executive Council has to make the appointment from amongst the candidates named in the merit list. The selection of the candidates recommended by the Selection Committee, thus is final.

It is no doubt true that in the case of Anuradha Sameshwar Gupta (supra), this Court has observed:

24. Section 12(4)(c) and (b), under which Kuladhipati acted, provides:

(4) The Kuladhipati may, by an order in writing, annul:

(a) any proceedings of any officer, authority, Committee or body of the University, constituted by or under this Act, which is not in conformity with this Act, the Statutes, Ordinances or the Regulations, or

(b) any proceedings of any authority. Committee or other body which has been referred to him by the Kulpati under sub-section (7) of Section 15, if he is satisfied that such proceedings are prejudicial to the interests of the University:

Provided that before making such order he shall call upon the officer, authority, committee or body concerned to show cause why such an order should not be made and if any cause is shown within the time specified by him in this behalf, he shall consider the same.

Sub-clause (a) of this section clearly provides that if the proceedings of any officer, authority, committee or body of the University constituted by or under this Act is not in conformity with the Act, Statute or Ordinances or the Regulations, Kuladhipati by an order in writing can annul these proceedings. The proviso to this section requires that before passing an order, Kuladhipati shall call upon the officer, authority, committee or body concerned to show cause why such order be not made and it is not in dispute that Kuladhipati issued a notice to show cause to the Executive Council and the Executive Council submitted its reply, the relevant part of which has been quoted above and it was not

contended that so far as the Executive Council is concerned, there was any defect of procedure followed by Kuladhipati. The grievance made by the learned counsel for the petitioner was that no notice was issued to the Selection Committee and that a notice was not issued to the petitioner. It was contended by the learned counsel that the authority, committee or body used in Section 12(4)(a) will cover the case of the Selection Committee as it is a committee constituted u/s 49, Apparently the Selection Committee within the meaning of language used in section 49 could not be said to be an authority, committee or body of the University, The Selection Committee under the scheme of Section 49 is only a recommendatory committee which is constituted temporarily for conduct of a selection vis a vis particular advertisement for a particular post. It is also clear that the functions of the Selection Committee are over as soon as it submits its report to the Executive Council and it is the Executive Council, which is a body of the University, which takes decision. It was contended by the learned counsel that in view of section 49(5), the Executive Council was bound to follow the decision of the Selection Committee and, therefore, so long as the decision of the Selection Committee was not set aside, or annulled, the Executive Council was bound to accept it.

Section 49(5) provides:

Out of the persons so recommended under sub-section (4), the Executive Council shall make the final decision:

Provided that where the Executive Council proposes to make the appointment otherwise than in accordance with the order of merit arranged by the committee the Executive Council shall record its reasons in writing and submit its proposal for sanction of the Kuladhipati.

The sub-clause indicates that the Executive Council will make the final selection out of the persons recommended by the Selection Committee under sub-clause (4) and the only rider put in the proviso is that if the Executive Council proposes to make the appointment otherwise than in accordance with the merit list prepared by the Selection Committee, it is expected to give reasons and it has to submit its proposal for sanction to the Kuladhipati. In the decision reported in *Das Ram Singh vs. University of Sagar* (supra), on which reliance has been placed it was observed:

..... But we are not inclined to accept the argument of the learned counsel for the petitioner that the Executive Council in every case is bound to accept the recommendation of the Selection Committee when only one name is recommended and that it is bound to make the appointment as recommended. It has to be taken notice of that the Executive Council is the Executive authority of the University in whom all the powers of the University, not otherwise specifically provided for, are vested. It is quite possible that by the time the recommendations of the Selection Committee reach the Executive Council it may not be advisable to fill up the post advertised for various administrative reasons,

e.g. lack of funds or want of students. If an honest administrative decision is taken not to appoint a person recommended in our opinion, the Executive Council and the University cannot be compelled to accept the recommendations of the Selection Committee and to make the appointment.

