

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 354/2009 & CM Nos. 10514/2009 & 10516/2009

DR. RAMA KANT & ANR. Appellants
Through: Mr. M.L. Lahoty with Mr. Sanjiv
Kumar Saxena and Mr. Ruchir
Mishra, Advocates

Versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. M.J.S. Rupal, Advocate for
Respondent No.1.
Mr. Harinder Kumar, Advocate for
Respondent No.2.

AND

+ LPA 427/2009 & CM Nos. 12260-12261/2009

DR. SUBHO MOJUMDAR Appellant
Through: Ms. Neela Gokhale, Advocate with
Mr. Mayur Chaturvedi, Advocate.

Versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. M.J.S. Rupal, Advocate for
Respondent No.1.

Reserved on : 11th September, 2009

% Date of Decision : 25th September, 2009

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J

1. Present two Letters Patent Appeals being LPA Nos. 354/2009 and 427/2009 have been filed challenging the judgment and order dated 29th May, 2009 by virtue of which Dr. Subho Mojumdar's writ petition being W.P.(C) No. 8707/2008 was dismissed after recording a concession made by counsel for University of Delhi that the University would not accept the recommendation of the Selection Committee, in case Dr. Rama Kant and Dr. Shrikant Kukrati were recommended by the Selection Committee for appointment to the posts of Professor in the Department of Chemistry.

2. While LPA 354/2009 has been filed by Dr. Rama Kant and Dr. Shrikant Kukrati challenging the concession made by counsel for University of Delhi, LPA No. 427/2009 has been filed by the original writ petitioner challenging the dismissal of his writ petition. Since both the appeals arise from a common judgment and the issue raised in both the appeals relates to appointment to the posts of Professor in the Chemistry Department of University of Delhi, the two appeals have been taken up together for disposal.

3. Briefly stated the material facts of these two appeals are that on 12th March, 2008, an advertisement was issued by the respondent-University for appointment to the posts of Professor, Reader, Lecturer and Research Associate in the Department of Faculties of Science and Mathematical Sciences. Amongst the said posts advertised, six posts of Professor in the Department of Chemistry were to be filled through open selection. The

eligibility criteria for the post of Professor in the Department of Chemistry as given in ordinance XXIV of the University of Delhi was as under:

“An eminent scholar with published work of high quality, actively engaged in research with ten years of experience in post-graduate teaching and/or post doctoral research at University/National level institutions including experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.”

4. In fact, in the advertisement that was issued, it was clearly stipulated that, *“it will be open to the University to consider names of suitable candidates who might not have applied.”*

5. Thirty three candidates applied for the aforesaid six posts of Professor. The University of Delhi constituted a Screening Committee for short-listing the candidates to be called for interview before the Selection Committee. According to the respondent-University, the Screening Committee constituted for screening of applications for the posts of Professor comprised Prof. V.S. Parmar, Chairman and Head, Department of Chemistry, Prof. N.K. Kaushik, Convener Committee for Professor Post, Prof. S.M.S. Chauhan, Member and Prof. A.K. Bakshi, Member. The said Screening Committee laid down additional eligibility criteria for the posts advertised. The additional eligibility conditions set out by the Screening Committee were as under:

“i) First class academic career throughout;

ii) 10 years of teaching/research experience at P.G. level;

- iii) *Minimum 10 publications in the last 5 years in internationally reputed peer reviewed journals;*
- iv) *Guidance and award of minimum 2 Ph.D. students.”*

6. In pursuance to the aforesaid additional eligibility criteria, the Screening Committee rejected 21 out of the 33 applications. Since Dr. Rama Kant and Dr. Shrikant Kukrati were not short-listed by the Screening Committee on the ground that Dr. Rama Kant did not have the necessary ten publications in the last five years and Dr. Shrikant Kukrati had not supervised the requisite number of Ph.D. students, they made detailed representations to the Vice Chancellor of the University of Delhi through Head of the Department of Chemistry. Since the cases of Dr. Rama Kant and Dr. Shrikant Kukrati were recommended for interview by the Chairman and Head of the Department of Chemistry, the Pro-Vice Chancellor and Vice Chancellor decided to call them for an interview.

