

(1989) 11 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No's. 4555 of 1989 (Arising out of Special Leave Petition (C) No. 4987 of 1988) and C.A. No. 4554 of 1984 (Arising out of S.L.P. (C) No. 8269 of 1988) and C.A. No. 4556 of 1989 (Arising out of S.L.P. (c) No. 5164 of 1988)

University of Jodhpur

APPELLANT

Vs

H.K. Purohit and Others

RESPONDENT

Date of Decision : 16-11-1989

Acts Referred:

Citation : (1989) 1 JT 339 Supp : (1989) 2 SCALE 1340 : (1989) 2 SCC 586
Supp : (1990) 1 UJ 235 : (1990) 1 WLN 13

Hon'ble Judges : S. Ratnavel Pandian, J;B. C. Ray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.C. Ray, J.—Special leave granted. Arguments heard. These three appeals on special leave in SLP (C) NOS. 4987, 5164 and 8269 of 1988 are against the common judgment passed in Writ Petition No. 3548 of 1984 whereby the Division Bench of the High Court of Rajasthan by order dated 12th February, 1988 allowed the Writ Petition in part quashing the selection of Respondents Nos. 6 to 8 and their consequent appointment to the posts of Assistant Registrars made by the University of Jodhpur with the observation that the University might hold fresh selection for the said posts.

2. The salient facts giving rise to the Writ Petition are as follows;

The University of Jodhpur, the appellant, published an advertisement which has been annexed at Annexure 'B' to the Civil Appeal No. 4555 of 1989 filed by the University of Jodhpur. By the said advertisement applications had been invited for appointment on the following posts including the posts of Assistant Registrar in University of Jodhpur in the scales of pay and allowances mentioned therein, The qualifications prescribed for the post of Assistant Registrar are : (A) Bachelor's degree from a recognised University and (B) Experience of about seven years in

a supervisory capacity in a University, Board of Secondary Education, Educational Institution of repute or college of post-graduate standard. Pursuant to the said advertisement 116 candidates applied for these posts out of which 24 were called for interview including the Respondents Nos. 1 to 7 in the appeal No. 4555 of 1989. Only 18 candidates attended the interview. Three applicants, the Respondents Nos. 2, 3 and 4 were selected against the permanent non-plan post and the Respondent No. 5, Shri T.P. Singh was selected against the plan post and the Respondent No. 6, Shri L.C. Jain and Respondent No. 7 Shri K.D. Purohit were selected and kept in reserve quota. The recommendation of the Selection Committee was considered and approved by the Syndicate and consequently on 17.11.1984 the Respondent Nos. 2 to 6 were appointed as Assistant Registrar by the Syndicate of Jodhpur and the Respondent No. 7 was appointed on 3.1.1986 as Assistant Registrar. The Respondent No. 1 who was interviewed was not recommended by the Selection Committee.

3. The Respondent No. 1, Shri H.K. Purohit filed a Writ Petition being C.W. No. 3548 of 1984 in the Rajasthan High Court at Jodhpur assailing the selections of the Respondents Nos. 2 to 7 on the grounds inter-alia that the selections were made without application of mind and that the record of the Selection Committee was not placed before the Syndicate and, therefore, the approval accorded by the Syndicate to the said selection was mechanical and was without application of mind. It was prayed that appropriate writs be issued for quashing the appointments made by the appellant, Jodhpur University appointing Respondents Nos. 2 to 7 as Assistant Registrars. The Writ Petition was heard by the Division Bench of the said High Court and by order dated 12.2.1988, the High Court (Mr. M.C. Jain and Mr. Sobhagmal Jain, JJ) held inter-alia that the selection and appointment of Respondents Nos. 2 to 4 is not vitiated for want of application of mind by the Selection Committee or by the Syndicate and the submission made on that score was devoid of any substance and was rejected. It was further held that the selection and appointment of the Respondent No. 5 Shri T.P. Singh as Assistant Registrar deserves to be quashed as it was not clear whether the Selection Committee while considering the case of the Respondent No. 5 followed the directions given by the High Court or not. It had been further held that since no minutes or proceedings of the Selection Committee were drawn up it was not possible for the Court to know how the mind of the Selection Committee worked in regard to the selection of the Respondents Nos. 6 and 7 namely, Shri L.C. Jain and Shri K.D. Purohit. The High Court though upheld the appointments of Respondents Nos. 2 to 4 (Respondents Nos. 3 to 5 in the Writ Petition before the High Court) to the posts of Assistant Registrar quashed the selections of Respondents Nos. 5 to 7 (Respondents Nos. 6 to 8 in the Writ Petition before the High Court) and their appointments to the posts of Assistant Registrar made by the University with the observation that it would be open to the University to hold the fresh selection for the said posts but in that selection the University should adhere to the directions given by this Court in its judgment dated 8.8.1983 in Writ Petition No. 1297 of 1974 in case the petitioner Respondent No.

