

Mortuja Hussain (Md.) Vs Afia Khanam Choudhury and Others

Court: Gauhati High Court

Date of Decision: July 28, 1998

Acts Referred: Assam Legislative Assembly Secretariat Rules, 1986 " Rule 38
Constitution of India, 1950 " Article 226

Citation: (1998) 3 GLT 156

Hon'ble Judges: V.D. Gyani, Acting C.J.; P.C. Phukan, J

Bench: Division Bench

Advocate: A.B. Choudhury and M. Hazarika, for the Appellant; M. Singh, for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. This Writ Appeal is directed against the judgment and order dated 4.7.95 passed by a learned Single Judge of this Court in Civil Rule No.

141/93, preferred by writ Petitioner -Respondent No. 1, challenging the appointment of present Appellant (who was Respondent No. 4 in the writ

petition) as a Lecturer in English, and the approval accorded to his appointment by the Joint Director, Higher Education (Respondent No. 3 in the

petition).

2. This writ appeal was filed on 23.8.95 and by interim order dated 22.9.95, the operation of the impugned judgment was stayed.

3. The present Appellant had filed yet Anr. appeal, being Writ Appeal No. 42/94 challenging the judgment and order dated 24.1.94 passed by a

learned Single Judge of this Court in Misc. Case No. 108/94. Prior to it the writ Petitioner-Respondent had served all the Respondents 6 to 11,

but none of them appeared. On 20th August, 1993 when the petition was directed to be listed after two weeks and the Respondents were given

time to file counter, if they so desired. On 16.9.93 a Rule, calling upon the Respondents to show cause as to why a writ should not be issued made

returnable within four weeks and the petition was directed to be listed in the 3rd week of November, 1993 as a fixed item. Mr. Choudhury

entered appearance on behalf of the Respondent No. 4 as can be seen from the order dated 17.12.93. Although the petition was to be listed in the

3rd week of November, it was not so listed and came to be listed on 18.1.94 when again none appeared for the Respondents. Before the learned

Single Judge the hearing concluded and judgment reserved, which was delivered on 24th January, 1994. It was against this judgment allowing the

writ petition that Writ Appeal No. 467/95 was filed by the present Appellant.

4. This appeal has had a chequered history. When listed on 3.4.96 none appeared for the Appellant and a Division Bench of this Court passed the

following order:

None appears for the Appellant. Mr. M. Singh, learned Counsel for the Respondent No. 1 submits that although the appeal was barred by

limitation, no application for condonation has been filed by the Appellant and no order has been passed condoning the delay in filing the appeal.

Mr. Singh pointed out that as per report of the Stamp Reporter, the limitation question cannot be ascertained without certified copy and this report

of the Stamp Reporter has not been brought to the notice of the Division Bench by the counsel for the Appellant when the appeal was admitted on

22.9.95 and the impugned judgment and order dated 4.7.95 passed by the learned Single Judge in Civil Rule No. 141/95 was stayed.

We do not intend to go into the question of limitation as none appears on behalf of the Appellants and we dismiss this appeal for default. The

interim order dated 22.9.95 staying the order dated 4.7.95 passed by the learned Single Judge in C.R No. 141/95 is vacated.

5. Just a week thereafter on 10.4.96 the following order was passed:

Heard Mr. Das, learned Counsel appearing for the Appellant and Mr. M. Singh, learned Counsel appearing for the contesting Respondent.

After hearing the counsel for the parties at some length and after taking the interest of the students into account we permit the Appellant to function

as Lecturer in English until further orders of this Court.

Mr. Singh has prayed that the appeal itself may be disposed at the early date and for that purpose the appeal be laid before one of us for

appropriate orders.

6. The appeal was once again dismissed for want of prosecution on 18.6.96 but again restored and directed to be listed for hearing on 25.6.96

and continued to be listed on different dates till 7.7.97. When once again none appeared for the Appellant and the appeal was disposed of on

merits after hearing the counsel for the Respondents. The Appellant notwithstanding dismissal of appeal, not once but thrice, continued to enjoy the

interim order of stay and remained in service, which he still continues.

