

## **S.L. Namdeo Vs Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Bhopal and others**

**Court:** Madhya Pradesh High Court

**Date of Decision:** Oct. 25, 1986

**Acts Referred:** Jawaharlal Nehru Krishi Vishwa Vidyalaya Act, 1963 " Section 14(2)  
Letters Patent Act, 1865 " Clause 10

**Citation:** (1987) JLJ 230 : (1987) MPLJ 296

**Hon'ble Judges:** S. Awasthy, J; C.P. Sen, J

**Bench:** Division Bench

**Advocate:** Y.S. Dharmadhikari, for the Appellant; R.P. Verma, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

C.P. Sen, J.

This is an appeal under Clause 10 of the Letters Patent by the appellant against the dismissal of his writ petition by the learned Single Judge,

challenging the order of the Chancellor setting aside his appointment as Soil Microbiologist.

Respondent No. 2 Jawaharlal Nehru Krishi Vishwa Vidyalaya is an Agriculture University constituted under Jawaharlal Nehru Krishi Vishwa

Vidyalaya Act, 1963. Respondent No. 1 Governor of the State of M.P. is the Chancellor of the University. There were two posts of Soil

Microbiologists, one in Biological Nitrogen Fixation Scheme of the Indian Council of Agricultural Research and the second under State Plan

Scheme for Rhizobium Culture and Production. The first post fell vacant and, therefore, the post was advertised on 22-7-1980 inviting applications

for the post. The advertisement required the following qualifications : "Ph.D. in Soil Science/Agricultural Chemistry with specialization in Soil

Microbiology or Published work of an equivalent high standard". It was made clear in the advertisement that post is sanctioned under I.C.A.R.

Scheme for Biological Nitrogen Fixation. However, the second post also fell vacant on 31-8-1980 but it was not advertised. The appellant as well

as the respondent Ho. 3 and others applied for the post. Five of the candidates including appellant Dr. S. L. Namdeo and respondent No. 3 Dr.

A. K. Khare were called for interview on 22-4-1982 by the Selection Committee constituted by the Vice-Chancellor consisting of three eminent

scientists on the subject viz. Dr. N. S. Subbarao, Head of the Department, Dr. A. C. Gaur, Professor, both of Microbiology Division of Indian

Agricultural Research Institute, New Delhi, and Dr. Santsingh, Emeritus Scientist, Department of Soil Science and Agricultural Chemistry of the

Institute of Agricultural Sciences, Benaras Hindu University. The Selection Committee recommended the names of Dr. L. N. Verma and the

appellant on the panel. The selection was approved by the Board of Management of the University on 11-5-1982 and Dr. L. N. Verma was

appointed for the first post while the appellant was appointed for the second post i.e. under State Plan Scheme for Rhizobium Culture and

Production. Since the respondent No. 3 was not selected, he made a representation to the Chancellor against the selection of the appellant on the

grounds that (i) he did not hold Ph.D. and (ii) his research work was not equivalent to Ph.D. and, therefore, he being not qualified, his selection is

bad. A show cause notice was given to the appellant and the University by the Chancellor on 7-3-1983. The appellant filed his reply denying the

objections raised and asserted that he was fully qualified and has been rightly selected after considering his merits. However, by order dated 2-1-

1984 the Chancellor set aside the appointment of the appellant u/s 14(2) of the Act holding that (i) the work submitted was merely some short

notes published by the appellant in collaboration with others in some science journals which cannot be held to be work individually done by him

and, therefore, the Selection Committee was not justified in equating his work with that of a Ph.D. holder and (ii) the second post was not

advertised as required under Statute No. 6(A)(i) in which requirement to any post carrying minimum pay of Rs. 1000/- has to be advertised. The

post of Soil Microbiologist is in the pay scale of 1200-1900 but the second post was not advertised.

The appellant challenged the order of the Chancellor by filing writ petition in this Court on the grounds (i) that the Selection Committee which

consisted of 3 eminent dentists of all India repute on the subject found the published work of the appellant to be equivalent to Ph.D., and,

therefore, the Chancellor could not have sat over judgment over the selection by the Selection Committee, (ii) The Chancellor was not justified in

setting aside the appointment merely because the second post was not advertised. There is a decision of the Board of Management dated 21/22nd

October 1981 that in order to minimise cost and to expedite filling of posts, the panel recommended by the Selection Committee shall be valid for

one year and, therefore, the University committed no illegality in appointing the appellant for the second post which fell vacant after the

advertisement as the appellant was already in the panel of selected candidates. The petition was opposed by the respondents saying that the

Chancellor was justified in setting aside the selection of the appellant for the post of Soil Microbiologist and his order suffers from no infirmities.

