
(2014) 08 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : SWP No. 1745 Of 2013, IA No. 3359 Of 2013, IA No. 2785 Of 2013
and IA No. 3879 Of 2013

Shabana Khan

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Citation : (2015) 2 JKJ 234

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : M.A. Qayoom, Advocate, for the Appellant; Altaf Haqani, Azhar-ul-Amin and Shahbaz Sikender, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.â?"State Public Commission vide advertisement notice No. 42-PSC(DR-P) dated 29.06.2012 invited applications from

eligible candidates, amongst others for the post of Lecturer Ophthalmology in Government Medical College Srinagar. The applications were to be

submitted by 30.7.2012. On receipt of revised break up of the post available in Government Medical Colleges Jammu and Srinagar vide No. 46-

PSC (DR-P) of 2012 dated 01.08.2012, the date of receipt of the applications was extended to 20.08.2012. Petitioner and Dr. Asif Amin Vakil -

respondent No. 5 herein, applied for the advertised post. Both were found eligible and allowed to participate in selection process.

2. The Commission on conclusion of selection process notified select list vide notification No. 36-PSC (DR-S) of 2013 dated 10.9.2013.

Petitioner did not find place in the select list. However, respondent No. 5 was included in the select list. Petitioner was shown to have secured 69

points as against 74.75 points secured by the respondent No. 5.

3. Aggrieved with her non selection, petitioner submitted a representation to respondent No. 1 requesting for review of selection of respondent

No. 5 and for her selection against the advertised posts. It was urged that respondents 6 & 7 previously acted as teacher and guide to respondent

No. 5 and therefore were favourably disposed towards him. Her representation did not find any response from the respondent No. 1, constraining

her to file writ petition on hand.

4. Petitioner on the strength of averments made in the petition seeks following relief:

i) Writ of certiorari or any other appropriate writ, order or direction, quashing the impugned merit list/selection list issued by respondent No. 04 in

terms of notification No. 36-PSC(DR-S) of 2013 dated 10.09.2013, to the extent it relates to respondent No. 05.

ii) Writ of mandamus or any other appropriate writ, order or direction directing.

a) respondent No. 4 to forward the name of the petitioner to respondent No. 1 for appointing her against the post of Lecturer Ophthalmology in

GMC Srinagar.

b) respondent No. 1 & 2 to issue orders of appointment against the post of Lecturer Ophthalmology, in favour of the petitioner on the basis of the

recommendations so made by respondent No. 04.

c) respondent No. 3 to relieve her from the post of Assistant Surgeon so as to enable her to join against the post of Lecturer Ophthalmology.

5. Respondents in their separate replies deny that respondents 6 & 7 were favourably disposed towards petitioner. It is stated that in all 17

candidates responded to the advertisement notice and 16 candidates out of the aspirants were found eligible for the advertised posts and that all

the 16 eligible candidates were allowed to participate in the selection process. It is pointed out that Selection Committee comprised of Chairman

and one of the members of the Commission and respondents 6 & 7 were associated with the committee as experts. In absence of any specific

averments pleaded to establish malafidies, the selection process according to the respondents cannot be vitiated or termed as arbitrary.

6. The apprehensions nursed by petitioner as regards favour shown by the respondents 6 & 7 towards respondent No. 5, according to

respondents, is imaginary and devoid of any substance. It is pleaded that only because respondents 6 & 7 were at one or other time involved in education or training of respondent No. 5, is not to lead to the conclusion that respondents 6 & 7 must have acted in an biased manner or indulged in favouritism. It is denied that respondents 6 & 7 had any personal or pecuniary interest in selection of respondent No. 5. Respondents insist that the respondents 6 & 7 merely because they taught respondent No. 5 or acted as his guide in post graduation course, would not disentitle them from being on the panel of experts associated with the selection process. The marks secured by the respondent No. 5 in viva - voce, it is pleaded, must not lead to an impression that respondents 6 & 7 were biased in favour of respondent No. 5 and against petitioner and for that matter other aspirants for the advertised post. The petitioner is said to have failed to discharge the burden of substantiating bias and malafides against the respondents and therefore did not deserve any indulgence.

7. The respondent No. 5 in his reply has thrown challenge to maintainability of the writ petition on the ground that as the petitioner was all along aware of constitution of Selection Committee and presence thereon, of respondents 6 & 7 as experts and participated in the selection process knowing fully well that respondents 6 & 7 were to act as experts, was estopped from questioning his selection only because she after participating in the selection process could not make the grade. It is pleaded that respondent No. 5 was one amongst number of students taught by the respondent No. 6 at Department of Ophthalmology, Jawahar Lal Nehru Medical College, Aligarh Muslim University and did not have any special relationship with the respondent No. 6 and that the respondent No. 7 supervised the research work of not only respondent No. 5 but also a number of students enrolled in M.S. Ophthalmology programme in Department of Ophthalmology of said college. It is denied by respondent No. 5 that he had any special relationship with respondent No. 6 & 7 over and above other students enrolled in the Department. The research paper published in the International Journal of Health referred to in the petition according to respondent No. 5, was based on his research work and that of five other experts including respondent No. 7 and therefore was not to lead to the conclusion that respondent No. 7, merely because of having

been amongst the six contributors to the "paper" was favourably disposed towards the respondent No. 5.

