(2009) 04 KL CK 0068

High Court Of Kerala

Case No: Writ Petition (C) No. 35461 of 2008 (V)

Seleena K.V. (Dr.)		APPELLANT
	Vs	
The Manager, Malabar Christian College and Others		RESPONDENT

Date of Decision: April 2, 2009

Citation: (2009) 2 ILR (Ker) 459 : (2009) 2 KLJ 344

Hon'ble Judges: T.R. Ramachandran Nair, J

Bench: Single Bench

Advocate: P. Ravindran and Harikrishnan Ravindran, for the Appellant; P. Chandrasekhar, P.K. Ibrahim, Thomstine K. Augustine, C.N. Gopakumar and P.C. Sasidharan, S.C., for the Respondent

Final Decision: Allowed

Judgement

T.R. Ramachandran Nair, J.
The important question that arises in this writ petition is whether the Educational Agency is empowered to cancel the panel of names forwarded by the Selection Committee for appointment to the post of Lecturer in the College in question.

2. The notification is one for appointment to the post of Lecturer in College, Calicut. A vacancy arose due to retirement of a Selection Grade Lecturer. Ext.Pldated 13,8.2007 is the notification.

3. The petitioner was an applicant for the post. She is a Post Graduate in malayalam and has passed the National Eligibility Test and M.Phil, in Malayalam. She is having Doctorate in Malayalam language.

4. The procedure for selection is in accordance with the Calicut University (Conditions of Service of Teachers and Members of non- teaching staff) First Statutes, 1979. A Selection Committee was constituted as per Clause 4(1) of the said Statute and it

comprised of two representatives of the Educational Agency, the Principal, the Head of the Department, one subject expert and a nominee of the Government.

5. The interview was held on 16.9.2008. On the apprehension that the appointment as per the select list will not be done by the Educational Agency, the petitioner sought for the details of the matter and accordingly obtained Ext.P2 mark list and Ext.P3 rank list. The details therein showed that the petitioner has got 55 out of 100 marks and one Dr. Suja obtained 53 out of 100. The petitioner is ranked as No. 1 and Dr. Suja as No. 2. Meanwhile, a news item was published in the Indian Express Daily dated 23-10-2008 stating that the Government nominee dissented with the selection of the candidate. Again, information was sought by the petitioner as per Ext.P5 and she was given a reply as per Ext.P6 stating that the governing body in its meeting held on 7.11.2008 has decided to scrap the Staff Selection Interview. This is under challenge in this writ petition.

6. Mainly, the challenge is based on lack of power on the Educational Agency to cancel the selection list. It is contended that they are bound to make the appointment in accordance with the panel forwarded and the petitioner being rank No. 1, ought to have been appointed.

7. Respondents 1 and 2 have filed separate counter affidavits. The first respondent is the Manager and the second respondent is the Chairman of the governing body who has issued ExtP6. In the counter affidavit filed by the second respondent, mainly it is contended that in Ext.P3 rank list the Chairman did not put his signature and therefore it is only a draft. It is also contended that he did not approve the rank list after finding that there was merit in the objection raised by the Government nominee. He was acting in accordance with the legal opinion obtained in the matter, wherein the opinion given was to the effect that the petitioner was awarded marks lavishly, whereas Dr, Suja who has come second, was having more marks after assessment of her qualification, but deliberately in the interview she was given very low marks. The petitioner was granted uniform marks by the two members of the management and the Principal and this will raise serious suspicion against the members of the management representatives and the Principal. It is averred that on the basis of the said legal opinion, the Educational Agency resolved to cancel the list prepared by the Selection Committee for the post of Lecturer in Malayalam and ordered for fresh selection. Accordingly, the rank list was cancelled.

8. On the merits of the matter also, in paragraphs 8 and 9 of the counter affidavit, it is contended that the petitioner could not have been ranked first in the selection list for many reasons. She was awarded 15 marks for NET and Ph.D., whereas she is not entitled for grant of 15 marks as she did not have Ph.D. on the date of her application. The guidelines for awarding of marks is as per Ext.R2(a) issued by the University. Before giving ranking to the candidates, the Selection Committee has not subjected further scrutiny of the marks awarded to the candidates for their educational and other credentials at the office of the Principal. This omission has resulted in vitiating the rank list prepared by the Selection Committee. It is also contended that merely because she

happened to be rank No. 1, no right has been accrued to enforce the appointment. The recommendation of the Selection Committee is not binding on the governing body which has full power and authority to examine the merits of the ranking and can take its own decision on being satisfied by an objective assessment of the merit of the candidate.

