

Taskeena Fazil Vs University of Kashmir

Court: Jammu & Kashmir High Court

Date of Decision: Dec. 25, 1997

Acts Referred: Constitution of India, 1950 " Article 16, 226

Citation: (1998) 3 SCT 728

Hon'ble Judges: A.M.Mir, J

Bench: Single Bench

Advocate: M.H. Attar, Rafiq Bazaz, M.A. Qayoom, Advocates appearing for the Parties

Judgement

A.M. Mir, J.

This petition seeks indulgence of this Court for issuance of an appropriate Writ including one in the nature of certiorari

through which the process of selection undertaken by the respondents for filling the post of Reader in Iqbal Institute University of Kashmir in

pursuance to Advertisement Notice dated 20.2.1995 be quashed. Besides this recommendations made in favour of Respondent No. 6 on the

basis of interview held on 24.8.1996 at New Delhi also be quashed. A Writ of Mandamus be also issued to respondents to consider the case of

the petitioner for appointment against the available post of Reader.

2. A post of Reader fell vacant in Iqbal Institute of Kashmir University. Advertisement Notice No. III of 1996 besides for other posts invited

applications from eligible candidates. The petitioner as well as Respondent No. 6 applied for the post. Their applications were entertained and

both were interviewed at "Kashmir House Chanakya Puri, "New Delhi on 24.8.96. The petitioner while apprehending that the Selection

Committee has recommended the name of Respondent No. 6 as Reader, rushed to the Court and filed this petition. Be it placed on record that

neither any appointment has so far been made and nor it is known to anybody as to who was recommended by the Selection Committee. The

petitioner has only in para eleven of her petition revealed that she after finishing the interview "came to know" that Respondent No. 2 has

recommended Respondent No. 6. The source of the knowledge is not disclosed nor is any material placed before the Court that any

recommendations have been made by Respondent No. 2 so far.

3. The grounds taken in the petition are as under :

1. That the advertisement notice was issued on 20.2.1995. Process of Selection was lied over. It was only on 10.8.1996 that a letter came to be

received by the petitioner asking her to participate in the interview, which was held in New Delhi on 26.8.1996. By this time the schedule of

Election for Jammu and Kashmir Assembly was issued by the Election Commission and relevant notification issued. The selections during this

period are vitiated.

2. That holding of interview for various other posts required to be filled in terms of the advertisement notice were postponed by the University. It

was only the interview for the post of Reader in Iqbal Institute which was not postponed. This was done only to accommodate Respondent No. 6.

3. That the filling up of this post is actuated by malice. Mala fides have not directly been explained; however, indirectly it is maintained that

recommendations of Respondent No. 6 were made under the influence of Sh. Mohd. Maqbool Dar, Minister of State for Home Affairs,

Government of India and Mufti Mohammad Syed, ExUnion Home Minister.

4. That Respondent No. 6 did not possess the requisite eligibility qualification so he could have not been invited for interview; therefore, the

recommendations in his favour are illegal. The petitioner has a better merit than Respondent No. 6; therefore, she alone was deserving to be

appointed on the post of Reader.

5. Objections to the maintainability of the petition have been filed both on behalf of the RespondentUniversity and also Respondent No. 6.

The stand taken by Respondents qua the grounds reproduced above is as under :

1. That the schedule prescribed in the Advertisement Notice was strictly followed. Selection of teachers in the University has nothing to do with the

Election of the Assembly. As such, this ground is fallacious.

2. That the postponement of interviews relating to other posts was ordered because of blockage of National Highway linking Kashmir valley with

rest of the country. As far as interviews relating to the post of Reader in Iqbal Institute are concerned, 6 out of 9 candidates had presented

themselves at the venue of interview at New Delhi. The members of the Selection Committee including experts were also present at New Delhi.

Therefore, the University did not think it advisable to postpone the interviews with respect to this post. There is absolutely nothing wrong in doing

the same as none of the rights of the petitioner who duly participated in the interview is violated by such nonpostponement.

3. That the allegations of mala fides are groundless. The assertion that the respondentUniversity or the Selection Committee was influenced by

some minister or exminister in making any recommendation is frivolous and strongly rebutted. The University has taken a strong exception to the

baldness and recklessness of the allegations.

4. That the allegation of noneligibility of Respondent No. 6 for appointment as Lecturer has been denied. The Selection Committee found him

eligible for participating in the interview. Therefore, the same cannot be agitated before this Court.