8. I have gone through the pleadings and have heard Ld. Counsel for the parties.

9. Nemo judex in re sua, "no man a judge in his own cause" is a universally followed principle to exclude a person from decision making process

where he may be, or may fairly be suspected to be biased. Principle was initially restricted to pecuniary interest. Wherever a person, shown to

have direct or indirect pecuniary interest in subject matter of the dispute was disqualified to act as a judge and deal with and adjudicate upon the

dispute. The principle is now extended to even non pecuniary interest, to uphold the principle that "justice should not only be done, but should

manifestly and undoubtedly be seen to be done". The principle is attracted in case of personal friendship, hostility, family or commercial relationship

etc etc. The rule is equally applicable to administrative decisions. A person having a pecuniary or non pecuniary interest in the subject matter of the

decision, would be disqualified from dealing with the matter individually or even as part of a committee. In such case such person may be

restrained from dealing with the matter on an action brought by the person affected by the proposed decision suspecting bias or the decision itself

may be called in question on the ground of bias unless the aggrieved is found to have waived or acquiesced and comes forward only after the

decision goes against him. However, in all such cases a line is to be drawn between genuine and fanciful complaints so as not to disturb the

decision where interest in question is too slight to be appreciated.

10. In the present case, petitioner suspects bias on the ground that one of the members of the Selection Committee constituted by State Public

Service Commission to make selection against the advertised post, taught petitioner while he was pursuing post graduation in Ophthalmology at

Jawahar Lal Nehru Medical College and Aligarh Muslim University. The other member of selection committee - Respondent No. 7, according to

the petitioner, was disqualified from being a member of the Selection Committee as he acted as petitioner's guide in research work pursued by the

petitioner at said college and also co-authored a paper with the petitioner uploaded on Internet Journal of Health.

11. Petitioner's case as already stated, is that respondents 6 & 7 because of

teacher-taught/supervisor-research scholar relationship were

favourably disposed towards respondent No. 5 and therefore disqualified from being on the Selection Committee to make a selection for Lecturer

Ophthalmology.

12. The Public Service Commission to make selection against faculty position in professional colleges or other educational institutions has invariably

to associate one or more experts in the field with the selection committee. The Selection Committee comprising exclusively of the members of the

Commission may not be well equipped to make selection against the faculty positions. It is necessary to co-opt experts as members to make

selection fair, transparent and objective. The experts have expertise in the subject and therefore better placed to assess comparative merit,

competence, potential etc of the candidates appearing before the Selection Committee.

13. It is quite natural that the Commission has to draw experts from University and like academic institutions. A faculty member of a university or

college affiliated to university holding senior position, teaches scores of students enrolled in university or such college. True that teachers to extract

best from their students shower, love praise and affection on students, the students reciprocate such love and affection by utmost respect and

reverence for the teachers. This however, does not imply that a teacher would favour his student or show bias towards his competitors whenever

teacher is called upon to assess merit of his student as also others not taught by such teacher. A teacher shall no way favour his student over the

candidates who hail from some other place or come from a different background. It is to be realized that a teacher teaches hundreds of students

during his academic career and in case he is disqualified from acting as a member of Selection Committee on that ground, it would be difficult if not

impossible to have a Selection Committee constituted with one or more experts as its members. The position of a guide or a supervisor under

whom a student makes research, is no different then that of a teacher. A senior faculty member in a university or college affiliated to the university

supervises research of scores of students engaged in research at post graduation, M. Phil, or Ph.D level. Such a supervisor or guide cannot be

expected to be favourably disposed towards the research scholars who conducted

their research under his supervision.

14. In the present case as the record relied upon by the petitioner would indicate Dr. Simi Zaka-ur-Rab - respondent No. 7 has acted as

supervisor for as many as 15 research scholars from 2001 to 2011. She as acted as supervisor of respondent No. 5 in 2003 i.e. about eight years

prior to impugned selection process. The contention that respondent No. 7 was favourably disposed towards respondent No. 5, is therefore to be

taken as imaginary and farfetched. Her having co-authored with respondent No. 5 a few page paper on Effect of Panretinal Laser

Photocoagulation on the Concentration of Enzymatic Antioxidants in the Serum of Diabetic Patients Single v. Multiple Sitzings, that appeared in

Internet Journal of Health 2012 Vol. 13 must also not lead to the conclusion that petitioner had a reason to suspect that respondent No. 7 is biased

in favour of respondent No. 5 moreso when the paper is co-authored by four other experts in the field. The position might have been different had

respondent 5 and 6 co-authored a book, published and marketed such book, as in such case it would be commercial venture with joint and shared

pecuniary interest of respondents 5 to 7. This is not the case. The paper uploaded on the internet is a research paper of six faculty members of

Jawahar Lal Nehru Medical College Aligarh and SKIMS Medical College Srinagar.