9. In the counter affidavit filed by the first respondent Manager, similar contentions have been raised.

10. Heard learned Senior Counsel Shri P. Ravindran, for the petitioner and Shri P. Chandrasekhar and Shri P.K. Ibrahim for the respondents.

11. Shri P. Ravindran, learned Senior Counsel appearing for the petitioner submitted that going by the relevant provisions of the First Statutes, the Educational Agency has no role to tinker with the panel forwarded by the Selection Committee. The assessment of qualification and merit is entirely for the Selection Committee to make and once their assessment has become final, the Educational Agency cannot have any role in reassessing the qualification and find out whether the award of marks for each candidate is correct or not. Relying upon the relevant provisions of the Calicut University Act and the relevant First Statute, it is pointed out that none of the provisions therein specifically confer the Educational Agency any power to have a reassessment as done in this case. Therefore, whatever is done by the Educational Agency by cancelling the rank list as per Ext.P6 is beyond its jurisdiction. Therefore, the same-has to be declared null and void.

12. On the merits of the matter also learned Senior Counsel submitted that the contention that the marks awarded to the petitioner by the two representatives of the management and the Principal is on the uniform rate and is tainted by suspicion, cannot be justified. It is pointed out that the petitioner had been given 14 marks each by the Chairman, Manager and the Principal and 10 marks by the Government nominee. Therefore, it cannot be said that the awarding of marks is tainted at all. Regarding the absence of Ph.D. qualification and awarding of 15 marks for NET along with Ph.D., learned Senior Counsel pointed out that in the application it was clearly stated that she has appeared for Ph.D. It is contended that Ph.D. is not a qualification prescribed for the post of Lecturer and Ph.D. and M.Phil are treated as desirable qualifications by the University. The additional qualifications are looked into by the Selection Committee at the time of interview. At the time of submitting the application, she had submitted her thesis for Doctorate and was awaiting result. Doctorate was awarded on 9.9.2008 which is evidenced by Ext.PlO and at the time of interview held on 16.9.2008, she had produced the relevant documents before the Selection Committee. On being satisfied about her qualification, the Selection Committee has awarded marks. It is therefore submitted that there is no illegality in the matter.

13. Learned Senior Counsel relied upon various decisions of the Apex Court and of this Court, viz. Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, , The Chancellor and Another Vs. Dr Bijayananda Kar and Others, , Bhagwan Parshu Ram

College and Another Vs. State of Haryana and Others, , Sobha B. Nair Vs. University of Kerala, in support of the above contentions.

14. On behalf of the respondents, a decision of the Apex Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, was relied upon to contend that if there is lack of essential qualification, illegality cannot be cured.

15. Before going into the merits of the matter, the relevant provisions of the First Statutes also will have to be referred to. Chapter II of the Calicut University (Conditions of Service of Teachers and members of non-teaching staff) First Statutes, 1979 deals with conditions of service of teachers in private colleges. The Statute provides for constitution of Selection Committee for appointments. Herein, the selection is made by a Committee as provided under Statute the following effect:

4.(1) xxxxxxx

(2) xxxxxxx

(3) Notwithstanding anything contained in Clause (1), in the case of any Educational Agency which has voluntarily entered into a written agreement with the Government for the direct payment of salaries to the teachers and the non-teaching staff of its Arts, Science or Training Colleges, appointments of teachers, whether provisional or permanent, shall be made only from a list of persons prepared by a selection committee constituted by the Educational Agency and consisting of the following members, namely:

(a) two representatives of the Educational Agency nominated by it;

(b) a person nominated by the Educational Agency from amongst the Principal, Heads of Departments and Professors of the College or where the Educational Agency has two or more colleges from amongst the Principals, Heads of Departments, ad Professors of all those Colleges;

Provided that before making any such nomination, the educational agency shall obtain the concurrence of the University.

(c) One member chosen by the Educational Agency from amongst the Secretaries to the Government and the District Collectors:

Provided that in the case of Oriental Title Colleges, the member chosen by the Educational Agency shall be from amongst the category of Principals and officers of the Collegiate Education Department not below the rank of Professors proficient in the concerned languages:

Provided further that if for any reason the Government consider that the officer chosen by the Educational Agency cannot be deputed to the Selection Committee, the Educational

Agency shall choose another officer from amongst the said categories;

(d) one expert chosen by the Educational Agency from a subject-wise list of experts prepared by the University containing not less than five members and made available to the Educational Agency on its request at the beginning of each academic year;

Provided that if the Educational Agency considers that the list is insufficient, it may request for more names to be included in the list and the University, shall, as far as possible, comply with such request.

