

**(2003) 11 CAL CK 0044**

**Calcutta High Court**

**Case No:** W.P.S.T. No. 278 of 2002

Dr. Parijat De

APPELLANT

Vs

Dr. Amarendra Kumar Samaddar  
Chowdhury and Others

RESPONDENT

---

**Date of Decision:** Nov. 10, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2004) 1 CALLT 580 : (2004) 2 CHN 510

**Hon'ble Judges:** Sailendra Prasad Talukdar, J; Ashok Kumar Ganguly, J

**Bench:** Division Bench

**Advocate:** Bikash Bhattacharya and Nandini Mitra, Dipankar Dutta, Tarun Roy, K. Banerjee and P. Thakur, for the Appellant; S.R. Maitra, for the Respondent No. 1, for the Respondent

**Final Decision:** Allowed

---

### **Judgement**

A.K. Ganguly, J.

This Writ petition has been filed by one Dr. Parijat De impugning the judgment and order dated 15.02.2002 passed in O.A. No. 2296 of 1999. The said O.A. was filed by one Dr. Amarendra Kumar Samaddar Chowdhury challenging the selection of the Public Service Commission (hereinafter referred to as "PSC") for the post of Principal in the Kalyani Engineering College. The Tribunal, after a contested hearing, was pleased to set aside the selection and appointment of the petitioner (respondent No. 4 before the Tribunal) to the said post and gave liberty to the respondent authorities to fill up two posts of Principal in the Jalpaiguri and Kalyani Engineering Colleges in accordance with the rules.

2. However, pursuant to the selection in 1999 which was quashed by the Tribunal in the month of February, 2002, the petitioner was appointed by an order dated 25.10.1999 to the post of Principal in the Kalyani Engineering College and,

thereafter, the petitioner was confirmed in the said post of Principal by a Government order dated 01.12.2001. When this Court entertained the petitioner's challenge against the order of the Tribunal, this Court, by an order dated 26.06.2002, granted an interim order staying the operation of the Tribunal's judgment. The said interim order was granted for a limited period, but, then that order was extended from time to time.

3. During the pendency of the matter before this Court, the respondent No. 1 at whose instance the Tribunal passed the impugned order, retired in March, 2003 from the substantive rank of Professor.

4. The learned counsel for the respondent No, 1 submitted that even though his client had retired from service and cannot get the benefit of the order of the Tribunal, but, on principle, his client wants to contest the matter. As such, the Court heard the parties and proposes to decide the question on merit.

5. In setting aside the selection of the petitioner to the post of Principal, the reasons which weighed with the Tribunal are that the authorities did not follow the relevant recruitment rules and the Tribunal held that the advertisement was made without following the relevant recruitment rules and this error on the part of either the State or the PSC has misled the expert body in giving their finding. As such, the finding of the expert body is not entitled to be considered in a manner which it would normally deserve.

6. Therefore, it is basically a question of interpretation of the recruitment rules. The relevant recruitment rules have been framed in exercise of the power conferred by proviso of Article 309 of the Constitution of India. The rule was initially framed on 30.09.1994, which was made applicable to the Jalpaiguri Engineering College. Thereafter, by an amendment in the year 1996, the said rule has been made applicable to the all Government Engineering Colleges. Therefore, it is not in dispute that the said rule is applicable in the case of the Kalyani Engineering College also. Under the said rule for the post of Principal, the method of recruitment is totally by way of direct recruitment by selection. The essential qualifications, which are prescribed under the said rules, are as follows:

"Qualifications for direct recruitment Essential

(i) A Doctorate degree with first class, either in Bachelor's degree or in Master's degree, in any branch of Engineering Technology as taught in the College concerned or equivalent.

Note: The branches of Engineering/Technology as mentioned above should be mentioned by Government in the requisition for advertisement.

(ii) Ten years" experience in teaching/research/industry out of which five years must be at the level of Assistant Professor or above or equivalent posts in the appropriate filed in the institute of University standard."

