
(1977) 03 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 1080 of 1971

V.K. Aggarwal

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 08-03-1977

Acts Referred:

Citation : (1977) ILR Delhi 355 : (1978) LabIC 561 : (1977) RLR 525

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : P.P. Rao, A.K. Ganguly, V.P. Raman, D.S. Dang, K.K. Bhaduri and R.H. Dhebar, for the Appellant;

Judgement

H. L. Anand, J.

(1) This petition under Article 226 of the Constitution of India by a lecturer of Hindustani Music (Instrumental) in the Faculty of Music and Fine Arts of the University of Delhi challenges the selection of respondents 3 and 4 in the order of preference for the post of a Reader in the Hindustani Music (Instrumental) in the said Faculty for which the petitioner was also a candidate.

(2) The facts and circumstances leading to the petition may be briefly stated. The petitioner has been a lecturer of Hindustani Music (Instrumental) in the said Faculty since 1960. In February 1971 the University invited applications, inter alia, for the post of a Reader in Hindustani Music (Instrumental) through an advertisement in the press specifying certain "general" and "desirable" qualifications. The petitioner, respondents 3 and 4 were candidates for the post. All of them were interviewed by the Selection Committee. The interview consisted of two parts viz. viva voce and practical. The Selection Committee recommended to the Executive Council of the University that respondent No. 3 be appointed to the post. The Committee further recommended that in case respondent No. 3 was unable to accept the post it may be offered to respondent No. 4. The recommendation was accepted by the Executive Council, which

decided to appoint respondent No. 3 to the post, and resolved that in case respondent No. 3 was unable to accept it it be offered to respondent No. 4. Respondent No. 3 accepted the post, was appointed to it pursuant to the aforesaid decision and has since been functioning in that capacity.

(3) The proceedings of the Selection Committee and the consequential selection and appointment were sought to be assailed on two grounds. In the first instance, it was contended that the proceedings of the Selection Committee were vitiated on account of the indifference of the Vice Chancellor and the Pro-Vice Chancellor and in their absence the process of selection was virtually left to the two experts, who were nominated by the academic council, and one of whom was not an expert in the field of instrumental music. Secondly, it is urged that both the experts were deeply interested in the selection of the respondents 3 and 4 to the post because of their close and deep personal connection which had and was calculated to impair their impartiality.

(4) After hearing learned counsel for the parties it appears to me that there is no force in either of these two contentions. It is true that according to Section 19 of the Statutes the Selection Committee shall consist of a Vice Chancellor, the Pro-Vice Chancellor, if any, a nominee of the visitor and the persons specified in the corresponding entry in column (2) of the table which in the case of a Reader means two persons not connected with the University nominated by the academic council for their special knowledge of, or interest in, the subject with which the Reader or lecturer will be concerned. It is true that neither the Vice Chancellor nor a nominee of the visitor attended any of the meetings of the Selection Committee. It is equally true that of the two parts of the interview i.e., the viva voce and practical even the Pro-Vice Chancellor did not attend the practical test part of the interview. It is also undisputed that the process of selection was virtually left to the two experts, one of whom was known for his eminence in vocal music while the other was similarly known instrumental music. It was also not disputed that the two experts had not been nominated by the Academic Council and had been nominated by the Vice Chancellor. This was also not disputed that respondent No. 4 was working for her Ph. D. under the guidance of one of the two experts and her father was a close friend of the expert and they were on visiting terms with each other. It was also not disputed that both the respondents had very friendly relations with the said expert and the other expert and respondent No. 3 had been teaching and working in the Bhartiya Kala Kendra for many years. None of these circumstances could individually or collectively be capable of vitiating the proceedings of the Selection Committee. While it is unfortunate that the Vice Chancellor did not attend any of the meetings of the Selection Committee and even the Pro-Vice Chancellor chose to be absent from the meeting concerned with the practical test, apparently because he thought such a test was best left to the two experts, this would not by itself vitiate the proceedings. The Selection Committee had been duly constituted. All the members of the Selection Committee had intimation of the meeting and in the absence of any provision with regard to quorum for such a