7. It is pertinent to mention that the constitution of the Selection Committee for appointment to the post of Professor and other teaching position in the University is statutory in nature and governed by Statue 19(1) of the Statutes of the University of Delhi. The said Statue reads as under:-

“19.(1) The Selection Committee for any appointment specified: in column (1) of the Table hereto annexed shall consist of the Vice Chancellor, the Pro-Vice-Chancellor (if any), a nominee of the Visitor, and the persons specified in the corresponding entry in column (2) of the said Table.”

8. The composition of the Selection Committee for appointment to the

post of Professor in the Department of Chemistry held on 10th November, 2008 was as under:-

- i) Prof. Deepak Pental, Vice Chancellor (Chairperson).
- ii) Prof. S.K. Tandon, Pro Vice Chancellor.
- iii) Prof. G. Padmanaban (Indian Institute of Science, Bangalore) Visitor's Nominee.
- iv) Prof. V.S. Parmar, Head, Department of Chemistry.
- v) Prof. Charusita Chakravorty (Indian Institute of Technology, Delhi), External Expert.
- vi) Prof. S.S. Ramasesha (Indian Institute of Science, Bangalore) External Expert.
- vii) Prof. Ganesh Prasad Pandey (Deputy Director, Division of Organic Chemistry, National Chemical Laboratory Pune) External Expert.

9. Even before the University of Delhi could announce its results, the writ petitioner, Dr. Subho Mojumdar filed a writ petition being W.P.(C) No. 8707/2008 seeking a declaration that the procedure of selection followed by the respondent-University for appointment to the post of Professor in the Department of Chemistry was illegal and irregular. The main ground for filing the said writ petition was that the respondent-University had indulged in arbitrariness and nepotism by including at the last minute the candidature of Dr. Rama Kant and Dr. Shrikant Kukrati for the posts of Professor, even though they did not meet the minimum eligibility criteria prescribed by the Screening Committee. It was further alleged in the said writ petition that though a Scheduled Caste candidate had applied for the post of Professor but contrary to instructions of the Government of India, there was no representation from the Scheduled

Caste community in the Selection Committee. It was also contended that Prof. M. Kidwai who was a candidate for the post of Professor, was a Member of the Screening Committee and on this ground alone the selection process needs to be set aside.

10. On 08th December, 2008, notice was issued in the said writ petition and the University of Delhi was restrained from giving effect to the recommendation of the Selection Committee for the posts of Professor. During the course of arguments before the learned Single Judge on 04th March, 2009, learned counsel for respondent-University conceded that the University of Delhi would not accept the recommendation of the Screening Committee in case it recommend the names of Dr. Rama Kant and Dr. Shrikant Kukrati for appointment to the posts of Professor. The impugned judgment itself records that the said statement/concession was made by the learned counsel for University of Delhi to avoid jeopardizing the academic interest of the students on account of non-filling of vacancies to the posts of Professor. The relevant portion of the impugned judgment where the concession of the learned counsel for University of Delhi had been recorded, is reproduced hereinbelow for ready reference:

“14. At the outset, it must be stated that at the time of the conclusion of the arguments the learned senior counsel for the respondent No.1 had very fairly conceded before this Court that the respondent/University would not accept the recommendation of the Selection Committee so far as the respondents No.2 and 3 are concerned and in case their names are recommended by the Selection Committee for the appointment to the post of Professor, they would not be sent to the Executive Council for the purpose of approval and appointment. This statement was made by the learned Senior counsel in the larger interest of the studies of the students

being affected on account of non-filling of the vacancies to the post of Professor, and thereby jeopardizing the academic interest of the students.”

11. On 29th May, 2009, learned Single Judge passed the impugned judgment wherein after recording the aforesaid concession, he dismissed the writ petition after rejecting all the other submissions of the writ petitioner, Dr. Subho Mojumdar.

12. While LPA No. 427/2009 has been filed by Dr. Subho Mojumdar challenging the impugned judgment, LPA No. 354/2009 has been filed by Dr. Rama Kant and Dr. Shrikant Kukrati on the ground that they have been ousted notwithstanding the fact that they fulfilled the essential eligibility criteria for the post of Professor and that they had been rightly considered/interviewed by the statutorily constituted Selection Committee. According to Mr. M.L. Lahoty, learned counsel for Dr. Rama Kant and Dr. Shrikant Kukrati, there was no justification in withholding the recommendation of the Selection Committee qua them.

