

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.10807/2018 (S – RES)

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BETWEEN

DR. PRASHANTH BABAJI,
S/O JAGANNATHAPPA,
AGE 41 YEARS,
WORKING AS PROFESSOR,
DEPARTMENT OF PEDODONTICS,
SHARAVATHI DENTAL COLLEGE,
SAGAR ROAD, SHIVAMOGGA,
NO.15/R, MIG , KHB COLONY,
II CORSS, VINOBHANAGARA,
SHIVAMOGGA – 577 204.

... PETITIONER

(BY SRI K.MANJUNATHA RAO, ADVOCATE (VIDEO
CONFERENCING))

AND

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY,
DEPT. OF HEALTH & FAMILY WELFARE,
VIDHANA SOUDHA,
DR.B.R.AMBEDKAR VEEDHI,
BENGALURU – 560 001.
2. THE DIRECTOR
CHAMARAJANAGAR INSTITUTE OF

MEDICAL SCIENCE (CIMS),
SY. NO.124, YADAPURA VILLAGE,
CHAMARAJANAGAR – 571 313.

3. DR.GAYATHRI RAMESH
AGE 41 YEARS,
WORKING AS PROFESSOR,
DEPT. OF ORAL PATHOLOGY,
RAMA DENTAL COLLEGE &
RESEARCH CENTER,
NO.A-1/8, LAKHANPUR,
KANPUR – 208 024, UTTAR PRADESH.

... RESPONDENTS

(BY SRI R.SRINIVASA GOWDA, AGA FOR R1 (PHYSICAL
HEARING);
SRI A.C.CHETHAN, ADVOCATE FOR R3 (VIDEO
CONFERENCING);
SMT.SUMANA BALIGA, ADVOCATE FOR R2 (VIDEO
CONFERENCING)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO CALL FOR ENTIRE RECORDS FROM THE R-2 INSOFAR
IT CONCERNED TO SELECTION TO THE POST OF
ASSOCIATE PROFESSOR IN DENTISTRY; DIRECT THE R-2
TO CANCEL THE EXCESS MARKS OF 3.5 AWARDED TO THE
R-3 IN THE CATEGORY OF MARKS SECURED IN FIXED
PARAMETER IN RESPECT OF THE PUBLICATION OF
ARTICLES IN NATIONAL AND INTERNATIONAL JOURNALS
ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 05.10.2020, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING :-

ORDER

The petitioner in this writ petition has sought for the following prayers:

- "a) Call for entire records from the 2nd Respondent in so far it concerned to selection to the post of Associate Professor in Dentistry;*
- b) a writ in the nature of mandamus, order or direction, directing the 2nd Respondent to cancel the excess marks of 3.5 awarded to the 3rd Respondent in the category of marks secured in fixed parameter in respect of the publication of articles in National and International Journals;*
- c) a writ in the nature of certiorari to QUASH the Provisional Selection List dated 29.01.2018 in No.Nil Vide **Annexure-'E'***

published by the 2nd respondent in so far it concerned to selection of Associate Professor in Dentistry;

d) a writ in the nature of mandamus, order or direction, directing the 2nd Respondent to consider the case of the Petitioner for selection to the post of Associate Professor in Dentistry;

e) grant such other writs or orders or directions as this Hon'ble Court deems fit under the facts and circumstances of the case, in the interest of justice and equity."

2. Brief facts of the case leading to filing of the writ petition are that:

The second respondent - Chamarajnagar Institute of Medical Sciences (hereinafter referred to

as the 'Institute' for short) issued a notification on 23.10.2017 calling for applications from eligible candidates for the posts of Professor, Associate Professor, Assistant Professor and Senior Resident. This writ petition concerns the post of Associate Professor in the discipline of Dentistry and the notified post was one. Both the petitioner and the third respondent finding themselves eligible to be considered for selection to the post of Associate Professor applied pursuant to the said notification.

