

HIGH COURT OF MADHYA PRADESH : JABALPUR

SB : HON'BLE SHRI JUSTICE J.K. MAHESHWARI, J.

Writ Petition(S) No.4086/2011

Dr. Mrs. Ankita Bohare

vs.

Madhya Pradesh Public Service Commission & another

Shri R.S. Jaiswal, learned Senior Advocate with Shri Manoj Kushwaha,
Advocate for the petitioner.

Shri Prashant Singh and Shri Manas Verma, learned Advocates for
respondent no.1.

Shri Vijay Shukla and Shri R.P. Tiwari, learned Government Advocates
for respondent no.2/State.

Shri L.C. Patne, learned Advocate for intervener Dr. (Mrs.) Abida
Shamim Qureshi.

Shri Pratyush Tripathi, learned Advocate for intervener Dr. Hemant
Pandit.

Shri Ajay Pratap Singh, learned Advocate for intervener Dr. (Mrs.)
Sadhana Kesharwani.

Shri A. Rajeshwar Rao, learned Advocate for intervener Smt. Veena
Chaube.

AND

Writ Petition No.6294/2011

Dr. (Mrs.) Sadhana Kesharwani

vs.

State of M.P. & others

Shri P.R. Bhave, learned Senior Advocate with Shri D.C. Gupta,
Advocate for the petitioner.

Shri Vijay Shukla and Shri R.P. Tiwari, learned Government Advocates
learned Advocates for respondent no.1.

Shri Prashant Singh and Shri Manas Verma,for respondent no.2/State.

Shri Udyan Tiwari, learned Advocate for respondent no.5.

Shri P.K. Kaurav, learned Advocate for respondent no.7.

Shri Dharmendra Sharma, learned Advocate for respondent no.10.

Shri Arpan J. Pawar, learned Advocate for respondent no.12.

Shri C.B. Patne, learned Advocate for respondent no.13.

Shri Atulanand Awasthy, learned Advocate for respondent no.14.

Date of hearing : 24/11/2014

Date of order : /12/2014

O R D E R

This order shall govern disposal of W.P. (S) No.4086/2011 filed
by Dr. Mrs. Ankita Bohare as well as W.P. No.6294/2011 filed by Dr.
(Mrs.) Sadhana Kesharwani.

2. Invoking the jurisdiction under Article, 226 of the Constitution
of India, assailing the communication dated 27.1.2011, Annexure P-1
and 21.02.2011, Annexure P-2 and the order of termination dated
29.10.2013 passed in furtherance to the order of learned Single Judge
dated 26.09.2013 and seeking quashment of those orders and to hold

the petitioner Dr. Mrs. Ankita Bohare eligible and qualified for the post of professor (Zoology) and to reinstate her with all consequential benefits direction has been sought for in W.P.(S) 4086/2011.

3. As per the order of the Division Bench of this Court dated 02.12.2013 in W.A.No.1280/2013, the order passed by learned Single Judge on 26.09.2013 has been set aside and the parties were relegated to advance their plea again for reconsideration before the Single Bench. On restoration of this petition vide order dated 23.01.2014, application for amendment assailing the consequential order of termination, passed during pendency of the writ appeal based on subsequent event has been allowed.

4. The facts narrated in the original writ petition (s) 4086/2011 and also by amendment are that the Madhya Pradesh Public Service Commission issued an advertisement for appointment to the post of Professors in various subjects. The present petition relates to the post of Professor "Zoology", for which 25 posts were advertised for appointment, out of which 12 posts were for unreserved category, 4 posts were for SC, 5 posts for ST and 4 posts for OBC category. The last date for submission of the application form was 20.02.2009.

5. Petitioner applied for the post of Professor (Zoology) being a candidate of merit possessing the essential qualification Ph.D. in the topic "A Probe into Correlation between Astrological Rulings and

Women's reproductive Cycle". It is said that she is having 10 years teaching experience as an Assistant Professor in Mata Gujari Post Graduate Women's College, Jabalpur. Apart from it, she is working as Senior Consultant -Genetic, Child Planning, Infertility, Ante and Post Natal Care in the Yashasvi Child Planning and Holistic Health Care and Research Centre, Jabalpur, Madhya Pradesh and Consultant in Department of Obste & Gynae, Jabalpur Hospital and Research Centre, Jabalpur. She has worked as Research Assistant for her work "Correlative Study between Sex Ratio of Human New born and the pre natal epoch position of Moon and Ascendant of horoscope" and also on The Minor Research Project of University Grant Commission in the subject of "Astrological Rulings and Women's Reproductive Cycle". Since 2008 till submission of the application form she had worked as Principal Investigator on a Major Research Project on EUGENICS sanctioned and financed by UGC, MHRD, Govt. of India. She is having various awards and certificate of merit in High School, Madhya Pradesh State Education Board, "Young Scientist Award" in Bhartiya Vigyan Sammelan, III Prize in National Symposium in Biological Sciences, Govt. Auto Model Science College, Jabalpur, All India Science Hindi Congress, Appreciation by Federation of Obste and Gynae Societies of India (FOGSI), Appreciation by All India Congress of Obste and Gynae Societies of India (AICOG), Special Award for Outstanding work in the field of Holistic and Integrated Field, BEST