13. Mr. Lahoty also drew our attention to an RTI application in which amongst others, the following two queries were raised:-

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6. *On what basis Dr. Shrikant Kukrati and Dr. Rama Kant were issued call letters for the interview for the post of Professor?*

7. *Whose names were recommended by the Selection Committee for the post of Professor of Delhi University.”*

14. Following reply was given by the University of Delhi to the said two queries which were asked for under the RTI application:

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6. *On the basis of the recommendations of Screening Committee which were approved by the Pro-Vice-Chancellor.*
7. *The Selection Committee recommended following candidates for the post of Professor in order of merit:*
 1. *Prof. Mazaahir Kidwai*
 2. *Dr. A.J. Verma*
 3. *Dr. Ashok Kumar Parsad*
 4. *Dr. Rama Kant*
 5. *Dr. Shrikant Kukrati*

As per the judgment of Hon'ble Court of Delhi dated 29.05.2009 in the matter CWP No. 8707/2008 and CM No. 17329/2008, the names of Dr. Srikant Kukrati and Dr. Rama Kant were not presented to the Executive Council. The recommendations of the Selection Committee were approved by the Executive Council in accordance with the above judgment/order. (Copy of E.C. Resolution enclosed).

15. In view of the aforesaid reply, Mr. Lahoty contended that though his clients had been selected for the posts of Professor, they were not appointed solely on account of concession given by the learned counsel for respondent-University.

16. On the other hand, Ms. Neela Gokhale, learned counsel for Dr. Subho Mojumdar submitted that Dr. Rama Kant and Dr. Shrikant Kukrati were not qualified to be appointed to the posts of Professor in the Department of Chemistry as they did not fulfil the additional criteria stipulated by the Screening Committee. She further submitted that the Selection Committee was biased in favour of Dr. Rama Kant and Dr.

Shrikant Kukrati and its decision to recommend their names was vitiated by malice. She further drew our attention to the minutes of Screening Committee to contend that Professor M. Kidwai, though being a candidate for the post of Professor, was also a Member of the Screening Committee for the said post.

17. Mr. Rupal, learned counsel for University of Delhi stated that the university's senior counsel had given concession before the learned Single Judge in the interest of students as the university could not afford to restart the process of appointment for the posts of Professor. He pointed out that the vacancies now sought to be filled up, had arisen quite a few years ago. Details of the vacancies that had arisen for the posts of Professor of Chemistry are as under:

- “1. Prof. G.B.V. Subramaniam (03.07.1998)*
- 2. Prof. S.K. Chatterjee (31.03.2001)*
- 3. Prof. M.R. Parthasarathy (09.06.2003)*
- 4. Prof. N.K. Ray (04.12.2005)*
- 5. Prof. B.S. Garg (01.09.2007)*
- 6. Prof. A.N. Maitra (08.08.2008).”*

18. Having heard the parties, we are of the view that the learned Single Judge rejected the candidatures of Dr. Rama Kant and Dr. Shrikant Kukrati without deciding their plea on merits solely on the basis of concession given by the respondent-University's counsel. This, in our opinion, virtually amounts to 'condemning' Dr. Rama Kant and Dr. Shrikant Kukrati without hearing them. Therefore, we are of the view that Dr. Subho Mojumdar's submission that Dr. Rama Kant and Dr. Shrikant Kukrati were not qualified to be called for an interview, has to be

examined on merits.

19. It is settled law that if eligibility conditions of short-listing of candidates is mentioned in the advertisement or in the Statute, then that method alone has to be followed and it is not open to a Screening Committee to stipulate any other conditions, even if the same are fair and objective.

20. In fact, the Supreme Court in ***B. Ramakichenin v. Union of India*** reported in (2008) 1 SCC 362 has held as under :-

“17. However, for valid shortlisting there have to be two requirements — (i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a BSc degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in BSc and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention that only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates; (ii) if a prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed.

