
(1981) 09 RAJ CK 0022
In the Rajasthan High Court
Case No : Special Appeal No. 240 of 1981

Suneeta

APPELLANT

Vs

University of Jodhpur

RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974
— Section 5

Citation : (1981) WLN 275

Hon'ble Judges : S.C. Agarwal, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—This special appeal has been filed u/s 18 of the Rajasthan High Court Ordinance 1949 against the judgment of the learned single Judge whereby the writ petition filed by the appellant has been dismissed summarily on the ground that it was premature.

2. The University of Jodhdur (hereinafter referred to as the University) had advertised certain posts of lecturers in the Department of Political Science. The appellant as well as Respondent Nos. 3 to 6 had applied for the said posts in pursuance of the said advertisement. Selection for the post of lecturers in, the University has to be made in accordance with the provisions of the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 (hereinafter to be referred to as "the Act"). Section 4 of the Act provides for the constitution of a selection committee and u/s 5 it is laid down that the recommendations of the selection committee shall be considered by the Syndicate of the University concerned and in case the Syndicate disapproves the recommendations of the selection committee the Vice Chancellor of the University concerned shall submit such recommendations along with reasons for disapproval given by the Syndicate to the Chancellor for his consideration and the decision of the Chancellor thereon shall be final.

3. In the present case the appellant in her writ petition had prayed that the selection of Respondents Nos. 3 and 6 for appointment to the post of lecturers in the Department of Political Science in the University by the Selection Committee made on 9th July, 1981 be quashed by issuing a writ of certiorari. The appellant approached this Court before recommendations of the Selection Committee had been considered by the Syndicate in accordance with Section 5 of the Act. The learned single Judge was of the view that the writ petition filed by the appellant was premature in as much as the recommendations of the selection committee were subject to approval or disapproval of the Syndicate and in the event of the disapproval of the said recommendations by the Syndicate the matter had to be placed before the Chancellor of the University for his decision. The learned single Judge, therefore, dismissed the writ petition of the appellant on the ground that it was premature. In taking the aforesaid view the learned single Judge has placed reliance on the decisions of the Supreme Court in *Dr. G. Sarana v. Lucknow University* AIR 1976 SC 2443 and *A.K. Kraipak and Others Vs. Union of India (UOI)* and Others, Being aggrieved by the aforesaid decision of the learned single Judge the appellant has filed this appeal.

4. We have heard Mr. L.R. Mehta learned Counsel for the appellant and Mr. H.M. Parekh learned Counsel for the University.

5. The submission of Mr. L.R. Mehta was that the decision of the Supreme Court in *Dr. G. Sarana v. Lucknow University* (supra) and *Mrs. Kunda S. Kadam v. Dr. K.K. Soman* (supra) on which reliance has been placed by the learned single Judge are in conflict with the earlier decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI)* and Others, and since the decision of the *A.K. Kraipak v. Union of India* (supra) was a decision given by larger Bench consisting of five Hon'ble Judges whereas the subsequent decision in *Dr. G. Sarana v. Lucknow University* (supra) was delivered by a bench consisting of three Hon'ble Judges, and the decision in *Mrs. Kunda S. Kadam v. Dr. K.K. Soman* (supra) was delivered by a bench consisting of two Hon'ble Judges, the judgment of Supreme Court in *A.K. Kraipak v. Union of India* (supra) should prevail over the subsequent decisions given by benches consisting of lesser number of Judges.

6. There is no doubt that in the event of conflict between two decisions of the Supreme Court the judgment which is delivered by a bench consisting of larger number of Judges must prevail over a judgment given by a bench consisting of lesser number of Judges. The only question which requires consideration is whether the decision of the Supreme Court in *A.K. Kraipak v. Union of India* (supra) is in conflict with the subsequent decisions of the Supreme Court in *Dr. G. Sarana v. Lucknow University* (supra) and *Mrs. Kunda S. Kadam v. Dr. K.K. Soman* (supra).

7. In *Dr. G. Sarana v. Lucknow University* (supra) the Supreme Court was dealing with a case where the recommendations made by the Selection Committee of the Lucknow University for appointment on the post of Professor of Anthropology in

Faculty of Arts in the said University had been challenged on the ground that the said recommendations of the selection committee were vitiated by bias. The Supreme Court while holding that the appellant was not entitled to challenge the recommendations of the selection committee on the ground of bias because he had appeared before the selection committee with the full knowledge about the composition of the selection committee, further held that the writ petition filed by the appellant in the High Court was not maintainable in as much as the recommendations of the selection committee had still to be scrutinised by the Executive Council of the University and they could either be accepted or rejected by it and other remedy by way of representation to the Executive Council and an application for reference of the matter u/s 68 of the U.P. Universities (Re-enactment and Amendment) Act 1974 to the Chancellor were still open to the appellant and the same had not been exhausted. In other words in the said case the Supreme Court held that the writ petition challenging the recommendations of the selection committee at a stage before the said recommendation had been scrutinised by the Executive Council of the Lucknow University was premature.

