
(2015) 09 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : LPA No. 155 of 2014

Shabana Khan (Dr.)

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Citation : (2016) 2 JKJ 27

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Dhiraj Singh Thakur, J.

Bench : Division Bench

Advocate : Mr. A. Haqani, Advocate, for the Respondent No. 5; Mr. Azhar ul Amin, Advocate, for the Respondent No. 4, 6 and 8; Mr. Sajad Ahmad Mir, AAG, for the Respondent No. 1. and 3; Mr. M.A. Qayoom, Advocate, for the Appellant/ Petitioner

Final Decision : Dismissed

Judgement

Mr. Dhiraj Singh Thakur, J. - The present Letters Patent Appeal is preferred against the judgment and order dated 8.8.2014 passed in SWP

No. 1745/2013.

2. The material facts in the background of which the present controversy has arisen are as under:-

3. The Jammu and Kashmir Public Service Commission invited applications inter alia for filling up the post of Lecturer Ophthalmology in

Government Medical College, Srinagar. The petitioner/appellant herein as also the Respondent No. 5 applied for the same. Finally, on completion

of the process of selection, which included interview by a selection committee, Respondent No. 5 was selected for the post of Lecturer

Ophthalmology. The petitioner/appellant had secured 69 points as against 74.75 points secured by Respondent No. 5.

4. Aggrieved of the process of selection conducted by the Public Service Commission, the appellant challenged the same before the writ court

primarily on the ground of bias stating that the selection committee was wrongly constituted inasmuch as the expert members were favourably

inclined towards the selected candidate.

5. The stand taken was that Respondent No. 6-Prof. Mohammad Ashraf was a member in the department of Ophthalmology in Aligarh Muslim

University from where Respondent No. 5 had passed his M S Ophthalmology. As regards the other expert member, respondent No. 7; Dr. Simi

Zaka-ur-Rab, it was stated that she too was ineligible inasmuch as she had been a guide/supervisor of Respondent No. 5 while he was doing post-

graduation in Aligarh Muslim University and that the said Respondent No. 7 had also been a co-author of a scientific paper i.e. ""Effect of Pan-

retinal Laser Photocoagulation on the Concentration of Enzymatic Antioxidants in the Serum of Diabetic patients Single v. Multiple Sitzings"".

6. It was stated that the said journal was published in the journal of Health ISSN and as a proof of the same, a copy of the said journal was

annexed to the petition. The selection was, thus, challenged as being a result of bias.

7. Objections were filed by private Respondent No. 5 where the allegations of malafides were controverted. The stand of the private Respondent

No. 5 in essence was that the mere fact that Respondent No. 6 was a faculty member in the Ophthalmology department wherefrom the petitioner

did his M.S in Ophthalmology did not, in any manner, render the said expert as ineligible to be a part of the selection committee nor would it show

bias. With regard to Respondent No. 7 also, a stand was taken that there was no personal relationship between Respondent No. 5 and

Respondent No. 7, in the absence whereof, the selection could not be rendered bad or be said to prejudice the selection of the appellant.

8. A preliminary objection was also taken that the petitioner having participated in the selection process could not be permitted to challenge the

same after being unsuccessful in the said process. Reliance was placed upon Dr. G. Sarana v. University of Lucknow and Ors., (1976) 2

SCC 585.

9. The writ court however, did not accept the pleas of the petitioner and

dismissed the same vide judgment and order dated-8.8.2014, which is impugned in the present Letters Patent Appeal.

10. Heard the counsel for the parties.

11. It is an admitted fact the Respondent No. 6 was acting as a member of the faculty in the Ophthalmology department during the period when

the Respondent No. 5 was undergoing his M.S course. It is also an admitted fact that Respondent No. 7 had co-authored a scientific paper, which

was published in the journal of Health ISSM. It is, however, pertinent to notice that in the paper published in the aforementioned journal, along

with the petitioner and private Respondent No. 5, there were four others, who had co-authored the said paper.

12. Admittedly, Respondent No. 7 had also acted as a guide/supervisor of Respondent No. 5 while he was undergoing post-graduation in

Ophthalmology at Aligarh Muslim University.

13. In the light of the aforementioned facts, which are admitted, we have to see as to whether any inference of bias can be drawn as regards the

process of selection.

14. From out of the three judicially accepted principles of natural justice i.e., *Nemo debet esse iudex in propria causa*, *audi alteram partem* and the

third principle that all orders or decisions should be supported by reasons, the rule against bias or interest has its genesis in the first principle of

natural justice, which declares that no man shall be a judge in his own cause. The philosophy behind this maxim is that a judge is supposed to be

independent, neutral and free from any bias towards any of the parties appearing before him with a view to enable him to decide matters

independently and objectively. The only exception to the rule (*supra*) being the doctrine of necessity.

15. Bias is defined as a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute and may be

categorized as pecuniary bias, personal bias or official bias. While the least pecuniary interest in the subject matter of litigation may disqualify a

person from acting as a judge, the same may not be true where personal bias is alleged as is the case in the present appeal where personal bias is

alleged by the appellant.

16. In *Dr. G. Sarana v. University of Lucknow and Ors.*, (1976) 3 SCC 585 the court held that it was difficult to prove the state of mind of a

person to show that he was biased. What was important to see was whether there was reasonable ground for believing that he was likely to have been biased.