It is, therefore, clear that even this decision does not lay down that the Executive Council is bound to accept the recommendations of the Selection Committee. In the circumstances of the present case, it could not be doubted that if it had come to the notice of the Executive Council that the Selection Committee did not observe Ordinance No. 4 pertaining to the requirement of educational qualification as was clearly indicated in the advertisement, the Executive Council itself might have chosen not to accept the recommendations of the Selection Committee and it could not be argued that the Executive Council has committed any mistake. It is therefore, clear that in view of the Scheme of the Act and the Scheme of Section 49, the contention that the Executive Council was bound to accept the recommendations of the Selection Committee cannot be accepted. As discussed earlier, the Selection Committee does not appear to be a committee under the Act or a committee or body of the University but it is only a recommendatory committee appointed in accordance with section 49 for the purpose of selection of a particular post and thus, it could not be said that the Executive Council's decision could not be annulled unless the Selection Committee is noticed and its decision is annulled. This contention advanced by the learned counsel for the petitioner, therefore, could not be accepted.

It appears that the observations made, by the Single Bench is on the reasoning that the Selection Committee within the meaning of the language used in section 49 of the Act of 1973 is merely a recommendatory committee which is constituted temporarily for conduct of selection vis a vis particular advertisement for a particular post and its function is over no sooner it recommends the candidates for appointment; secondly that the Executive Council is not bound to accept the recommendation of the Selection Committee and, therefore, the Selection Committee was not a statutory committee and thirdly, the recommendations of the Selection Committee could be annulled under the provisions of Section 12(4)(a) of the Act of 1973 without a show cause notice to it.

We have carefully considered the view expressed in the aforesaid decision but find ourselves unable to subscribe to the said view for the reason that the Act of 1973 itself provides for constitution of the Selection Committee for the purposes of making appointments to the teaching posts in the University. No appointment can be made unless the name is recommended by the Selection Committee. Even in the case of any eminent person who has not applied for the post, his name has to be recommended by the Selection Committee. No person can be appointed to any teaching post unless he is recommended by the Selection Committee. It is thus a condition precedent. It is also incorrect to say that the recommendations made by the Selection Committee are not binding on the

Executive Council which is the appointing authority. The order of merit in which the candidates are shown is not binding but at any rate the person to be appointed has to be not only recommended by the Selection Committee, but the Executive Council has to be recorded its reasons for not appointing the person placed in order in the merit list as also to submit its proposal for sanction of the Kuladhipati/Chancellor. In view of the unambiguous provisions contained in section 49 of the Act of 1973, we see no reason to hold that merely because the Selection Committee gets itself exhausted after the recommendations are made it is not a statutory committee and we hold that it is a statutory committee, and it would be subject to the provisions of Section 12 of the Act of 1973, but it is not an alternate remedy available to the petitioners for the reasons already stated hereinabove.

The other question to be considered is whether the petitioners have an alternative remedy under the provisions of Section 55 of the Act of 1973 which is reproduced below:

55. If any question arises regarding the interpretation of any provisions of this Act or of any Statute, Ordinance or Regulation or as to whether any person has been duly elected, appointed as or is entitled to be a member of any authority, or other body or the University, the matter shall be referred to the Kuladhipati whose decision thereon shall be final:

Provided that before taking any such decision the Kuladhipati shall give the person or persons affected thereby a reasonable opportunity of being heard.

EXPLANATION :-- In this section the expression "body" includes any committee constituted by or under the Act.

The language of the above provision is unambiguous. This provision occurs in Chapter XII containing Supplementary Provisions under the heading "Disputes as to constitution of University authorities and bodies". The explanation states that the expression "body" includes any "committee". In these petitions, according to the averments made by the petitioner, they are affected by the appointment of Shri V. C. Mishra as a member of the Selection Committee. Questions as regards interpretation of Section 49(4) and Section 158(3) read with Statute 1-A have been raised. In view of above the petitioners should have raised a dispute before the Kuladhipati/Chancellor. The petitioners would have been given reasonable opportunity of hearing as provided under the aforesaid provision since they were the persons affected, before the decision was given and had there been any merit in the dispute, the Kuladhipati/Chancellor could have taken recourse to the provision of Section 12 of the Act of 1973. But, in spite of what has been stated above, this Court is of the opinion that the remedy available to the petitioners is not effective in view of the provisions of Section 58 of the Act of 1973, which is as under:

58. No act or proceeding of any authority, committee or body of the University shall be invalid merely by reason of

- (a) any vacancy in or defect in the constitution thereof, or
- (b) any defect in the election, nomination or appointment of a person acting as a member thereto, or
- (c) any irregularity in its procedure not affecting the merits of the case.