7. The dismissal of appeal on 7.7.97 was again called in question, the appeal was once again ordered to be listed for hearing, recalling the order

dated 7.7.97 and it was accordingly heard.

8. Before proceeding to deal with the rival contentions advanced at the bar, it would be pertinent to note some basic facts. The dispute relates to

the appointment of a Lecturer in English in N.C. College, Badarpur. By the impugned judgment the learned Single Judge has held that approval

accorded to the appointment of the present Appellant as Lecturer in English by the Joint Director, Higher Education was without application of

mind and without taking into consideration the relevant factors, the conditions and guidelines for such appointment setting aside the Appellant's

order of appointment. Annexure 6 to the affidavit-in-opposition. The learned Judge directed the governing body of the college to select a candidate

strictly in accordance with the rules and guidelines governing such selection and appointment.

9. It is an admitted position that the College is a deficit schemed college and receives a substantial grant from the State Government, no

appointment can be made by the governing body of the college without prior approval of the Director of Higher Education, whose duty it is to

examine and scrutinise the matter as a whole to see and satisfy that the selection made by the governing body is strictly in accordance with the

guidelines issued and procedure prescribed by the government.

10. A post of Lecturer in English has fallen vacant. A notice inviting application for the sanctioned post of Lecturer in English from candidates

having qualification prescribed by the U.G.C. were invited within 15 days of the date of publication of the advertisement. The writ Petitioner was

one of the applicants. The last day for submission of application as per advertisement published in "The Assam Tribune" was 14.7.92. The writ

Petitioner submitted the application on 13.7.92. The present Appellant also submitted his application within time but he did not possess the

requisite minimum qualification having a Master Degree in the subject, although he had appeared at the examination, the result was yet to be

announced. By subsequent notice dated 1.7.92 issued by the Secretary of the Governing Body of the College it was notified that those who have

appeared at the M.A. final examination may also apply for the post, but they must submit their marksheets and certificates showing U.G.C. norms

before the date of interview. This notice dated 1.7.92 was sent to the Employment Exchange and to AIR, Silchar for relaying the same. As a result

of this change two other candidates, namely, Md. K.M. Baharul Islam and Md. Moinuddin who had also appeared at the M.A.. Final examination

also submitted their application for the post of Lecturer in English. Seven candidates who fulfilled the norms prescribed by the U.G.C. were called

for interview. A selection committee was constituted by the Governing Body. Out of 7 candidates called for interview, 5 turned up including the

Appellant and the writ Petitioner -Respondent No. 1. The selection committee recommended the Appellant who was placed at S1. No. 1 in order

of merit. The writ Petitioner Respondent Miss Afia Khanam at S1. No. 2 and one Miss Suranjana Roy Choudhury at S1. No. 3. Accordingly the

Governing Body vide its resolution dated 6.1.93 resolved to appoint the Appellant as Lecturer, it was approved by the Director vide approval

order dated 13.1.93 followed by the appointment order dated 18.1.93. It was this appointment and approval which was challenged by the writ

Petitioner Respondent No. 1 and quashed by the learned Single Judge. Hence this appeal.

11. Mr. Choudhury, learned Counsel appearing for the Appellant has questioned the maintainability of the writ petition on the ground that it was

not in the form prescribed. Entertaining this objection at the appellate stage more so when the petition has been allowed on merits by the learned

Single Judge would neither be proper nor desirable. All that the Appellant submitted was that the cause title did not indicate that the petition was in

accordance with the High Court Rules, inasmuch as, it did not disclose or indicate as to what particular order had been challenged by the writ

Petitioner and the prayer clause was also defective. The writ Petitioner Respondent did not pray for cancellation of the approval accorded to the

appointment of the Appellant Respondent No. 4. The writ Petitioner prayed for the following reliefs:

In the premises aforesaid, it is most respectfully prayed that your Lordships may be pleased to admit this writ appeal, call for the records, issue

notice to the Respondents and on hearing the parties be pleased to set aside the impugned order dated 4.2.94 passed by the learned Single Judge

Hon"ble Mr. Justice J.N. Sarma in Misc. Case No. 108/94 arising out of Civil Rule No. 141/93 as well as set aside the judgment and order dated

24.1.94 passed in Civil Rule No. 141/93 and remand the case to a single Judge to hear Civil Rule No. 141/93 afresh, after giving all opportunity to

the Appellant including filing of counter affidavit and/or in the alternative be pleased to dispose of the appeal on merit and be pleased to pass such

order or further orders as your Lordships may deem fit and proper.

Further it is most respectfully prayed that pending disposal of the writ appeal, your Lordships may be pleased to stay the operation of the

impugned judgment and order dated 24.1.94 passed in Civil Rule No. 141/93.

12. Really speaking there is no such defect in the form of the petition so as to render it not maintainable. A relief should not be denied merely

because the Petitioner is not in the prescribed form and for deciding the nature of the petition the entire petition has to be read and not merely the

relief portion as has been pointed out by the Supreme Court in Corporation of the City of Corporation of the City of Bangalore Vs. M. Papaiah

and Another, Of course, it was a case relating to pleadings in a suit for perpetual injunction without claiming the relief of declaration of title but the

underlying principle is the same rather in a suit the pleadings are to be strictly construed, yet the Supreme Court held that the suit cannot be

dismissed on the ground that the relief of declaration of title has not been specifically mentioned in the plaint. It has been held by series of decision

of the Supreme Court that the Court has power to mould the relief having regard to the changed circumstances.

13. So far as a writ petition under Article 226 of the Constitution is concerned, there is no force in the contention advanced by the learned Counsel

appearing for the Appellant that the petition was not maintainable simply because it did not contain challenge to the selection and approval and

relief for setting aside or quashing the selection as well as approval was not claimed nor was there any averment in the petition that justice was

demanding and had been denied. For all these one has to read the petition as a whole avoiding a pedantic approach to pleadings and it cannot be

overlooked that we are at the appellate stage. Even if it had been at the initial most stage the objection as taken are not such as to render the

petition not maintainable.

14. Learned Counsel placing reliance on the decision in Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others, submitted that Court

cannot play the role of selection committee more so at the instance of an unsuccessful candidate who having participated but failed in selection now

seeks to challenge the process is not permissible. Again reliance has been placed on a decision in C.P. Kalra Vs. Air India through its Managing

Director, Bombay and Others, . We would like to make it clear that we are quite mindful of the scope of judicial review in such matters. We do

not for a while intend to interfere with the academic aspect of the matter and play the role of selection committee. We are here to see that the rules

and norms of selection as prescribed by the Government are followed. We are not going into the question of comparative merits or demerits and

the marking as made by the selection committee. The first question that arose for consideration is whether the Appellant possesses all the requisite

qualifications as prescribed under the advertisement as initially published and whether the same can be relaxed by any subsequent notice. It is an

admitted position that as per advertisement (Annexure-H) published in the Assam Tribune dated 29.6.92, the prescribed qualifications were atleast

a Master Degree in the subject, in the instant case English literature with atleast 55 marks in aggregate and consistently good academic record

from HSLC onwards. The applications were to be received within 15 days from the date of publication of the advertisement. The subsequent

notice dated 1.7.92 filed as Annexure-A reads as follows:

With reference to the advertisement published in THE ASSAM TRIBUNE dated 29th June, 1992 for the post (one) of Lecturer in English in N.C.

