

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. of 2001@@

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(Arising out of SLP(C) No. 10324 of 2001)

Amaresh Chandra Pandey

...Appellant (s)

Versus

Prakash Singh & Ors.

...Respondent(s)

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Leave granted.

This appeal is directed against the judgment of the Allahabad High Court, Lucknow Bench in a writ petition filed by respondent no.1 challenging the appointment of the appellant to the post of Associate Professor in (Fisheries) in Acharya Narendra Dev Prodyogik Vishwa Vidyalaya, Faizabad. It was alleged in the writ petition that the Selection Committee had given the order of preference placing the writ petitioner at No.1, but the Vice Chancellor while recommending, altered that preference and gave No.1 position to the present appellant.

The Division Bench of the High Court on construing the relevant provisions of the Statute, came to the conclusion that once order of preference is given by the Selection Committee, it would not be open for the Vice Chancellor or Board of Management to alter that preference and appoint anybody else other than the person who secured the first position. The writ petition having been allowed, the present

appeal has been preferred by way of special leave.

Mr. Chitale, the learned senior counsel appearing for the appellant, contended that the Selection Committee is a mere recommending body and has no authority to make any appointment. The authority for appointment being vested in the Board of Management on the basis of recommendation made by the Vice Chancellor, there would be no fetter on the power of the Vice Chancellor to alter the order of preference nor there would be any fetter on the power of the Board of Management to appoint anybody else from the panel even though he might not have secured the first position in the order of preference. The counsel appearing for the University and the Vice Chancellor also reiterated the same stand and contended that since under the relevant regulation, Kulpati has the power to approve the name or any of the names recommended by the Selection Committee, the Vice Chancellor thought that it was within his powers to alter the order of preference and looking the relevant qualifications of the two applicants, he had altered that position in the order of preference. It is not suggested that he did it out of malice and, therefore, the order of preference indicated by the Vice Chancellor which was

accepted by the Board of Management, could not have been interfered by the High Court in exercise of its power under Article 226 of the Constitution of India.

The learned counsel appearing for Respondent, on the other hand, contended that a reading of Regulation 7 and

Regulation 8(a) unequivocally indicates that the Selection Committee has to recommend the names and when it recommends more than one name for a particular post, the order of preference shall be indicated. That being the position, even if under Regulation 8(a) Vice Chancellor has been conferred power for approval or disapproval, such power of approval or disapproval would not bring within its sweep to change the order of the preference and, therefore, the High Court rightly held the appointment of the present appellant to be illegal. The correctness of the rival submissions depend upon the interpretation of the relevant provisions of the University Statute and Regulations made thereunder.

Clause 1 of Chapter XIII of the Statute framed under the Act unequivocally provides that all appointments shall be made strictly on the basis of merit. Regulation 7 is the provision under which the Selection Committee is required to select names for each post and recommend the same to the Kulpati. Regulation 8(a) is the provision which confers power on the Kulpati to approve the name or any of the names recommended by the Selection Committee. Section 26(1) is the power of the Board to make appointment on the recommendation of the Kulpati. Section 26(1), Regulations 1, 7, 8(a) and 8(b) are quoted herein below in extenso.

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"Section 26(1) Subject to the provisions@@
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of this Act, the member of staff of the
university shall be appointed by the Board on the
recommendation of the Kulpati"

STATUTES:-@@
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Chapter XIII:- Appointment of Staff@@
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Regulation 1. "All appointments shall be made strictly on the basis of merit".

Regulation 7. "The selection committee shall, by majority of its total recommend one or more, but not more than three names for each post to the Kulpati and where more than one names are recommended, the order of preference shall be indicated".

Regulation 8(1) "Where Kulpati approves the name or any of the names recommended by the selection committee and he is the appointing authority, he shall make the appointment, and where such appointment is subject to the approval of the board or the board is the appointing authority, the Kulpati shall make recommendation to the Board for such approval or appointments, as the case may be".

Regulation 8(b) "Where the Kulpati does not approve the name or any of the names recommended by the selection committee, or as the case may be, Board does not approve the recommendations of the Kulpati, the post shall be readvertised."

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A fair reading of the aforesaid provisions make it explicitly clear that the appointment to any post has to be made on the basis of merit. The merit has to be adjudged by the Selection Committee which consists of a number of personnel including the Vice Chancellor as its Chairman and two of the experts on the subject in which the post is required to be filled up. Regulation 7 stipulates that when there would be recommendation of more than one man, then the order of preference shall be indicated. Regulation 8(a), no doubt, confers a power on the Vice Chancellor to approve the name or any of the names recommended by the Selection

Committee and make its recommendation to the Board for such approval or appointment, as the case may be. In a given case, the Vice Chancellor may refuse to accord approval to the panel of names submitted by the Selection Committee for good reasons to be recorded. But, the power of approval or disapproval would not bring within its sweep to alter order of preference indicated by the Selection Committee and, moreso, without ascribing any reason therefor.