5. The Respondent No. 6 who has filed separate objections, in which it has been stated that the Selection Committee which comprised of men of

high integrity is vested with the power of Selection. No selections have so far been made. It is not known as to through what source did the

petitioner reach to the secret which is embeded in the confidential record of the Selection Committee. The Writ petitioner has participated in the

interview before the Selection Committee; therefore, she is estopped from challenging the recommendations, especially which are yet to be made.

In anticipation of any recommendations having been made, the petitioner had no cause of action. Respondent No. 6 also has taken a strong

objection to the allegation levelled by the Writ Petitioner in para eleven of the writ petition. According to him, he does not know the two dignitaries

named and has never met them. He has never stayed with either of them. Nor did he stay with Mohammad Maqbool Dar, Minister of State Home

Affairs at any time including the interview period. Answering respondent was staying with one Shakeel Ahmad S/o Ghulam Mohammad R/o

Gopalpora Bagh Mehtab Srinagar, at Seema Lodge 3745 Chooriwalan Chawri Bazar Delhi from 20.8.96 to 27.8.1996. Respondent No. 6 has

given a long list of publications at his back and tries to prove the superiority of his claim. According to Respondent No. 6, writ petitioner came to

file the writ petition only after knowing her worth in the interview and her attempt to level groundless allegations of Mufti Mohammad Syed or Shri

Mohammad Maqbool Dar having recommended his name is only a figment of her imagination.

6. I have heard the learned counsel for the parties and considered the matter. The foremost point of law which arises for consideration is as to

whether or not the petitioner has a cause of action at this stage. Admittedly, what has been done so far is that only interview has been held.

Nothing is known as to what are the recommendations of the Selection Committee. It is an act or omission on the part of the official respondents

which is resulting in violation of some rights, fundamental or legal, could have given a cause of action to the petitioner. So far no action has been

taken by the University; therefore, no right of the petitioner has been violated. The allegation of recommendations having been made, is not borne

out by any proof. Assuming and not admitting that a recommendation was made by respondent No. 2, nobody knows what that recommendation

is. Even assuming that recommendation would be in favour of Respondent No. 6, the same would not assume the character of an appointment.

This is so, because, the appointing authority is the University. The Selection Committee has only to make a recommendation. The employer may

not be bound by the recommendations. In absence of any appointment having been made, the allegation of two dignitaries named in the petition

having intervened is not fortified by any material. The writ petition has been filed at a premature stage when no cause of action was available to the

petitioner. A direct authority on the point finds place in Kunda S. Kadam and ors. v. Dr. K.K. Soman & ors., reported in AIR 1980 SC 881. In

this case a post of Deputy Municipal Commissioner Bombay was referred to Public Service Commission. Public Service Commission after holding

the interview made recommendations of certain candidates for appointment. A writ petition was filed to challenge the recommendations on various

grounds. One of the grounds was that those recommended did not possess necessary qualification. The writ petition was held to be premature.

V.R. Krishna Iyer, J. speaking for the Court laid down as under :

3. We consider that the time has not arrived for the Court to adjudicate upon the merits and that the writ petition itself was premature. The normal

procedure should have been for the recommendation of the Public Service Commission to be considered by the Corporation. It was open to the

Municipal Corporation to accept the recommendation or not to accept the recommendation. The learned Attorney General appearing for the

Corporation says that it was open to the Corporation to ask for other names and make its own choice. We are not called upon to state what the

powers of the Corporation in such a situation are. It was also open to the State Government even if the Corporation had made an appointment to

confirm or not to confirm it, depending on its own view of the matter. We mention all this only to emphasise that it was too early for a writ petition

to be entertained and decided on the merits.

Keeping in view the above position of law, this ground by itself was sufficient to throw out the petition. However, I even then revert back to the

grounds taken in the petition.

1. No copy of the Election Notification which is relied upon by the Writ Petitioner has been placed before the Court; therefore, the Court is not in

a position to proceed on the basis of that notification. However, what Election law envisages is that Government should not during the period of

elections confer benefits upon anybody, because, that may influence and win over voters. This argument in the instant case is not available.

Elections have been held in September 1996 and we are in March 1997. No appointments have so far been made. Moreover,

Respondent University is an autonomous body. It has to do nothing with the government. Therefore, it will not be safe for this Court to believe that

appointments of the University which are still in pipeline would be violative of any election notification.