College, Badarpur, it is hereby notified for general information that subject to the consideration of the Governing Body, N.C. College, Badarpur,

candidates who have appeared in the M.A. final examination this year (1992) in the concerned subject may also apply for the same post. But they

must submit their M.A. final mark sheets and certificates showing U.G.C. norms before the date of interview.

15. By the subsequent notice candidates who had appeared in the M.A. final examination of the year 1992 but whose results were not declared

were allowed to apply for the post and concession in their case was made to produce the mark sheet at the time of interview. Whether this notice

was published at all is a highly disputed fact. But we proceed on the assumption that it was published. The Appellant does not say anything about

the mode and manner of this notice (Annexure-A). The writ Petitioner Respondent in paragraph 3 of her petition referring to the advertisement as

published in the Assam Tribune dated 29.6.92 has categorically averred that it was in pursuance of this employment notice that she had submitted

her application for the post of a Lecturer. Surprisingly enough Respondents 1 and 2 in their affidavit-in-opposition sworn by no less a person than

the Principal of the College and Secretary of the Governing Body has very conveniently omitted to reply to paragraph 3. In paragraph 4 of the

affidavit-in-opposition he has stated ""that the statement made in paragraphs 2 and 4 of the writ petition are matters of record"". This is not the way

of controverting a particular fact when the Petitioner comes out with a specific case that the advertisement was published on a particular date in a

particular newspaper. The Secretary of the Governing Body and the Principal of the College does not come out with a statement in reply to that

particular paragraph 3 of the petition or for that matter must in his affidavit-in-opposition come out with the true state of affairs which he has

deliberately avoided. In paragraph 7 of his affidavit-in-opposition the deponent has referred to employment notice and added ""I say that the said

statements are not correct and the same are hereby denied."" What prevents the deponent in placing the correct statement. Why does he not come

forward with the statement that the employment notice as published in the Assam Tribune dated 29.6.92 (Annexure-H) as filed by the writ

Petitioner Respondent was subsequently modified on 1.7.92, vide Annexure-A as filed by the Appellant Respondent No. 4 already reproduced

above. The deponent in his affidavit has again referred to the advertisement and the notice issued subsequently without disclosing the date of its

issuance or publication and the mode and manner in which it was so published, the affidavit-in-opposition sworn by the Principal is silent on the

point. What is surprising is the Principal of the College and the Secretary of the Governing Body does not file the subsequent notice, it is the

appointee the Appellant Respondent No. 4 who files a photostat copy of this notice dated 1.7.92. It may be noted that both Respondents 1 and 2,

the deponent, the Principal and the appointee Appellant have filed their affidavit-in-opposition on the same day i.e. 28th June, 1994. The Secretary

of the Governing Body and the Principal of the College does not disclose the date of notice much less file or produce the same, but the appointee

Lecturer files a photostat copy of the notice dated 1.7.92 and the Appellant is also equally silent about the mode and manner of publication of this

notice (Annexure-A). The Supreme Court is very clear on this point in Bharat Singh and Others Vs. State of Haryana and Others, . Assuming for

the sake of argument that the notice dated 1.7.92 (Annexure-A) as filed by the Appellant was published, the advertisement (Annexure-H) as

published in the Assam Tribune on 29.6.92 provided for possessing the qualification on the date of advertisement a very convenient departure has

been made by the subsequent notice. Even those who did not possess the requisite qualification on the date of advertisement were permitted to

apply in anticipation of their possessing the qualification and what a leniency shown to such applicants to produce the mark sheet at the time of

interview and the interview was held and without indicating the date of interview which was again to be conveniently held only after the Appellant

Respondent No. 4 had got through the examination. Just look to the time gap. The advertisement (Annexure-H) was published on 29.6.92. The

applications were to be received within 15 days from the date of publication of the advertisement. Those in service were to apply through proper

channel. For obvious reasons the post of Lecturer was sanctioned by the UGC for the academic year. Now it could not be made co-terminous

with possessing of qualification by particular candidate i.e. what appears to have been done in the instant case. It is an admitted position that the