Women Empowerment Award, abstracts published & presented in World Ayurved Congress 2008, Jaipur. She is having various additional qualifications and also possessing the Membership of various Institutions.

6. It is urged that the communication dated 27.1.2011 and 21.2.2011 rejecting the candidature of the petitioner due to not having teaching experience or having experience of a private college is not proper. As petitioner was eminent and outstanding scholar, however, eligible for the post. It is submitted that this Court vide interim order dated 4.3.2011 directed to accept the application form of the petitioner and permitted to participate in the process of selection provisionally subject to final outcome of this writ petition. After completion of the process of selection as per interim order dated 20.5.2011 it was directed that in-case the petitioner is found eligible she may be appointed provisionally subject to final decision of this writ petition. In furtherance to the order passed by this Court, and on found eligible, petitioner was appointed as Professor "Zoology" vide order dated 3.8.2011 and posted as a Professor in Govt. Model Science College, Jabalpur. It is said that this Court vide order dated 26.9.2013 dismissed the petition against which a writ appeal bearing number 1280/2013 was filed on 22.10.2013 which came up for hearing on 28.10.2013 but on the said date hearing could not take place, however, listed on 31.10.2013. Prior to the said date, the

order terminating the petitioner was passed on 29.10.2013 (Annexure P/8) with utmost haste without awaiting the order of the Division Bench. On account of the said subsequent development, this Court, directed to call for the record of M.P.P.S.C. pertaining to selection. Thereafter, on 2.12.2013, the writ appeal was allowed and the order dated 26.9.2013 passed by the learned Single Judge was set aside restoring the writ petition to its number. It is urged that the order of termination passed by the authorities is with the utmost haste and in gross violation of principle of natural justice and also in violation of Article 14 and 16 of the Constitution of India. In view of the aforesaid prayer is made to quash the communication dated 27.1.2011 (Annexure P/1), 21.2.2011 (Annexure P/2) and the order of termination dated 29.10.2013 (Annexure P/8) and to reinstatement her with all consequential and monetary benefits.

7. In W.P. No.6294/2011 Dr. Smt. Sandhya Kesharwani has challenged the selection list Annexure P/1 including the name of respondent nos. 3, 4, 5, 12, 13 and 14 selecting them on the post of Professor "Zoology" by the MPPSC on the ground of not having the eligibility prescribed by the UGC. It is said that respondent nos.3 and 4 were working as Guest of Faculty in the Department of Bio Sciences, Barkatullah University, Bhopal, however, it cannot be counted as a teaching experience. It is further said that the respondent no.5 was working in the Department of Environmental

Toxicology, Agra University as In-charge Lecturer which cannot be counted for teaching experience. It is further said that respondent no.12 Dr. Mrs. Ankita Bohare does not possess minimum requisite teaching experience of 10 years and respondent no.13 also do not possess minimum requisite teaching experience of 10 years of Post Graduate Classes. Similarly, respondent no.14 is also not having the teaching experience of post graduate classes, therefore, their selection for the post of Professor "Zoology" is unsustainable in law. Petitioner is having experience of 25 years of teaching in the Government Colleges, therefore, ignoring her eligibility, selection of respondents is arbitrary and without having minimum qualification by them which may be quashed.

8. The respondent No.1 PSC by filing return in W.P.(S) No.4086/2011, inter alia, contended that the recruiting agency as per the request made by the State Government published the advertisement for the vacancies specified therein. It is said that the State Government vide communication dated 27.10.2009 has clearly stated that teaching experience of these candidates who have worked in the Government or Government aided colleges as specified in Annexure R-1 ought to be counted. As the petitioner is having the teaching experience of private college, however, in the light of the said communication, her teaching experience cannot be counted. Thus, candidature of the petitioner has rightly been rejected in the

light of instructions issued by the State Government. It is said that the action of the respondents is neither illegal nor arbitrary or violative of Article 14 and 16 of the Constitution of India. By filing additional return it is submitted that in view of the advertisement 10 years' experience is required till the last date of submission of the application form upto 22.02.2009, but as per the experience certificate submitted by the petitioner, she has completed only 9 years 6 months and 20 days of teaching, therefore, criteria of having 10 years' teaching experience has not fulfilled by her, however, communication Annexure P-1 and P-2 has rightly been issued. The reply to the amended pleading has not been filed denying those avernments.