16. Learned Senior Counsel appearing for the petitioner submitted that in the case of appointments in the Universities, the relevant provisions allow the Syndicate to make an appointment otherwise than against the recommendation of the Selection Committee, the same can be done as per the procedure prescribed in the proviso to Statute 4(4) of Chapter 3, but herein no such provision is there. Therefore, the statutory position is clear in that once the Selection Committee makes the selection and prepares a panel, the Educational Agency cannot tamper with the same and the appointment will have to follow.

17. The said question has been examined under different circumstances by the Apex Court and this Court. In The Chancellor and Another Vs. Dr Bijayananda Kar and Others, , while considering the finality of the proceedings of the Selection Committee, it was held thus in para 8:

The function of the Selection Committee comes to an end when the proceedings are drawn. Every member of the selection Committee has a right to give his fair opinion in respect of each candidate. Normally, it would not be considered a bona fide act on the part of a member of the Selection Committee to say, after the selection is over and he has signed the proceedings, that he overlooked certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained. It would be travesty of the selection process if the candidates are encouraged to meet members of the Selection Committee after the selection is over and to obtain letters from them attempting to renege the selection made.

Apparently, the view taken is that individual members of the Selection Committee cannot thereafter raise controversies in the matter. In Kerala University''s case 1996 (2) KLT 565 a Division Bench of this Court considered whether the recommendation of the Selection Committee is binding on the Syndicate. While considering the matter, it was held in para 4 in the following terms:

Rule 8 cannot be construed so as to hold that the recommendation of the Selection Board shall be binding on the Syndicate. Such recommendations of the Selection Board is in the nature of aid and advice, which is given by the Selection Committee and in certain cases of emergency or urgency, the Vice Chancellor is empowered to appoint with or without the aid or advice of such committee. Such selection committees are appointed by the Syndicate itself.

It was further held in para 6 that "although the recommendation of the Selection Committee is not binding on the Syndicate but such recommendation should not be lightly brushed aside and due weight has to be given to such recommendations."

18. The case considered in Bhagwan Parshu Ram College and Another Vs. State of Haryana and Others, show that the Selection Committee selected one person and the Managing Committee did not issue any appointment order. The Governing Body later recorded certain reasons to the effect that he should not be given appointment and decided to re-advertise the post. While considering the matter, it was held thus in para 5:

The appointment made by the Selection Committee had to be accepted inasmuch as the relevant rules did not permit the Managing Committee to sit in judgment over such a selection made and, therefore, the view taken by the Managing Committee in this regard is wholly arbitrary.

Their Lordships further held that "it is no doubt true that the position in law is that a selection process commenced for an appointment may be cancelled or stopped at any stage or not completed by appointment of the selected candidate but such action can be attacked as arbitrary or mala fide." Thus, it is evident from the above decision that the Managing Committee has no right to sit in judgment over such a selection.

19. In Sobha B. Nair Vs. University of Kerala, , more or less a similar issue was considered. But the appointment therein was to the service of the University itself in various teaching departments. The Selection Committee conducted the selection, but their report was rejected by the Syndicate by stating various reasons. This was challenged in the writ petition on the ground that the Syndicate has no jurisdiction for deciding on such a rejection. After analyzing the relevant provision, it was held in para 15 thus:

The manner in which the provisions had been incorporated in the statute-do indicate that once the selection is made by the Committee, the Syndicate has to take follow up steps for appointing the persons concerned and has no residuary or other powers to reject the recommendation. If that was the position, the Statute would have made explicit provision for them. The reasons given by Justice Smt. UshaT(as she then was) about "the absence of expertise of the Syndicate in the manner of selection in the decision cited supra, is very much relevant here to be noticed. I hold that the selection was held validly and properly, and the Syndicate could not have nullified the steps. They were expected to accept and endorse the selection made by the statutory Committee.

Learned Senior Counsel relied upon the principles stated by the Apex Court in Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, to the effect that when a Statute prescribes a particular mode of doing things, that mode alone should have been adopted. Their Lordships held in para 18 thus:

It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice.

20. In State of Punjab v. Suman Lata 1999 STPL (LE) 27047 SC, the dictum laid down was to the effect that "when the Selection Committee which consists of persons with sufficient experience in that field with the knowledge of job requirements and necessary qualifications in this regard having examined the qualification possessed by the respondent selected the respondent as Arts and Crafts Teacher, the District Education Officer ought not have cancelled that appointment." This is relied upon in support of the argument that the decision of the Selection Committee is final.