7. The dispute, in this case, is over requirement of essential qualifications as prescribed under the rules. In the instant case, the following requirements were prescribed in the advertisement:-

"Qualifications: (for post at "A")--(i) Doctorate degree with first class either in Bachelor's degree or in Master's degree in Mechanical/Civil/Electrical/Electronics/Computer Engineering or equivalent; (ii) Ten year's, experience in teaching/research/Industry out of which five years must be at the level of Assistant Professor or above or equivalent posts in the appropriate field in an Institute or University standard."

8. According to the Tribunal, the said insertion in the advertisement for the post of Principal was not in accordance with the relevant rules framed under Article 309 of the Constitution. The Tribunal found that in the recruitment rules, the following words "as taught college concerned" were found missing in the advertisement and that is a significant omission that has made all the difference. The Tribunal held that the authorities are bound to follow the recruitment rules as framed under Article 309 of the Constitution. The view of the Tribunal is that the relevant words, mentioned above, which are there in the rules and are found absent in the advertisement has vitiated selection. The Tribunal also came to a finding that the subject of Mining Engineering is not taught either at the Jalpaiguri Engineering College or at the Kalyani Engineering College, where the post of Principal fell vacant. The Tribunal, however, accepted that the petitioner who was selected for the said post of Principal, has a brilliant academic career, but it did not accept the argument that by the word "equivalent", the authorities had the liberty to select a person having a degree in any branch of Engineering subject, if it is recommended as equivalent by the expert body, who has the knowledge in the respective field. The Tribunal also accepted the position that the assessment of equivalence in educational qualification in a technical subject requires the opinion and knowledge of the experts and the Court should not rightly disturb such opinion, unless it is demonstrably based on extraneous consideration. A judgment of the Hon'ble Supreme Court cited to the above effect was also noted by the Tribunal. But, even then the Tribunal found, in the instant case, as the PSC made a gross error by omitting an important part of the essential qualification mentioned in the rule, such omission misguided the expert body and the expert body failed to give proper emphasis on the qualification in the subjects, which are taught in the concerned colleges. As such, the Tribunal set aside the selection of the petitioner disregarding the opinion of experts.

9. The learned counsel appearing for the petitioner has challenged the judgment by contending that the Tribunal made an error in its proper appreciation of the rules in question. According to the learned counsel, the expression "equivalent" would cover the degree of Mining Engineering, which is possessed by the petitioner. The learned counsel very much relied on the fact that since the respondent No. 1 had retired

from his service during the pendency of the proceedings and since he cannot get the post of Principal, even if the writ petition is dismissed, this Court, on the ground alone, may not upset the appointment of the petitioner to the post of Principal and especially when it is continuing for a long time. The learned counsel submitted that the petitioner cannot be blamed for any erroneous interpretation of the requirement under rules either by the Selection Committee or by the State. The learned counsel submitted that his client had given up his job in order to join the post of Principal. Now he has been confirmed in the post of Principal. Therefore, this Court on equitable consideration should not upset his appointment. The learned counsel submitted that the word "equivalent" referred to the expression "colleges". We are not very much satisfied with this interpretation of the rules given by the learned counsel for the petitioner.

10. The learned counsel for the PSC submitted that there is no error on the part of the PSC inasmuch as the PSC inserted the advertisement as per the requisition submitted by the State Government and, thereafter, the selection has been conducted. The learned counsel submitted that no grievance has been made by anybody about the mode of selection. He further submitted that by referring to the affidavit of the Commission that the Selection Committee was assisted by a body of experts and about the eminence and impartiality of the said body of expert, there is no grievance.

11. The learned counsel further submitted that the advertisement as inserted, was not contrary to the rules, but, was made in accordance with the rules. The learned counsel relied on a decision of the Hon'ble Supreme Court in the case of [Mohammad Shujat Ali and Others Vs. Union of India \(UOI\) and Others](#), and submitted that where there is a recommendation of an expert body, such recommendation should not be interfered with by the Court, unless a very strong case has been made out of unfairness and partisanship and in this case, no such case has been made out.

12. Mr. Dipankar Dutta, learned counsel appearing for the State, has effectively assisted the Court and gave a proper interpretation of the recruitment rules.