9. In W.P. No.6294/2011 filed by Dr. Mrs. Sadhna Kesharwani, Public Service Commission, in its return has stated that the petitioner is duly qualified, however, called for interview alongwith other candidates including respondent nos.3 to 6. As per the recommendations made by the Selection Committee, the select list has published on 14.3.2011 wherein the respondent nos.3 to 6 are placed in the merit list at Serial No.2, 7, 8 and 10 whereas the petitioner is placed at Serial No.3 in the supplementary list of unreserved category. As per the Government instructions dated 29.4.2010, it has been specifically mentioned that experience of the candidates who have worked on contract basis as Guest Faculty in the

Government Colleges and Government aided Colleges and Universities, their experience should be counted. Accordingly, respondent nos.3 to 6 found eligible to participate in the interview and selected by the Committee on found in merit. It is said that the Public Service Commission has not acted illegally or arbitrarily while preparing the merit list. In such circumstances, interference in the selection of the respondents is not warranted.

10. The respondent No.2/State, in its return, filed in W.P.(S) No.4086/2011 contended that the post of Professor in various subjects by inviting advertisement was directed to be filled-up by the MPPSC, however an advertisement was published in the newspaper "Rozgar Aur Nirman" dated 19.01.2009. In the said advertisement, one of the qualifications was that the candidate should possess 10 years' teaching experience in graduate/post graduate classes on the date of submission of the application form. As per the experience certificate submitted by the petitioner, it is apparent that she started teaching from 01.07.1999 and on the last date of submission of the application form she was having an experience of 9 years, 7 months only, less than 10 years. The Public Service Commission sought clarification whether teaching experience from non-government institutions can be counted. In reply to it, the State Government vide its memo dated 29.04.2010 clarified that teaching experience would mean the experience of teaching in Government Colleges or

Government Aided Colleges or Universities as guest of faculty, part-time lecturer or assistant professor and it would not include the experience of teaching in non-government institution. As the experience of the petitioner pertains to private institution, therefore, it cannot be taken into account in view of the clarification issued by the State Government. The instructions issued by the State Government are reasonable with a view to achieve the object relates to the post of Professor, however, minimum 10 years' teaching experience of undergraduate or post graduate classes has been said as mandatory. By filing the additional return as per the directions issued by the court it is clarified that the UGC has issued letter to the Principal Secretary, Higher Education Department on 29.08.2009 stating that no criteria had fixed or laid down by UGC who may be outstanding scholar, it ought to be decided by each of the Universities considering the cases of individuals. The State Government has not filed any reply to the amended pleadings.

11. In W.P.No.6294/2011, State Government by filing reply has contended that the petitioner after facing the process of selection remained unsuccessful and could not secure the cut-off marks to find place in merit as evident from document Annexure P/1. Since petitioner availed opportunity to appear in the process of selection and could not secure place in the select list, however, no case is

made out warranting interference in the writ petition filed by her, however, prayed for dismissal of the said writ petition.

12. In W.P.No.6294/2011, respondent No.5 has filed its return *inter alia* contending that she is possessing the requisite qualification for the post of professor, however, rightly selected by the PSC. In such circumstances, interference is not warranted without alleging malafide or bias against the members of the Selection Committee, who recommended the name of the answering respondent.

13. Respondent no.12 (petitioner in W.P.(S) No.4086/2011) by filing the reply has reiterated the averments made in her petition *inter alia* contending that she possess the requisite qualification for the post. Respondent no.13 by filing its reply and referring various documents and also the eligibility criteria prescribed in advertisement contended that he is eligible for selection and appointment and accordingly, selection has rightly been made by the respondents.

14. Intervener (in W.P. (S) No.4086/2011), namely, Dr. Sadhna Kesharwani submitted that she is having teaching experience of 25 years of under-graduate and of 16 years of post graduate and has filed a writ petition bearing number 6294/2011 seeking appointment being eligible on having teaching experience and wrongly placed at serial no.3 in the supplementary list of the unreserved category, however, in case the petitioner is not found eligible then she may be

appointed on availability of the vacant post. It is said that no other intervener has claimed the appointment within the validity period of selection list, however, she may be appointed on the said post rejecting the petition and the claim of other interveners.

15. The other intervener, namely, Aabida Shameem Qureshi contends that she found place at serial no.1 in the supplementary list of the unreserved category having experience of teaching in the government colleges as assistant professor, however, eligible for the appointment. It is further stated that the appointment of the petitioner was subject to the final outcome of the petition which was dismissed by this Court, however, on availability of the vacant post being the candidate at serial no.1 in the supplementary list she may be directed to be appointed on the vacant post.