21. Now I will consider the decisions relied upon by the learned Counsel for the respondents. In United India Insurance Co. Ltd. Vs. Roy, , this Court considered the question whether a defect could be corrected by the authority concerned even though the benefit was granted to the person concerned. The issue was whether a cash incentive given contrary to the guidelines issued by the General Insurance Company, could be recouped. After analyzing the question, it was held in para 2 thus:

In such a situation, human error at times cannot be avoided. Nobody could expect an ideal situation without any error or mistake in the matter of administration. Due to inadvertence or otherwise a mistake has been committed which can always be corrected. Duty is cast not only on the administrators but on a beneficiary of the mistake to correct the error. The beneficiary is also part of the administration like the person who has committed the mistake. Writ petitioner cannot make a capital out of a mistake committed by his colleague in the office. Circular issued by the General Insurance Corporation of India is applicable not only to the administrators but to the beneficiary of the mistake also. So mistake can be corrected not only by the administrators but also by the beneficiaries.

The legal position declared therein is that a mistake can be corrected by the administration concerned.

22. Reference can also be made to the principle stated by the Apex Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, . There, a person was appointed to a teaching post for which the qualification required was B.Ed. Degree. Later, it was found that he had not acquired the qualification from a recognized University. Show cause notice was issued and after conducting an enquiry, his service was terminated. While considering the matter, the Apex Court held that when somebody lacks qualification for appointment, that cannot be condoned. Only an irregularity can be sought to be regularized and not an illegality. The principles stated therein in paragraphs 16 to 18 are in the following terms:

The qualification for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity. It is a matter of concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the degree(s) possessed by the candidate(s) are valid or not. It was an ad hoc appointment. Why despite the same, he was allowed to obtain degree from another university is not known. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in an unmistakable term says so. Only an irregularity can be.

23. Herein, in the additional affidavit, the minutes of the meeting of the governing body dated 7.11.2008 has been produced as Ext. R2(C). After referring to the newspaper report and the adverse comments of the Government nominee and after relying upon the legal opinion in the matter, it was decided to cancel the selection and to initiate fresh selection. It is seen that they have taken a further decision to issue a fresh notification.

24. Going by the counter affidavit filed by respondents I and 2, the justification for cancellation of selection is mainly on the ground that the marks awarded to the petitioner was far more than what she was actually entitled to as per the guidelines issued by the Calicut University, produced as Ext. R1(a). It is pointed out that the best candidate ought to have been recruited. Objection is taken with regard to the assignment of 15 marks towards NET and Ph.D. It is stated that only a candidate who had acquired Ph.D. + NET is entitled to 15 marks as per Ext. R1(a) and the petitioner who had passed only M.A. and M.Phil, was entitled to be assigned only for five marks as per the said order. It is pointed out that as on the date of selection, she had not acquired Ph.D. and therefore should have been reduced from her total marks of 33 for qualification. She would have entitled only for 23 marks for qualification. Going by the academic record, the second person, viz. Dr. Suja is qualified and is the better candidate. Reliance is placed on the mark sheet and the academic qualifications of Dr. Suja who is having M.A. with 1st Class. Compared with it, the petitioner, has not passed M.A. with 1st class. Thus, the contention taken is that the entire selection is faulty and the faulty selection process cannot confer any right on the petitioner.

25. Going by the statutory scheme under the First Statutes, it is the selection committee which has to conduct the selection and interview, award marks and prepare the panel. No other body is entitled to assess the qualification and award marks. The guidelines for awarding marks (Ext. R1(a)) is one issued by the University. The same was approved by the Academic Council. Therefore, that is binding on the Selection Committee also. If the governing body has got a ease that the Selection Committee had failed to effectively assess the qualification and the awarding of marks is not in tune with the guidelines, then the question arises what could be the next step to be taken by them. In this case, going by the averments in the counter affidavit it is clear that the Educational Agency had sit upon the entire selection procedure initiated by the selection committee, assessed the

entitlement of the two candidates for assignment of marks, gone into the correctness of the marks awarded by the Selection Committee and has taken the view that the petitioner who is rank No. 1 in the panel, was given the marks in correctly. Thus, by the exercise done by the Educational Agency as is explained in the counter affidavit, they themselves have taken upon the responsibility of the Selection Committee and has clearly deviated from the marks awarded by the Selection Committee. Going by the relevant provisions of the First Statutes, the panel has to be prepared by the Selection Committee. Read along with the guidelines in the matter, the entire duty or burden is on the Selection Committee itself and not on any other body including the Educational Agency. Going by Statute 4(1) of Chapter 2, appointment of teachers by direct recruitment should be on the basis of merit and such appointments shall be made by the Educational Agency from a panel of three names for every vacancy recommended by a Selection Committee constituted by the Educational Agency. Therefore, the role of the Educational Agency is specific that they will have to make appointment from a panel recommended by the Selection Committee. Of course, as strongly pleaded by the learned Counsel for the respondents, merit is the sole criteria. If there is a failure to consider the merit, it will be a defect which will definitely affect the preparation of the panel. That surely will vitiate the entire selection. No amount of statutory protection will give credence to such a panel prepared by the Selection Committee.

