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**(2010) 07 DEL CK 0072**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 8178 of 2008**

Subrata Mukherjee

APPELLANT

Vs

Achin Vinayak and Others

RESPONDENT

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**Date of Decision : 14-07-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000 — Regulation 5(5)  
University Grants Commission Act, 1956 — Section 16, 16(1), 2, 3

**Citation : (2010) 07 DEL CK 0072**

**Hon'ble Judges : Manmohan Singh, J**

**Bench : Single Bench**

**Advocate :** Dipak Bhattacharya and Rajesh Kumar, for the Appellant; M.S. Vinaik, for R-1, Amitesh Kumar, for UGC and Amit Bansal, for R-2, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

Manmohan Singh, J.—The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for issuance of the writ of mandamus or any other appropriate writ to respondent Nos. 2 and 3 to remove respondent No. 1 from the post of Head of Department ("HoD" for brevity) of Political Science being junior to the petitioner and not eligible for the said post.

2. The facts necessary for deciding the present petition are that the petitioner is a professor in the department of political science at respondent No. 2 University of Delhi. A detailed bio profile of the petitioner has been given in the petition which shows that the petitioner has been a Reader at respondent No. 2 from 1979 to 1989 and a Professor at respondent No. 2 since 1989 and retired as Professor in the Department in January, 2006 and subsequently from the re-employment in January 2009. The petitioner claims to be the senior most

professor in the department of political science and therefore, has challenged the appointment of respondent No. 1 to the post of HoD of the said department by this writ petition on the basis that respondent No. 1 does not possess the requisite qualifications for the same.

3. The petitioner's grievance is that respondent No. 1 is qualified with only a B.Sc. degree in which he obtained a second division. Allegedly, respondent No. 1 does not have a basic degree in the subject of political science and has falsely shown himself to be a holder of a doctorate degree though he is not one. Further, he has teaching experience of one year and seven months and no experience of guiding research at the doctoral level which implies that he is wanting in the mandatory requirements prescribed for the post for which he has been selected. The respondent No. 1 also has no academic articles to reckon with and is thus stated to be inadequately qualified for the post of professor as well as HoD of the political science department at the respondent No. 2 University.

4. The petitioner has sought the removal of respondent No. 1 from the post of professor and initiation of disciplinary action against respondent No. 1 in case it is found that he does not possess a PhD degree as claimed on the following grounds :

(i) The appointment of respondent No. 2 to the post of professor contravenes with the University Grants Commission (minimum qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000 and Ordinance XXIV of the University statute as respondent No. 1 does not possess the requisite qualifications;

(ii) The procedure of selection and appointment of professors has been vitiated as respondent No. 1 has been appointed de hors the same as well as with no regard to the relevant regulations and statutes, thereby being arbitrary and unsustainable in law.

(iii) The respondent No. 2 University is a premier university known for its high standards and quality of education and appointment of respondent No. 1 as professor despite an obvious lack of the requisite qualifications is against the academic interest of the students.

5. I have perused the submissions of both parties and heard the arguments of the Learned Counsel.

6. As per the University Grants Commission (minimum qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000 "no person shall be appointed to a teaching post in University or in any of institutions including constituent or affiliated colleges recognized under clause (f) of Section 2 of the University Grants Commissions Act, 1956 or in an institution deemed to be a University u/s 3 of the said Act in a subject if he/she does not fulfil the requirements as to the qualifications for the subjects as provided in the Annexure." The relevant portion

of the said Annexure states as under :

1.3.0 Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law.

1.3.1 Professor

An eminent scholar with published work of high quality, actively engaged in research, with 10 years of experience in postgraduate teaching, and/or experience in research at the University/ National Level Institutions, including experience of guiding research at doctoral level.

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge.

7. Ordinance XXIV sets out the requisite qualifications for the post of Professor in respondent No. 2 University as under :

Order XXIV. Qualifications of University Teachers (Appointed and Recognised) and Principals other than those for whom special qualifications may be prescribed by the Executive Council on the recommendations of the Academic Council.

....

Professor (except management studies, Music, Journalism & Mass Communication and Social Work)

An eminent scholar with published work of high quality, actively engaged in research with 10 years of experience in post-graduate teaching and/or post-doctoral research at University/National level institutions including experience of guiding research at doctoral level.

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge.

8. Delhi University, the respondent No. 2 has submitted that an advertisement dated 22.06.2004 inviting applications for the post of Professor in the department of political science with essential requirements as set out in Ordinance XXIV above was met with a response of 16 candidates who were called for an interview out of which only 8 actually presented themselves for the same.