16. Dr. Hemant Pandit, the intervener, has said that the petitioner is ineligible and such ineligibility remained untouched while setting aside the order of learned Single Judge by the Division Bench of this Court and only one post is directed to be kept vacant, however, being eligible and found place in supplementary list, he may be directed to be appointed as Professor "Zoology" on the available vacant post.

17. Learned counsel appearing on behalf of the parties have been heard at length, however, to adjudicate the core issue that petitioner in W.P.(S) No.4086/2011 Dr. Smt. Ankita Bohare possesses requisite

qualification and eligibility for appointment to the post of Professor "Zoology" is required to be examined in the context of the eligibility criteria prescribed in the advertisement as per Rule 8 Schedule III of Madhya Pradesh Educational Services (Collegiate Branch) Recruitment Rules, 1990 and also UGC Guidelines. As per the advertisement commensurate to the UGC guidelines, the eligibility criteria is as under –

“(इ) अर्हता :- 1. यू.जी.सी. द्वारा समय-समय पर विहित शैक्षणिक अर्हताएं संबंधित विषय में पी.एच.डी. अनिवार्य अर्हता।

2. स्नातक/स्नातकोत्तर कक्षाओं में 10 वर्ष का अध्ययन अनुभव।

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प्रख्यात विद्वान जिनका उच्च गुणवत्ता का प्रकाशित कार्य, हो जो अनुसंधान कार्य में सक्रिय रूप से लगा हो, साथ में स्नातकोत्तर कक्षाओं में अध्यापन का 10 वर्ष का अनुभव और या विश्वविद्यालय/राष्ट्रीय स्तर के संस्थानों में अनुसंधान कार्य का गाईड के रूप में अनुभव सम्मिलित हो

या

एक उत्कृष्ट विद्वान जिसका ज्ञान के क्षेत्र में महत्वपूर्ण योगदान करने का स्थापित प्रतिष्ठा हो।”

18. Petitioner passed out 12th Class, B.Sc, M.Sc with first division throughout and awarded Ph.D. as per notification dated 28.11.2003 on the subject "A probe into Correlation between Astrological Rulings and Women's Reproductive Cycle". Alongwith the application form, experience certificate of Mata Gujari Post Graduate Women's College, Jabalpur dated 13.2.2009 having teaching experience from 1.7.1999 as Assistant Professor has also been attached alongwith her additional work experience as Senior Consultant -Genetic, Child Planning,

Infertility, Ante and Post Natal Care in the Yashasvi Child Planning and Holistic Health Care & Research Centre, Jabalpur, Madhya Pradesh and as Consultant in Department of Obste & Gynae, Jabalpur Hospital and Research Centre, Jabalpur (M.P.). Alongwith the application form to show the research work of more than 10 years various instances pleaded like the work of Research Assistant with Dr. Kanti Choubey for a period 1997-1999 on the subject "Correlative Study between Sex Ratio of Human New Born and the Pre Natal Epoch Position of Moon and Ascendant of Horoscope". The Minor Research Project in the subject of "Astrological Rulings and Women's Reproductive Cycle" approved by University Grant Commission; Ph.D. Research during 1999-2002; 2002-till date of submission of form working as Senior Consultant in Yashasvi Research Centre with a team Gynecologists, Pediatricians, Ayurvedacharya and Alternative therapist on Eugenics; from 2008-till date of submission of application form working as Principal Investigator of Major Research Project "The Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula Implantation, Mental and Physical Development of the Fetus" approved by the University Grants Commission, Govt. of India with a grant of more than 7 lacs. It has also been specified that she is having a "Certificate of Merit" in High School issued by M.P. State Educational Board. "Young Scientist Award" in Bhartiya Vigyan Sammelan; III Prize in National Symposium in Biological Sciences, Govt. Auto Model Science

College, Jabalpur. Appreciation by Federation of Obste and Gynae Societies of India (FOGSI), Zonal Conference, Indore; Appreciation by All India Congress of Obste and Gynae Societies of India (AICOG) 2004, Agra (UP); Special Award for Outstanding work in the field of Holistic and Integrated Field by Govt. Science (Auto) College Workshop, Jabalpur; BEST Women Empowerment Award; Abstracts published at World Ayurved Congress 2008, Jaipur. It has further been specified that she is having Certificate course of Computer Operator; Vocal Classical Degree and appearing in Diploma in Early Childhood Care & Education (DECE), IGNOU. It is also specified that she is having Membership of various recognized Governing Bodies, College, Society and Federation and NGO. In the context of the qualification as possessed on the date of submission of the application form and as per the directions issued by the Division Bench in the order passed in Writ Appeal to examine that the case of the petitioner falls within the purview of alternative qualification being an eminent scholar or outstanding scholar is required to be looked into.