13. Mr. Dutta by referring to the requisition of the State Government submitted that in the requisition submitted by the State Government, the post, the number of vacancies and all necessary particulars were mentioned. In the said requisition, under column 9, which is meant for qualification, the essential qualifications were mentioned. The learned counsel submitted that in the said requisition by the State Government, the recruitment rules have been followed. It was submitted that the recruitment rules refer to the branches of Engineering and Technology as taught in the colleges concerned. Since in the concerned colleges for which the advertisement was made subjects like Mechanical, Civil, Electrical, Electronics and Computer Engineering were taught, they were specifically spelt out in the advertisements.

14. The learned counsel submitted that the requirements of the essential qualifications as specified in the rules, must be read with the note. The note prescribes that the branches of Engineering/ Technology should be mentioned by the Government in the requisition for advertisement. The learned counsel rightly submitted that the note is a part of the rules. The requirement of the rules, this Court thinks, has been clarified in the note. So following the said requirement of rules, in the requisition for advertisement, subjects, which are taught, are mentioned. By doing so, the authorities have complied with the requirement of rules, viz. "as taught in the college concerned". This Court is in agreement with this argument and this Court holds that the Tribunal, while construing the rules, completely ignored the purport of the note, which is a part of the rules. This Court is of the view that the note, appended to the rules, being an integral part of the rules clarifies what is meant by expression "as taught in the college concerned".

15. But, the Tribunal unfortunately omitted to construe the purport of the said note in the context in which it occurs. We accept the contentions of the learned counsel for the State that by mentioning the specific branch of Engineering in the advertisement, the authorities have complied with the requirement of rules by clearly spelling out the branches, which are taught in the colleges concerned. Therefore, there is no inconsistency or conflict between the rule and the advertisement.

16. On the issue whether or not a degree in the Mining Engineering is equivalent to the branches of Engineering mentioned in the advertisement, the opinion of the expert body must be given proper weight and credence. In the instant case, the learned counsel for the State has shown before us the experts, who assisted the Commission in such selection. They are, viz.. (i) Professor G.S. Sanyal of IIT, Kharagpur, (ii) Dr. S. Chatterjee, Director, B.E. College, Howrah; (iii) Professor N.N. Shome, Dean, Faculty of Engineering and Technology, Department of Civil Engineering, Jadavpur University.

17. There is no dispute about the eminence and impartiality of these experts. In fact, no such case has been made out in the affidavit filed before the Tribunal. The findings of the Tribunal that the experts were misled by the terms of the advertisement, is a finding, which is totally de-hors the pleading before the Tribunal and is a finding without any evidence or material to sustain it. Naturally, it is not accepted by this Court.

18. The learned counsel for the PSC has also submitted before us a list of persons, who were selected by the PSC with the help of the experts. In the said list, the petitioner is at serial No. 2, having obtained 75 marks and whereas the respondent No. 1 occupied the fifth position, having acquired 62 marks. No case was made out either before the Tribunal or before this Court by the respondent No. 1 that the said assessment is erroneous or has been vitiated by any infirmity. Therefore, considering these facts, this Court is of the opinion that there is no error in the

matter of selection which is based on the opinion of the experts.

19. In the background of those facts, it is well known that the opinion of the experts assumes great importance in the matter of selection of candidatures. This Court is of the view when a body of eminent experts have held that a degree in a particular branch of Engineering is equivalent to a degree in the branches of Engineering mentioned in the said advertisement, it is difficult for this Court to interfere with that finding in the absence of any allegation that the experts were partisan or biased or lack the necessary expertise in the matter.

20. The attention of this Court was rightly drawn to a Constitution Bench judgment of the Supreme Court in the case of [Mohammad Shujat Ali and Others Vs. Union of India \(UOI\) and Others](#), . of the report, this aspect of the matter has been dealt with and the Apex Court held where a decision of the Government is based on the recommendation of the expert body, which has the requisite skill, knowledge and expertise, the Court, uninformed of the relevant data and without any technical insight, should not lightly disturb the decision of the Government.

21. Mr. Dutta, the learned counsel for the State, was right in his criticism of the judgment of the Tribunal by urging that the judgment of the Tribunal flew off at a tangent by holding that the experts were misled, when no such case was made out in the pleadings of the respondent No. 1 is his O.A. filed before the Tribunal.

