

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP No. 10027 of 2009
Date of decision 23 .11.2010

Dr. Subhash Chander Lohan ... Petitioner

Versus

State of Haryana and others ... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Vishal Malik ,Advocate for the petitioner
Ms.Mamta Singhal Talwar, AAG Haryana
Mr. RS Rana, Advocate for respondent no. 3

- 1.To be referred to the Reporter or not ?
- 2.Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

The instant petition filed under Article 226 of the Constitution seeks a declaration that Clause (iv) of sub rule 1 of Rule 7 of the Haryana Affiliated Colleges (Security of Service) Rules, 2006 (for brevity 'the Rules) is violative of Articles 14 and 16(1) of the Constitution in as much as it clothes any one of the nominee of the Vice Chancellor or nominee of Commissioner of Higher Education to record a dissenting note in the proceedings of the Selection Committee which is considered to be binding. A further prayer made is that resolution dated 13.11.2001 (P.3) passed by the Kurukshetra University, Kurukshetra (for brevity 'the University') be also quashed being arbitrary and without jurisdiction; and still further prayer made is for granting the petitioner all consequential relief.

Brief facts of the case necessary for the disposal of the instant

petition are that Chhotu Ram Kisan College, Jind (for brevity 'the College') advertised one post of Principal on 17.7.2008 (P.1). The service conditions of the employees of the affiliated colleges are governed by statutory rules called the Haryana Affiliated Colleges (Security of Service) Act, 1979 and the rules framed thereunder. Rule 7(1) contemplates that recruitment to the post of Principal is to be made by the Selection Committee comprising of eight members. The case of the petitioner is that the Committee comprises of four experts and four administrative members. After going through the selection process, the Selection Committee has selected the petitioner at serial no.1 in order of merit. However, the 8th member, who is a nominee of the Commissioner of Higher Education, had remarked in the Selection Committee Proceedings vide his note that no candidate was found suitable and the post be re-advertised. Accordingly appointment has not been approved by the Commissioner of Higher Education (P.5) as well as by the University. The petitioner approached this Court by filing CWP No. 17121 of 2008 which was disposed of on 26.9.2008 being premature. He was given liberty to approach the Court by placing the order of the Government disapproving his appointment (P.4). Eventually under the Right to Information Act, 2005 the petitioner was able to secure a copy of the order dated 15.1.2008 (P.6). It is from the aforesaid letter that the petitioner came to know that the University did not approve the selection of the petitioner. The petitioner has also placed on record letter dated 27.1.2009 (P.5) to the effect that the Commissioner did not approve the proceedings. The petitioner has prayed that the nominee of the Commissioner of Higher Education has been given power to veto the views of the Selection Committee and the power is unguided, unbridled and arbitrary.

In response to the notice of motion, respondent nos.1 and 2 have filed their written statement and has conceded the broad factual position. However their only stand is that according to Clause (iv) of sub rule 1 of Rule 7 of the Rules, the nominee of the Commissioner of Higher Education or nominee of the Vice Chancellor are entitled to record a dissenting note and the proceedings of the Selection Committee cannot be approved thereafter by the University or the Commissioner and the post has to be re-advertised.

In their separate written statement filed by respondent no.4, again the factual position has been accepted holding that out of eight members four were experts and seven members had selected the petitioner by placing him at No. 1 in order of merit. It was only the nominee of the Commissioner of Higher Education who stated that no candidate was found suitable and the post be re-advertised. The 4th respondent has pointed out that Ms. Vimla Kaler was not even competent to participate as a Member of the Selection Committee because she was herself holding the rank of Lecturer and therefore the Lecturer/ Assistant Director has no right to be a Member of the Selection Committee which is to select a Principal.

No reply has been filed by respondent no. 3 i.e. Kurukshetra University, Kurukshetra.

Mr. R.K.Malik, learned Senior Counsel for the petitioner, has vehemently argued that there is no justification for vesting the nominee of the Commissioner of Higher Education or the nominee of the Vice Chancellor to record a dissenting note and set aside the views of other seven members. Mr. Malik has read out Rule 7 of the Rules to us and argued that totally unbridled power has been vested with the nominee of the Vice

Chancellor or the nominee of the Commissioner of Higher Education. The learned counsel has argued that in the absence of any rationale and justifiable reason such a power is being mis-used which is wholly arbitrary. Another aspect highlighted by the learned counsel is that the autonomy of the institution can be interfered-with only to advance excellence of education or to bring exalted or higher standard. The nominee has not recorded any thing with regard to the performance of the petitioner who fulfills all the essential qualifications as well as preferable qualifications. In support of his submission, learned counsel has placed reliance on a Division Bench judgement of this Court rendered in the case of Dr.Sushma Arya v. State of Haryana 2003(1) SCT 1044 where the nominee of the Director, Higher Education had recorded a dissenting note ignoring the recommendations made by the Selection Committee. The observations made in para 6 of the judgement have been relied upon to argue that the selection process has to be completed by taking into consideration the majority opinion and not the opinion of one person. He has also placed reliance on a judgement of the learned Single Judge rendered in the case of Ashok Kumar v. M.D.U. 1994(3) SCT 447 as also the judgement of Hon'ble the Supreme Court rendered in the case of Brahmo Samaj Education Society v. State of West Bengal 2004(4) SLR 612 and argued that the management of aided institutions are entitled to administer them which include the right to appointment of teachers of their choice from amongst those who have cleared NET/ UGC qualifications.