19. On perusal of the eligibility prescribed it is to be observed that in the first category Ph.D. is an essential qualification, with desired experience of Graduate/Post Graduate teaching of 10 years. At second category as per the UGC Guidelines, if a person is eminent scholar with published work of high quality, actively engaged in research with 10 years of experience in Post Graduate teaching and /

or experience in research at the University/national Level Institution, including experience at doctoral level; while at third place if a person is an "outstanding scholar with established reputation who has made significant contribution to knowledge" would be eligible for selection and appointment to the post of Professor. In the said context, looking to the essential qualification of Ph.D., the petitioner has possessed the same. While for 10 years experience, the certificate has been filed dated 1.3.2011 alongwith petition Annexure P-5 but as per the advertisement the experience as demanded on the last date of submission of form i.e. 20.2.2009. The PSC in its return has accepted the experience of petitioner for 9 years 6 months and 20 days. Thus, it can fairly observed that petitioner did not possess 10 years teaching experience on the last date of submission of application form to fulfill desired qualification of teaching experience. But in the light of direction issued in the Writ Appeal by Division Bench, it is to be seen that petitioner is an eminent scholar having research work of standard or she may fall within the purview of the "outstanding scholar of established reputation" to fulfill the eligibility. In this respect in para 5.5 of the petition, it is averred that the petitioner is an eminent scholar in her subject and has led major research projects in the capacity of Principal Investigator. The said averment of the writ petition has not been denied and has remained un rebutted. But as per directions, it is to be seen that looking to the

research work performed by her during tenure she may come within the ambit of eminent scholar or outstanding scholar of established reputation.

20. To find out the answer that who may be eminent scholar with published work or outstanding scholar, the judgment of Hon'ble Apex Court delivered in the case of **G.N. Nayak vs. Goa University & others (2002) 2 SCC 712** would be relevant. In paragraph-25 of the said judgment, the Apex Court has observed- "for a candidate to be qualified under second limb, apart from a brilliant academic record and having an established standing, the candidate must have been responsible for original research which had added to the field of the particular science, not in small measure but significantly. As per the letter of the University Grants Commission dated 28.8.2009 filed alongwith the Additional Return Annexure AR/1, it has been clarified by the UGC to the State Government that UGC has not laid down any criteria or norms for eminent scholar or outstanding scholar. This has to be decided by the each University on the merit of the individual case. It is relevant to note here that the Public Service Commission who is the expert body and interviewed the petitioner has not objected that the case of the petitioner do not fall within the second or third category i.e eminent scholar or outstanding scholar. It is merely said that the qualification prescribed in the context of teaching experience is not fulfilled by the petitioner. As per Major Law Lexicon

By P. Ramanatha Aiyar, IVth Edition, 2010 4865, the word "outstanding" means "still unsettled prominent, conspicuous" meaning thereby the outstanding will mean prominent and scholar means a learned person. As per Oxford English Dictionary "Scholar" means a person who studies and has a lot of knowledge about a particular subject. Thus, a prominent learned person having knowledge in particular subject would also fall within the purview of eligibility criteria. In this backdrop, petitioner possesses the eligibility criteria or not is to be decided by the Selection Committee, constituted by the MPPSC consist with the body of experts.

21. The record of selection of PSC is available. On perusal of the same, it is apparent that after issuance of the interim direction by this Court on 4.3.2011, petitioner was permitted to appear in the process of selection provisionally, thereafter, as per directions further issued by this Court on 25.2.2011 her result was declared placing her in the merit at Serial No.5A amongst the selectee of the unreserved category candidates for the post of Professor "Zoology". It is relevant to note here that this Court while passing the order on 25.2.2011, observed that the appointment of the petitioner can be made on the post in question based on her result, if she is also found eligible for appointment. Thus, the expert body (Public Service Commission) is required to examine the eligibility and on found the petitioner in merit recommendation may be made for appointment. In the notesheet of

M.P.P.S.C. reference of the orders of the Court are there, thereafter recommended vide letter dated 28.6.2011 further making reference to the interim orders, and in para-5 thereof, they have recommended for appointment as under –

उक्त आवेदिका का चयन सूक्ष्म जांच उपरान्त किया गया
है फिर भी आयोग का मत है कि चयनित आवेदिका की नियुक्ति के पूर्व विभाग भी एक बार उनकी अर्हता की संवीक्षा कर ले और यदि कोई विसंगति दिखाई देती है तो आयोग का ध्यान उस ओर आकर्षित करते हुये आयोग की राय प्राप्त कर लें । इसी तारतम्य में यह भी निवेदन है कि जिन प्रकरणों में आवश्यक समझा जाए उनमें आवेदिका द्वारा प्रस्तुत प्रमाण-पत्रों की जांच करा ली जाये ।