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19. Hence, if the method of shortlisting had not been prescribed by UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of shortlisting adopted by UPSC since it appears to be based on a rational and objective criteria.

20. However, in this case we have noticed that in Para 3.1 of the advertisement of UPSC dated 23-5-1998, the method of shortlisting has been given. Hence UPSC cannot resort to any other method of shortlisting other than that which has been prescribed in Para 3.1

21. Learned counsel for the appellant has shown us several advertisements issued by the Union Public Service Commission in which it was specifically mentioned that experience must be after getting the postgraduate degree. However, in the present case, the advertisement does not mention that the two years' experience must be after getting MSc degree in Agriculture. Hence, we cannot add words to the advertisement and we must read it as it is.

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23. Had Para 3.1 not been in the advertisement of UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to UPSC to resort to any rational method of shortlisting of its choosing (provided it was fair and objective). However, in the present case, a particular manner of shortlisting has been prescribed in Para 3.1. Hence, it is not open to UPSC to resort to any other method of shortlisting even if such other method can be said to be fair and objective."

21. Consequently, in our opinion, in view of the eligibility conditions having already been stipulated in ordinance XXIV, it was not open for the Selection Committee leave alone the Screening Committee to stipulate any additional eligibility criteria. Accordingly, Dr. Subho Mojumdar's submission that Dr. Rama Kant and Dr. Shrikant Kukrati did not meet the minimum eligibility criteria, is untenable in law. We are also of the view that the respondent-University should ensure in future that screening of candidates, if any, is carried out either in accordance with the criteria mentioned in the advertisement or if it is not so mentioned then in accordance with a criteria determined by the Selection Committee and not by the Screening Committee.

22. In any event, the University's advertisement itself stipulates that it would be open to the university to consider the names of suitable candidates who may not have even applied. Consequently, it was open to the university to call Dr. Rama Kant and Dr. Shrikant Kukrati for the interview even if they had not applied for the same.

23. Dr. Subho Mojumdar's allegations that the Selection Committee had indulged in arbitrariness and nepotism in selecting Dr. Rama Kant and Dr. Shrikant Kukrati, is rejected as neither any allegation of personal malafides has been made nor any member of the Selection Committee has been impleaded by name. Moreover, keeping in view the high powered statutory Selection Committee, we are of the view that Dr. Mojumdar's allegation is misconceived on facts and untenable in law.

24. Even though we have held that the Screening Committee did not have the power to stipulate an additional eligibility criteria, we are not inclined to set aside the entire recruitment process of Professors in the Department of Chemistry as Dr. Mojumdar, the lone writ petitioner was not prejudiced either by stipulation of the additional eligibility criteria or by our view that the said criteria was not mandatory. It is pertinent to mention that no other aggrieved party has approached this Court challenging the selection process. Moreover, setting aside the entire selection process at this stage would gravely prejudice public interest inasmuch as some of the vacancies now being filled up, had arisen way back in July 1998, March 2001 and June 2003.

25. Dr. Mojumdar's further submission that the selection process is liable to be set aside as there was no Scheduled Caste expert in the Selection Committee, is untenable in law inasmuch as the Selection Committee had been constituted according to the University statute and the interviews were not for any reserved posts of Professor.

26. Dr. Mojumdar's further submission that Professor Kidwai though being a candidate for the post of Professor, was also a member of the Screening Committee, is misconceived on facts. As pointed out by the learned Single Judge, Professor Kidwari was a member of the Screening Committee for posts other than that of Professors of Chemistry.

27. Consequently, LPA No. 354/2009 filed by Dr. Rama Kant and Dr. Shrikant Kukrati is allowed and the University of Delhi is directed to forward their names to the executive council for appointment to the posts of Professor in the Chemistry Department. The respondent-University is also directed to ensure in future that short listing of candidates is done either in accordance with the criteria stipulated in the advertisement or if it is not so mentioned, then in accordance with a criteria determined by the Selection Committee and not the Screening Committee.

28. For the aforesaid reasons, LPA No. 427/2009 filed by Dr. Subho Mojumdar is dismissed, but with no orders as to costs.

MANMOHAN J.

CHIEF JUSTICE

SEPTEMBER 25 , 2009

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