Appellant-Respondent No. 4 did not possess the requisite qualification on the date of advertisement. He submitted his mark sheet and certificate,

vide application dated 29.9.92 which was received in the office on 30.9.92. In one of its very recent decision in Upen Chandra Gogoi Vs. State of

Assam and Others, the Supreme Court had the occasion to deal with the eligibility qualification to be met by the candidate and has clearly pointed

out that the qualifications prescribed under the advertisement in response to which one had applied and not those prescribed with effect from a

subsequent date. It was a case of an Officer on Special Duty in the rank of Joint Secretary in Assam Legislative Assembly Secretariat] The

qualification as prescribed for the post were that the applicant must be a Judicial Officer qualified to be appointed as District Judge or Additional

District Judge or he should be an advocate having practice for 7 years. In this case the Appellant was holding the post of Judicial Magistrate which

is a Grade 111 post and was on deputation. He was not eligible for appointment to Grade I post of District Judge or Additional District Judge.

Referring to the subsequent modification in the eligibility conditions under Rules, 1986 and dealing with the Appellant's contention that since he

was holding grade 111 post on deputation he had necessary qualification for being appointed as Joint Secretary, the Supreme Court observed.

We fail to see how the qualifications prescribed subsequently can help the Appellant. The Respondents have also contended that these

qualifications were inserted by the Appellant himself in the Draft Rules in order to validate his own appointment. Be that as it may, the subsequent

Rules cannot affect the qualifications prescribed for the post of OSD under the advertisement of 18.6.1985. The Appellant was appointed

pursuant to this advertisement. He had to meet the qualifications prescribed. The Appellant has drawn our attention to Rule 38 of the Assam

Legislative Assembly Secretariat Rules, 1986, under which all orders made or actions taken before these Rules came into force shall be deemed to

have been made or taken as if these were made or taken under those rules. Rule 38 can apply only to orders lawfully made or action lawfully taken

before these Rules came into force. It cannot validate an action which was not lawful at inception.

16. In the same vein the Supreme Court in Union of India and Another Vs. Ravi Shankar and Another, has held that a candidate who does not

possess the requisite qualification under the Rules has no right of appointment.

17. Adverting to the facts of the case let us now see whether the Appellant possessed the requisite qualification on the date of publication of the

advertisement dated 29.6.92 (Annexure-H). On the Appellant's own showing he submitted his application on 8.7.93 alongwith all the required

testimonials except "the mark sheet and certificate of M.A. Final Examination" but the result was yet to be announced.

18. By subsequent notice dated 1.7.92 as claimed by the Appellant, the Managing Committee and the Principal of the College are silent on the

point. The Appellant appeared at the M.A. final examination in the year 1992 and he claims to have submitted M.A. final mark sheet and

certificate atleast 4 months before the interview.

19. Mr. N. Dutta, learned Counsel appearing for the Respondents 1 and 2 has placed for our perusal the record and going through the same it

would be seen that there is a letter dated 29.9.92 written by the Appellant and addressed to the Secretary, Governing Body, N.C. College,

Badarpur. The letter itself is reproduced hereinbelow:

With reference to my application posted from New Delhi on 3rd of July, 1992 addressing Secretary, G.B. (Principal-in-Charge), N.C. College,

Badarpur for the post of Lecturership in English, as per the advertisement No. SV/2161/1 published in the Assam Tribune on 29th of June"92 I

beg to state you that the result of my M.A. (F) Examination has already been declared out.

Therefore, I request your kindness to attach the copies of the statement of marks and certificates with my earlier application and oblige.

20. The provisional certificate issued by the Assistant Controller of Examinations is not in its original but it is a photostat copy. The statement of

marks filed alongwith this letter is a photostat copy which bears an endorsement ""Received original Marksheet for Re-evaluation"" dated 16.9.92.