8. Similarly, in *Mrs. Kunda S. Kudam v. Dr. K.K. Soman* (supra) a writ petition had been filed by the Respondent wherein the recommendations made by the Public Service Commission for appointment on the post of Deputy Municipal Commissioner in the Municipal Corporation of Greater Bombay had been challenged on the ground that the person who had been selected by, the Public Service Commission did not hold the essential qualifications prescribed for the said post. The aforesaid writ petition was allowed by the Bombay High Court but the Supreme Court, on appeal, reversed the said decision of the Bombay High Court on the view that the writ petition was premature because the recommendations of the Public Service Commission had to be considered by the Municipal Corporation and it was open to the Municipal Corporation to accept the said recommendations or not to accept the said recommendations.

9. Thus it will be seen that in the aforesaid decisions In *Dr.G. Sarana v. Lucknow University* (supra) and *Mrs. Kunda S. Kadam v. Dr. K.K. Soman* (supra) the Supreme Court has directly pronounced on the maintainability of a writ petition challenging the recommendations with regard to the selection of a particular person for appointment on a particular post before the said recommendations had been considered by the authority which is competent to accept or reject the said recommendation and the Supreme Court has held that the writ petition would be premature at that stage.

10. In *A.K. Kraipak v. Union of India* (supra) the question with regard to the maintainability of the writ petition was not in issue and the Supreme Court was dealing with the validity of the recommendations made by the Selection Board constituted in accordance with the provisions of the Indian Forest Service (Initial Recruitment) Regulations 1966. Under the said Regulations the selection of officers of the State Forest Service for appointment to the Indian Forest Service was to be made by a special Selection Board and the recommendations made by

the Special Selection Board were required to be considered by the Ministry of Home Affairs and thereafter they were to be considered by the Union Public Service Commission and after the Union Public Service Commission had approved the recommendations of the Special Selection Board the appointments had to be made on the basis of the list as approved by the Union Public Service Commission. In *A.K. Kraipak v. Union of India* (supra) recommendations made by the Special Selection Board had been considered by the Home Ministry as well as by the Union Public Service Commission and the list that had been approved by the Union Public Service Commission was challenged by the appellant in their writ petitions before the Supreme Court. Thus there was no question of further approval of the list that was approved by the Union Public Service Commission by any other authority and the question of maintainability of the writ petition on the ground that it was premature did not arise before the Supreme Court. Mr. Mehta has placed reliance on the following observations of the Supreme Court:

It was next urged by the learned Attorney-General that after all the selection board was only a recommendatory body. Its recommendations had first to be considered by the Home Ministry and thereafter by the UPSC. The final recommendations were made by the UPSC. Hence grievance of the petitioners have no real basis. According to him while considering the validity of administrative action taken, all that we have to see is whether the ultimate decision is just or not. We are unable to agree with the learned Attorney General that the recommendations made by the selection board were of little consequence. Looking at the composition of the board and the nature of the duties entrusted to it we have no doubt that its recommendations should have carried considerable weight with the UPSC. If the decision of the selection board is held to have been vitiated, it is clear to our mind that the final recommendations made by the Commission must also be held to have been vitiated. The recommendations made by the Union Public Service Commission cannot be disassociated from the selection made by the selection board which is the foundation for the recommendation of the Union Public Service Commission. In this connection reference may be usefull made to the decision in 1967-2 QB 864.

A perusal of the aforesaid observations shows that in the aforesaid observations the Supreme Court has dealt with the contention urged by the learned Attorney General that any defect in the constitution of the Selection Board could not vitiate the list which had been ultimately issued after the approval of the Union Public Service Commission in as much as the recommendations of the Selection Board had first to be considered by the Home Ministry and thereafter by the Union Public Service Commission. The aforesaid contention of the Attorney General was rejected by the Supreme Court on the view that taking into consideration the composition of the Selection Board and the nature of the duties entrusted to it there was no doubt that the recommendations of the Selection Board must have carried considerable weight with the Union Public Service Commission. In other words the Supreme Court was examining the validity of the

recommendations of the Selection Board on merits with reference to the question as to whether the selection which had been made by the Selection Board and which had been approved by the Home Ministry as well as by the Public Service Commission could be challenged on the ground that the recommendations made by the Selection Board were vitiated on account of one of the members of Selection Board being biased. In our view the aforesaid observations of the Supreme Court in *A.K. Kraipak v. Union of India* (supra) cannot be read to mean that a writ petition challenging the recommendations of the selection committee can be entertained even before the said recommendations have been considered by the authority which is empowered to approve or disapprove the said recommendations.

11. Thus in our view there is no conflict between the decisions of the Supreme Court in *A.K. Kraipak v. Union of India* (supra) and the subsequent decisions of the Supreme Court in *Dr. G. Sarana v. Lucknow University* (supra) and *Mrs. Kunda S. Kadam v. Dr K.K. Soman* (supra).

12. In view of the subsequent decisions of the Supreme Court in *Dr. G. Sarana v. Lucknow University* (supra) and *Mrs, Kunda S. Kadam v. Dr. K.K. Somun* (supra) the writ petition of the appellant was premature and in our view, the learned single Judge was right in taking the said view. Thus there is no merit in this special appeal and it is accordingly dismissed summarily.