meeting the absence of any member would not vitiate the proceedings. If the contention raised on behalf of the University that the Rules with regard to quorum for the meetings of the various authorities of the University were applicable to the meetings of the Selection committee as well, there was, in any event, no objection to the validity of the proceedings because the requirements of these Rules had been satisfied. It is not open to the petitioner to challenge the validity of the proceedings on the ground of deep interest of the experts in the respondents or because of their intimate personal and family connections because these facts were admittedly within the knowledge of the petitioner and if the petitioner nevertheless participated in the proceedings and took a chance of a favorable selection he cannot now be heard to object to the validity of the proceedings on that ground. In any event, the petitioner, as indeed the two respondents, were by all reckoning well-known in the world of Indian Music and so were the two experts. It was, Therefore, natural that the experts and the candidates were well known to each other, had associated with each other in their common pursuit, and would have been interested in their welfare. The experts being men of eminence in the field of music were normally expected to be above personal likes or dislikes and it is difficult to void the proceedings merely because the two experts happened to know some of the candidates more than they knew the others and merely because the two candidates, with whom the experts had closer affinity, happened to succeed, while the petitioner did not. In this context it is difficult to ignore that the intimate connections attributed to the experts and the respondents arose not because of their personal relationship but because of their common interest in and love of a certain discipline. It may be mentioned in this connection that initially two different experts had been appointed and invited but the present experts had to be substituted because of the inability of the original appointees to attend. The contention that one of the experts was an expert in vocal music and was, Therefore, not competent is also devoid of force. What Statute 19 envisages is that the experts must be men having special knowledge or interest in "the subject with which the Reader or lecturer will be concerned". The subject in the present case was essentially music and not necessarily its instrumental manifestation. The basic theory of Indian music is common to both the vocal and instrumental disciplines of it. An artist who has special knowledge of vocal music does not cease to be a person having special knowledge of Indian music. A vocalist may not be adept in the instrumental exposition of music but is nevertheless equally competent in the appreciation of both disciplines. There is also no force in the contention that the experts had not been properly appointed. The petitioner failed to provide any material in support of this contention. These two contentions must, Therefore, fail and it must be held that there was no illegality in the constitution or the proceedings of the Selection Committee.

(5) There were some controversies between the parties as to whether the appointment of the experts was made in accordance with the procedure laid down by the Executive Council or by the Academic Council. It was not disputed

on behalf of the University that by a resolution of April 23, 1970 the Academic Council had laid down a fresh procedure for nomination of expert on the Selection Committee. It was also not disputed that in appointing the experts in the present case the procedure laid down in that resolution was not followed. It was, however, explained that the said resolution did not indicate the date from which it would come into force and for that reason the procedure prevalent for the nomination prior to the said resolution was adopted. Reliance in support of this contention was placed on the minutes of the meeting of the Academic Council held on the 25th October, 1971, subsequent to the date of the filing of the present petition, in which the resolution of April 23, 1970 was noticed and it was pointed out that no date had been fixed for this enforcement and it was, Therefore, decided that the revised procedure should be strictly adhered to with effect from January 1, 1972. This decision of the Academic Council, which was characterised on behalf of the petitioner as an after-thought intended to legitimise the appointments of the experts, in any event, amounts to a ratification by a council of the appointment of the experts, as indeed the procedure which was followed for the purpose. It is, Therefore, unnecessary for this Court to go into the motivation for this resolution which was obviously the result of a lacuna or in irregularity pointed out by the petitioner in the course of the petition.

(6) The next ground of attack to the validity of the selection of respondents 3 and 4 for the post and the eventual appointment of respondent No. 3 to it, is based on the contention that neither of the two respondents were eligible for being considered for the post in terms of the Ordinance of the University and the respondents were, Therefore, not entitled to be considered for it and consequently respondent No. 3 was not entitled to be appointed to it.

