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(51)

HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM : Hon'ble Shri Rajeev Gupta, C.J. &  
Hon'ble Shri Sunil Kumar Sinha, J.

Writ Appeal No. 226 of 2009

Dr. Kamlesh Kumar Mishra

Vs.

Guru Ghasidas Vishwavidyalaya & Others

ORDER

For consideration

Sd/-  
Sunil Kumar Sinha  
Judge

HON'BLE SHRI JUSTICE RAJEEV GUPTA

*I agree.*

Sd/-  
Chief Justice

Post for Order 21/08/2010

Sd/-

30/08/2010



AER

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CORAM :** **Hon'ble Shri Rajeev Gupta, C.J. &**  
**Hon'ble Shri Sunil Kumar Sinha, J.**

**Writ Appeal No. 226 of 2009**

**APPELLANT**  
**Petitioner**

Dr. Kamlesh Kumar Mishra S/o  
Dr. O.N. Mishra, Aged about 44  
years, R/o B/38, Kranti Nagar,  
Bilaspur (C.G.)

***Versus***

**RESPONDENTS**

1. Guru Ghasidas Vishwavidyalaya  
Bilaspur Through Registrar
2. Chancellor, G.G.D. Vishwa-  
Vidyalaya, Raipur (C.G.)
3. Anupama Sinha (Saxena) D/o  
Meghnath Sinha, Lecturer,  
Political Science, G.G.D. Vishva-  
Vidyalaya, Bilaspur (C.G.)

**(Writ Appeal under Section 2(1) of the Chhattisgarh High Court**  
**(Appeal to Division Bench), Act 2006)**

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**Appearance:**

Dr. Kamlesh Kumar Mishra, appellant in person.

Mr. Ashish Shrivastava, Advocate for respondents 1 & 2.

Mr. Rajendra Tiwari, Senior Advocate with Mr. Avinash Mishra  
& Mr. R.K. Tripathi, Advocates for respondent No.3.

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**ORDER**  
**(31.08.2010)**

Following order of the Court was delivered by  
**Sunil Kumar Sinha, J.**

(1) Being aggrieved with order dated 6<sup>th</sup> of February, 2006 passed in W.P. No. 2964/1991 and order dated 12<sup>th</sup> of February, 2009 passed in Review Petition (M.C.C.) No. 146/2006, by the learned Single Judge of this Court, the appellant/petitioner has filed this writ appeal.

(2) The facts, briefly stated, are as under:-

The appellant/petitioner filed a writ petition for quashing of the appointment order of respondent No.3 and for further direction for his appointment on the post of Lecturer. Pursuant to an advertisement dated 8.2.88, the appellant and respondent No.3 applied for appointment to the post of Lecturer. The last date for submission of the application form was 7.3.88. The interview was conducted on 9.9.88. As per advertisement dated 8.2.88, the qualifications for the post of Lecturer was declared "As prescribed by the University Grants Commission, New Delhi for Lecturer in the Universities". It was an essential qualification. Apart from the above the desirable qualification was that, "preference shall be given to candidates specialized in or having experience of research and studies in the field of weaker section of society particularly tribals, harijans and women, and in rural development". After the interview, respondent No.3 was selected and was issued appointment letter. The petitioner claimed that the selection of respondent No.3 was not proper; he was better candidate than respondent No.3; he had better qualifications than respondent

No.3; and the selection of respondent No.3 was on account of extraneous considerations. Therefore, the entire process of selection was vitiated.

Respondents opposed the above contentions of the appellant and contended that on account of comparative merits between the appellant and respondent No.3, the Selection Committee found respondent No.3 as more suitable than the appellant, therefore, she was appointed. To show comparative merits of the appellant and respondent No.3, respondent No.3 also filed comparative chart Annexure-R-3/23 as contended in Para-6 of the impugned order.

The learned Single Judge, on close scrutiny of entire material available on record, dismissed the writ petition filed by the appellant holding that the selection of respondent No.3 was valid and proper. She appears to be a better candidate than the appellant, therefore, on the grounds taken by the appellant, the decision of the Selection Committee cannot be interfered by the High Court as the High Court never sit as an appellate authority over the decision of the Selection Committee. Thereafter a Review Petition was filed by the appellant, which was also dismissed by the learned Single Judge.

