

A MADRAS INSTITUTE OF DEVELOPMENT
STUDIES AND ANOTHER

v.

B DR. K. SIVASUBRAMANIYAN AND OTHERS
(Civil Appeal No. 6465 of 2015)

AUGUST 20, 2015

[M. Y. EQBAL AND ARUN MISHRA, JJ.]

C *Service Law – Selection Process / Procedure – For the*
positions of Professor, Associate Professor and Assistant
Professor – Appellant-Institute issued advertisement –
Several persons including respondent No.1 submitted
applications – Selection Committee conducted interviews
D *and recommended a panel of five names. Thereafter,*
Executive Council by Order dated 14.8.2006 approved the
appointment of various persons – Since the Institute had
advertised for three posts, the first three i.e. respondent nos.
2, 3 and 4 were initially approached for the post of Associate
E *Professor – Respondent No.1 challenged the decision dated*
14.8.2006 inter alia on grounds that the selection was not
done strictly as per the qualifications mentioned in the
advertisement; and that there was infraction of the recruitment
rules – Single Judge of the High Court dismissed the writ
F *petition inter alia on grounds that there was no discrepancy*
with regard to the qualification mentioned in the
advertisement and the service rules; and that respondent
No.1 having taken part in the selection process without
raising any objection cannot challenge the selection process
G *after being declared unsuccessful – Division Bench of High*
Court reversed the order passed by the Single Judge – Held:
The contention of the respondent no.1 that the short-listing
of the candidates was done by few professors bypassing the
Director and the Chairman does not appear to be correct
H *from perusal of the documents on record – Decision of the*

Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction – Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience – Division Bench of High Court ought not to have interfered with the decision of the appellant-Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor – Be that as it may, respondent no.1, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts – It was only after he was not selected for appointment, turned around and challenged the very selection process – The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra – Taking into consideration the entire facts of the case and the law laid down by Supreme Court in a catena of decisions, it is clear that the Division Bench committed grave error in law by reversing the order passed by the Single Judge – Madras Institute of Development Studies (MIDS) Faculty Recruitment Rules, 2001.

Dr. G. Sarana v. University of Lucknow & Ors. (1976) 3 SCC 585 : 1977 (1) SCR 64 ; Madan Lal & Ors. v. State of J&K & Ors. (1995) 3 SCC 486 : 1995 (1) SCR 908; Manish Kumar Shahi v. State of Bihar (2010) 12 SCC 576; Ramesh Chandra Shah and others v. Anil Joshi and others (2013) 11 SCC 309 : 2013 (5) SCR 687 – referred to.

A Case Law Reference

1977 (1) SCR 64 referred to Para 21

1995 (1) SCR 908 referred to Para 22

(2010) 12 SCC 576 referred to Para 23

B 2013 (5) SCR 687 referred to Para 24

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6465 of 2015.

C From the Judgment and Order dated 09.01.2012 of the High Court of Judicature at Madras in W.A. No. 167 of 2008.

WITH

C.A. No. 6466 of 2015.

D Ms. V. Mohana, Sr. Adv., N.L. Rajah, Santanam Swaminadhan, Ms. Insha Mir, Sidharth Rajah, Anil Kumar Tandale, Gautam Narayan, R.A. Iyer, Amitesh Kumar, Shashank Shekhar Singh, Navin Prakash, Vijay Kumar, Anil Kumar Tandale, Anil Kumar Tandale, Satish Vig, B. Ragunath, Vijay Kumar, Advs. for the appearing parties.

E The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

F 2. These appeals by special leave are directed against the Judgment and order dated 09.01.2012 passed by the High Court of Judicature at Madras in W.A. No. 167 of 2008, whereby the order passed by the learned Single Judge dismissing the writ petition filed by respondent No.1 herein has been reversed and the order dated 14.8.2006 of the Appellant No.-Institute approving appointment of Respondent

G Nos. 2 to 6 (namely Dr. S. Anandhi, Dr. Brinda Viswanathan, Dr. L. Venkatachalam, Dr. Ajit Menon and Dr. Kripa Ananthpur) to the post of Associate Professor has been quashed.