22. On the basis of such recommendation, petitioner was appointed on found eligible vide order dated 3.8.2011 without asking any further advise from the MPPSC. Clause.8 of the appointment order issued by the State Government states as under -

यह नियुक्तियां पूर्णतः अस्थाई है नियुक्त उम्मीदवारों द्वारा प्रस्तुत शपथ पत्र, शैक्षणिक योग्यता संबंधी प्रमाण-पत्र, जाति प्रमाण-पत्र, मूल निवास प्रमाण-पत्र, अनापत्ति प्रमाण-पत्र व अन्य प्रस्तुत दस्तोजों के परीक्षण में यदि नियुक्ति पश्चात कोई असत्य पाया जाता है तो एक माह का नोटिस देकर अथवा एक माह का वेतन/भत्ते देकर सेवायें समाप्त की जा सकेगी । इसी प्रकार अधिकारी द्वारा एक माह का नोटिस देकर अथवा एक माह का वेतन/भत्ते जमा कराकर सेवा से त्यागपत्र दिया जा सकेगा ।

23. In view of the conjoint reading of the recommendations of the M.P.P.S.C as well as the appointment order of State Government, it is clear that P.S.C has examined the eligibility of the petitioner and found her suitable for selection and placed in the merit at Serial No.5A alongwith the list of candidates of unreserved category, providing a solace to State Government to satisfy them on eligibility of the petitioner. Thereafter, order of appointment was passed by State Government accepting the documents of petitioner subject to a rider that the document submitted by the candidates, if any, found incorrect, then by giving a notice of one month, his/her services can be terminated, meaning thereby, the State Government was also satisfied on the eligibility of the petitioner, after the recommendation of the Selection Committee of the MPPSC, however, appointed the petitioner without raising any objection. The said description find support from their returns because the plea of petitioner in para 5.5 relating to the eminent scholar/outstanding scholar has not been denied.

24. As per the Constitutional Bench judgment of Hon'ble the Apex Court in a case of **University of Mysore vs. C.D. Govinda Rao** **AIR 1965 SC 491** it was held that normally Courts should be slow to interfere with the opinions expressed by the experts particularly in a case where there is no allegation of *mala fide* against the experts constituting the Selection Committee. The Court further observed

that it would normally be wise and safe for the Courts to leave the decisions of academic matters to the experts who are more familiar to with the problems they face than the Courts. Hon'ble Apex Court in the case of **The Chancellor and another vs. Bijayananda Kar and others (1994) 1 SCC 169** reiterated the same principle that whether or not a candidate fulfils the requisite qualifications is to be decided by the selection committee. In the said case the court while dealing the appointment for the post of Professor of Philosophy in a University has emphasized the scope of judicial review in the matter of recruitment process. It is said that the decisions of the academic authorities should not ordinarily be interfered with by the Courts. Whether or not a candidate fulfils the requisite qualification is a matter which should be entirely left to be decided by the academic bodies and on the concerned selection committees which invariably consist of experts on the subject. In the said facts, the Court has declined to interfere in the matter.

25. In the case **Neelima Misra vs. Harinder Kaur Paintal and others (1990) 2 SCC 746** selection on the post made by the Committee accepting alternative qualifications have been declined to interfere with. The Court observed that the minimum qualification prescribed for the post is a doctorate in the subject concerned. In the present case also the essential qualification is the Ph.D. in addition experience is required and also the alternative qualification as

prescribed. In that case, the Court found, that for the appointment qualification was not possessed by the petitioner, but on the basis of the alternative qualification, the selection was made. In the said sequel of facts, the court observed that Chancellor who accepted the recommendations of the Selection Committee ignoring the opinion of the Executive Council is justified. It has further been observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendations on which the Chancellor has acted upon.

26. Similarly, in the case of **G.N. Nayak vs. Goa University and others (2002) 2 SCC 7 12** the Apex Court observed that the Court would not be justified in adopting the legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility which is to be decided by them. It is for the University to decide what kind of research would be adequate to qualify for professorship. The University had intended, understood and consistently proceeded on the basis that the pre-doctoral research could be counted towards the 10 years' experience clause. In another case of **Dr. Kumar Bar Das vs. Utkal University and others (1999) 1 SCC 453** the Apex Court has reiterated the same principle holding that the teaching experience and research work satisfies the condition of 10 years

experience and after selection and appointment by the expert body, the interference by the Court is not warranted.