15. The petitioner therefore is not to suspect bias against her or in favour of respondent No. 5. The Apex Court had an occasion to examine issue

of bias arising out of teacher-taught relationship, in Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, .

In this case selection was questioned inter alia on the ground that two experts in the Selection Committee acted as guides of selected candidates,

where he was pursuing his post graduation course and they were disqualified to act as such. The contention found favour with the High Court and

selection was set aside amongst others on the ground of bias. The Apex Court recording disagreement with the conclusions drawn by the High

Court held:

.....10. The fourth and the last ground given by the High Court to set aside the appointment of the appellant in CA No. 3507/89 is that the

fourth and the fifth respondents to the writ petition were guides of the appellant when he was doing his M.Sc by Research. We are unable to

understand as to how the fact that they were his guides when the appellant was doing his M.Sc. would influence their decision in selecting him, or

vitiating the selection made. They must have been guides to many who had appeared for the interview. A senior teacher in the Faculty in question, it

is one of their duties to guide the students. In fact, very often the experts on the selection committees have to be drawn from the teaching faculty

and most of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the

members of the Selection Committee.

16. In *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, , the selection of the appellant was questioned inter alia on the ground that

one of the members of the selection committee was member of organization that brought out a magazine of which the appellant was editor while

one of the members of the Selection Committee was on the editorial Board. The Apex court reversing the judgment of the High Court and

recording disagreement with the conclusions drawn, held:

9. The last contention of the first respondent which has been accepted by the High Court is that of bias on the part of one of the members of the

selection committee. The so-called bias, as set out in the original petition, is that one of the experts was a member of an organization which brought

out a magazine of which the selected candidate was the Editor while one of the members of the selection committee was on the Editorial Board.

Both the university as well as the selected candidate have pointed out that this fact was known to the first respondent throughout. He did not, at

any time, object to the composition of the selection committee. He objected only after the selection was over and he was not selected. This amounts

to a waiver of such objection on the part of the first respondent. Reliance is placed on the decision of this court in *G. Sarana Vs. University of*

Lucknow and Others, in which this court found that despite the fact that the appellant knew all the relevant facts, he had voluntarily appeared

before the committee and took a chance of having a favourable recommendation from it. Having done so, it was not open to him to turn round and

question the constitution of the committee. A similar view has been taken by this court in the case of *U.D. Lama and Others Vs. State of Sikkim*

and *Others*, .

10. What is more, we fail to see how on account of one of the experts being a member of an organization or being on the Editorial Board of a

magazine brought out by that organization, he would necessarily be favourably inclined towards the Editor of that magazine. There is no allegation

of any personal relationship between the member of the selection committee and the candidate.....

.....Allegations of bias must be carefully examined before any selection can be set aside. In the first place, it is a joint responsibility of the entire

selection committee to select a candidate who is suitable for the post. When experts are appointed to the committee for selection, the selection

should not be likely set aside unless there is adequate material which would indicate a strong likelihood of bias or show that any member of the

selection committee had a direct personal interest in appointing any particular candidate. The expert in question, in the present case had no

personal interest in selection of any particular candidate. It is not even alleged by the first respondent that he had any such personal interest in

selection of the candidate who was selected. The mere fact that the expert as well as one of the candidates were members of the same organization

and connected with the magazine brought out by it would not be sufficient, in the facts and circumstances of the present case, to come to a

conclusion that the selector had a specific personal interest in the selection of that candidate. The experts, in the present case, are experts in Oriya

language and are men of stature in their field. The candidates who would be considered for selection by the selection committee would also be

candidates who have some stature or standing in Oriya language and literature, looking to the nature of the post.

17. The case in hand squarely falls within the ambit of principle laid down in the above referred cases. In the circumstances, there is no merit in the

petitioner's claim that respondents 6 and 7 were favourably disposed towards respondent No. 5 or there were reasons to raise suspicion of bias

that would lead one to suspect that respondents 6 & 7 were favourably disposed in favour of respondent No. 5.

18. The above discussion apart, the petitioner was aware of composition of the Selection Committee and inclusion of respondents 6 & 7 in the

Committee, if not earlier, at least on the date she appeared before the Committee. Petitioner participated in the selection process unmindful of

composition of the Selection Committee and presence of respondents 6 & 7 on the selection committee. She did not voice her grievance till the select list was issued and she not included in the list. She did not suspect bias on the date she appeared before the Selection Committee or even thereafter. She raised the issue only after she was not able to make the grade. Nothing had happened in between that would entitle petitioner to raise an issue not agitated on the day one. It is well settled law that a candidate after participation in the selection process, well aware of selection criteria and composition of the selection committee, cannot turn around and question the selection process only because he or she does not make it to the select list. Reference in this regard may be made to law laid down under Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, . So viewed, the petition is held bereft of any merit and is accordingly dismissed.