
(1997) 03 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 321 of 1988 and CMPs No"s. 1105 of 1988 and 1325 of 1996

Sh. Bhim Sen Sharma

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Citation : (1998) 1 ShimLC 1

Hon'ble Judges : M. Srinivasan, C.J;L.S. Panta, J

Bench : Division Bench

Advocate : J.L. Kashyap and S.R. Mehrotra, for the Appellant; D.C. Jishtu and Shyama Dogra for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—These two petitions are by a third party to the writ petition, by name, Dr. S.R. Mehrotra. The earlier petition, namely, CMP No. 1105/88 is for permission to intervene in the main writ petition and to allow him to present his opinion and take part in the proceedings because he is interested in a question of law which is directly and substantially in issue in the proceedings. The main writ petition is one for quashing the selection of the third Respondent as Professor in Music by the University. The Petitioner therein is challenging the selection on several grounds. One of the prayers was to declare the creation of the post of Professor in Music as illegal, malafide and null and void.

2. Even in the main writ petition reference is made to CWP No. 512/87 which was filed by the present applicant in this CMP for quashing the creation of several posts by the University including the post of Professor in Music. That writ petition was pending at the time when the present writ petition CWP No. 321/88 was filed but subsequently on 12-12-1994 that writ petition has been dismissed by this Court. Inasmuch as the writ petition filed by the applicant in the CMP has been dismissed and it has been held that the creation of post of professor in Music could not be declared to be illegal, the applicant herein cannot claim to be

interested in any question of law which arises for consideration in this writ petition. As pointed out already the writ petition is only in challenge of appointment of a particular person as Professor in Music and we are only concerned with the rights inter se the Petitioner in the said writ petition and the third Respondent who has been appointed as Professor in Music. Whatever may be illegality or irregularity urged by the writ Petitioner that is not a matter of a question of law which could be said to be a common one.

3. It is not in dispute that the applicant is a retired Professor and he is not a person who can compete for any of the posts with which we are concerned in the main writ petition. The only reason given by him in the CMP is that a false allegation has been made in the reply filed by the Vice-Chancellor to the effect that the applicant was also considered in absentia at the time of his initial appointment in the University. According to the applicant that applicant is false as he was appointed only after he appeared in the interview and his merit was considered by the Committee which interviewed him. The averments in the application are that he should present his opinion and take part in the proceedings as he is interested in the question of law. The question whether the averment made by the Vice-Chancellor in the reply filed in the main writ petition is true or not is not a question of law and it is not a matter on which the Petitioner can claim to be intervener. Even assuming that the said averment is false it is only a matter for evidence and applicant wants only if at all to give evidence in the writ petition to the effect that the averment contained in the reply is false. The question of truth of the statement in the reply can be considered only if this Court decides that the said question is relevant for the purpose of disposal of the writ petition. It is only at that stage this Court could consider recording of evidence on that allegation made by the Vice-Chancellor in the reply or the statement made by the applicant herein in the CMP. Hence we are of the opinion that the applicant cannot claim to be an intervener. It is too well known that a person can claim to be an intervener only if he is interested in the subject matter of the dispute before the Court. Even according to the applicant he is interested in one of the questions of law and he must place his opinion on the said question before the Court but that will not make him an intervener in the eye of law. Hence this CMP is dismissed.

4. CMP No. 1325/96 is filed by the applicant in CMP No. 1105/88. Inasmuch as we have refused to entertain his application to permit him as intervener, this petition does not arise for consideration and accordingly it is also dismissed.

5. C.M.P. No. 321 1988 One of the prayers in this writ petition is to declare the creation of post of Professor in Music as illegal, mala tide, null and void. That prayer has been considered by this Court in CWP No. 512/87 which was pending when this writ petition was filed. The said writ petition was dismissed by order dated 12-12-1994 whereby the creation of the post was upheld and consequently the question does not survive for our consideration in this writ petition.

6. The other prayer relate to the proceedings of the Screening Committee,

Selection Committee as also the Executive Council for the post of Professor in Music and the appointment of the 3rd Respondent as such Professor. The prayer of the Petitioner is to declare the proceedings of the said Committees as well as the appointment of the 3rd Respondent as arbitrary, illegal, unconstitutional and biased. Even at the outset we must point out that the Petitioner has no locus-standi to challenge the appointment of 3rd Respondent as Professor in Music. Admittedly the Petitioner did not submit any application for consideration for the appointment to the said post. Though there was an advertisement in the newspapers calling for applications, the Petitioner did not send his application. According to the Petitioner he was misled by the age limit mentioned in the said advertisement. It is stated by the Petitioner that the age limit was not less than 18 years and not more than 30 years. A perusal of the advertisement which is filed as annexure P/1 shows that the age limit is applicable only to the post of Statistical Assistant and not applicable to the other posts mentioned in the advertisement. Even otherwise the University has taken care to issue a subsequent notification and advertise the same whereby deleting the post of Statistical Assistant including the age limit. That was done on 27-10-1987 within 10 days from the initial advertisement. In view of the fact that the said modification was not published in the newspapers, further publication was made at the instance of the University and the same was published in the Tribune dated 31-10-1987 and the Hindustan Times dated 3-11-1987. In view of the same it is not open to the Petitioner to contend that he was misled by the age limit shown in the advertisement. The fact remains, that he was not an applicant and therefore he cannot raise any contention with regard to the appointment of the 3rd Respondent. We are not going into the question whether the Petitioner was qualified for applying to the post of Professor. Learned Counsel for the Petitioner contends that this writ petition is one for Issue of quo warranto as the 3rd Respondent has been appointed illegally and against the statutory provisions. It must be pointed out that this cannot be treated as a petition for issue of quo-warranto because it is not a case of appointment of a person by an authority who has no power to do so. Quo-warranto can be issued if the appointment is made by a person who has no power to do so or that alleged power is itself null and void because of some provisions of law. In this case the University has power to appoint a person as Professor in Music inasmuch as it has been held that the creation of the post of Professor in Music is valid. Hence the appointment can be challenged if at all only on the ground of illegality or irregularity and that too only by an applicant for that post. In this case the Petitioner not having done so, it is not open to him to challenge the selection.