When the Statute has conferred a power of approval or disapproval with the Vice Chancellor and, at the same time, confers a power on the Selection Committee to indicate the order of preference in the case where the Selection Committee selects more than one names and the Vice Chancellor happens to be the Chairman of the said Selection Committee, it is unthinkable that the so called power of approval or disapproval would bring within its sweep the power of altering the order of preference indicated by the Selection Committee. Such a construction would tantamount to conferring an unbridled power on the Vice Chancellor who even though be the Chairman of the Selection Committee and that Selection Committee indicates an order of preference, alone would alter that order of preference. In this view of the matter, we find no infirmity with the impugned judgment of the Division Bench of the High Court.

Mr. Chitale, in course of his arguments, vehemently contended that the Selection Committee being a mere

recommending body, it would not have any power to fetter the power of the appointing authority and that being so, the so called order of preference indicated by the Selection Committee could be changed by the appointing authority. In support of this contention, he places reliance on the decision of this Court in the case of Varanaseya Sanskrit@

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Wishwavidyalaya v. Rajkishore Tripathi [(1977) 1 SCC 279].@@
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Paragraph 10 of the said judgment on which the counsel relied upon, no doubt, states that there was nothing to prevent a Selection Committee from making a particular recommendation of this kind and it certainly had no power to make the appointment which vested only with the Executive Committee, but, its powers of recommendation were not fettered. We are

unable to persuade ourselves to agree with the submission of Mr. Chitale that this decision is of any application to the case in hand where the Statute itself and the Regulations framed thereunder confer the power on the Selection Committee to indicate an order of preference and there is no power conferred on the Vice Chancellor to alter the said order of preference. In our view, the aforesaid decision is of no application to the case in hand.

The learned counsel also relied upon yet another decision of this Court in the case of *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122]. But on examining the said decision, we are of the view that instead of supporting the contention of the appellant it runs contrary thereto. In the

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said decision this Court has held that "If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character." Mr. Chitale's contention is that the Vice Chancellor for similar reasons like bad conduct or character can alter the order of preference on evaluating the educational qualification and experience of the candidate. We are unable to persuade ourselves to accede to this submission of the learned counsel. This Court had made the aforesaid observation on construing the power of the Public Service Commission under Article 320 of the Constitution read with the power of the Government under Article 323 and the procedure prescribed therein as to under what circumstances, the Government may not approve the recommendation and, in such a case, the reasons must be indicated and must be placed before the Legislature.

Yet, another decision relied upon by the learned counsel for the appellant is the case of *Dr.H.Mukherjee v. Union of India* [1994 Supp (1) SCC 250]. In the said case also the Court was construing Articles 320 and 323 of the Constitution and was examining the circumstances when the Selection made by the Commission may not be accepted by the Government and it was in that context observed that the

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selection by the Commission, however, is only a recommendation and the final authority for appointment is the Government. We fail to understand as to how this decision would be applicable in interpreting the provisions as interpreted by us earlier. In our view none of these decisions would be of any assistance to the counsel appearing for the appellant. It was also contended placing reliance on the decision of this Court in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168] to the effect that the appellant having been continued in the post after being appointed in 1992, the same ought not to have been interfered with by the Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution. But, it appears that the appointment of the appellant was made in March, 1992 and respondent No.1 did file a writ petition in the same year, which remained undisposed till 2001 when it was disposed of by the impugned judgment. In this view of the matter, the question of non-interference with the appointment which has been held to be illegal and not to be within the power of the Vice Chancellor, does not arise.

In the aforesaid premises, we do not find any merits in this appeal. It accordingly stands dismissed.

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(G.B. PATTANAIAK)@@
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New Delhi;

November 27, 2001.

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(R.C. LAHOTI)@@
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ITEM No.8
NMD CASE

Court No. 3

SECTION XI
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.10324/2001

(From the judgement and order dated 14/05/2001 in WP 21/92 of The HIGH COURT OF JUDICATURE AT ALLAHABAD BENCH AT LUCKNOW)

AMARESH CHANDRA PANDEY

Petitioner (s)

VERSUS

PRAKASH SINGH & ORS.

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for exemption from filing O.T.)
(For Final Disposal)

Date : 27/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE R.C. LAHOTI

For Petitioner (s) Mr. A.K. Chitale, Sr. Adv.
Mr. Rakesh Uttamchadra Upadhyay, Adv.

For Respondent (s) Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Shail Kumar Dwivedi, Adv.
Mr. Sanjeev Malhotra, Adv.

O R D E R

UPON hearing counsel the Court made the following

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Leave granted.

Appeal stands dismissed in terms of the signed order.

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(J.S. Rawat)
Court Master

(Radha Rani Bhatia)
Court Master

(Signed order is placed on the file)