Ms. Mamta Singhal Talwar, learned State counsel has argued that once the State is giving aid to an institution to the extent of 95% then its nominee has to be given superior power which is recognized by the Act

as well as by the Rules. She has particularly placed reliance on Sections 13 to 16 of the Act and the Rules.

Having heard the learned counsel, we are of the view that the short issue raised for consideration of this Court is Whether individual view expressed by a sole member being nominee of the Commissioner, Higher Education could constitute the basis to over-ride the views of other seven members favouring the selection of the petitioner on the post of Principal. It would be apposite to read rule 7(1) of the Rules, which is as under:

“ **Method of Recruitment:** 7(1) Recruitment to the service shall be made

(a) in the case of Principal, by direct recruitment through a Selection Committee comprising the following:-

(I) Chairperson of the Governing Body as Chairperson.

II) One member of the Governing Body to be nominate by the Chairperson.

III) Two Vice-chancellors' nominees out of whom one should be a subject expert.

IV) Three experts consisting of Principal of a college, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by the Governing Body) out of a panel of experts approved by the Vice- Chancellor.

QUORUM

i) At least four members, including two experts, should constitute the quorum. But the presence of the Vice Chancellor's nominee and the Director's nominee shall be essential.

- a) Assessment of attitude for teaching and research.
 - b) Ability to communicate clearly and effectively.
 - c) Ability to analyze and discuss.
 - d) Optional: Ability to communicate may be assessed by requiring the candidate to participate in a group discussion or by exposure to a classroom situation/ lecturer wherever it is possible.
- ii) If the Chairman of the Managing Committee or his nominee is unable to attend, the Vice-Chancellor's nominee shall be the Chairman of the Selection Committee.
- Iii) The recommendations of the Selection Committee shall be subject to the approval of the Vice-Chancellor and Director.
- iv) In the meeting of Selection Committee for the selection of Lecturers, Librarians and Principals and also if any one of the nominees of the Vice Chancellor or the Director gives a dissenting note, the proceedings of the Selection Committee shall not be approved by the University/ Director and the post shall be re-advertised.”

A perusal of the aforesaid rule shows that selection of the Principal by direct recruitment is made by the Selection Committee. The Chairperson of the Selection Committee is the President/Chairman of the Governing Body and the other members are (i) a member of the Governing Body to be nominated by the Chairperson, two nominees of the Vice Chancellor and one of them must be a subject expert. The nominee of the Director, three experts consisting of Principal of College, a Professor and an accomplished educationist not below the rank of a Professor out of a panel of experts

approved by the Vice Chancellor. The rule further provides that to constitute quorum there should be at least four members including at least two experts and a nominee of the Vice Chancellor and that of the Director have been made essential. There are numerous traits and parameters given in clauses (a), (b), (c) and (d) which constitute the basis of assessment of various qualities of a candidate. The recommendations of the Selection Committee have been made subject to the approval of the Vice Chancellor and Director. However, clause (iv) stipulates that in a meeting of the Selection Committee for the selection of Lecturers, Librarians and Principals if one of the nominees of the Director Higher Education or Vice Chancellor records a dissenting note then the proceedings of the Selection Committee are not to be approved by the University/Director and the post has to be re-advertised. It is in pursuance of clause (iv) of sub rule 1 of Rule 7 that in the present case the selection of the petitioner has not been approved because the nominee of the Director has recorded a dissenting note stating that no person has been found suitable whereas the other seven members unanimously recommended the name of the petitioner.

In the case of Bihar Public Service Commission v. Dr. Shiv Jatan Thakur AIR 1994 SC 2466 Hon'ble the Supreme Court has highlighted that a single member cannot be permitted to question the functioning of the Public Service Commission as a body. The observations of Hon'ble the Supreme Court in that regard reads as under:

“ No member of a Public Service Commission can be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought to be

so for the simple reason that, such member must be regarded to be a party to the functions required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged.” (emphasis added)

It is thus evident that collective decision is the foundation of functioning of a multi member commission and body. Therefore individual view must give way to the decision of the majority. Similar view was taken by a Division Bench of this Court in the case of Ashok Kumar (supra) and Ms. Sunita Aggarwal v. State of Haryana (CWP No. 448 of 1997 decided on 31.3.1997). The Division Bench after examining the whole controversy has observed as under:

“ After hearing learned counsel for the parties, we are of the view that non-grant of approval to the selection of petitioner Sunita Aggarwal was for no valid reason. Simply because the nominee of the Vice Chancellor and the nominee of the Director, Higher Education had placed petitioner Sunita Aggarwal at no. 2 and another candidate at Sr. No.1 in the merit list was no ground to decline approval. This was the view taken in the aforesaid judgement also. To avoid any such situation, we may suggest that if each member of the Selection Committee awards certain marks in the interview and certain marks were reserved for the academic qualifications, this situation may never arise as the person getting maximum

average marks would be placed at Sr. No.1.” (emphasis added)

The question whether such a course is permissible in law came up for consideration before a Division Bench of this Court in the case of Dr. Sushma Arya (supra). In that case reliance was placed on the aforesaid observations of Hon'ble the Supreme Court as also the observations made in various judgements of this Court and then following conclusion was reached in paras 6 and 7:

“ Evident from the afore-noticed extract of the notification/ instructions, it is clear that the selection committee consists of highly educated and expert members whose decision would normally not call for interference particularly in the absence of any specific allegation of mala fide or bias. Even in the reply filed on behalf of the respondents, no such allegations have been made, however, the nominee of the Director, Higher Education Haryana, has only questioned the selection on the basis of merit of other candidates who have better academic qualifications. This *per se* cannot be ground for setting aside the selection. Selection of a candidate by the selection committee is based upon collective wisdom of the Selection Committee. In terms of rules of business of such Selection Committee, the selection has to be by majority opinion. The seven members of the selection committee including nominees of the Vice Chancellor, experts all were in favour of selection of the petitioner, thus selection of the candidate by collective wisdom cannot be frustrated by dissenting note recorded by the nominee of the Director. Dissent is appreciable view but where

upon deliberation unanimity of the selection committee by majority must take precedence over such a dissent note unless facts averred or apparent from the record were so startling and were based on bias or mala fide of the nature which would prick the judicial conscious of the Court, the majority view should prevail. (emphasis added)

7. The above stated facts which are to be taken into consideration by the Selection Committee do not permit the selection committee to make the selection only on academic qualification. It has to take into consideration aptitude in teaching ability, to communicate ability, to analysis and discuss and other facts. In other words, the academic record, service profile and performance of the candidates before the selection committee collectively would be lynchpin to the process of selection culminating into final selection.”

The Selection Committee, that case had selected Dr.Sushma Arya by a majority view of 7:1. However there was a dissenting note recorded by the nominee of the Director Higher Education who was also one of the members of the Selection Committee which was constituted in accordance with the rules. The guide-lines which were to be followed by the Selection Committee and are spelled out in the judgement are *pari-materia* to the guide-lines to which reference has been made in the preceding paras of the present case.

It is thus evident that the contents of clause (iv) of sub rule 1 of Rule 7 of the Rules highlight arbitrary and unbridled power which is violative of Articles 14 and 16(1) of the Constitution. The decision of the

Selection Committee comprised of four experts, the nominee of the Vice Chancellor and other eminent people cannot be set at naught on the arbitrary discretion vested in the nominee of the Commissioner of Higher Education. We are also of the view that such a power can also not be vested in the nominee of the Vice Chancellor. It has come on record that not only the petitioner fulfill all the qualifications but he is also duly eligible in all respects possessing the degree of Ph.D. and 22 years experience to his credit. In the written statement filed by respondent nos. 1 and 2 and respondent no.4 there is no mention of any shortcoming in the essential qualification or preferential qualifications of the petitioner and the only case put up by them is that once the nominee of the Commissioner of Higher Education has recorded a dissenting note it was not permissible for the University to approve the recommendations. Therefore, the only reason disclosed in these proceedings is the dissenting note of the nominee of Commissioner of Higher Education. The aforesaid note does not disclose any other lacuna except the expression of opinion that 'no candidate found suitable. Post be re-advertised'.

As a sequel to the above discussion, clause (iv) of sub rule 1 of Rule 7 of the Haryana Affiliated Colleges (Security of Service) Rules, 2006 is declared as arbitrary and ultra vires of Articles 14 and 16(1) of the Constitution. As a consequence, the resolution dated 15.1.2008(P.6) of Kurukshetra University, Kurukshetra refusing to approve the proceedings of the Selection Committee is hereby quashed. Accordingly a direction is issued to the respondent nos. 2 and 3 to grant approval to the proceedings of the Selection Committee by ignoring the dissenting note recorded by the nominee of Commissioner of Higher Education because the petitioner fulfill

the qualifications otherwise required. The needful shall be done within a period of 30 days from the date of receipt of copy of this order which be given dasti on payment of usual charges.

(M.M.Kumar)
Judge

23.11.2010

(Ritu Bahri)
Judge

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