(3) Dr. Kamlesh Kumar Mishra, appellant, appearing in person, argued that neither the appellant nor respondent No.3 was having Ph.D. qualification on the date of advertisement but the appellant got Ph.d. Degree prior to respondent No.3 on 26.8.88, whereas, respondent No.3 got Ph.D. Degree on 22.9.88. Therefore on the dated of the interview i.e. on 9.9.88, he was having Ph.D. Degree to

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his credit, whereas respondent No.3 was not having such Degree, even than respondent No.3 was selected and given appointment which in fact should have been given to the appellant. In support of his contention, he referred to the two decisions rendered by the Supreme Court i.e. District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another -Vs- M. Tripura Sundari Devi, (1990) 3 SCC 655 & Ashok Kumar Sonkar -Vs- Union of India and Others, (2007) 4 SCC 54.

(4) On the other hand, learned counsel for the respondents opposed these arguments and supported the order passed by the learned Single Judge. They contended that the minimum qualifications for appointment to the post of Lecturer in pay scale of Rs.2200-2400 was Master's Degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record. The appellant and respondent No.3 both fulfilled the above essential qualifications on the date of making of application i.e. 7.3.88 and after due selection process, respondent No. 3 was selected by the Selection Committee which cannot be challenged by the appellant on the above grounds.

(5) We have heard the learned counsel for the parties at length and have also perused the records of the writ petition.



(6) In *M. Tripura Sundari Devi* (supra), the minimum qualification prescribed in advertisement was a second class post-graduate degree. Respondent having a third class post-graduate degree was selected and appointed inadvertently without scrutinizing the copies of certificates. The order of appointment was made subject to production of original certificates. Subsequently on scrutiny of original certificates the respondent was found to be short of qualification and as such was not allowed to join the service. The above action of the authorities was held to be proper. How the said judgment is helpful to the petitioner, we do not know. The present is not a case of not having minimum qualification with the respondent No.3. The petition is claiming his right on the basis of better candidature and not that respondent No.3 was not having essential qualification for appointment to the post of Lecturer in political science. The petitioner has stressed very much that he got Ph.D. prior to the date of interview and respondent No.3 was not having such degree, therefore, he had a better candidature. The Supreme Court said time and again that the High Court never sit as an appellate authority over the decision taken by the Selection Committee and to scrutinize the relative merits of the candidates. This has to be decided by duly constituted committee, the reason being that the court has not such expertise. The decision of the Selection Committee can be interfered by the High Court only on limited grounds like illegality or material irregularity in the constitution of the Committee or the procedure adopted by the

Committee vitiating the selection or on proved malafides etc. Nothing like the above was brought on record by the appellant on which the selection process undertaken by the duly constituted Committee may be struck off or it may be held to be illegal.

(7) In *Ashok Kumar Sonkar* (supra), the Supreme Court held that in order to avoid any uncertainty in such matter, fixation of a cut-off date is a must. However, in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing the application must be considered as a cut-off date. We do not find any controversy of such nature in the present case. In case on hand, in advertisement dated 8.2.88, no specific date was shown as cut-off date. However, advertisement clearly contents in Para-1 that the application form of the candidates must reach to the undersigned by 7.3.88. Therefore, in absence of any prescribed cut-off date fixed in the advertisement or the rules, as per above principles laid down by the Supreme Court, the cut-off date, in present matter, would be 7.3.88. On the said date i.e. on 7.3.88, the appellant and respondent No.3 both were having essential qualifications for appointment to the post of Lecturer which was Master's Degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record as the qualification like M.Phil and Ph.D., in the relevant subject, were the desirable qualification. It was further made clear by appendix to the letter dated 17.6.87 (Annexure-R-3/15) that the minimum qualification should not be relaxed even in

respect of candidates who have Degree like M.Phil and Ph.D. In case on hand, as stated above, the appellant and respondent No.3 both were having essential qualifications on the cut-off date 7.3.88. The Selection Committee called them for interview and after the interview, on assessment of comparative merits, respondent No.3 was selected. If in all wisdom of the Selection Committee, respondent No.3 was found to be better candidate than the appellant, in absence of any legal ground to show the malafides of the Selection Committee or that the selection vitiates on established principles, the writ court cannot set-aside such selection made by Selection Committee as if sitting as an appellate authority over the decision of the Selection Committee. Therefore the view taken by the writ court cannot be held to be erroneous so as to call for interference in this intra-court appeal..

(8) The appeal has no merits, the same is liable to be dismissed and is hereby dismissed.

(9) No order as to cost.

Sd/-  
Chief Justice

Sd/-  
Sunil Kumar Sinha  
Judge