1 and Respondent No. 5 Shri T.P. Singh both are the candidates for the said post.

4. Against this judgment and order three Special Leave Petitions, one by the University of Jodhpur being SLP (Civil) No. 4987 of 1988, another by K.D. Purohit and T.P. Singh being SLP (Civil) No. 5164 of 1988 and the third being SLP (Civil) No. 8269 of 1988 by Shri H.K. Purohit were filed. The instant civil appeals arose out of the said three Special Leave Petitions.

5. The crucial question that poses for consideration in these appeals is whether the selection of the Respondents Nos. 2 to 7 and their consequent appointments to the post of Assistant Registrars' as made by the Syndicate of Jodhpur University is vitiated by non-application of mind and also by non-consideration of the guidelines specified in the impugned advertisement inviting applications for the said post. For the sake of convenience all the three Civil Appeals were heard together. In accordance with the advertisement the requisite qualifications for the post of Assistant Registrar are (i) Bachelor's degree from a recognised University and (ii) Experience of about 7 years in a supervisory capacity in a University, Board of Secondary Education, Educational Institution of repute or college of post-graduate standard. The High Court after hearing the submissions made on behalf of the Petitioner-Respondent No. 1 and considering the recommendations of the Selection Committee and consequent appointments made by the Syndicate in favour of Respondent Nos. 2 to 4 (Respondents Nos. 3 to 5 in the Writ Petition before the High Court) held;

The counsel for the petitioner could not point out any error or infirmity regarding the selection of Shri K.L. Paliwal and Shri B.N. Agarwal. His grievance was mainly against Shri S.D. Khilnani. The counsel has argued that the experience gained by Shri Khilnani was not in a supervisory capacity and he did not have to his credit experience in a supervisory capacity for about seven years. Counsel has urged that Shri Khilnani was not eligible for the post of Assistant Registrar. Having considered the submissions made by the learned Counsel for the petitioner, we are not impressed by the same. The counsel for the petitioner failed to show to us any relevant material having a bearing on the selection of these respondents on the post of Assistant Registrar, which ought to have been placed, but not placed before the Selection Committee or the Syndicate. The argument that the selection by the Selection Committee and the consequent appointment of Respondents Nos. 3 to 5 are vitiated for want of application of mind by these bodies, is devoid of any substance and is hereby rejected.

6. So far as regards the findings of the High Court upholding the validity of the appointments of Respondents Nos. 2 to 4 i.e. Shri. K.L. Paliwal, Shri S.D. Khilnani and Shri B.N. Agarwal. We not find any infirmity and as such we confirm those findings.

7. Regarding the validity of the selection and appointment of Shri T.P. Singh, the Respondent No. 5, to the post of Assistant Registrar, it is necessary to set out certain relevant facts hereafter. The Respondent No. 1, Shri H.K. Purohit, was