Under the above provision, the act or proceedings of any authority, committee or body of the University shall not be invalid merely because of any vacancy or defect in the constitution of the committee or appointment of a person acting as a member thereto. In these petitions, the contention of the petitioners is that Shri V. C. Mishra could not have participated in the deliberations of the Selection Committee constituted u/s 48 of the Act of 1973 as a Rector since he had ceased to be the Rector on 16-8-1985 as his turn as a Rector being co-terminous with that of the term of the Vice-Chancellor, Shri M. B. Malhotra who was relieved of his duties as a Vice-Chancellor on that day and the successor Vice-Chancellor. Shri K. K. Dave after assumption of the charge of the office on 17-8-1985 did not appoint Shri V. C. Mishra as a Rector till 8-4-1986 and thus there was a gap between the period 17-8-1985 to 8-4-1986 when he was not the Rector and, therefore could not participate in the Selection Committee as a Rector, thereby rendering the entire proceedings of the Selection Committee as inoperative, invalid and illegal.

This Court has carefully considered the arguments advanced on behalf of the parties. In our opinion, even assuming that Shri V. C. Mishra could not have taken part as a Rector-member in the Selection Committee which held its meeting on 30-1-1986, the proceedings of the Selection Committee cannot be termed as void and illegal in view of the Omnibus curative provision of Section 58 of the Act of 1973 which would validate the acts and/or proceedings of the Selection Committee, Considering a similar provision of Karnataka Town and Country Planning Act, 1963, in the case of B. K. Shrinivasan and another (supra), the Supreme Court termed such a provision to be a "Ganga" clause meaning thereby that according to Hindu tradition, the waters of the Ganga purify, clean the sins and remedy all insufficiency. The Supreme Court laid down that such Omnibus Curative clauses are found in several modern Acts and their object is to put beyond challenge defects of constitution of statutory bodies and defects of procedure which have not led to any substantial prejudice. The question now is whether by participation in the deliberations of the Selection Committee by Shri V. C. Mishra as a Rector, any substantial prejudice is caused to the petitioner and our answer to the said question is in negative as Shri V. C. Mishra was not the sole member of the Selection Committee, The Selection Committee, as per the provisions of Section 49 of the Act of 1973, consisted of several other members including the experts in the subject for which selection was to be made. In view of above, this Court is of the opinion that the 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 and thus, the selection and appointment of respondent No. 2 Dr. R. S. Kasana as Professor of Physics cannot be said to be void or illegal,

on this ground.

The East submission which remains to be considered relates to the interpretation of the word "investigate" as occurring in sub-section (4) of Section 49 of the Act of 1973. The argument of the learned counsel for the petitioner is that the selected candidate, Dr. R. S. Kasana, had submitted incorrect information with regard to his teaching and research experience and the Selection Committee abdicated its statutory duty to "investigate" the correctness of his bio-data as provided under sub-section (4) of Section 49 of the Act. It was also submitted that there was no material before the Selection Committee as regards his teaching and research experience. According to the learned counsel the certificates of experience in teaching have been filed by Dr. R. S. Kasana for the first time in his return to these petitions. The learned counsel also referred to the reply to rejoinder of Dr. R. S. Kasana where he admitted that there was a "calculating mistake" as regards his teaching experience. Therefore, it was contended that the Selection Committee instead of relying on the comparative chart of the qualifications of the prospective candidates, ought to have made enquiry with regard to the veracity of the statement and failure to do so, has wrongly recommended the respondent No. 2 for the post of Professor in the University. The reply of the respondent No. 2 is that the teaching experience required under the advertisement, Annexure P-2, was about ten years and the respondent No. 2, even otherwise has fulfilled the said criteria. It was submitted that the Expert Panel has found the respondent No. 2 more meritorious than the other candidates and no interference is called for in these petitions. It was also contended that the Selection Committee has to see the respective "merits" of the candidates and not to "investigate" the same as the Police Authorities do the "investigation".