(7) The University of Delhi is a Body Corporate established by the Delhi University Act, 1922 (for short, "the Act") Ordinance Xxiv made pursuant to the provisions of sections 30 and 31 of the Act lays down the qualifications for the post of a Reader in these terms :-

"GOODAcademic record with first or high second class M.A./ M.Sc. Degree in the subject concerned with a Doctor's Degree or equivalent published work. Independent published work (in addition to the published work mentioned above) with at least 5 years" teaching experience in Honours/post-graduate classes essential."

The Ordinance, however, provides that "relaxation of any of the qualifications may be made in exceptional cases in respect of all posts on the recommendation of the Selection Committee." The advertisement for the post, however, put the requisite qualifications thus :

"GENERALQualifications: Good academic record with First or High Second Class Master's Degree in the subject concerned followed by a Doctorate Degree or equivalent published work. Independent published work (in addition to the published work referred to above) with at least five years" teaching experience in

Honours/Post-Graduate classes essential. Desirable Qualifications : Standing as a performing Artist in Sitar. Experience in original research and wide scholarship in the history and theory of Music. Ability to guide research in Music at all levels. A working knowledge of any three of the languages mentioned below and acquaintance of Musicological works in them is necessary :- English, Hindi, Urdu, Bengali and Marathi. Experience of teaching of Music in advanced institutions and of organising teaching Courses in Music. A list of published work, papers and articles should be submitted with the application."

A foot note to the advertisement made provisions for relaxation in the following terms :-

"1.It will be open to the University to consider the names of suitable candidates who may not have applied. Relaxation of qualifications may be made in exceptional cases at the discretion of the Selection Committee." (Annexure "A"). It is a common case of the parties that neither of the two respondents either had the requisite academic qualifications or any published works to their credit and did not have the required teaching experience. It was, however, not disputed that respondent No. 3 was considered an eminent Sitarist and had exceptional distinction as such. The Selection Committee recommended respondent No. 3 for the post even while being aware that the respondent "did not have the requisite academic qualifications" and "in view of Shri Chaudhry's (respondent No. 3) eminence and exceptional distinction as an Artist the Committee decided to relax the qualifications in his case and recommended him for appointment." There is no reference in the recommendation if respondent No. 4 had the requisite academic qualifications and, if not, whether, in recommending her for the post in the alternative, the Selection Committee also relaxed the qualifications in her case, and further if the recommendation in favor of respondent No. 4 was also based on any relaxation, whether on account of her eminence or distinction or otherwise. Sub-section (2) of Section 6 of the Statutes of the University made u/s 29(1) of the Act provides that "no action shall be taken by the Executive Council in respect of the number, qualifications and the emoluments of teachers otherwise than after consideration of the recommendations of The Academic Council".

(8) It thus appears to be beyond doubt that the eligibility of a candidate for the post must be considered in the context of the qualifications laid down in the said Ordinance subject to the power of the Executive Council u/s 6(2) of the Statutes to relax "any" of the qualifications in exceptional cases on the recommendation of the Selection Committee and after consideration of the recommendation of the Academic Council. It is also beyond doubt that the "desirable" qualifications referred to in the advertisement, in addition to the "general" qualifications referred to in the said Ordinance, are beyond the scope of the Ordinance and the advertisement is inconsistent with the Ordinance in that the advertisement empowers the Selection Committee " at its discretion" to relax "qualifications" in exceptional cases. This is so because the power of relaxation in the Ordinance is

