

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7570 OF 2011
[Arising out of SLP(C) No.3568/2006]

CHANDIGARH ADMN. TH. DIR. PUB. INSTRN.

Appellant

VERSUS

USHA KHETERPAL WAIE & ORS.

Respondents

Date: 02/09/2011 This Petition was called on for judgment today.

For Petitioner(s) Ms. Kamini Jaiswal, Adv.

For Respondent(s) Mr. P.N. Puri, Adv.

Ms. Binu Tamta, Adv.

Ms. Sushma Suri, Adv.

Hon'ble Mr. Justice R.V. Raveendran pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Markandey Katju.

Leave granted.

In terms of the signed reportable judgment, this appeal is allowed and the order dated 22.4.2002 of the Tribunal and the order dated 26.10.2005 of the High Court are set aside. The original application (OA No.648 - CH of 2001) filed by respondents 2 to 5 before the Tribunal is dismissed.

(Ravi P. Verma)
AR-cum-PS

[Signed reportable judgment is placed on the file]

(M.S. Negi)
Court Master

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7570 OF 2011
[Arising out of SLP (C) No.3568/2006]

Chandigarh Administration through the
Director Public Instructions (Colleges), Chandigarh ... Appellant

Vs.

Usha Kheterpal Waie & Ors.

... Respondents

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

2. There are four Government Arts and Science colleges in Union Territory of Chandigarh. Till 1988, the Chandigarh Administration, appellant herein, used to fill the vacancies of the post of Principal of the Arts and Science colleges by deputation from neighbouring States of Punjab and Haryana. When the post of Principal in Government College for Boys, Sector 11, Chandigarh was due to fall vacant on 29.2.1988 on superannuation of a deputationist, two UT cadre lecturers filed an application before the Central Administrative Tribunal, Chandigarh, seeking a direction that UT cadre lecturers from the Government Arts & Science Colleges should be considered for the post of Principal instead of taking someone on deputation from the neighbouring states. The said application was ultimately disposed of with a direction to the Chandigarh Administration to consider the case of the applicants and other lecturers of UT cadre who may fall within the zone of consideration as may be determined by a competent authority, for regular appointment to the post of Principals of the Government Arts & Science colleges, on the basis of relevant criteria, and appoint those who were found suitable. In pursuance of the said order, the Chandigarh Administration fixed 30 years experience as a Lecturer as the eligibility criterion for promotion of lecturers to the post of Principal, though at that time (1989-90) there were no lecturer with 30 years experience in the cadre. As no UT cadre lecturer possessed such

experience, again deputationists were appointed a
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Principals in the said colleges.

3. Feeling aggrieved, the UT cadre lecturers aga
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approached the Tribunal and their applications were allowed

by the Tribunal by order dated 12.1.1991, quashing th
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order prescribing 30 years experience as also the order

appointing deputationists. Thereafter, whenever vacancies

arose, it is stated that the appellant promoted UT cadre

lecturers as Principals. It may be mentioned that persons

so promoted did not possess a Ph.D. degree.

4. By notification dated 13.1.1992, Chandigarh

Administration adopted the corresponding Service Rules of

Punjab with effect from 1.4.1991 to govern the conditions

of service of its employees, where it had no rules

governing the matter. The effect of it was that the

provisions of Punjab Educational Service (College Grade)

(Class I) Rules, 1976 (as amended in 1983 (for short '1976

Punjab Rules') became applicable in regard to the

recruitment of candidates to UT college cadre. Under the

said 1976 Punjab Rules, the qualification and experience

for appointment to the service was as under: For direct

recruitment : (a) MA, first division or high second

division (50%) in relevant subject or an equivalent degree

of a foreign university with eight years teaching

experience; (b) Ph.D. with eight years teaching experience;

By promotion : Experience of working as a lecturer for a

minimum period of eight years.

5. When matters stood thus the Administrator,

Chandigarh Administration, framed and notified the

"Chandigarh Educational Service (Group A Gazetted)

Government Arts and Science College Rules, 2000 (for short

'Recruitment Rules') vide notification dated 29.3.2000

published in the Gazette dated 1.4.2000. The said Rules were framed in consultation with the Union Public Service Commission ('UPSC' for short) and sent to the Government of India for being issued in the name of the President of India. As per the said Rules, the appointment to the posts of Principal in Government Arts and Science Colleges was 25% by direct recruitment and 75% by promotion. The said rules prescribed the educational qualification of Ph.D. for appointment to the post of Principal by direct recruitment. The appellant advertised a post of Principal (which was falling vacant on 31.7.2001) on 14.7.2001 prescribing the following eligibility criteria as per the said Rules :

"Educational and other qualifications required for direct recruits : Essential: (i) A Doctorate degree or equivalent with at least 55% marks at the Master's Degree level from a recognized university or equivalent; (ii) 12 years teaching experience of degree classes in a college affiliated to a university or equivalent."