The decision of the Board of Management cannot override the express provision in the statute that such posts have to be filled up after duly

advertised in all India papers. The learned Single Judge held that though advertisement of vacancies may not be the only method of filling up of

posts as per constitutional requirement, It is by far the best method available. The Chancellor was of the opinion that the published work of the

appellant is not his individual work and otherwise was not of the quality which could equate him with Ph.D. Degree. Though the Selection

Committee consisted of highly qualified and eminent Scientists of the country, their opinion was not binding on the Board of Management who

could have differed with the recommendation. The Chancellor has been empowered under the Act to annul the proceedings of the Board of

Management in case the same are not in conformity with the law. No finality attaches to the opinion of the Selection Committee however high and

eminent they might be. Conferral of Ph.D. Degree on an individual is having a recognition of the fact that he has conducted research which is found

to be of requisite standard. Research conducted jointly with others and the resultant thesis would not confer on anyone of them a Ph.D. degree as

it is not his individual work. The Chancellor had the advantage of getting expertise advice on the subject and to the Court no such facility is

available. Since it is the requirement of the Statute that the post was to be advertised, the appellant could not be appointed to the post unless it was

duly advertised. Therefore, the view taken by the Chancellor is neither illegal nor perverse requiring any interference.

The appellant contended that the learned Single Judge proceeded on the assumption that Soil Microbiologist is an officer of the University and, as

such, the appointment of an officer shall be made in such manner as may be prescribed by the Statute and Regulations framed under that Act.

"Officer" has been defined in Section 12 of the Act and also in Statute No. 3. Soil Microbiologist has not been specified to be an officer of the

University. Therefore, the Chancellor proceeded on wrong assumption that the post of Soil Microbiologist has to be advertised under Statute No.

6(a)(i) which is only applicable for filling up posts of officers. Soil Microbiologist not being an officer, the post need not have been advertised. The

Selection Committee consisted of 3 eminent Scientists of the country and they were of the opinion that the published work of the appellant was

equivalent to the Ph.D. degree and, therefore, the Chancellor, who is not an authority on the subject, could not have taken a view different from

them by saying that the published work of the appellant is not of requisite standard. The Chancellor had given his decision on the basis of

unamended Statute No. 6 (a)(i) that all posts carrying pay scale of Rs. 1000/- and above should be advertised. Since the appellant was included in

the panel of selected candidates, it was open to the University to appoint him in the second post of Soil Microbiologist which fell vacant

subsequently as the panel was valid for one year. According to the respondents, the appellant cannot be permitted to raise a new ground for the

first time in the L.P.A. that Soil Microbiologist is not an officer of the University when this point was not agitated or taken before the learned Single

Judge nor this has been raised as a ground in this Letters Patent Appeal. It is nobody's case that the appellant was appointed as an officer of the

University. In fact, the case proceeded on the assumption by both the parties that the post of Soil Microbiologist came within the definition of

Teacher" u/s 2(x) of the Act and Statute No. 32. Clearly, the post of Statute No. 3, Soil Microbiologist has not been specified to be an officer of

the University. Therefore, the Chancellor proceeded on wrong assumption that the post of Soil Microbiologist has to be advertised under Statute

No. 6(a)(i) which is only applicable for filling up posts of officers. Soil Microbiologist not being an officer, the post need not have been advertised.

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Single Judge nor this has been raised as a ground in this Letters Patent Appeal. It is nobody's case that the appellant was appointed as an officer

of the University. In fact, the case proceeded on the assumption by both the parties that the post of Soil Microbiologist came within the definition

of Teacher" u/s 2(x) of the Act and Statute No. 32. Clearly, the post of Soil Microbiologist is equivalent to the post of Associate Professor

carrying scale of Rs. 1200-1900/-. Therefore, advertisement of the post was a must before it was filled up. Short notes published by the appellant

in collaboration with others cannot be said to be his individual work when it is not known what was his contribution to that published work, while

thesis which has to be submitted for Ph.D. has to be an elaborate work on the subject. The University is all autonomous body and must have a final

say in the matter in the absence of any mala-fides and no interference is called for by any Court. The Chancellor acted bona-fide and there is no

illegality in the order.

The main ground of attack of the learned counsel for the appellant is that while the learned Single Judge held that the appellant was an officer of the

University but failed to consider that only those officers defined u/s 12 and statute No. 3 are alone governed by Statute No. 6(a)(i) requiring the

post of officers and teachers to be filled up by selection based strictly on merit and on all India advertisement. Under Statute No. 7, the panel of

recommendees has to be submitted by the Vice-Chancellor to the appointing authority with his own recorded recommendations and thereafter the

appointing authority may accept and approve the recommendations or return the recommendation refusing to accord approval giving reasons in

writing thereof, in which case the Vice-Chancellor shall in due course to present another panel of recommendees. Only some specified officers as

mentioned in Section 12 and Statute No. 3 are to be treated as officers for the purpose of Statute No. 6(a)(i) and u/s 23 the appointment of

officers specified u/s 12 shall be such as may be prescribed by Statute and regulations. But then this question is being raised for the first time during

the hearing. It was not even raised in the grounds of appeal nor before the learned Single Judge. Rightly, therefore, the learned counsel for the

University contended that this question cannot be allowed to be raised for the first time during hearing in Letters Patent Appeal. A Full Bench of

this Court in *Kanhaiyalal vs. Jerome D'Costa* (1955 NLJ 7109 AIR 1955 Nag 302) has held as under : -

Once a case is decided by a Single Judge, it is his judgment which is the subject matter of an appeal under Cl. 10 of the Letters Patent on a leave

given by him. If a particular topic was not considered fit for argument before the learned Single Judge; or a point was abandoned before him, it is

not right or proper for the Division Bench in the Letters Patent appeal to allow it to be urged.