As regards the question of interpretation of the term "investigation" as occurring in Section 49(4) of the Act of 1973 it may be stated that the same has to be interpreted in the context in which it has been used in the Act of 1973. The Act of 1973 has been enacted to consolidate and amend the law relating to the Universities and to make better provision for organisation and administration of Universities in Madhya Pradesh. Chapter IX relates to appointment to teaching posts in the University which is to be done by constituting a Selection Committee, u/s 49 thereof, which consists of members who are experts in the subject in which the selection is to be made as also eminent educationalists, amongst other as provided. The Selection Committee is required to "investigate the merits" of various candidates which apparently mean to explore the knowledge of the candidates in their respective subjects and not to embark upon an enquiry regarding the veracity of the statements made by the candidates, like a police investigation. The Selection Committee does not make appointments. It merely recommends in order of merit the candidates for appointment. This order of merit is based upon the knowledge and experience of the candidate in his subject on the basis of the opinion of the experts. In view of above, it cannot be accepted that the term "investigation" has been used in the sense it is generally

understood. It is no doubt true that the advertisements Annexures P-1 and P-2 state that a candidate furnishing incorrect information about his qualifications etc. will stand disqualified. This disqualification is with respect to his "appointment" which is made by the Executive Council. Applications are invited for "appointment" and not for "selection". If any candidate furnishes incorrect information, it is for the University to see that such a candidate is not appointed to the post, though recommended by the Selection Committee. Such clause is included to deter a candidate from making incorrect statements. But, apart from this according to the return submitted by the respondent/University, there was no material before it to suspect that any candidate much less, the respondent No. 2 had furnished incorrect information. The reply to the rejoinder by the respondent No. 2, Dr. R. S. Kasana states it as a calculation mistake and even excluding the disputed period, he had the requisite teaching experience.

As regards the teaching experience, it is seen from perusal of the advertisement dated 6-7-1985, Annexure P-2 that one of the conditions was that the candidates should have about ten years of experience of teaching. The use of the word "about" is significant. It would mean "around" or "nearly" ten years and not "essential". Whether Dr. R. S. Kasana had or had not the requisite qualification of teaching is a question of fact which cannot be gone into in these petitions under Article 226 of the Constitution of India but since it was argued on behalf of the petitioners that there was no material before the Selection Committee as regards the teaching experience, this Court called for the relevant file of the Selection Committee which was produced before us for perusal by the University. On close scrutiny of the file produced before us, we found that Dr. R. S. Kasana in his application form had stated that he had a total ten years of teaching experience but this statement was not supported by any certificate either from Indore University or R. D. Vishwa Vidyalaya, Jablapur and the Selection Committee took into consideration the statement made by Dr. R. S. Kasana in his application form. There was thus, no material before the Selection Committee since the statement made by Dr. R. S. Kasana in his application, as regards his teaching experience was not supported by any document. The respondent No. 2 Dr. R. S. Kasana has no doubt produced certificates of his teaching experience with his return. However, these cannot be taken into consideration at this stage, by this Court. The proper authority to consider the same was the Selection Committee, The learned counsel for the University also agreed that there was no document or certificate of teaching experience submitted by Dr. R. S. Kasana before the Selection Committee and it acted on the basis of the statements made by Dr. R. S. Kasana. It is also significant to note that there is no comparative chart prepared on the basis of the qualification and experience showing merit of the candidates who appeared in the interview, in the file produced by the University for our perusal. The learned counsel for the University also could not explain its absence in the file. Under these circumstances even though the Selection Committee recommended the name of Dr. R.S. Kasana on the basis that he was found to be meritorious than the other candidates, it still remains a question as

to whether Dr. R. S. Kasana had or had not the requisite experience in teaching. In our opinion, therefore, the Selection Committee made an error in relying on the statement of teaching experience in the application form of Dr. R. S. Kasana without there being any supporting documents to that effect and hence the selection of Dr. R. S. Kasana as a Professor of Physics cannot be sustained and deserves to be quashed. However, since Dr. R. S. Kasana has been selected and appointed as a Professor of Physics, he shall continue to hold the post until the University makes arrangement for selection of the post of Professor of Physics afresh.

For the reasons stated above, these petitions are allowed. The appointment of Dr. R. S. Kasana as a Professor of Physics in the University vide Annexure P-4 with the petition is quashed. It is, however, directed that Dr. R. S. Kasana shall continue to hold the post of Professor of Physics in the University until alternate arrangement for selection and appointment is made to fill up the post of Professor of Physics in accordance with law. The petitioners as well as Dr. R.S. Kasana shall be free to apply afresh for the post of Professor of Physics as and when advertised by the University, There shall, however, be no order as to costs and the outstanding amount of security, if any, shall be refunded to the petitioners.