7. Having heard the counsel on both sides fully, we find that there is no merit in the contentions of the Petitioner. The main contention urged by the Petitioner is that two of the applicants for the post who are shown as Respondents 4 and 5 in the writ petition were not at all qualified for the post and there was only one qualified candidate, namely, the 3rd Respondent. According to learned Counsel for the Petitioner if there is only one qualified candidate the said candidate

should not be considered and there should be a fresh advertisement calling for fresh applications. According to him that has been the practice adopted by the University for quite a number of years and that it was in pursuance of a decision taken by the Executive Council somewhere in 1978. We have no hesitation to reject this contention and hold that if there had been such a practice it is not in accordance with law. It can never be said that if there is only one qualified applicant the said person should not be considered for appointment. But on the facts of this case it is unnecessary for us to go into that question.

8. It is seen from the records that there were as many as seven persons who were invited for interview, namely. Dr. Indirani Chakravarti (Respondent No. 3), Dr. Ajit Singh Paintal, Dr. Siya Bihari Saran, Mr. Chaman Lal Verma (Respondent No. 5), Dr. Manorama Sharma (Respondent No. 4), Dr. S.B. Sharma and Dr. Radhey Shyam Jaiswal. Two of them, namely, Dr. Ait Singh Paintal and Dr. S.B. Sharma were considered in absentia. The Selection Committee comprised four persons, namely, Prof. K.C. Malhotra Vice-Chancellor of H.P. University, Prof. V. Ranade, Head Music Department, MS U. Baroda, Professor U.S. Kochak, Ex-Dean, Fine Arts Faculty, Allahabad University and Prof. (Mrs.) Bhupinder Sheetal, Music Deptt. Punjab University Chandigarh.

9. There is no allegation whatever against any member of the Selection Committee that any of them was affected by mala fides. As such the contention that there was only one qualified candidate available for selection and that there was no scope for comparing the merits of different candidates is not available to the petitioner in view of the fact that there were as many as seven candidates.

10. No exception can be taken to the fact that two persons were considered in absentia. Here again learned Counsel contends that the decision of the Executive Council was to the effect that no person should be considered in absentia and that was the practice followed by the University for quite a long time. In support of this, a communication issued by the Chancellor of the University, namely, the Governor of Himachal Pradesh on December 19, 1985 is placed before us. A perusal of the same shows that at the relevant time an interview was held for appointment of a Professor in Department of Business Administration. Four persons were to appear in the interview. Two of them sent a communication that they could not attend the interview on account of law and order situation in Punjab. Another person sent a telegram stating that he was not well and could not attend the interview. The selection committee considered only the case of the person who appeared before the Committee and declared him selected. The Selection Committee did not consider the case of other three candidates even though they could not attend the interview for reasons beyond their control. It was on that ground that the Chancellor held that the Selection was not justified and cancelled the selection. The Chancellor pointed out that the Selection Committee ought to have compared the merits of the four candidates as the relevant records containing the bio-data of all the candidates were available with the Selection Committee.

11. Our attention is drawn to Clause 35.11 of the University Ordinances. Sub-Clauses (d), (e) and (h) of the said Clause read as under:

35.11....

(d) In the case of appointments to category "A" the Vice-Chancellor may also place before the Selection Committee, names of persons, who may not have applied for the post but who in his opinion deserve to be considered.

(e) In the case of appointments to category "A" the Selection Committee shall consider the academic record of the candidate, his research work, his contribution to the advancement of the knowledge of the subject, his publication and then assess his suitability for the post in all respects.

(h) In case the Selection Committee is of the opinion that none of the candidates is suitable, the post may be re-advertised and in the case of appointments to posts in category "A", the Vice-Chancellor may also be requested to suggest some other names.

12. Even a perusal of the above clauses will show that merits of the candidates could be considered in absentia. Clause (d) is very specific. It says that even if some persons have not applied and the Vice-Chancellor is of the opinion that they should be considered, they could be considered by the Committee. Learned Counsel contends that Clause (d) will apply only to persons who had not sent their applications and not to persons who had applied but remained absent in the interview. We are not able to accept this contention. Even if a person sent an application and remained absent on account of reasons of his own, still if his records are available, the Selection Committee could consider the merits of that person and compare him with the other persons who appear in the interview. It is also seen in Clause (h) that the Selection Committee is to call for fresh applications only if it is found that none of the candidates is suitable. The contention of the learned Counsel that if there is only one candidate there should be a fresh advertisement calling for applications is negated by this very clause. The clause contemplates fresh applications only if none of the applicants is found to be suitable. In this case the Selection Committee was of the opinion that the 3rd Respondent was eminently fit for being appointed as Professor and it has accordingly chosen the 3rd Respondent for that post. We have also referred to the fact that seven candidates appeared in the interview and the contention raised by the Petitioner's counsel does not arise for consideration in this case in view of the facts. In the circumstances it is unnecessary for this Court to pronounce whether the practice said to have been adopted by the University pursuant to a decision taken by the Executive Council in 1978 is valid or not. Suffice it to point out that on the facts of this case nothing has been made out by the Petitioner to show that the appointment of the 3rd Respondent as the Professor in Music is in any manner vitiated, invalid, unconstitutional or illegal. Hence, the writ petition suffers dismissal. In the facts and circumstances of the case and it is hereby dismissed. There will be no order as to costs.