appointed as Upper Division Clerk on August 27, 1962 whereas Shri T.P. Singh, Respondent No. 5 was appointed as U.D.C. on October 6, 1962. It has been stated in the reply affidavit of Shri H.K. Purohit, Respondent No. 1 in the Civil Appeal Mo. 4555 of 1989 in paragraph 3 that the Respondent No. 1 was promoted to the post of Assistant on 14th October, 1972 but the Respondent No. 5 Shri T.P. Singh was promoted to the post of Assistant nearly three years later i.e. 20th September, 1975. It has also been stated therein by the Respondent No. 1 that he was promoted the post of Section Officer on 21 April, 1977 whereas the Respondent No. 5 was promoted to the said post on 27th April, 1977 and as such in the service as Section Officer the Respondent No. 5 was junior to the Respondent No. 1 by 6 days and in the service as Assistant the Respondent No. 5 was junior to him (Respondent No. 1 by about three years). It has also been stated in paragraph 4 of the said affidavit that the Respondent No. 5 is M.A. in History which he passed in the year 1977 whereas the Respondent No. 1 passed his M.A. (Philosophy) in the year 1960; M.A. (Political Science) in the year 1974 and LL.B. in the year 1956 and Sahitya Ratna in 1963. It has been further stated in paragraph 5 of the said affidavit that the Respondent No. 5 was illegally promoted to the post of Senior Assistant on 14th June, 1968 ignoring his claim to be promoted to the said post. A Writ Petition was filed by him being S.B. Civil Writ Petition No. 477 of 1968 in the Rajasthan High Court at Jodhpur. The Writ Petition was allowed and the promotion of the Respondent No. 5 to the post of Assistant was set aside by judgment dated 10th March, 1970. It has also been stated that the University of Jodhpur promoted Respondent No. 5 to the post of Section Officer by order dated 7.4.1973 without promoting him in the first instance to the post of Assistant. The said promotion was challenged by the Respondent No. 1 in Writ Petition S.B. Civil Writ Petition No 1297 of 1974. Realising the legality of the contention raised in the Writ Petition the appellant, University of Jodhpur reverted respondent No. 5 to the post of U.D.C. by order dated September 20, 1975 during the pendency of the said Writ Petition. On August 8, 1983 the High Court partly allowed the Writ Petition holding that the experience of Shri T.P. Singh, Respondent No. 5, herein, for the period April 7, 1973 to September 1975 would not be considered for selection qua the Respondent No. 1. This judgment has been annexed as Annexure 'C' to the Civil Appeal No. 4555 of 1989. It has been further stated in the said affidavit that the Respondent No. 5 stated in paragraph 10 of this counter affidavit the following facts :

It is submitted that although it is not known to the petitioner whether the attention of the Selection Committee was invited to the limited declaration as made in the Writ Petition. But it is submitted that this has no bearing in the matter in issue and this is no material fact which was required to be brought to the notice of the Selection Committee, The respondent does not remember whether on 6.9.1984 the Vice-Chancellor was apprised of the declaration at residence by the Petitioner. At any rate this was not done in the presence of this respondent. It is wonder what the petitioner is trying by making such statement.

8. It was stated in paragraph 7 of the affidavit-in-reply filed by Respondent No. 1 in this Court that the Bio-data of Respondent No. 5 placed before the Selection Committee mentioned two important facts (i) the fact that the experience gained by Respondent No. 5 during the period April 7, 1973 to September 19, 1975 was in fact included in the total period of experience gained by T.P. Singh, as Section Officer. "Thus, instead of excluding the said period, the University allowed the said period to be included in the total period during which respondent No. 5 could not be said to have served as Section Officer. I submit that this is in flagrant violation of the mandate given by the High Court. This shows that the members of the Selection Committee as well as the members of the Syndicate, were made to believe that the said period of 2 years 5 months, forms part of the period of experience gained by Respondent No. 5, as Section Officer. Hon'ble High Court has specifically and categorically taken note of that bio-data, which can be seen on page 8 of the paper book."

9. It appears from page 8 of the paper book of Civil Appeal No. 4555 of 1989 that the period from July 1970 to September 19, 1975 was included in the period of experience as Supervisor, although the period of appointment of Respondent No. 5, T.P. Singh temporarily as Section Officer for the period from July 11, 1970 to April 6, 1973 was to be excluded as the Respondent No. 5 was reverted to the post of U.D.C. by order dated September 20, 1975 by the University. Moreover, the High Court of Rajasthan in partly allowing the Writ Petition No. 1297 of 1974 dated August 8, 1983 specifically held that the experience of T.P. Singh Respondent No. 5, for the period from April 7, 1973 to September 20, 1975 would not be considered for selection qua the Respondent No. 1. The High Court has rightly held that "but the material information is still wanting as to whether the directions of this Court regarding Mr. Singh was also brought to the notice of other two members who constituted the selection committee and whether his experience which this Court directed to be excluded from consideration qua the petitioner was in fact excluded or not by the Committee."