6. Respondents 1 to 4 had joined UT Colleges (Arts & Science) cadre in 1969 and 1970 and were serving as lecturers in the Government Arts & Science Colleges. None of them possessed a Ph.D. degree. They filed OA No.684/CH/2001 before the Central Administrative Tribunal challenged the said Recruitment Rules and the advertisement dated 14.7.2001, as unconstitutional and for a direction that they along with other eligible candidates from the UT cadre should be considered for promotion to the said post. It was contended that the Administrator of the Union Territory had no power to make the said Recruitment Rules, as it was only the President of India who was competent to frame such rules under Article 309 of the Constitution of India. They also contended that on earlier occasions the appellant had promoted lecturers as Principals without insisting upon the qualification of Ph.D.; and that though they did not possess Ph.D. degree, having regard to the eligibility criteria earlier being applied, they were

eligible for being considered for the post of Principals, and the Chandigarh Administration should fill the vacancies of Principals, by applying the eligibility criteria which was prevalent prior to the making of the said recruitment rules.

7. The appellant, in its statement of objections filed before the Tribunal conceded that the "power to notify the recruitment rules for Class I Posts vested with the President of India". The appellant stated that they had forwarded the Recruitment Rules to the government of India under cover of letter dated 21.9.2001, to notify the said Rules under the name of President of India, and such notification was awaited. They contended that pending publication of the Rules, they could resort to recruitment in terms of the draft Rules on the basis of administrative instructions. The appellant also contested the application by contending that the post in question was required to be filled under the direct recruitment quota, and none of the applicants were eligible as they did not possess Ph.D. degree, which was the qualification prescribed by the university Grants Commission ('UGC' for short) and approved by the UPSC, and therefore none of them could be considered for appointment to the said post.

8. The said application (OA No.648 - CH of 2001) was allowed by the Tribunal, by order dated 22.4.2002. The Tribunal held that in the absence of any recruitment rules prescribing such qualification, Ph.D. degree was not an eligibility requirement for the post of Principal. The Tribunal held that UGC guidelines would not apply as the Rules providing for 25% by direct recruitment was not in force; and that even if the new rules were to be duly framed, such Rules would apply only to future vacancies and not to the vacancies which arose on 31.7.2001. The Tribunal

held that in the absence of any Rules, it was appropriate to take guidance from its earlier judgments dated 12.9.1989 and 12.11.1991 which accepted the administrative instructions dated 20.8.1987 permitting UT cadre lecturers to be promoted as Principals, even though they did not possess any Ph.D. degree. The Tribunal also rejected the contention of the appellant that as per notification dated 13.1.1992, the 1976 Punjab Rules became applicable under which 75% of the posts had to be filled by promotion and 25% by direct recruitment with Ph.D as an eligibility requirement, on the ground that no material was placed to show that the said 1976 Punjab Rules were ever followed for appointing Principals in UT of Chandigarh. The Tribunal therefore quashed the advertisement dated 14.7.2001 inviting applications for the post of Principal and directed the appellant to fill the vacancy according to law, keeping in view the eligibility criteria and the past practice till the Rules are framed and notified by the competent authority. The said order of the Tribunal was challenged by the appellant before the High Court. The High Court dismissed the writ petition by impugned order dated 26.10.2005, affirming the findings of the Tribunal.

9. Feeling aggrieved, the appellant has filed this appeal by special leave raising the following contentions:

(i) When appellant has framed the draft Rules in consultation with UPSC and had been placed the Rules before the central government, for being notified under the name of the President of India, pending such notification of the Rules, it was entitled to invite applications for the post of Principal in terms of the said Rules by treating them as draft rules under consideration. (ii) The Tribunal and the High Court could not substitute the eligibility requirements prescribed by the appellant. (iii) The Tribunal and the High Court could not have ignored the

notification dated 13.1.1992 adopting the corresponding Punjab Rules to govern the service of its employees wherever there were no rules of the Chandigarh Administration. (iv) The 1976 Punjab Rules were applicable, and in terms of it, the advertisement for filling one post of Principal by direct recruitment by prescribing the eligibility requirement of Ph.D was valid. The appellant also pointed out that another bench of the Tribunal by order dated 3.8.1995 in OA No.844-CH of 1994 has clearly held that the 1976 Punjab Rules would apply to recruitment/employment, having regard to the notification dated 13.1.1992 of the Chandigarh Administration adopting the Punjab Rules; and as there was a clear divergence between the two decisions of the Tribunal, the High Court could not have mechanically affirmed the decision of the Tribunal that the 1996 Punjab Rules were inapplicable.