There is yet Anr. letter dated 7.11.92 addressed to the Principal. This letter is also reproduced herein below as ready reference:

With due respect I do hereby most humbly state you that I had improved three of my MA. (Previous) papers and accordingly my M.A.(P) marks

have been improved by eight(8). If necessary, I will submit the improvement Mark-sheet issued by the Exam. Controller office of J.M.I. and

oblige.

21. There are two statement of marks of M.A (Previous) examination and it is the Appellant's case that he had improved his marks of as many as

3 papers. Once again advertng to the advertisement (Annexure-H) the qualification prescribed is not merely a Master Degree with atleast 55 of

marks in aggregate but added to it is consistently good academic record from HSLC onwards. It now remains to be seen how far the Appellant

fulfils this requirement of having a consistently good academic record from HSLC onwards. A consistently good academic record has a definite

legal connotation, it cannot be a record which is achieved by improvement made in repeated attempts, nor can it be a record by securing a pass in

compartments. While learned Counsel appearing for the Appellant, all along projected the marks obtained by the Appellant at the interview, this

obtaining of marks is not an indication of consistently good academic record. The writ Petitioner Respondent passed her HSLC examination in first

attempt in 1st Division, whereas the Appellant had passed the HSLC examination in compartment. He had obtained 37 marks out of 150 in 2nd

language, English and 20 marks out of 100 in social studies, whereas the writ Petitioner Respondent passed HSLC examination in 1st Division, the

P.U. (Arts) in 1st Division and B.A. with honours in English in 2nd class. As against this consistently good academic record of the writ Petitioner

Respondent, the selection committee giving a convenient go by to these various essential aspects of the academic excellence in the matter of

selection has made a selection in a most arbitrary and unfair manner. We are not going into the marks allotted at the time of interview, at the same

time one reconcile a candidate passing in HSLC examination in compartment being preferred as against one who has secured first Division in first

attempt followed by First Division in Pre-University (Arts) and B.A. with honours in English. As already noted above, the Appellant had improved

by 8 marks in 3 papers in M.A. (Previous). The statement of marks for M.A. English (Previous) Examination, 1992 as submitted by him to the

Managing Committee issued in September, 1992. There is Anr. statement of marks in M.A. English Examination of 1991 which was issued on

26.8.91 in which the Appellant had obtained 334 marks out of 600 marks and in the 2nd bid in 1994 he obtained 342 marks out of 600. Now is it

indicative of consistently a good academic record? Howsoever, liberally construed this improvement in marks is certainly not consistently good

academic record. We do not dispute the Appellant's right to improve his record if the University Rules so permit, he can always do so, but the

question is one of consistently a good academic record. The kind of patchwork in passing the examination and improving the performance militates

against a good academic record. The Appellant passed his B.A. Part-II in 1989 securing 280 marks out of 600 and was placed in 2nd Class. The

Appellant had appeared in B.A. Part-I examination in 1988, his Roll Number was A-18453 which he passed. He appeared B.A. Part-II

examination in 1989 and it was at this examination that he again appeared 3rd paper of a major subject securing 44 marks. These different

statement of marks as submitted before the Managing Committee by the Appellant clearly and clinchingly establishes the fact that his over all

academic performance can hardly be said to be consistently good. Whatever the marks, even these marks were not obtained in first attempt,

repeated attempts were required . in obtaining poor marks. What is poor performance, HSLC compartment, B.A. 3rd paper repeated,

improvement made in 3 papers of M.A. Previous. Now this simply points to the poor academic career of the Appellant. No selection committee

acting fairly and keeping in view the requirement of consistently good academic record from HSLC onward could have selected such a candidate

in preference to the writ Petitioner-Respondent. The view taken by the learned Single Judge, cannot be faulted with on any legitimate ground. The