10. This finding of the High Court is unexceptional and it has been arrived at on a proper consideration of the vital fact i.e. the minutes or proceedings of the Selection Committee were not placed before the Court. Furthermore, it appears prima-facie that the experience of the Respondent No. 5, Shri T.P. Singh for the period from July 1970 to September 1975 cannot be taken into account in view of the statements made in the affidavit-in-reply filed by the Respondent No. 1 in this Court and the same has not been controverted either by the University, the Appellant or by the Respondent No. 5, Shri T.P. Singh.

11. The judgment of the High Court quashing the selection and appointment of the Respondent No. 5 to the post of Assistant Registrar is legal and valid.

12. The Respondent No. 6, Shri L.C. Jain was selected by the Selection Committee and he was appointed on the post of Assistant Registrar on 17-11-1984, while the Respondent No. 7 was appointed by the Syndicate as Assistant Registrar on 3.1.1986. His name was included by the Selection

Committee in the reserve-plan post The Respondent No. 7 Shri K.D. Purohit who was appointed as Assistant Registrar on 3.1.1986 was not impleaded in the Writ Petition filed by the Respondent No. 1 in the High Court initially but he was impleaded in the High Court by the Respondent No. 1 after 6 months of the date of his confirmation. The High Court has not all considered whether there was non-application of mind by the Selection Committee in selecting these two respondents for the posts of Assistant Registrars and whether the Syndicate was wrong in appointing them to the posts of Assistant Registrars. The High Court did not find any infirmity in the selections of these two Respondents i.e. Respondents Nos 6 and 7 The High Court only on the ground that the file of the Selection Commute was not produced by University before the Court during the course of arguments observed;

We are quite unhappy by the way the proceedings of the Committee were maintained. There is nothing on record to show how the interview proceeded." The High Court further held "We are also not in a position to know how the mind of the Selection Committee would have worked to the case of Shri L.C. Jain and Shri K.D. Purohit, had the decision of the Committee with regard to the claims of the Petitioner and Shri Singh been different." On these reason the High Court quashed the selection and appointment of Repondents Nos. 5, 6 and 7. This finding of the High Court does not make any whisper about the illegality and non-application of mind of the members of the Selection Committee in selecting the Respondents Nos. 6 and 7 also in appointing them by the Syndicate to the posts' of Assistant Registrars. There is nothing to show that these two Respondents, who were duly interviewed by the Selection Committee and were selected had not the requisite qualification mentioned in the said advertisement made by the University of Jodhpur in inviting applications for the posts of Assistant Registrars. These respondents have been selected and appointed to the posts of Assistant Registrars by the Syndicate of the said University in November, 1984 and in January, 1986 respectively and their appointments have been duly confirmed. We do not find any perceptible and cogent reason in the judgment of the High Court in setting aside the appointments of the Respondents Nos. 6 and 7 as Assistant Registrars. The judgment of the High Court in so far as, it purports to quash the appointments of these two respondent as Assistant Registrar is liable to be set aside.

13. In these circumstances, we allow the appeal No. 4555 of 1989 filed by the University of Jodhpur setting aside the judgment of the High Court in so far as, it purports to quash the appointments of Respondents Nos. 6 and 7 i.e. L.C. Jain and K.D. Purohit to the posts of Assistant Registrars in the University of Jodhpur and dismiss it and affirm the order of the High Court quashing the appointment of Respondent No. 5, T.P. Singh as Assistant Registrar. The Civil Appeal No. 4554 of 1989 filed by H.K. Purohit is dismissed. The Civil Appeal No. 4556 of 1989 filed by K.D. Purohit and T.P. Singh is dismissed as regards the appointment of T.P. Sigh is concerned and the same is allowed as regards K.D. Purohit, upholding his appointment in the post of Assistant Registrar. In the facts and circumstances of

the case, there will be no order as to costs.