9. It is also submitted by the respondent No. 2 that the respondent No. , previous to his appointment as Professor with Delhi University, was also working as a visiting Professor in Jamia Milia Islamia University from 1996-1997 and 2001-2002 and in Delhi University since the year 2002. The respondent No. 1 has also authored several articles/chapter books on global issues and

international relations, published by prestigious publications like Oxford University Press and Orient Longman, amongst others. Further, the respondent No. 1 has been a member of several prestigious bodies like Fellow of the Transnational Institute which is an international body of scholars concerned about problems of global inequality and development. Further, he is on editorial board of the journal, Comparative Studies of South Asia, Africa and the Middle East, brought out from Duke University, South Carolina, USA. The respondent No. 1 is also a co-recipient, with Praful Bidwai, of the "Sean MacBride International Relations and Global Politics" and the respondent No. 1 specializes in the area of international relations and global politics. Hence the respondent No. 1 has requisite qualifications for consideration and appointment to the post of Professor.

10. After assessing the comparative merit of the candidates, the Selection Committee unanimously selected respondent No. 1 for the advertised post. Minutes of the meeting at which the said selection transpired have been placed on record. On 25.10.2004 the Executive Council approved the recommendations of the Selection Committee and therefore, the selection of respondent No. 1 as a professor in the respondent No. 2 University has been in accordance with the prevalent rules and Regulations and is beyond reproof. It has been clarified by Learned Counsel for respondent No. 2 that respondent No. 1 was selected for the post of professor as per the University and Ordinance requirements as he falls within the latter category of qualifications i.e. of "an outstanding scholar with established reputation who has made significant contribution to knowledge".

11. Learned Counsel for the respondent No. 2 has argued that the petitioner has already retired as professor in 2006 and from subsequent re-employment in 2009 and it is not his case that he had applied and was not considered for appointment by the Selection Committee and for these reasons, the petitioner has no locus standi to file the present writ petition as neither is he personally aggrieved nor has any fundamental right of his been violated. Further, the persons who were in the position to be personally aggrieved were the other candidates who appeared for the interview but were not selected and none of them have challenged the appointment of respondent No. 1.

12. Another contention of respondent No. 2 is that the appointment of respondent No. 1 was carried out in 2004 and the petitioner has been well aware of the same since then and therefore, the filing of the present petition in November 2008 is belated it should be rejected on the ground of delay and laches.

13. As regards the allegation that the respondent No. 1 has misrepresented himself to be a doctorate with a Ph.D. degree, Counsel for respondent No. 2 has clarified that nowhere has the respondent No. 1 represented himself as such and in fact it has been an inadvertent mistake on the part of the Selection Committee which has referred to the said respondent as "Doctor". The said mistake has been committed by the person writing the minutes of the Selection Committee

who has inadvertently prefixed the word "Dr." against the name of the respondent No. . The contentions of the respondent No. 1 in its counter affidavit are the same as that of respondent No. 2.

14. Let me first deal with the objection of the respondents that the writ petition is not maintainable as the petitioner has no locus standi to file the present writ petition as neither is he personally aggrieved nor has any fundamental right of his been violated, in exercising power of writ jurisdiction, the Supreme Court in its recent judgment *N. Kannadasan v. Ajoy Khose and Ors.* (2009) 7 SCC 1, has settled the law in respect of exercise of judicial review and quo warranto in paras 105, 126, 129, 130 and 134 which are as follows:

105. Judicial review in our constitutional scheme itself is a part of its basic structure. Decisions whether arrived at by the executive or the judiciary are subject to judicial review.

126. While exercising the power of judicial review in a case of this nature, the Court would not be concerned with the merit of the decision but with the decision-making process. If it is found that the decision-making process has not been adhered to, indisputably, judicial review would lie.

129. The respondents herein filed the writ petitions inter alia for issuance of a writ of quo warranto. A writ of quo warranto can be issued when the holder of a public office has been appointed in violation of constitutional or statutory provisions.

130. Section 16 of the Act lays down the qualifications inter alia for appointment of the Chairman of the State Commission. Clause (a) of Sub-section (1) of Section 16 provides that the candidate must be "is" or "has" been a Judge". The proviso appended thereto, however, mandates consultation by the State Government with the Chief Justice of the High Court concerned.