Further, it is the judgment and what arises therein which is under appeal, and not a matter which was not urged before the Single Judge. The

appeal being by leave of the Judge, it would be a little incongruous for the Division Bench to hold that the Single Judge considered the case a fit

one for appeal on a point never raised before him. If this rule is not followed, there would be confusion and no end to litigation as new points

suggested by the ingenuity of counsel would be urged.

Therefore, the appellant is not entitled to agitate this new ground for the first time in this appeal. Otherwise also, this contention is misplaced

because it is the accepted case of both the parties that Soil Microbiologist is a Teacher. u/s 2(x) Teacher means a person appointed or recognised

by the Vishwa Vidyalaya for the -purpose of imparting instructions and/or conducting and guiding research and/or extension programmes and

includes a person who may be declared by the Statutes to be teacher. Statute No. 32 defines Professor, Associate Professor and Assistant

Professor as teacher. Statute No. 34 provides that Academic Council subject to the approval of the Vice-Chancellor shall prescribe the

qualifications for candidates for the various grades of teachers of the Vishwa Vidyalaya. Under Statute No. 36 the Associate Professor carries a

scale of Rs. 1200-1900/-. The post of Soil Microbiologist carries a scale of Rs. 1200-1900/- i.e. the post is equivalent with the Associate

Professor. Therefore, filling up of the post of Microbiologist requires its advertisement in All India papers. Obviously this provision has been made

so that best possible talents are available for appointment. Therefore, for filling up the post of Soil Microbiologist, it was incumbent to advertise the

post before filling it up by following the procedure under Statute No. 7.

The next contention of the learned counsel for the appellant is that the Select Committee consisted of 3 Scientist. of All India repute who were

authority on the subject of Soil Microbiology and so it was not open to the Chancellor, who is not as authority on the subject, to differ with the

selection made particularly when the published work of the appellant was found equivalent to the Ph.D. degree, For this purpose, reliance has been

placed on a decision of the Supreme Court in The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, ""that in mandamus

petition the High Court and the Supreme Court would not act as Court of appeal and consider and examine the facts for themselves. It was not the

function of the Court of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question was

entrusted by the law. The University authorities acted honestly as reasonable and responsible men confronted with an urgent situation were entitled

to act. This was decidedly not the sort of case in which a mandamus ought to issue"". In the present case, interference with the selection is not by

the Court but by the Chancellor who has been empowered u/s 14(2) of the Act to annul any proceeding of any officer or authority of the Vishwa

Vidyalaya which is not in conformity with the Act, Statutes or the Regulations, provided that before making any such order he shall call upon the

officer or authority concerned to show cause why such an order should not be made and after considering the cause shown. Therefore) the

Chancellor is the final authority under the Act to decide as to whether any proceeding is or is not in conformity with the provisions of the Act,

Statutes or the Regulations. The Supreme Court in Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another,

held ""that in a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to

interfere. They should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of

educational institution."" May be the Chancellor was not the authority on the subject of Soil Microbiology but at the same time being the Governor

of the State, necessary expertise advice was available to him and he must have taken necessary advice in this regard. However, even supposing

that the published work of the appellant was equal to Ph.D. Degree, still it not being his individual work but in collaboration with others, the

Chancellor was right in saying that the joint published work cannot be equated with the Ph.D. Degree particularly when it is not known what was

the contribution of the appellant for that work. It is true that in the impugned order the Chancellor has mentioned the unamended Statute No. 6(a)

(i) which provided that all posts of officers and teachers carrying scale of Rs. 1000/- or more should be filled up by selection on merit on all India

basis. Now the scale of Rs. 1000/- has been omitted and instead designations of officers and teachers are mentioned. So quoting of unamended

Statute ultimately does not make any difference. The Supreme Court in The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar

Rampal, held that when an authority makes an order which is otherwise within its competence, it cannot fail merely because it purports to be made

under a wrong provision of law, if it can be shown to be within its powers under any other provision; a wrong label cannot vitiate an order which is

otherwise within the power of the authority to make. Therefore, it was incumbent on the University to have advertised the second post of Soil

Microbiologist after it fell vacant in all India papers before making selection strictly on merit. Non-compliance of this requirement justified the

Chancellor in interfering with the appointment. It is true that the Board of Management by its decision of 21/22nd October 1981 in order to

minimise cost and expediting filling of posts decided that the panel recommended by the Selection Committee shall be valid for one year and the

appointment should be made from the panel for filling up posts in the same cadre carrying identical designation and qualifications. The decision of

the Board cannot override the expression in Statute No. 6(a)(i) that all posts of officers and teachers should be filled strictly on merit and on all

India advertisement. The post which was advertised was a different post than the second post which was filled up subsequently by appointing the

appellant. Therefore, the decision of the Board has no application in the present case.

With the result, the appeal fails and it is dismissed. There shall be no order as to costs.