17. In *Secretary to Government, Transport Deptt., Madras v. Munuswamy Mudaliar and Anr.*, 1988 (Supp) SCC 651 it was held that

reasonable apprehension of bias in the mind of a reasonable man was necessary, but such reasonable apprehension must be based on cogent materials.

18. In *International Airport Authority of India, v. K.D. Bali and Anr.*, AIR 1988 SC 1099 the Apex Court in paragraph 6 held as under:

6. In the words of Lord O'Brien, LCJ there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not

mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest.

See in this connection *Gullapathi Nageswara Rao v. State of Andhra Pradesh*, (1960) 1 SCR 580 : AIR 1959 SC 1376 and *Mineral*

Development Ltd. v. State of Bihar (1960) 2 SCR 609 : AIR 1960 SC 468 Recently this Court in a slightly different context in *Ranjit*

Thakur v. Union of India, AIR 1987 SC 2386 had occasion to consider the test of bias of the Judge. But there must be reasonableness of the

apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension

that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that

it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension

must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point

we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension

because the arbitrator being the appointee of his client was not acceding to the request of his client which the petitioner considered to be

reasonable. We have heard this submission with certain amount of discomfiture

because it cannot be and we hope it should never be in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner.

19. With a view to satisfy this court that there was likelihood of bias in the minds of Respondents No. 6 and 7 in favour of private Respondent No.

5 and against the petitioner-appellant herein, it was incumbent upon the appellant to show that the nature of relationship between Respondent No.

5 and Respondents No. 6 and 7 was in the nature of a personal relationship, which the appellant has miserably failed to show in the present case.

20. While it maybe true that the Respondents No. 6 and 7 were teaching in the same institute from where the petitioner had acquired his degree

and that Respondent No. 7 also had been a guide to the private Respondent No. 5 and had co-authored a paper, which was published in a

scientific journal, yet the said relationship cannot be stated to be a relationship, which is personal in character, which could raise doubt or

apprehension in the mind of a reasonable man regarding a pre-disposed inclination in favour of Respondent No. 5.

21. A teacher in a medical college as a part of his duty and professional obligation may also act as a guide to some of the students and help them in

their thesis and research. Such a teacher may also be selected to be a part of a selection committee. Unless and until the petitioner succeeds in

proving a conflict between the duty of the selector to act impartially and the interest, which he might have in a particular candidate, the selection

cannot be set aside. In the present case, 1 he appellant-petitioner herein has clearly failed to establish that the Respondents No. 6 and 7 had any

personal interest in Respondent No. 5.

A teacher cannot be said to be biased in favour of a candidate only because he was discharging his duty as such teacher or guide or collectively working with a student and other faculty members in some literary or research work. The fact that a teacher gets selected to be a part of a selection committee itself suggests and points to the distinction of the person in his own field. To accuse such a person of bias on the basis of unsubstantiated and non-existent material at the instance of a candidate, who has failed in the process of selection is, therefore, nothing but derogatory to such a faculty member.

22. In *Utkal University v. Dr. Nrusingha Charan Sarangi and Ors.*, (1999) 2 SCC 193 the Apex Court was dealing with a case where the

selection had been challenged inter alia on the ground that one of the experts in the selection committee 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. What was stated by the Apex Court in paragraph 10 of the judgment (*supra*) is reproduced hereunder :

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 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 organisation 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. Any

literary association in this context, or any knowledge about the literary activities of the candidates would not, therefore, necessarily lead to a

conclusion of bias. Looking to the circumstances of the present case, it is not possible to come to a conclusion that the Selection Committee was biased in favour of the candidate selected.

23. In a similar case where bias was alleged between a teacher and the student, the Apex Court in *Dalpat Abasaheb Solunke and Ors. v. Dr.*

B.S. Mahajan and Ors., AIR 990 SC 434 in paragraph 10 held as under:

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 vitiate the

selection made. They must have been guides to many who had appeared for the interview. As senior teachers 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 Committees. In fact, as stated by the 4th respondent in his affidavit before the High Court, even the 2nd respondent, the aggrieved

candidate was also his student. Curiously enough the High Court has discarded the said fact by observing that in point of time, the appellant was

closer to the 4th respondent as a student since the appellant was his student at a later date. It is not necessary to comment further on this reasoning.

As an aside of the very same reason, the High Court has also found the presence of the sixth respondent on the Committee as vitiating the

selection, and the only reason given by the High Court in that behalf is as follows:

..In this background if we consider the reply of sixth respondent, Shri Shyamrao S. Kadam, the member of the Selection Committee were of the

opinion that the apprehension expressed by the petitioner that the members of the Selection Committee had shown favour to the 7th respondent

cannot be said to be without any substance.

There is no discussion or finding given by the High Court on the alleged role played by the 6th respondent. We are therefore at a loss to know in

what manner the 6th respondent had influenced the decision of the Selection

Committee. Probably the Court had nothing further to say with regard to the alleged "role" of the 6th respondent. We therefore refrain from saying anything more on the subject.

24. Applying the ratio of the aforementioned judgments to the facts of the present case, we are of the opinion that the appellant cannot succeed in getting the selection of private Respondent No. 5 set aside on the ground of likelihood of bias. We cannot persuade ourselves to take a view different from the one taken by the learned Single Judge.

25. Since we have dealt with the issue of bias in detail, we do not deem it necessary at all to deal with the issue of estoppel against the appellant on account of his having taken a chance in the selection process.

26. This appeal is found to be without merit and is accordingly dismissed along with connected application(s), if any.