3. On consideration of the credentials of both the petitioner and the third respondent and the marks obtained by them, finding the third respondent to be more meritorious notified a provisional select list on 29.01.2018. The petitioner filed his objections to the provisional select list so notified on 01.02.2018. The petitioner approached this Court in the writ petition

challenging the provisional select list as also, award of marks to the third respondent. This Court by its order dated 09.03.2018 while directing notices to the respondents made the appointment of the third respondent to be subject to the result of the writ petition and also gave a further direction to mention pendency of this writ petition and her selection being subject to it in the order of appointment.

4. The second respondent issued an appointment order to the third respondent on 19.03.2018 making it subject to the result of this writ petition.

5. Heard Sri.K.Manjunatha Rao, learned counsel for petitioner, Sri.R.Srinivasa Gowda, learned Additional Government Advocate for respondent No.1, Smt.Sumana Baliga, learned counsel for respondent No.2 and Sri.A.C.Chethan, learned counsel for respondent No.3.

6. The learned counsel appearing for the petitioner would contend that the petitioner is more meritorious than the third respondent as he has published articles in National and International journals in comparison to what the third respondent has published. He would further contend that the awarding of 3.5 marks to the third respondent is illegal and contrary to the Rules as the articles published by the third respondent in National and International journals did not relate to Dentistry, but related to medical toxicology and forensic medicine. He would further allege that the appointment of third respondent is tainted by political influence.

7. Per-contra, the learned counsel appearing for the Institute submits that the post that was notified was in the discipline of Dentistry. Dentistry deals with many fields of dental sciences. So it is best left to the

experts to choose the person whom they would want for the post without compromising on merit. In the wisdom of the selection committee, the third respondent was found to be more suitable to the post more so, in the light of the fact that the petitioner is less meritorious than the third respondent.

8. The learned counsel for the third respondent while adopting the submissions made by the learned counsel appearing for the Institute would further contend that the appointment of the third respondent is not challenged. What still remains in challenge is only the provisional select list. Both the counsels appearing for the second and third respondents would seek dismissal of the writ petition on the said grounds.

9. I have given my anxious consideration to the submissions made by the learned counsel for the parties and perused the material on record.

10. The Institute issued a notification calling for applications from eligible candidates to various posts. This writ petition concerns one post of Associate Professor in the discipline of Dentistry. The requirement of academic qualification, teaching and research experience to the post of Associate Professor is as follows:

Associate Professor	<p>i) <i>Must possess MBBS / BDS* degree or equivalent qualification included in any one of the schedules of the Indian Medical Council Act 1956. Must be registered in a State Medical Register or Indian Medical Register.</i></p> <p>ii) <i>Should have any one of the recognized postgraduate qualification i.e., MD / MS / MDS* in the concerned subject or equivalent qualification included in any of the schedules to Indian Medical Council Act 1956.</i></p> <p>iii) <i>Should have 5 years of Post PG experience.</i></p> <p>iv) <i>Should have teaching experience as Assistant</i></p>
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	<p><i>Professor in the concerned subject for four years in permitted / approved / recognized Medical College / Institution.</i></p> <p>v) Minimum of Two Research Publication in indexed** journals of the same subject 1st author or as corresponding author.</p> <p><i>Or</i></p> <p><i>Should have got teaching experience as Associate Professor in a concerned subject in permitted / approved / recognized Medical College / Institution before the date of MCI order no MCI order No. MCI-12(1) / 2017-Med. Misc. / 115698 Dated 05.06.2017.</i></p> <p><i>*In the department of Dentistry</i></p>
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The method of selection depicted in the notification reads as follows:

"6. Method of Selection:- Criteria for drawing up the merit list for Professor / Associate Professor / Assistant Professor to short listed for the interview.