27. Recently, the Apex Court in a case of **Basavaiah (Dr.) vs. Dr. H.L. Ramesh and others** has emphasized the scope of judicial review reiterating the view taken by the Constitutional Bench of the Apex Court in the case of *University of Mysore vs. C.D. Govinda Rao* (supra) and also referring more than ten judgments of Apex court. In para-38 the Apex Court observed that 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 mala fides 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 realize and appreciate its constraints and limitations in academic matters.

28. In view of the above discussion based upon various precedents of Hon'ble Apex Court, it is well settled that after the recommendation made by the Selection Committee consists with the experts of the subjects the, interference by the Court in such recommendations is not warranted. On applying the said principle and looking to the facts of this case, it is pertinent to emphasize that after permitting the petitioner to

participate in the process of selection as per interim order of this Court her interview was conducted. After perusal of all the papers of qualification, research paper and awards, the Selection Committee found her eligible and the candidate of merit, however placed at Sl. No.5A of the merit list out of 12 candidates in unreserved category. After selection and while making recommendations the MPPSC has acknowledged the eligibility, further requesting the State Government to consider the issue of eligibility of petitioner prior to passing the order of appointment or otherwise may ask for advice, if any, from the PSC. This apparently indicates that on having satisfaction of the eligibility of petitioner by the Selection Committee recommendations were made by the MPPSC. Thereafter, the State Government was also satisfied on eligibility, therefore, in the order of appointment in Clause-8, it was mentioned that if the documents found incorrect then services may be terminated. In such circumstances, after recommendation by the PSC and appointment by the State Government, interference by this Court is not warranted to re-determine the issue of eligibility of the petitioner.

29. In addition to the aforesaid, looking to the directions issued by the Division Bench of this Court in Writ Appeal No.1280/2013 as per order dated 2.12.2013 on restoration of the writ petition, this court is required to consider the eligibility of the petitioner in the context of the pleadings of para-5.5 of the writ petition which relate to eminent

scholar or outstanding scholar. As the order of the Division Bench has been passed in this particular case, however, a probe into the eligibility of the petitioner is required. In the said context, it is to be noted that the petitioner did Ph.D. in a subject "A probe into Correlation between Astrological Rulings and Women's Reproductive Cycle". She did her research as a Research Assistant under Dr. Kanti Choubey on a subject "Correlative Study between Sex Ratio of Human New Born and the Pre Natal Epoch Position of Moon and Ascendant of Horoscope" The Minor Research Project is on the subject "Astrological Rulings and Women's Reproductive Cycle" while the Major Research work is on the topic "The Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula Implantation and Mental and Physical Development of the Fetus". In addition thereto, she has worked as a Consultant, Genetic, Child Planning, Infertility, Ante and Post Natal Care in Jabalpur Hospital and Research Centre, Jabalpur and as Senior Consultant in the Yashasvi Child Planning and Holistic Research Centre, Jabalpur, Madhya Pradesh. After having brilliant academic record upto Post Graduation securing the certificate of merit in High School she has also secured "Young Scientist Award" as well as so many awards and appreciations with the publication. Being a student of "Zoology" looking to the research work towards Bio Science i.e. starting from Astrological Rulings and Women's Reproductive Cycle and the Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula

Implantation and Mental and Physical Development of the Fetus, makes it clear that she is having established understanding in the original research work which have been recognized by an appreciation of the FOGSI and All India Congress of Obste and Gynae Societies of India (AICOG). However, in the said context, she may be said to be a prominent learned person having knowledge of particular subject and come within the purview of outstanding scholar who worked with prudence and excellence in a particular subject throughout, therefore, the petitioner's case falls within the purview of alternate qualification. In that view of the matter looking to the recommendation made by Selection Committee consists the experts, accepted by the State Government. In my considered opinion, it can be held that Dr. Mrs. Ankita Bohare has rightly been found eligible by the PSC and after selection, rightly recommended for appointment, and in furtherance thereto the order of appointment dated 3.8.2011 was rightly passed by the State Government.

30. Now to venture and to dwell upon the order of termination in furtherance to the order passed by learned Single Judge during pendency of writ appeal, it is suffice to say that on found the petitioner, eligible and qualified for the post of Professor "Zoology" the order of termination is unsustainable. It is to be further observed that in furtherance to the interim order, petitioner was appointed subject to final outcome of the writ petition which was dismissed by

learned Single Judge vide order dated 26.9.2013 but the order learned Single Judge was set aside in writ appeal on 2.12.2012, but during pendency of which the order of termination was passed with utmost haste, prior to date of hearing, however, it is liable to be quashed in view of the discussion made hereinabove.