134. Indisputably, a writ of quo warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* and *R.K. Jain v. Union of India* (See also *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana.*) In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*, this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. (See also *Arun Singh v. State of Bihar*). We may furthermore notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. (See *Kashinath G. Jalmi (Dr.) v. Speaker.*)

15. In view of the settled law, I am of the considered view that the writ petition filed by the petitioner is maintainable. The objection of the respondents is without any merit and is rejected. However, it is the court's discretion to

intervene in the matter or not.

16. It is settled law that in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, this Court cannot sit in appeal over the decision of the validly constituted Selection Committee which is an expert body comprising eminent people, having expertise in the field of selection. The Apex Court in the case of *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, has held as under:

12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection et. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.

17. It is also a matter of fact that the petitioner has not made any allegation of malafide or procedural irregularity in respect of finding of the Selection Committee nor any details of the same are given in the writ petition. Under the said circumstances, the finding of the Committee cannot be interfered with by the Courts. In *M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others*, the Supreme Court has observed as under:

22. Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of Learned Senior Counsel for the applicants which had been addressed. But we may at the very outset observe that the Court while considering the proceedings of the Selection Committee does not sit as a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed. In the present case, 39 candidates were examined by the Selection Committee for being recommended for appointment to IAS. The selection process took place between 24-11-2003 and 28-11-2003 whereby the Selection Committee scrutinized the service records of the individual candidates and interviewed them and the Selection Committee selected those candidates who were found to be having outstanding

merit and ability.

18. The Learned Counsel for the petitioner has referred a letter dated 26.10.2004 written by the respondent No. 2 to respondent No. . It appears that the said letter was written by the officers of the University, respondent No. 2. I agree with the Learned Counsel for the respondent No. 1 that he had no control over the same. Therefore, no malice can be attributed to him.

19. As regard the objection raised by the petitioner regarding passing of the non-speaking order by the Selection Committee, it is settled law that in matters of selection where the rules do not provide so, it is not essential for the Selection Committee to record reason for selecting a particular committee over others. In *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman and Ors.* 1992 Supp (2) SCC 481, the Supreme has observed as under:

7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither juridical nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has however, referred to the decision of this Court in *Union of India v. Mohan Lal Capoor*. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in *Capoor* case was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The *Capoor* case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection nor non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass v. Union of India* in which *Capoor* Case was also distinguished.

20. The Learned Counsel for the petitioner has referred to paragraph 12 of *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, wherein it has been observed that "the High Court was of the view that a person is not qualified for appointment as Reader unless he has qualification in the appropriate subject. The High Court was also of the view that since the appellant had a qualification in the discipline of Political Science he could not be appointed in the

discipline of Public Administration....

This judgment referred by the Counsel has no bearing in the present case as the respondent No. 1 has not been selected on the basis of his academic qualifications, and therefore, this interpretation is not permissible in his case. Secondly, all his original work is in Political Science and closely related fields.

21. It appears to me that it is not within this Court's writ jurisdiction to sit over in appeal over the careful and diligent selection made by the Selection Committee of Respondent No. 2 which was later upheld by the Executive Council also. The Ordinance XXIV relied upon by the petitioner itself provides two criterions by which candidates can be selected and respondent No. 1 and 2 have both submitted that the former has been chosen for his prowess and excellence recognized under the second of the qualifications i.e. being an outstanding scholar etc.

22. Further, a perusal of the Minutes of the Selection Committee's meeting and other documents placed on record as well as the respondent No. 1's application form and Curriculum Vitae all show beyond doubt that respondent No. 1 has nowhere referred to himself as a doctorate or stated that he has a PhD degree and the prefix "Dr." before his name appears to be an error on the part of the Selection Committee. In such circumstances, it cannot be said that respondent No. 1 was misrepresenting himself to be the holder of a PhD degree. A perusal of his application submitted as respondent No. 1 shows the true details of his qualifications and material fact required.

23. Under the alternative qualification provided under the said ordinance, a candidate for the post of Professor is not judged by his academic qualification but in terms of his achievement and contribution in the relevant subject. Accordingly, educational qualification loses its significance in the backdrop of accomplishments in their field of specialization.

24. Admittedly, in the present case, the respondent No. 1 was appointed in the year 2004 in the same department where the petitioner was working and the presumption is that he knew about the appointment of respondent No. 1. The present writ petition has been filed in November 2008 and prior to the filing of the writ petition the respondent No. 1 had been appointed Head of the Department of Political Science and he was finally retired on 31.01.2009 after his three years extension. I find no valid justification on behalf of the petitioner to file the present writ petition after the expiry of more than four years.

25. After considering the overall situation in the matter and for the reasons given above, I find no merit in the present writ petition. The same is, therefore, dismissed with no orders as to cost.