7. Likewise, the contention that the interview for the post of Reader in Iqbal Institute was not deliberately postponed seems to be farfetched. It is

always for the University to decide as to the venue, date and time of the interview. If the University postponed interviews to be held on other dates

for the reason of road blockade and did not postpone interview of 24.8.1996, because, majority of the candidates alongwith the members of the

Selection Committee had already reached New Delhi. It did not commit any error of law as there was a justification for the same. Interestingly the

petitioner raises this ground even after herself having appeared in the interview on this date in New Delhi. Therefore, she is estopped from raising

this ground.

8. The ground of mala fides is too vague to inspire any confidence. Naming two persons, one of them Minister of State for Home Affairs, at

present and the other as ExMinister for Home is a sheer gimmick of namedropping. The only allegation levelled is that respondent No. 6, during

the course of interview, was living with Minister of State for Home, that has been boldly refuted by Respondent No. 6 and he has stated as to

where he was putting up during interview. His objections are supported by an affidavit. The law with regard to malice in fact is quite clear.

Allegations which lack in particulars cannot constitute malice, particulars of mala fides must be pointed, direct and unequivocal. Numberless

authorities are on the point. However, in J.N. Banavalikar v. Municipal Corporation of Delhi, reported in AIR 1996 SC 326 : 1995(4) SCT 665

(SC). , their Lordships of the Supreme Court held that when allegation of malice, lack in particulars forming the foundation of such contention, no

malice in fact can be said to have been at work behind an administrative action and such contention of mala fides should not be countenanced by

the Court.

9. Determination of eligibility and merit of the candidates at the time of final selection is the domain of the University. University statute lays down

as to how such power can be exercised. Rule 36 of the University statute makes room for formation of a Selection Committee. That Selection

Committee comprises of top brass of University executive, the Chairman of the Public Service Commission, Head of the concerned Department of

the University and two experts. It be placed on record that the University has coopted an expert like Professor Jagan Nath Azad, an internationally

known figure on Iqbaliat. This Court will not open a parallel forum for determination of inter se merit of the petitioner and Respondent No. 6.

10. Arriving at a decision in this behalf is the job of this High Power Committee. Whatsoever its decision in respect of the determination of inter se

merit, this Court will not ordinarily substitute its views by arriving at a different conclusion.

11. In Madan Lal v. State of J&K, reported in AIR 1995 SC 1088 : 1995(2) SCT 880 (SC) , the Hon'ble Supreme Court refused to

countenance an attack on assessment of the merit and held that such assessment falls within the exclusive purview of the Expert Committee. Their

Lordships refused to make findings of the Expert Committee, a subject matter of attack before the Court as it was not sitting as a Court of Appeal

over the assessment made by the Committee so far as the candidates interviewed by them were concerned.

12. A similar view had earlier been taken by the same court in Dalpat Abashed Solunke v. B.S. Mahajan, reported in AIR 1990 SC 434.

13. Therefore, whatever be the decision of the Selection Committee with regard to eligibility or at the time of making appointments regarding the

inter se merit of the two candidates shall not ordinarily be disturbed by this Court unless it is proved that decision is vitiated by any violation of law,

substantive or procedural. As such, this Court will not be in a position to adjudge the merit of the petitioner visavis that of the Respondent No. 6.

14. An attempt was made by Mr. M.A. Qayoom, learned counsel for the petitioner to challenge the constitution of the Selection Committee. I

have gone through the constitution of the Selection Committee. It has been formulated well in accordance with Rule 36 of the University Statute.

Besides Vice Chancellor, Chairman of Public Service Commission, Head of the University Department and high ranking experts have been

empanelled.

15. Before parting, I would like to repeat that the Writ Petitioner has very much participated in the interview. Therefore, her subsequent challenge

to the validity of that interview is not maintainable, because of Rule of estoppel working against her. In Madan Lal's case, supra, the Apex Court

held that once a candidate appears in an interview and submits himself to the authority of the Selection Committee, he cannot turn round and

challenge the validity of such interview.

16. On the foregoing analogy, I find that this petition is premature; there is no substance in any of the grounds taken in the petition and the same is,

therefore, dismissed. The interim direction issued by this Court on 1.11.1996 is vacated.

17. Writ petition No. 3844/96 titled Dr. Mohd. Hayat Amir v. State, has been clubbed with this petition by virtue of Court order dated

27.1.1997; that petition could also have easily been disposed of at this stage, but, because the learned counsel for the petitioner has not been

heard, therefore, that petition is ordered to be processed for hearing. However, the interim direction issued in that petition does not stand in the

way of official respondents to make appointments to the post of Reader.

18. Petition dismissed.