Petitioner-Respondent in paragraph 2 has categorically stated that she passed the M.A. in English with 56.7% of marks which is above the UGC

norms and this has not been controverted by the Appellant who in reply to paragraph 2 of the petition has simply stated that these are matters of

record and in paragraph 10 of the affidavit-in-opposition the Appellant has come out with bold assertion ""I say that a better academic career is not

the only criterion for selection of a candidate."" Again according to him ""The crucial date of qualification for selection is the date of selection and not

the date of advertisement"". Apart from the fact that these assertions are contrary to law, they also revealed the mind of the Appellant and his

concept and regard of academic excellence. It was argued that the Appellant had already served for almost 4 or 5 years. It may be noted here that

it was all along due to the interim order passed by the Court. Although final judgment delivered earlier which is against the Appellant, there are two

such Division Bench judgments on record and simply because an interim order was operating, the Appellant cannot be allowed to take advantage

of these interim orders as the acts of the Court prejudices none. The Appellant did not possess the requisite qualifications on the date of

advertisement, the Respondents 1 and 2 were rather too kind to extend the date to such an extent as to enable him not only to pass, but also to

improve his performance at the M.A. examination. The conditions which were required to be fulfilled at the time of submission of application form

were extended upto the time of interview. The publication of 2nd notice giving all those conditions in the advertisement as published in Assam

Tribune dated 29.6.1992, Annexure-H were waived and it is now apparent, to the benefit of none else than the Appellant. The fact that he has

served for 4 or 5 years is of no consequence, it does not confer any right of the Appellant. His continuance of service was solely due to the interim

order passed by the Court and it is a well known Lega Maxim that the act of the Court shall prejudice none. The Supreme Court in AIR 1998 91

(SC) has categorically held:

Looking to the clear terms of the advertisement which we have referred to above, the Respondent was not eligible for consideration. It is submitted

by the Respondent before us that since he has been continued and has now been confirmed we should not disturb his appointment. He has

requested that his case should be considered sympathetically, The fact, however, remains that the Appellants have taken the correct stand right

from the beginning. The Respondent's application was not considered and he was not called for an interview. It was on account of interim orders

which were obtained by the Respondent that he was given appointment and continued. He was aware that his appointment was subject to the

outcome of his petition. One cannot, therefore, take too sympathetic a view of the situation in which the Respondent finds himself. A cut-off date

by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who

would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess

the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice

to others.

22. Mr. N. Dutta, learned Counsel for the Respondents 1 and 2 while placing the record submitted that the subsequent advertisement was relayed

from the local Radio Station at Silchar, as a result 3 more candidates applied. Be that as it may, the affidavit sworn and filed on behalf of

Respondents 1 and 2 is conspicuously silent on the point. The Principal who has sworn the affidavit does not say a word about it and nothing was

easier for the Respondents to obtain the date/dates on which the particular notice was relayed. Placing reliance on some of the judgments of the

Supreme Court, as noted below:

(1) State of Punjab Vs. Union of India (UOI) and Others,

(2) Berhampur University and another Vs. Dr. Sailabala Padhi,

(3) Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another,

(4) Modi Industries Ltd. Vs. State of Uttar Pradesh and others,

It was repeatedly urged and stressed on behalf of the Appellant that this Court does not and should not interfere with the decision of the academic

authorities or bodies, the Courts cannot assume the role of Selection Committee. We are not interfering on the basis of academic lapses or

infirmities. What we are primarily concerned with is whether the norms of selection, and the criteria of selection has been followed by the selection

committee and the selection committee fails the test on both the counts. A candidate who did not fulfil the conditions of eligibility as per

advertisement Annexure-H did not even possess a master's degree, was not only allowed to apply and comfortably accommodated till cleared the

exam., but also selected, throwing the criteria of consistency having good academic record to winds, as already discussed above. Appellants

selection and appointment as Lecturer is most arbitrary and unfair.