confined to "any" of the qualifications, while the power of relaxation envisaged by the advertisement extends to all the qualifications because the expression which limits the scope of relaxation is absent in the note that appears at the foot of the advertisement. In addition according to the said Statutes and Ordinance power of relaxation is vested in the Executive Council on the recommendation of the Selection Committee, and after consideration of the recommendation of the Academic Council, the corresponding power envisaged in the advertisement is virtually vested in the Selection Committee to be exercised at its discretion. There is also no doubt, and this is clearly borne out by the recommendation of the Selection Committee (Annexure "B") that respondent No. 3 did not have any of the requisite academic qualifications and all the qualifications were, Therefore, relaxed in view of his "eminence" and "exceptional distinction" as an Artist. What happened to the case of respondent No. 4 is not clear from the recommendation but it was not disputed that respondent No. 4 also did not have the necessary academic qualifications. It is also beyond doubt that the petitioner had the necessary qualifications for the post, both with reference to the Ordinance and the advertisement, and his consideration for the post was, Therefore, appropriate. It. Therefore, follows a fortiori that unless all the academic qualifications could be legitimately dispensed with and the consideration of the candidature of respondent No. 3 may be justified with reference merely to his emience and exceptional distinction as an Artist, the consideration of the candidature of respondent No. 3, as indeed of respondent No. 4, and of the eventual. appointment of respondent No. 3 to the post could not possibly be justified because it would amount to considering and appointing someone who is not eligible for such consideration and appointment. This is so because consideration of candidature of an ineligible candidate is as objectionable as refusal to consider the candidature of an eligible candidate. Both suffer from the vice of transgression of the fundamental guarantee in the matter of employment enshrined in Article 16 of the Constitution of India.

(9) The question that, Therefore, requires consideration is as to whether the relaxation was within the permissible limits and made by the authority of law or was tantamount to abandonment of qualifications or otherwise not sanctioned by law.

(10) After hearing the learned counsel for the parties it appears to me that there is no escape from the conclusion that respondent No. 3 did not have any of the requisite qualifications laid down in the Ordinance; that relaxation of any of the qualifications did not authorise a complete abandonment of all; and even though he was admittedly an Artist of eminence and exceptional distinction he was not eligible either for being considered for the post of or being appointed to it. In coming to this conclusion I am not unaware of judicial anxiety not to interfere in the internal working of an autonomous body like the University and the need to allow the University Authorities a certain amount of freedom in organising its affairs and conducting its business so long as they conform to the statutory requirements and are within the Constitutional constraints. It is, however, not

possible to permit the University to consider and appoint a candidate to a post for which he was not eligible in terms of the Ordinance. The Ordinance merely empowers the Executive Council, subject to certain conditions being satisfied, to relax "any" of the qualifications. The expression "any" cannot be read out as meaning "all" the qualifications otherwise the expression "relaxation" would have absolutely no meaning at all. "Relaxation" means to reduce the rigour of the Rule and not to altogether dispense with it. The basic requirements of the Ordinance must, Therefore, be satisfied even though some of the qualifications may be relaxed by the Executive Council on the recommendation of the Selection Committee and after considering the recommendation of the Academic Council. The addition of desirable qualifications in the advertisement, the conferment of the power on the Selection Committee in its discretion to relax all qualifications, the absence of any recommendation of the Academic Council on the question before the consideration of the matter by the Executive Council, to my mind, amount to a clear violation of the Ordinance and vitiate the process of selection. It is true that subsequently the Academic Council noticed that on the recommendation of the Selection Committee the Executive Council had approved of the appointment but that does not, to my mind, dispense with or amount to a compliance of the mandatory requirement of the Ordinance. There is considerable force in the contention of the counsel for the petitioner that the total relaxation of the academic qualifications because of the eminence and exceptional distinction of respondent No. 3 as an artist was for a reason which had no rational relation to the requirements of the post. It is true, and learned counsel for the petitioner was no less vocal in the praise of the eminence and exceptional distinction of respondent No. 3 as an artist, that the said respondent had achieved considerable, eminence as a Sitarist but that could not qualify him for a post of the reader, if he did not have any of the requisite qualifications. There is some justification for the contention urged on behalf of the University that eminent artist with the requisite academic qualifications are hard to find in the Faculty of Music but that could not legitimise an action which is contrary to the Ordinance, howsoever strong be a case for the amendment of the Ordinance in such cases. To permit the University authorities to virtually amend the Ordinance in the garb of exercising the power to relax any qualification would be to authorise a clear fraud on the statutory provisions.