3. The facts of the case lie in a narrow compass.

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4. The appellant Institute issued an advertisement calling for applications for the positions of Professor, Associate Professor and Assistant Professor. The said advertisement contained a description of the three qualifications required to be possessed by the candidate. Several persons including respondent No.1-writ petitioner submitted application for appointment to the post of Associate Professor. The short-listing of the candidates was done by the Director of the Institute in consultation with the Chairman after informal consultation with senior Professors for evolving the criteria for short-listing of the candidates. The Selection Committee consisting of three noted Social Scientists as contemplated under the Rules conducted interviews and recommended a panel of five names. Thereafter, the Executive Council by Order dated 14.8.2006 approved the appointment of various persons to the posts of Professor, Associate Professor and Assistant Professor. Since the Institute had advertised for three posts, the first three i.e. respondent nos. 2, 3 and 4 were initially approached for the post of Associate Professor.

5. The respondent No.1-writ petitioner challenged the aforesaid decision dated 14.8.2006 on the ground *inter alia* that the selection was not done strictly as per the qualifications mentioned in the advertisement and that the respondent No.1-writ petitioner having fulfilled all the requirements ought to have been selected to one of the three vacancies of Associate Professor. It was also alleged by the respondent No.1-writ petitioner that there has been infraction of the recruitment rules.

6. The appellant institute denied and disputed the allegation regarding the infraction of the recruitment rules and further denied and disputed the allegations of irregularities in the selection process.

7. The learned Single Judge of the Madras High Court dismissed the writ petition by a reasoned judgment on two grounds. Firstly, it was held that the writ petition was not

- A maintainable inasmuch as the Institute is not a "State" within the meaning of Article 12 of the Constitution of India. The learned Single Judge secondly held that there is no discrepancy with regard to the qualification mentioned in the advertisement and the service rules. Finally, learned Single Judge held that respondent No.1-writ petitioner having taken part in the selection process without raising any objection cannot challenge the selection process after being declared unsuccessful by not including his name in the Selection List.

8. Aggrieved by the said judgment, the respondent preferred the writ appeal before the Division Bench of the Madras High Court. The Division Bench allowed the appeal and reversed the order passed by the learned Single Judge. On the issue of maintainability of writ petition, the Division Bench in the impugned order held that the duties being performed by the appellant-Institute are in the nature of public function and, therefore, it would come within the ambit of 'State' under Article 12 of the Constitution of India. The Division Bench on the merit of the case came to the conclusion that there is a variation in the advertisement from the prescribed rules and as such the entire selection process is vitiated in law. According to the Division Bench, the advertisement issued by the Institute and the constitution of Selection Committee are totally contrary to the Rules, consequently, the order dated 14.8.2006 approving the appointment of the respondent is liable to be quashed.

9. Hence, the present appeals by special leave.

10. We have heard learned counsel appearing for the appellants and the contesting respondents including the selected candidates.

11. Mr. N.L. Rajah, learned counsel appearing for the appellant-Institute, assailed the judgment passed by the Division Bench on various grounds. On the question of maintainability of the writ petition, it was submitted that the

appellant-Institute was not created by any statute. It was founded as a trust and no part of the corpus of the Institution was held by the Government. The participation of the State in the affairs of the Institution is not under any special statute. The Division Bench, therefore, has not correctly appreciated the facts and the law while coming to the conclusion that the appellant Institute is a State.

12. Mr. Rajah, learned counsel further contended that although the grievance of the writ petitioner is that he has not been selected but no relief has been prayed to consider him to the said post. The relief claimed in the writ petition is only to quash the decision by which aforesaid respondents have been selected.

13. Lastly, learned counsel submitted that the respondent writ petitioner participated in the selection process without challenging the alleged variance in the advertisement and the rules and without challenging the constitution of the Committee. He cannot thereafter challenge the same after being declared unsuccessful for the said post.

14. On the other hand, Ms. V. Mohana, learned senior counsel appearing for the respondent writ petitioner, supported the finding recorded by the Division Bench of the High Court. Learned counsel contended that the qualifications prescribed in the advertisement are totally in adherence with the Rules. According to the learned counsel, the entire proceeding for appointment is vitiated by reason of variance in the advertisement and the rules and also irregularity in the constitution of the Committee who conducted interview for selection of the candidates.

15. Indisputably, the Madras Institute of Development Studies (MIDS) is governed by its Faculty Recruitment Rules, 2001. The Rules apply to the selection and appointment of persons to the post of Assistant Professor (Research Associates), Associate Professor (Fellow) and Professor we

- A are here concerned with the qualifications required for appointment of a person to the post of Associate Professor. The Rules read as under:-

"Associate Professor (Rule)

- B Good academic record with a doctoral degree or equivalent published work with five years of experience of teaching and/or research."

16. The qualification mentioned for the post of Associate Professor in the advertisement reads as under:-

- C **"Associate Professor (ADVT)**

- D Good academic record with a doctoral degree in Social Sciences, with at least 5 (five) published papers in reputed national/international journals/ edited volume- or equivalent thereof- and experience of research/teaching at University/national level research institutions."

