

ITEM No.36

Court No. 1

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.15745/2003
(From the judgement and order dated 08/04/2003 in WA 1639/02
of The HIGH COURT OF KERALA AT ERNAKULAM)

ABRAHAM KURUVILA

Petitioner (s)

VERSUS

S.C.T.INST.,MEDICAL SCIENCES & TECH.&ORS

Respondent (s)

(With prayer for interim relief)

Date : 05/09/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)Mr. C S Rajan, Sr. Adv.
Mr. Vinod M.P.,Adv.

Mr. Joseph Kodianthara, Adv.
Mr. Ajay K Jain, Adv.
Mr. Dileep Pillai, Adv.

For Respondent (s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner is an Assistant Professor in the Department of Neurology under the first respondent. He claims that he, in terms of the existing rules and having regard to the qualification possessed by him, should have been promoted to the post of Associate Professor. The petitioner was, however, denied the said promotion despite the fact that a Selection Committee had been set up for the above-mentioned purpose in the year 1992. The petitioner has, however, allegedly been working in the post of Assistant Professor since 22.6.1994 but he was not given a higher salary by letter dated 4.8.1994 of the Director of the Institute, which is in the following terms :

"Sub: Highest scale of pay at Assistant Professor
level w.e.f. 22-6-94.

Ref: Your letter dated 22-7-94.

With reference to the above letter I may inform you that the service and personnel conduct Rules of the Institute do not contain any enabling provision to fix your pay at Rs.4500/- which is the maximum of the scale of pay applicable to Assistant Professors, w.e.f. The date of your joining the Institute."

The petitioner alleges that the Director had been interfering in his programmes as faculty member

member and whenever a programme was submitted the same had been turned down. In support of the said contention, reliance has been placed by the petitioner on a letter dated 12.3.1998 which is in the following terms :

"Subject: Reply to your letter dated 10.03.98 about resident's Resource Project "Clinical, Electroencephalographic and Radiological correlation in Lesional Epilepsy"

The clinical electroencephalographic and radiological correlation in lesional epilepsy is what is being done through the Comprehensive Epilepsy Program for over 2 years. There is nothing novel in your idea. Your proposal creates a conflict of interest. Moreover, without VEEG and Surgical outcome data, the Resource will be incomplete. Hence, contrary to your statement, the proposal will only provide an inferior quality of information.

After discussing the contents of your letter in the Epilepsy section meeting, I came to the conclusion that I cannot permit you to proceed with the above project. I have also discussed the whole issue with the Director.

If you are unable or unwilling to change the Research Project by March 25th, Dr. Joy will have another Supervising Consultant."

The post of Associate Professor was proposed to be filled up. The petitioner along with others appeared before the Selection Committee in an interview. He was not promoted. The recommendations of the Selection Committee had been accepted. According to the petitioner, those who had been recommended for promotion to the said post had not published any article. He filed a representation before the second respondent pointing out purported irregularities committed by the Senior Staff Selection Committee. He thereafter filed an application under Article 226 of the Constitution of India before the High Court raising, inter alia, a contention that some of the private respondents were biased against him. A learned Single Judge by reason of a judgment dated 26.3.2002 without going into the question of bias raised by the petitioner directed that he may file a representation which may be considered on its own merits. The learned Single Judge opined that the High Court cannot substitute the decision of the Selection Committee. However, without expressing any final opinion, it was directed thus :

"... I direct the Governing Body of the first respondent Institute to consider the representation of the petitioner against his non selection. This the Governing Body shall do in accordance with law after giving an opportunity of being heard to the petitioner. Respondents 3 and 10 may not participate in the Governing Body, if they are members of the same, while this matter is considered by the said forum. Having regard to the materials produced in this case and to avoid the charge of bias and to uphold the purity of the decision, I am making this order that they may not participate in the Committee considering the representation of the petitioner. In case the Governing Body is not able to take a decision objectively on the suitability of the petitioner for upgradation on the basis of the Minutes and other records of the Selection Committee, the Governing Body will be free to take appropriate further decision in the matter including the formation of a fresh Selection Committee and re-assessment of the petitioner in accordance with law afresh."

Not satisfied therewith, the petitioner preferred an appeal. During the pendency of the letters patent appeal, however the Governing Body in terms of the directions of the High Court considered the matter and rejected the representation of the petitioner. The Division Bench noticed the said order of the Governing Body in the impugned judgment in the following terms :

"13. It may be so. Since the appellant has not challenged the order of the governing body before us, we are not going into the merits thereof. We do not wish to make any comment on it. However, it deserves notice that learned counsel for the appellant has not denied the factum of rejection of the representation. Thus, it appears that on consideration of the representation, even the governing body had found no reason to differ with the recommendation of the Selection Committee."

The letters patent appeal filed by the petitioner, however, was dismissed stating :

"14. The selection of a candidate has to be made by the duly constituted Committee. The High Court cannot examine the matter as a super selection board. The scope of judicial review is limited. There is no suggestion that the Committee was not constituted in conformity with the Rules. Still further, it is clear from the record that the appellant's name was duly considered. It may be that the appellant is better than what the Committee had found him to be. Equ

ally it is also possible that the appellant may have an exaggerated view of his own ability. However, the suitability and merit have to be adjudged by the competent authority and not by the Court."

Mr. C.S. Rajan, the learned senior counsel appearing for the petitioner submitted that keeping in view the facts and circumstances of the case, the impugned order ought to have been set aside by the Division Bench and the petitioner should have been directed to be promoted to the post of Associate Professor. The learned senior counsel contends that a mere likelihood of bias would be sufficient to set aside an administrative order.

As indicated hereinbefore, the learned Single Judge has not gone into the aforementioned question. The case of the petitioner was directed to be considered afresh by a Governing Body barring the members against whom bias was alleged. The grievance of the petitioner was, thus, sufficiently redressed. Despite the same, the petitioner chose to prefer a letters patent appeal alleging bias against some of the respondents.

It is now a well settled principle of law that bias which would mean and imply "spite or ill-will" must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is state of mind and it shows pre-disposition. Thus, general statements would not meet the requirements of law. Certain correspondence/orders which might have been passed against the petitioner as far back as in 1994 and 1998 would not meet the requirement of law to prove bias. Not only existence of a factual bias has to be proved, but it must also be shown that the same has resulted in miscarriage of justice. A finding of fact has been arrived at by the High Court that the petitioner had not been able to show any pre-disposition on the part of the concerned respondents so as to affect his chances of promotion to the post of Associate Professor. The Division Bench has in our opinion assigned sufficient and cogent reasons for not agreeing with the submissions of the petitioner herein. It also took notice of the letter of the Director dated 27th July, 1996 which stands explained in the judgment of the High Court. The said letter has rightly been held to be not a communication proving bias.

For the reasons aforementioned, we are of the opinion that the impugned judgment does not call for any interference. The special leave petition is, accordingly, dismissed.

(D.P. WALIA)
COURT MASTER

(SURAJ PARKASH)
COURT MASTER