(11) Even so Shri Dhebar, learned counsel for Respondent No. 3 taking advantage of the amended Article 226 of the Constitution of India, sought to urge that, assuming that the selection was in contra- vention of the provisions of the Ordinance, the petitioner would still not be entitled to any relief because it could not be said that the selection of the respondents or the appointment of respondent No. 3 or the non-selection of the petitioner constituted "any injury of a substantial nature" in terms of sub-clause (b) of clause (1) of Article 226 of the Constitution of India, as amended, and that, the petition would be deemed to have been abated by virtue of the fact that in terms of clause (3) of Article 226 of the Constitution of India, as amended, a petition of this nature could not be

entertained because the petitioner could seek redress in a civil court, which would constitute "any other remedy" within the meaning of the said clause. Counsel for the petitioner vehemently contested these propositions but pointed out, and rightly in my view, that the entire process of consideration of the petitioner, the respondents 3 and 4, the selection of respondents 3 and 4 and the consequential appointment of respondent No. 3 were violative of the fundamental guarantee of equality in the matter of employment and were, Therefore, hit by Article 16 of the Constitution of India and, if that be so, the case of the petitioner would be squarely covered by sub-clause (a) of clause (1) of Article 226 of the Constitution of India, and it was, Therefore, unnecessary for the petitioner to satisfy the requirements of the other sub-clauses of clause (1) or be subjected to the limitation imposed by clause (3). Article 16 guarantees equality of opportunity in the matter of employment.. The right in relation to employment is, however, confined to the right to be considered for employment and does not necessarily extend to the right to employment. The right to be considered for employment is, however, a right to be considered for employment in accordance with law which lays down the requirement of eligibility. A consideration which is devoid of such statutory requirement is not a consideration at all and is a denial of it. Even otherwise the right to equality is violated by equal treatment to unequals or unequal treatment of equals. Both suffer from the vice of denial of equality. In the same way consideration of the candidature of an ineligible candidate is as objectionable as refusal to consider the candidature of an eligible candidate. Both suffer equally from the vice of transgression of the fundamental guarantee in the matter of employment enshrined in Article 16 of the Constitution of India. By the consideration of the candidature of respondents 3 and 4, who being ineligible, were not entitled to compete at the selection, the petitioner's fundamental right to be considered for selection has been clearly violated. That being so, the case of the petitioner would be covered by sub-clause (a) of clause (1) of Article 226 of the Constitution of India and it is, Therefore, unnecessary for the petitioner either to satisfy the requirement of sub-clause (b) or to be subjected to the limitation imposed by clause (3) of the Article. The cases on which reliance was placed on behalf of the respondents do not appear to support their contention. In none of the cases were the courts concerned with the consideration of ineligibles along with eligibles. In the case of Banarsi Dass (1) the question was if it was open to the appointing authority to lay down the requisite qualifications for recruitment to Government service and whether such qualifications could constitute a transgression of the fundamental right in the matter of employment. It was in this context that it was pointed out by the Supreme Court that Government, like other employers, were entitled to pick and choose from amongst a large number of candidates for employment under the Government. Similarly in the case of N. Rudraradhya (2), the Mysore High Court was concerned with the question if the State was entitled to lay down qualifications and to make an appointment in accordance with its desire to get the best service that can be obtained and it was held that such a requirement could not be violative of the equality of opportunity in the matter of employment. In the case

of B. N. Nagarajan (3) the contention that if executive was held to have power to make appointments and lay down conditions of service without making rules in that behalf under Article 309 of the Constitution, Article 16 would be breached was negated. In the case of P. Narasinga Rao (4) it was held that there was no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favored and that Article 16 did not bar a reasonable classification of employees or reasonable tests for their selection.

(12) I have, Therefore, no option but to strike down the selection of respondents 3 and 4 and the appointment of respondent 3 even though I take this action with considerable reluctance because it amounts to an interference in the internal functioning of the University and also with considerable regret because it would affect the interest of an artist of eminence. The University would consider afresh the candidature of eligible persons for the post in accordance with law. The present incumbent need not be displaced until the process of selection has been completed and fresh appointment has been made. The University would complete the course of selection and appointment within a period of three months, unless otherwise directed by this Court.

(13) The petitioner would also have his costs. Counsel's fee is assessed at Rs. 500.00 .