I. a) Number of publications in National Indexed Journal ** above the stipulated

*number specified for the post by the MCI
– ½ mark for each paper subject to a
maximum of 2 marks.*

*b) Number of publications in International
Indexed ** journals 1 mark for each
paper subject to a maximum of 2
marks.*

*c) WHO fellowship in the same subject
University Gold Medal / University First
Rank – 1 mark.*

*d) Higher experience than experience than
required for the post – ½ mark for each
year to maximum of 2 marks.*

*e) Presentation of paper / lectures in State /
National /International Conference in
concerned subject ½ mark for each paper
subject to a maximum of 2marks.*

*f) Personality presentation in the interview
– 6 marks.”*

11. In terms of the qualification prescribed, the credentials of both the petitioner and the third respondent was assessed by the selection committee and marks were awarded on each criteria. In terms of clause 6 *supra*, 8 marks obtained by the petitioner and the third respondent for “fixed parameters” was

added to the marks obtained in the interview which was 4.5 and 2.7 respectively. Thus, the total marks obtained by the third respondent is 12.5 and the marks obtained by the petitioner is 10.7. The issue now brought up by the petitioner is that the marks awarded to the third respondent under the head "fixed parameters" is on the higher side and the marks awarded to the third respondent in the interview is also on the higher side, which is 4.5 to the third respondent and 2.7 to the petitioner. No other ground is urged by the petitioner to challenge the selection of the third respondent.

12. Insofar as the award of marks under the "fixed parameters" which the learned counsel for the petitioner submits to be on the higher side is contrary to the facts. Both the petitioner and the third respondent have been awarded 8 marks each under

the “fixed parameters”. The marks obtained under this category by both the petitioner and the third respondent are as follows:

*“Merit list for the Post of Associate professor
No. of Post Called: 07*

1	2	3	4	5	6	7	8	9						10	11
								Marks Secured in fixed Parameters (Max – 9)							
Sl. No.	Name of the Candidate	Subject	Walk-in- interview Reg. No.	Sex	Date of Birth	Category	H – K	Pub-National	Pub-International	WHO/Gold Medal	Higher Exp.	Paper Presentation	Total (Max – 9)	Marks Secured in Interview (Max – 6)	Total Mark s Secur ed (max- 15) 8+9
1	Dr. GAYATHRI RAMESH	Dentistry	66	F	26.09.1976	GM	N O	2	2	0	2	2	8	4.5	12.5
2	Dr. PRASHANTH BABAJI	Dentistry	31	M	16.03.1976	II A – R	N O	2	2	0	2	2	8	2.7	10.7

With the same marks obtained by both the petitioner and third respondent, the plea of arbitrariness raised by the petitioner insofar as award of marks under the head “fixed parameters” is untenable and contrary to the facts. What remains to be considered is the marks awarded for the interview.

13. Insofar as the award of marks in the interview which is at 4.5 to the third respondent and

2.7 to the petitioner is concerned, the interview committee/selection committee consisted of experts and on an interview conducted to both the petitioner and the third respondent marks are awarded in terms of their performance before the selection committee.

14. It is trite law that this Court under Article 226 of the Constitution of India would be loathe to interfere with the marks awarded by a selection committee to the candidates who appear before them, save in exceptional circumstances of demonstrable arbitrariness or malafides. The case at hand is not where arbitrariness is writ large by way of any demonstration or malafides have been pleaded. The prayer sought in terms of the grounds urged is that the award of marks to the third respondent is on the higher side, both on journals and the interview. I cannot telescope my imagination to the minds of the selection committee to hold the marks awarded being

excessive or insufficient. It is for the experts to award marks for publications. This Court while exercising judicial review would not sit in the armchair of experts and assess or award marks for such publications.

15. The plea of the petitioner that the third respondent who has not published papers in subjects under Dentistry could not have been awarded marks is also unacceptable, as it is common knowledge that the subject of Dentistry takes within its sweep manifold disciplines like, (i) Oral Medicine and Radiology, (ii) Orthodontics and Dentofacial Orthopaedics, (iii) Periodontology (iv) Prosthodontics and Crown and Bridge, (v) Conservative Dentistry and Endodontics (vi) Oral and Maxillofacial Surgery of dental sciences. The selection committee having considered the publication of journals both by the petitioner and the third respondent thought it fit to award 8 marks to both as indicated and this Court

would again not tinker with the wisdom of the selection committee on the quantum of marks awarded.