26. But even then, whether the Educational Agency could re-assess the qualification, award of marks, etc. in tune with the particular components as provided in the guidelines, is the moot question. Going by the various decisions of the Apex Court and this Court as referred to above, especially the decision of the Apex Court in Bhagwan Parshu Ram College and Another Vs. State of Haryana and Others, , the Managing Committee is not permitted to sit in judgment over a selection made by the Selection Committee. But at the same time, a selection process could be stopped or cancelled for other reasons. But herein, such other reasons leading to cancellation are not evident and the cancellation is mainly on the ground that the petitioner''s qualifications have not been properly assessed. In that view of the matter, the dictum laid down in the said case that the Managing Committee is not permitted to sit in judgment over the selection applies on all fours. In the absence of any power conferred by the First Statutes to the Educational Agency to have a separate assessment of its own, the exercise made by them cannot be supported.

27. But still, the question is whether if a candidate selected is not fulfilling the qualifications or in a case where the candidate is not entitled to have such marks as assessed by the Selection Committee on the basis of the documents and materials produced, then, can the said candidate be appointed? The appointment of candidates can only be on the basis of their merit as is evident by Statute 4(1) of the Calicut University First Statutes. The appointment will be subject to approval by the Syndicate which is evident from Statute 14, Therefore, all these pre-supposes that the candidate selected is fully qualified in accordance with the guidelines and other notified stipulations. When in a case like this there are alleged defects or there are materials which may need

a re-look of the entire matter, it cannot be said that the Educational Agency lacks power to revert the matter back to the Selection Committee. In facts this Court in Bernard Fenn v. University of Kerala 1979 85 KUC 167 considered the question whether if the candidate selected is having no qualification and that aspect was overlooked by the Selection Committee, such remedial measures could be taken or not. Of course, that case related to an appointment to the post of Reader in the University which falls within the ambit of the Statute. Clause (4) of Rule 4, Chapter 3 of the First Statutes, 1977 provides that "when the Syndicate proposes to make the appointment otherwise than in accordance with with the above provisions, or against recommendations of the Selection Committee, the Syndicate shall record its reasons and submit its proposals for the sanction of the Chancellor." The question was answered by this Court stating thus:

If the petitioner is not qualified, then apparently, the mere fact that the Selection Committee overlooked that vital aspect will not be a ground to prohibit the Syndicate from considering the whole question from all angles and from taking its own decision. In fact, Sub-clause (5) immediately following Sub-clause (4) of Rule 4 of Chapter 3 of the First Statutes, 1977 provides that no teacher shall be eligible for appointment as such in the university, unless he possesses such qualifications as may be prescribed by the Regulations made by the Academic Council. When Sub-clause (4) is read in conjunction with Sub-clause (5) of Rule 4 of Chapter 3, it goes without saying that the appointing authority can certainly verify whether the concerned candidate possesses the requisite qualifications to hold the concerned post.

Therefore, going by the above dictum, the appointing authority is not denuded of the power. But in the light of the decisions of the Apex Court as referred to above, as the appointing authority cannot re-assess the matter, it has to revert it back to the Selection Committee itself for a fresh reassessment. If the Selection Committee after reassessing confirms the same panel, the Educational Agency will have to make appointment in accordance with the same. If any candidate included in the list is aggrieved, he will have to challenge it in appropriate proceedings.

28. In the light of the above position, respondents 2 and 3 will have to request the Selection Committee to have a fresh exercise by way of assessment of qualification and award of marks and if necessary, they can conduct an interview afresh. It is up to the Selection Committee to adopt such method as it prefers. To enable the Selection Committee to do so, the second respondent will place the matter before the Selection Committee in the light of the various facts discussed above. The Selection Committee will thus reassess the matter and find whether the marks awarded is properly done or not and in accordance with the guidelines.

29. Therefore, Ext.P6 is quashed. There will be a direction to respondents 1 and 2 to constitute the Selection Committee and to place the matter for their consideration in accordance with the findings and the directions issued herein. Appropriate action shall be finalised within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above. No costs.