10. The first question for our consideration is whether the appellant could have prescribed in the advertisement, the educational qualifications for the post of Principal in terms of its 2000 Recruitment rules. The Administrator of the Chandigarh Administration made the Chandigarh Educational Service (Group A) Gazetted Government Arts & Science College Rules, 2000 vide notification dated 29.3.2000 and published it in the Gazette dated 1.4.2000. The said Rules were made in consultation with the UPSC, taking note of the UGC guidelines prescribing Ph.D. degree as an eligibility criteria for the post of Principals to be filled by direct recruitment. The Rules were sent to the Central Government for being notified in the name of the President of India and were pending consideration. It is in these circumstances the appellant advertised the post in terms of the said Rules, by prescribing the educational qualification of Ph.D. for direct recruitment to the post of Principal. In Abraham Jacob vs. Union of India [1998 (4) SCC 65], this Court held that where draft rules have been

made, an administrative decision taken to make promotions in accordance with the draft rules which were to be finalized later on, was valid. In Vimal Kumari vs. State of Haryana [1998 (4) SCC 114], this Court held that it is open to the Government to regulate the service conditions of the employees for whom the rules were made, even if they were in their draft stage, provided there is a clear intention on the part of the Government to enforce those rules in the near future. In this case, the High Court however rejected the advertisement on the ground that the regular rules were not notified by the President of India even after five years, when the High Court decided the matter. But what is relevant to test the validity of the advertisement, was the intention of the appellant when the advertisement was issued. At that time, the appellant had the clear intention to enforce the Recruitment Rules in future as they had been made in consultation with UPSC, in accordance with the UGC guidelines and the Rules had been sent to the Central Government for being notified by the President and the matter was pending consideration for a few months when the advertisement was issued. The appellant at that time had no inkling that there would be inordinate delay or the Rules may not be notified by the President. Therefore, the advertisement in terms of the 2000 Recruitment rules was valid.

11. Even in the absence of valid rules, it cannot be said that the advertisement was invalid. In exercise of its executive power, the appellant could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a statute. In fact it is the case of the respondents that the appellant had issued such instructions on 20.8.1987 directing that the lecturers from UT cadre should be promoted as principals. In fact, the

administrator of appellant had issued a notification on 13.1.1992 adopting the corresponding Punjab Rules to govern the service conditions of its employees. If so, the administrator of appellant could issue fresh directions in regard to qualifications for recruitment. The Recruitment Rules made by the Administrator were duly notified. Though they were not rules under Article 309, they were nevertheless valid as administrative instructions issued in exercise of executive power, in the absence of any other Rules governing the matter. Once the recruitment rules, made by the Administrator, were notified, they became binding executive instructions which would hold good till the rules were made under Article 309. Therefore, the advertisement issued in terms of the said Recruitment Rules was valid.

12. The Tribunal and High Court also committed an error in holding that the appellant could not prescribe the qualifications of Ph.D. for the post of principal merely because earlier the said educational qualification was not prescribed or insisted. The Recruitment Rules were made in consultation with UPSC, to give effect to the UGC guidelines which prescribed Ph.D. degree as the eligibility qualification for direct recruitment of Principals. In fact, even the 1976 Punjab Rules prescribed Ph.D. degree as a qualification. In several States, Ph.D. is a requirement for direct recruitment to the post of a college Principal. When the said qualification is not unrelated to the duties and functions of the post of Principal and is reasonably relevant to maintain the high standards of education, there is absolutely no reason to interfere with the provision of the said requirement as an eligibility requirement. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment.

Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [See J. Rangaswamy vs. Government of Andhra Pradesh - 1990 (1) SCC 288 and P.U. Joshi vs. Accountant General - 2003 (2) SCC 632]. In the absence of any rules, under Article 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable.

13. The Tribunal and the High Court have held that in the years 1989 and 1991, the Tribunal had accepted the earlier administrative instructions dated 20.8.1987 which required the UT cadre employees to be considered for the post has to be followed. The fact that at that time Ph.D. degree was not insisted upon, does not mean that for all times to come, Ph.D. degree could not be insisted. Ph.D. degree was made a qualification because UGC guidelines required it for direct recruitment post and the UPSC approved the same. Therefore, merely because on some earlier occasions, the posts of Principal were filled by UT cadre lecturers without Ph.D. degree, it cannot be argued that the Ph.D. degree cannot be prescribed subsequently.

14. The Tribunal and High Court were not justified in holding that 1976 Punjab Rules were not applicable on the ground that no material had been placed to show that they were followed while appointing a principal in the past. The fact that the appellant had issued a notification dated 13.1.1992 adopting the corresponding Punjab Rules governing the conditions of service of its employees, is not

disputed. Therefore when appellant acted in accordance with the said directions, it is not necessary to consider whether there were any occasion between 1992 to 2001 to invoke the said rules or whether they were in fact invoked. The notification dated 13.1.1992 could not have been brushed aside in the manner done by the Tribunal and the High Court.

15. In view of the above, we allow this appeal and set aside the order dated 22.4.2002 of the Tribunal and the order dated 26.10.2005 of the High Court. The original application (OA No.648 - CH of 2001) filed by respondents 2 to 5 before the Tribunal is dismissed. The prayer that Chandigarh Administration should be directed to fill the vacancies of Principals in accordance with the eligibility criteria as was prevalent prior to the issue of the notification dated 14.7.2001, is rejected. The notification prescribing educational qualification of doctorate degree or equivalent with 55% marks at the Master's Degree Level examination or 12 years teaching experience of degree classes in a college affiliated to any university or equivalent is upheld as validly prescribing the qualifications for filling the post by direct recruitment.

.....J.
(R V Raveendran)

New Delhi;J.
September 2, 2011. (Markandey Katju)