

University of Jodhpur

Vs

H. K. Purohit and Others

And

H. K. Purohit

Vs

University of Jodhpur and Others

With

K. D. Purohit and Another

Vs

University of Jodhpur and Others

Civil Appeal Nos. 4555, 4554 and 4556 of 1989

(B. C. Ray, S. R. Pandian JJ)

16.11. 1989

JUDGMENT

RAY, J. –

1. Special leave granted. Arguments heard. These three appeals on special leave in S.L.P.(C) Nos. 4987, 5164 and 8269 of 1988 are against the common judgment passed in Writ Petition No. 3548 of 1984 whereby the Division Bench of the High Court of Rajasthan by order dated February 12, 1988 allowed the writ petition in part quashing the selection of respondents 6 to 8 and their consequent appointment to the posts of Assistant Registrars made by the University of Jodhpur with the observation that the University might hold fresh selection for the said posts.

2. The salient facts giving rise to the writ petition are as follows :

The University of Jodhpur, the appellant, published an advertisement which has been annexed at Annexure 'B' to the Civil Appeal No. 4555 of 1989 filed by the University of Jodhpur. By the said advertisement, application had been invited for appointment on the following posts including the posts of Assistant Registrar in University of Jodhpur in the scales of pay and allowances mentioned therein. The qualifications prescribed for the post of Assistant Registrar are : (A) Bachelor's degree from a recognised University, and (B) Experience of about seven years in a supervisory capacity in a University, Board of Secondary Education, educational institution of repute or college of post-graduate standard. Pursuant to the said advertisement 116

candidates applied for these posts out of which 24 were called for interview including respondents 1 to 7 in the Appeal No. 4555 of 1989. Only 18 candidates attended the interview. Three applicants, respondents 2, 3 and 4 were selected against the permanent non-plan post and respondent 5, Shri T. P. Singh was selected against the plan post and respondent 6, Shri L. C. Jain and respondent 7 Shri K. D. Purohit were selected and kept in reserve quota. The recommendation of the Selection Committee was considered and approved by the Syndicate and consequently on November 17, 1984 respondents 2 to 6 were appointed as Assistant Registrar by the Syndicate of Jodhpur University and respondent 7 was appointed on January 3, 1986 as Assistant Registrar. Respondent 1 who was interviewed was not recommended by the Selection Committee.

3. Respondent 1, Shri H. K. Purohit filed a writ petition being C.W. No. 3548 of 1984 in the Rajasthan High Court at Jodhpur assailing the selections of respondents 2 to 7 on the grounds inter alia that the selections were made without application of mind and that the record of the Selection Committee was not placed before the Syndicate and, therefore, the approval accorded by the Syndicate to the said selection was mechanical and was without application of mind. It was prayed that appropriate writs be issued for quashing the appointments made by the appellant, Jodhpur University appointing respondents 2 to 7 as Assistant Registrars. The writ petition was heard by the Division Bench of the said High Court and by order dated February 12, 1988, High Court (Mr. M. C. Jain and Mr. Sobhagmal Jain, JJ.) held inter alia that the selection and appointment of respondents 2 to 4 is not vitiated for want of application of mind by the Selection Committee or by the Syndicate and the submission made on that score was devoid of any substance and was rejected. It was further held that the selection and appointment of respondent 5 Shri T. P. Singh as Assistant Registrar deserves to be quashed as it was not clear whether the Selection Committee while considering the case of respondent 5 followed the directions given by the High Court or not. It had been further held that since no minutes or proceedings of the Selection Committee were drawn up in was not possible for the court to know how the mind of the Selection Committee worked in regard to the selection of respondents 6 and 7 namely, Shri L. C. Jain and Shri K. D. Purohit. The High Court though upheld the appointments of respondents 2 to 4 (respondents 3 to 5 in the writ petition before the High Court) to the posts of Assistant Registrar quashed the selection of respondents 5 to 7 (respondents 6 to 8 in the writ petition before the High Court) and their appointments to the posts of Assistant Registrar made by the University with the observation that it would be open to the University to hold the fresh selection for the said posts but in that selection the University should adhere to the directions given by this Court in its judgment dated August 8, 1983 in Writ Petition No. 1297 of 1974 in case the petitioner respondents 1 and respondents 5 Shri T. P. Singh both are the candidates for the said post.

4. Against the judgment and order three special leave petitions, one by the University of Jodhpur being S.L.P. (Civil) No. 4987 of 1988 another by K. D. Purohit and T. P. Singh being S.L.P. (Civil) No. 5164 of 1988 and the third being S.L.P. (Civil) No. 8269 of 1988 by Shri H. K. Purohit were filed. The instant civil appeals arose out of the said three special leave petitions.