- E 17. From a reading of the necessary qualifications mentioned in the Rules and the advertisement, it is manifest that a candidate must have a good academic record with a doctoral degree with 5 years experience in research/teaching at University or National level research Institute.

- F 18. The contention of the respondent no.1 that the short-listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent- writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate
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Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor.

19. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer *res integra*.

21. In ***Dr. G. Sarana vs. University of Lucknow & Ors.***, (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

"15. We do not, however, consider it necessary in the present case to go into the question of the

A reasonableness of bias or real likelihood of bias as
despite the fact that the appellant knew all the relevant
facts, he did not before appearing for the interview or at
the time of the interview raise even his little finger against
the constitution of the Selection Committee. He seems
B to have voluntarily appeared before the committee and
taken a chance of having a favourable recommendation
from it. Having done so, it is not now open to him to turn
round and question the constitution of the committee. This
view gains strength from a decision of this Court in *Manak*
C *Lal's case* where in more or less similar circumstances,
it was held that the failure of the appellant to take the
identical plea at the earlier stage of the proceedings
created an effective bar of waiver against him. The
following observations made therein are worth quoting:

D “It seems clear that the appellant wanted to take a
chance to secure a favourable report from the tribunal
which was constituted and when he found that he was
confronted with an unfavourable report, he adopted the
device of raising the present technical point.”

E 22. In *Madan Lal & Ors. vs. State of J&K & Ors.* (1995)
3 SCC 486, similar view has been reiterated by the Bench
which held that:-

F “9. Before dealing with this contention, we must keep in
view the salient fact that the petitioners as well as the
contesting successful candidates being respondents
concerned herein, were all found eligible in the light of
marks obtained in the written test, to be eligible to be
called for oral interview. Up to this stage there is no
dispute between the parties. The petitioners also
G appeared at the oral interview conducted by the Members
concerned of the Commission who interviewed the
petitioners as well as the contesting respondents
concerned. Thus the petitioners took a chance to get

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themselves selected at the said oral interview. Only A
because they did not find themselves to have emerged
successful as a result of their combined performance
both at written test and oral interview, they have filed this
petition. It is now well settled that if a candidate takes a
calculated chance and appears at the interview, then, only B
because the result of the interview is not palatable to him,
he cannot turn round and subsequently contend that the
process of interview was unfair or the Selection
Committee was not properly constituted. In the case of
*Om Prakash Shukla v. Akhilesh Kumar Shukla*¹ it has C
been clearly laid down by a Bench of three learned
Judges of this Court that when the petitioner appeared
at the examination without protest and when he found
that he would not succeed in examination he filed a
petition challenging the said examination, the High Court D
should not have granted any relief to such a petitioner.

23. In *Manish Kumar Shahi vs. State of Bihar*, (2010)
12 SCC 576, this Court reiterated the principle laid down in
the earlier judgments and observed:-

"We also agree with the High Court that after having taken E
part in the process of selection knowing fully well that
more than 19% marks have been earmarked for viva voce
test, the petitioner is not entitled to challenge the criteria
or process of selection. Surely, if the petitioner's name F
had appeared in the merit list, he would not have even
dreamed of challenging the selection. The petitioner
invoked jurisdiction of the High Court under Article 226
of the Constitution of India only after he found that his
name does not figure in the merit list prepared by the G
Commission. This conduct of the petitioner clearly
disentitles him from questioning the selection and the
High Court did not commit any error by refusing to
entertain the writ petition."

A 24. In the case of **Ramesh Chandra Shah and others vs. Anil Joshi and others**, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

B "In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

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D 25. So far as the finding recorded by the Division Bench on the question of maintainability of the writ petition on the ground that the appellant Institute is a 'State' within the meaning of Article 12 of the Constitution, we are not bound to go into that question, which is kept open.

E 26. Taking into consideration the entire facts of the case and the law laid down by this Court in a catena of decisions, we are of the definite opinion that the Division Bench has committed grave error in law by passing the impugned judgment reversing the order passed by the learned Single Judge.

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G 27. We, therefore, allow these appeals, set aside the impugned judgment and order passed by the Division Bench in Writ Appeal No.167 of 2008 and hold that the writ petitioner-respondent has no merit in the case inasmuch as there is no illegality in the decision dated 14.08.2006 taken by the appellant-Institute for appointment of aforesaid respondent nos. 2 to 6 to the post of Associate Professor.