22. in support of these contentions, the learned counsel relied on a judgment of the Supreme Court in the case of [J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur](#), . The learned counsel also relied on another Constitution Bench judgment of the Supreme Court in the case of [The University of Mysore and Another Vs. C.D. Govinda Rao and Another](#), . Drawing the attention of this Court to para 13 of the judgment, the learned counsel submitted when the question pertains to academic matters and when decisions taken on such matters, are based on the opinion of the experts against whom there are no allegations of mala fide, it would be proper for the Court to leave the decision on such matter to rest with the opinion of the experts.

23. This Court is in total agreement with the aforesaid proposition laid down by the Constitution Bench of the Supreme Court and this Court is of the view that the Tribunal committed an error by interfering with the opinion of the experts on a basis, which is neither sound nor tenable.

24. This Court is also of the view that the Tribunal has taken an unduly technical view in the matter of construction of the recruitment rules. Recently the Supreme Court in the case of [G.N. Nayak Vs. Goa University and Others](#), , had dealt with the recruitment process and selection by the Selection Committee for the post of Professor. In para 28, at page 721 of the report, the Supreme Court held that the Court should not be justified in adopting a legalistic approach in such matters and should not take a technical view without considering the intention in laying down

the conditions of eligibility. In saying so, the Court relied on a previous Judgment of the Supreme Court in the case of [Uma Shankar Sharma Vs. Union of India \(UOI\) and Others, .](#)

25. Mr. Maitra, learned counsel for the respondent No. 1, on the other hand, urged that the instant writ petition is not maintainable inasmuch as in this petition, the State of West Bengal and PSC have been made proforma respondents and his client, a private party, has been made the sole respondent to contest the proceedings. Therefore, it is the case of one private party against another and, as such, this Court should dismiss the writ petition.

26. In support of this contention, the learned counsel relied on a judgment of the Guahati High Court in the case of Jagannath Talukdar v. Chandra Kanta Deva Mishra and Ors., reported in AIR 1972 Gau 14. In that case, what was challenged was the election pursuant to a claim in a civil suit for the management and administration of Barpota Satra, which was drawn up by a District Judge in 1935. The Division Bench of the Gauhati High Court had to deal with those facts. But, there the facts are totally different. Here the main grievance of the petitioner is against the judgment of the Tribunal. The Constitution Bench of the Supreme Court in the case of L. Chandrakumar clearly held a writ petition does lie at the instance of the aggrieved party against the decision of the Tribunal. Here, by the impugned judgment of the Tribunal, the appointment of the petitioner has been set aside, therefore, he is an aggrieved party and he can maintain this writ petition. Since the petitioner has not claimed any relief against the State of West Bengal or the Commission he has made them proforma respondents. Therefore, the objection against the maintainability of the writ petition cannot be sustained.

27. The other decision on which the reliance was placed by Mr. Maitra was in the case of V.K. Aggarwal v. University of Delhi, reported in 1978 LIC 561. This Court fails to appreciate the relevance of the decision in V.K. Aggarwal to the facts of the case. In that case, the Court held where the entire process of selection for the post of Reader in the Hindustani Instrumental Music was vitiated by violation of the right of equality under Article 16, the rejected candidate would be entitled to challenge the selection by filing a writ petition.

28. It cannot be contended by Mr. Maitra's client that the selection process has been vitiated. In fact, in the O.A. filed before the Tribunal except taking some vague grounds the legality in the selection process was not seriously impugned. No specific pleading is there and Mr. Maitra could not draw our attention to any substantive averment in the petition before the Tribunal to the above effect. Except the question of alleged inconsistency in the matter of essential qualification as advertised and as required under the rules no other case has been made out or urged before the Tribunal. Therefore, the said decision in the case of V.K. Aggarwal has no relevance to the facts of the case. It is nobody's case that the candidature of Mr. Maitra's client was not considered by the Selection Committee. It was

considered, but, he could not make the grade as he obtained 62 marks, as pointed out above, as against 75 marks, obtained by the petitioner.

For the reasons aforesaid, this Court is unable to uphold the judgment and order of the Tribunal. The judgment and order of the Tribunal is quashed. The writ petition is allowed.

There will be, however, no order as to costs.

Urgent xerox certified copy, if applied for, be given expeditiously.

S.P. Talukdar, J.

29. I agree.