16. The views of mine, in this regard, are fortified by the judgments of the Apex Court. The Apex Court in the case of ***Dalpat Abasaheb Solunke v. B.S. Mahajan*** reported in **(1990) 1 SCC 305** has held as follows:

"12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the

decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. ***The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the***

candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

(Emphasis applied)

Later, the Apex Court considering the entire spectrum of law with regard to limits of judicial review in matters of selection, in the case of ***Basavaiah (Dr.) v. Dr. H.L. Ramesh*** reported in ***(2010) 8 SCC 372*** has held as follows:

"21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the

recommendations made by the country's leading experts in the field of Sericulture.

28. *In Neelima Misra v. Harinder Kaur Paintal [(1990) 2 SCC 746 : 1990 SCC (L&S) 395 : (1990) 13 ATC 732] the Court relied on the judgment in University of Mysore [AIR 1965 SC 491] and observed that in the matter of appointments in the academic field, the court generally does not interfere. **The Court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.***

30. *In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528] the Court in somewhat similar matter observed thus: (SCC pp. 309-10, para 12) "12. ... It is needless to emphasise that it is not the function of the court to hear*

appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection, etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the

court, the High Court went wrong and exceeded its jurisdiction."

31. *In Chancellor v. Dr. Bijayananda Kar [(1994) 1 SCC 169 : 1994 SCC (L&S) 296 : (1994) 26 ATC 570] the Court observed thus: (SCC pp. 174-75, para 9)*

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the Selection Committees concerned which invariably consist of experts on the subjects relevant to the selection."

32. *In J&K State Board of Education v. Feyaz Ahmed Malik [(2000) 3 SCC 59] the Court while stressing on the importance of the functions of the expert body observed that the expert body*

*consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience and were entrusted with the duty of maintaining higher standards of education. **The decision of such an expert body should be given due weightage by courts.***

33. *In Dental Council of India v. Subharti K.K.B. Charitable Trust [(2001) 5 SCC 486] **the Court reminded the High Courts that the Court's jurisdiction to interfere with the discretion exercised by the expert body is extremely limited.***

34. *In Medical Council of India v. Sarang [(2001) 8 SCC 427] the Court again reiterated the legal principle that the court should not normally interfere or interpret the rules and should instead leave the matter to the experts in the field.*

35. In *B.C.Mylarappa v. Dr.R. Venkatasubbaiah* [(2008) 14 SCC 306 : (2009) 2 SCC (L&S) 148] the Court again reiterated the legal principles and observed regarding importance of the recommendations made by the expert committees.

36. In *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University* [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887] **the Court reminded that it is not appropriate for the Supreme Court to sit in appeal over the opinion of the experts.**

37. In *All India Council for Technical Education v. Surinder Kumar Dhawan* [(2009) 11 SCC 726] again the legal position has been reiterated that **it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.**

38. *We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no malafides have been alleged against the experts constituting the Selection Committee. **It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.***

17. In the light of the law laid down by the Apex Court in the aforesaid cases, the plea of the petitioner that there is arbitrariness in awarding marks under the “fixed parameters” and in the interview would not hold water. As observed hereinabove, under the “fixed

parameters” both the petitioner and the third respondent have been given equal marks. How much marks is to be given under those parameters is beyond the pane of judicial review. The other ground with regard to marks awarded in the interview being on the higher side to the third respondent also cannot be gone into as no malafides are pleaded and proved by the petitioner.

18. Therefore, in the facts obtaining in the case at hand, none of the grounds urged by the petitioner sounds acceptance. Wherefore, the writ petition lacks merit and is dismissed.

**Sd/-
JUDGE**

bkp
CT:MJ