23. The case relied upon by the learned Counsel for the Respondents 1 and 2 relates to selection to Munsiff Magistrate in Jammu and Kashmir, it

has been held that candidate taking calculated chance and appeared at oral interview, the candidate cannot challenge interview test as unfair (See

Madan Lal and Others Vs. State of Jammu and Kashmir and Others, In the instant case, the writ Petitioner Respondent has not challenged the

selection of the Appellant solely on the basis of only unfairness of interview, her case is that a candidate having no requisite qualification on the date

of advertisement has been selected by showing indulgence and extending accommodation to him to such an extent that he may not only passed

through the examination, but also improved his marks giving a convenient go bye to the essential requirements of having a consistently good

academic record. It is on these grounds and not merely the interview that the Appellant's selection has been challenged.

24. The guidelines were not adhered to, 30 marks were allotted for two experts - one for general and the other for interview and one expert gave

28 marks out of 30 to the Appellant. It is apparent that while according approval, the Respondent No. 3 has not applied his mind to the basic

requirement of having consistently good academic record, it was sought to be supplemented by gratuitous marking at the interview.

25. Lastly, it was urged by the learned Counsel for the Appellant that the Appellant has served almost 4 years by now and in the meantime has

undergone some specialised training in teaching in English. As has been seen above, he was not an eligible person on the date of advertisement and

the 2nd advertisement appears to be a crude patch.

26. The Supreme Court in Konch Degree College, Conch Jalaun and Others Vs. Ram Sajiwan Shukla and Another, while construing such a

requirement has held the provisions of Kanpur and Meerut Universities Act on the point of publishing advertisement in 3 news papers as

mandatory and held that advertisement of vacancy in two local newspapers against the requirement of three did not meet the requirement of law,

but the selection was not disturbed for the reasons that the candidate selected was duly qualified and continued for long years. In the instant case,

the candidate selected was not duly qualified, did not possess the qualifications, fulfilling conditions of eligibility on the date of advertisement, his

continuance under Court's interim orders is of no consequence.

27. Although, it was pointed out that 3/4 more applicants came forward in pursuance of the 2nd advertisement, there is no material placed on

record to show that the 2nd advertisement was published in local daily or given wide publicity. It is not even proved that it was displayed in the

College Notice Board or relayed from the Local Radio Station at Silchar or in the employment news bulletin. Even assuming for the sake of

argument that the 2nd advertisement with whatsoever publicity, was there, yet the Appellant has a very poor academic record and by no stretch of

imagination can he said to possess a good academic record as required under the first advertisement, Annexure-H, while it is true that the

Appellant is in service for all these years, but at the same time, it cannot be over looked that his continuance of service is due to order passed by

the Court and it is a well known maxim that the order of the Court prejudices none. In almost similar situation, the Supreme Court in AIR 1998 91

(SC) held as follows:

Looking to the clear terms of the advertisement which we have referred to above, the Respondent was not eligible for consideration. It is submitted

by the Respondent before us that since he has been continued and has not been confirmed we should not disturb his appointment. He has

requested that his case should be considered sympathetically. The fact, however, remains that the Appellants have taken the correct stand right

from the beginning. The Respondent's application was not considered and he was not called for an interview. It was on account of interim orders

which were obtained by the Respondent that he was given appointment and continued. He was aware that his appointment was subject to the

outcome of his petition. One cannot, therefore, take too sympathetic a view of the situation in which the Respondent finds himself., a cut-off date

by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who

would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess

the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice

to others.

28. In view of the foregoing discussions, this Appeal fails, it is accordingly dismissed with costs, counsel fee, Rs. 5,000/-. The Respondents 1 and

2 have conducted the whole process of selection in an arbitrary and discriminatory manner to keep the writ Petitioner Respondent out solely with a

view to pave the way for selection and appointment of the Appellant, which stands quashed and the Respondent No. 3 is directed to consider

accord of approval to the writ Petitioner Respondent for making appointment as Lecturer in English and on being accorded such approval, the

Respondents 1 and 2 are further directed to appoint the writ Petitioner-Respondent as Lecturer.