5. The crucial question that poses for consideration in these appeals is whether the selection of respondents 2 to 7 and their consequent appointments to the post of Assistant Registrars as made by the Syndicate of Jodhpur University is vitiated by non-application of mind and also by non-consideration of the guidelines specified in the impugned advertisement inviting applications for the said post. For the sake of convenience all the three civil appeals were heard together. In accordance with the advertisement the requisite qualifications for the post of Assistant Registrar are (i)

Bachelor's degree from a recognised University and (ii) experience of about 7 years in a supervisory capacity in a University, Board of Secondary Education, educational institution of repute or college of post-graduate standard. The High Court after hearing the submission made on behalf of petitioner-respondent 1 and considering the recommendations of the Selection Committee and consequence appointments made by the Syndicate in favour of respondents 2 to 4 (respondents 3 to 5 in the writ petition before the High Court) held :

"The counsel for the petitioner could not point out any error or infirmity regarding the selection of Shri K. L. Paliwal and Shri B. N. Agarwal. His grievance was mainly against Shri S. D. Khilnani. The counsel has argued that the experience gained by Shri Khilnani was not in a supervisory capacity and he did not have to his credit experience in a supervisory capacity for about seven years. Counsel has urged that Shri Khilnani was not eligible for the post of Assistant Registrar. Having considered the submissions made by the learned counsel for the petitioner, we are not impressed by the same. The counsel for the petitioner failed to show to us any relevant material having bearing on the selection of these respondents on the post of Assistant Registrar, which ought to have been placed, but not placed before the Selection Committee or the Syndicate. The argument that the selection by the Selection Committee and the consequent appointment of respondents 3 to 5 are vitiated for want of application of mind by these bodies, is devoid of any substance and is hereby rejected."

6. So far as regards findings of the High Court upholding the validity of the appointments of respondents 2 to 4 i.e. Shri K. L. Paliwal, Shri S. D. Khilnani and Shri B. N. Agarwal we do not find any infirmity and as such we confirm those findings.

7. Regarding the validity of the selection and appointment of Shri T. P. Singh, respondent 5, to the post of Assistant Registrar, it is necessary to set out certain relevant facts hereafter. Respondent 1, Shri H. K. Purohit, was appointed as Upper Division Clerk on August 27, 1962 whereas Shri T. P. Singh, respondent 5 was appointed as UDC on October 6, 1962. It has been stated in the reply affidavit of Shri H. K. Purohit, respondent 1 in the Civil Appeal No. 4555 of 1989 in paragraph 3 that respondent 1 was promoted to the post of Assistant on October 14, 1972 but respondent 5 Shri T. P. Singh was promoted to the post of Assistant nearly three years later i.e. September 20, 1975. It has also been stated therein by respondent 1 that he was promoted to the post of Section Officer on April 21, 1977 whereas respondent 5 was promoted to the said post on April 27, 1977 and as such in the service as Section Officer respondent 5 was junior to him respondent 1 by 6 days and in the service as Assistant respondent 5 was junior to him (respondent 1) by about three years. It has also been stated in paragraph 4 of the said affidavit that respondent 5 is MA in History which he passed in the year 1977 whereas respondent 1 passed his MA (Philosophy) in the year 1960; MA (Political Science) in the year 1974 and LL. B in the year 1956 and Sahitya Ratna in 1963. It has been further stated in paragraph 5 of the said affidavit that respondent 5 was illegally promoted to the post of Senior Assistant on June 14, 1968 ignoring his claim to be promoted to the said post. A writ petition was filed by him being S.B. Civil Writ Petition No. 477 of 1968 in the Rajasthan High Court at Jodhpur. The writ petition was allowed and the promotion of respondent 5 to the post of Assistant was set aside by judgment dated March 10, 1970. It has also been stated that the University of Jodhpur promoted respondent 5 to the post of Section Officer by order dated April 7, 1973 without promoting him in the first instance to the post of Assistant. The said promotion was challenged by respondent 1 in writ petition S.B. Civil Writ Petition No. 1297 of 1974. Realising the legality of the contention raised in the writ petition the appellant, University of Jodhpur reverted respondent 5 to

the post of UDC by order dated September 20, 1975 during the pendency of the said writ petition. On August 8, 1983 the High Court partly allowed the writ petition holding that the experience of Shri T. P. Singh, respondent 5, herein, for the period April 7, 1973 to September 19, 1975 would not be considered for selection qua respondent 1. This judgment has been annexed as Annexure 'C' to the Civil Appeal No. 4555 of 1989. It has been further stated in the said affidavit that respondent 5 stated in paragraph 10 of this counter-affidavit the following facts :

"It is submitted that although it is not known to the petitioner whether the attention of the Selection Committee was invited to the limited declaration as made in the writ petition. But it is submitted that this has no bearing in the matter in issue and this is no material fact which was required to be brought to the notice of the Selection Committee. The respondent does not remember whether on September 6, 1984 the Vice-Chancellor was apprised of the declaration at residence by the petitioner. At any rate this was not done in the presence of this respondent. It is a wonder what the petitioner is trying by making such statement."