31. Now to dwell upon the claim made by the petitioner in W.P. No.6294/2011 Dr. Mrs. Sadhna Kesharwani, one of the intervener in W.P. (S)No.4086/2011, that the appointment of respondent no.12 Dr. Mrs. Ankita Bohare has been assailed on the ground of not having teaching experience. As per the discussion made hereinabove, it is apparent that she has been found eligible for appointment on possessing the alternative qualification, however, on the said ground the relief as prayed for in the said petition cannot be directed. So far as cancellation of the appointment of other respondents are concerned, it is to be observed here that as per Circular issued by the State Government dated 29.4.2010 filed alongwith the return of respondent no.2, it is apparent that teaching experience of Assistant Professors working on contract basis as Guest Faculty and Part Time in the Government and aided institutions shall be counted, however, in the light of the said circular, the plea taken by the petitioner do not subsists in view of the consistent stand taken by the State Government as well as by MPPSC. It is to be further re-stated that Dr. Smt. Sadhna Kesharwani has participated in the selection process

and not found place in merit list of the selected candidates. She has found place in the supplementary list at Serial No.3. As per the pleadings of the petition, there is no averment that the Committee of the Experts constituted by PSC was biased or having any malice. In such circumstance after passing through the process of selection, without having any allegation of bias and malice, against the Selection Committee, interference in the facts of the case is not warranted. In that view of the matter, the petition filed by her W.P. No.6294/2011 is hereby dismissed and in that view of the matter her intervention application filed in W.P. (S) No.4086/2011 is also liable to be rejected.

32. In the facts of the present case the argument advanced by the interveners is also required to be dealt with. In this respect it may be observed here, that the final selection list was published by the PSC making recommendation for appointment for the post of Professor "Zoology" on 14.3.2011 which was valid for a period of 1½ years from the said date. The intervener Dr. (Mrs.) Abida Shamim Qureshi filed an application on 16.5.2014. Similarly, Dr. Hemant Pandit has filed the application for intervention on 30.9.2014. Thus, application of these two interveners were filed after the lapse of more than 1½ years, on expiry of the period of validity of the supplementary list. None of them has filed the writ petition seeking appointment challenging the recommendations of MPPSC by the Selection Committee alleging bias or mala fide. In the facts of this case, in my

considered opinion their intervention is meritless and they are not entitled to claim any relief. In this respect guidance can be taken from the case of **State of Orissa and another vs. Rajkishore Nanda and others (2010) 6 SCC 777** wherein Hon'ble Apex Court has held that the select list cannot be treated as perpetual reservoir for the purpose of appointments after expiry of validity period of selection. The Apex court in the judgment of **Raj Rishi Mehra and others vs. State of Punjab and another (2013) 12 SCC 243** has further held that the interveners who are the wait list candidates and its validity period expired long back then they are not entitled for appointment as a matter of right against the vacant post of petitioner. In that view of the matter, the interveners are having no right to claim any relief in this petition particularly, when the petitioner is found eligible possessing qualification for the post of Professor "Zoology" after selection by the Public Service Commission and appointment made by the State Government during pendency of the writ petition prior to its dismissal. In view of the foregoing, the pleas taken by the interveners are hereby rejected.

33. So far as intervention by Smt. Veena Chaube is concerned, it is to be observed that the application has been filed by her after expiry of the validity period of select list, however, by such intervention, she do not confer any right to claim appointment. In addition, she has filed a Writ Petition No.4369/2011 before the Indore Bench of this

Court which was dismissed on 7.11.2012, on found her ineligible to hold the post of Professor. The writ appeal filed against the said judgment bearing number 658/2012 has been withdrawn with a liberty to file review petition. Thereafter, a review petition was filed bearing No.3/2013 and its final order has not been brought to the notice of this Court. In such circumstances, in my considered opinion once she is found ineligible the claim made by her in this petition is also devoid of any merit.

34. In view of the foregoing discussion W.P.(S) No.4086/2011 is hereby allowed, the communication dated 27.1.2011 (Annexure P/1) and 21.2.2011 (Annexure P/2) is meritless and of no consequence. As per the discussion made hereinabove, the petitioner Dr. Mrs. Ankita Bohare has been found eligible for appointment to the post of Professor "Zoology", however, the order of termination Annexure P/8 dated 29.10.2013 is quashed. The respondent/State is directed to reinstate the petitioner Dr. Mrs. Ankita Bohare within the period of two weeks from the date of communication of this order, and to pay her all consequential and monetary benefits within the period of three months. Consequent upon to allow the Writ Petition(S) No.4086/2011, and as per the discussion made hereinabove, the Writ Petition No.6294/2011 filed by Dr. Mrs. Sadhna Kesharwani is devoid of any merit hence dismissed.

35. In the facts and circumstances of the case, parties are directed to bear their own costs. The original record of the MPPSC be returned back by the Registry.

(J.K. Maheshwari)
Judge

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