8. It was stated in paragraph 7 of the affidavit-in-reply filed by respondent 1 in this Court that the bio-data of respondent 5 placed before the Selection Committee mentioned two important facts (i) the fact that the experience gained by respondent 5 during the period April 7, 1973 to September 19, 1975 was in fact included in the total period of experience gained by T. P. Singh, as Section Officer. "Thus instead of excluding the said period, the University allowed the said period to be included in the total period during which respondent 5 could not be said to have served as Section Officer. I submit that this is in flagrant violation of the mandate given by the High Court. This shows that the members of the Selection Committee as well as the members of the Syndicate, were made to believe that said period of 2 years 5 months, forms part of the period of experience gained by respondent 5, as Section Officer. Hon'ble High Court has specifically and categorically taken note of that bio-data, which can be seen on page 8 of the paper book".

9. It appears from page 8 of the paper book of Civil Appeal No. 4555 of 1989 that the period from July 1970 to September 19, 1975 was included in the period of experience as Supervisor, although the period of appointment of respondent 5, T. P. Singh temporarily as Section Officer for the period from July 11, 1970 to April 6, 1973 was to be excluded as respondent 5 was reverted to the post of UDC by order dated September 20, 1975 by the University. Moreover, the High Court of Rajasthan in partly allowing the Writ Petition No. 1297 of 1974 dated August 8, 1983 specifically held that the experience of T. P. Singh respondent 5, for the period from April 7, 1973 to September 20, 1975 would not be considered for selection qua respondent 1. The High Court has rightly held that "but the material information is still wanting as to whether the directions of this Court regarding Mr. Singh was also brought to the notice of other two members who constituted the selection committee and whether his experience which this Court directed to be excluded from consideration qua the petitioner was in fact excluded or not by the Committee."

10. This finding of the High Court is unexceptional and it has been arrived at on a proper consideration of the vital fact i.e. the minutes of proceedings of the Selection Committee were not placed before the court. Furthermore, it appears prima facie that the experience of respondent 5, Shri T. P. Singh for the period from July 1970 to September 19, 1975 cannot be taken into account in view of the statements made in the affidavit-in-reply filed by respondent 1 in this Court and the same has not been controverted either by the University, the appellant or by respondent 5, Shri T. P. Singh.

11. The judgment of the High Court quashing the selection and appointment of respondent 5 to the post of Assistant Registrar is legal and valid.

12. Respondent 6, Shri L. C. Jain was selected by the Selection Committee and he was appointed on the post of Assistant Registrar on November 17, 1984, while respondent 7 was appointed by the Syndicate as Assistant Registrar on January 3, 1986. His name was included by the Selection Committee in the reserve-plan post. Respondent 7 Shri K. D. Purohit who was appointed as Assistant Registrar on January 3, 1986 was not impleaded in the writ petition filed by respondent 1 in the High Court initially but he was impleaded in the High Court by respondent 1 after 6 months of the date of his confirmation. The High Court has not at all considered whether there was non-application of mind by the Selection Committee in selecting these two respondents for the posts of Assistant Registrars and whether the Syndicate was wrong in appointing them to the posts of Assistant Registrars. The High Court did not find any infirmity in the selections of these two respondents i.e. respondents 6 and 7. The High Court only on the ground that the file of the Selection Committee was not produced by the University before the Court during the course of arguments observed : "We are quite unhappy by the way the proceedings of the Committee were maintained. There is nothing on record to show how the interview proceeded. "The High Court further held, "We are also not in a position to know how the mind of the Selection Committee would have worked to the case of Shri L. C. Jain and Shri K. D. Purohit, had the decision of the Committee with regard to the claims of the petitioner and Shri Singh been different. "On these reasons the High Court quashed the selection and appointment of respondent 5, 6 and 7. This finding of the High Court does not make any whisper about the illegality and non-application of mind of the members of the Selection Committee in selecting respondents 6 and 7 and also in appointing them by the Syndicate to the posts of Assistant Registrars. There is nothing to show that these two respondents, who were duly interviewed by the Selection Committee and were selected had not the requisite qualification mentioned in the said advertisement made by the University of Jodhpur in inviting applications for the posts of Assistant Registrars. These respondents have been selected and appointed to the posts of Assistant Registrars by the Syndicate of the said University in November 1984 and in January 1986 respectively and their appointments have been duly confirmed. We do not find any perceptible and cogent reason in the judgment of the High Court in setting aside the appointments of respondents 6 and 7 Assistant Registrars. The judgment of the High Court insofar as it purports to quash the appointments of these two respondents as Assistant Registrars is liable to be set aside.

13. In these circumstances, we allow the Appeal No. 4555 of 1989 filed by the University of Jodhpur setting aside the judgment of the High Court insofar as it purports to quash the appointments of respondent 6 and 7 i.e. L. C. Jain and K. D. Purohit to the posts of Assistant Registrars in the University of Jodhpur and dismiss it and affirm the order of the High Court quashing the appointment of respondent 5, T. P. Singh as Assistant Registrar. The Civil Appeal No. 4554 of 1989 filed by H. K. Purohit is dismissed. The Civil Appeal No. 4556 of 1989 filed by K. D. Purohit and T. P. Singh is dismissed as regards the appointment of T. P. Singh is concerned and the same is allowed as regards K. D. Purohit, upholding his appointment in the post of Assistant Registrar. In the facts and circumstances of the case, there will be no order as to costs.

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