

## **Dalpat Abasaheb Solunke And Ors. vs Dr. B.S. Mahajan And Ors. on 6 December, 1989**

**Equivalent citations: AIR1990SC434, [1990(60)FLR172], (1990)IILLJ470SC, (1990)1SCC305, 1990(1)UJ328(SC), (1990)1UPLBEC528, AIR 1990 SUPREME COURT 434, (1990) 1 CURLR 3, 1990 ALL CJ 226, 1990 UJ(SC) 1 328, (1990) 1 UPLBEC 528, (1990) 1 MAHLR 916, (1990) 1 LAB LN 1, (1990) 1 SERVLR 849, (1991) 16 ATC 528, (1989) 4 JT 487 (SC), (1990) 2 LABLJ 470, (1990) 1 SCJ 571, (1990) 60 FACLR 172, 1990 SCC (L&S) 80, 1990 (1) SCC 305**

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**Bench: K. Ramaswamy, Kuldip Singh, P.B. Sawant**

### **JUDGMENT**

**P.B. Sawant, J.**

1. These four appeals are directed against the Judgment of the Aurangabad Bench of the Bombay High Court in Writ Petitions Nos. 3363 and 3364 of 1981.

2. Civil Appeal No. 3507 of 1989 is filed by Dalpat Abasaheb Solunke, original respondent No. 7 in W. P. No. 3363/81. The relevant facts in W. P. 3363/81 are that the respondent University issued an advertisement in July 1980 inviting applications for the post of Chief Extension Education Officer along with 79 other posts. On receipt of the applications, the University constituted a Selection Committee in compliance with the relevant statutes. The Selection Committee after considering the relevant merits of the candidates, on August 6, 1981 recommended the appellant to the said post. The Vice-Chancellor of the University accepted the recommendation and in exercise of the powers conferred on him, appointed the appellant by an Order of October 19, 1981. On October 20, 1981 respondent No. 1 Dr. Mahajan preferred a writ petition before the High Court being W. P. No. 3363 of 1981 and obtained ad interim stay of the appointment of the appellant. On November 13, 1981, after hearing the University and the appellant, the High Court vacated the stay Order, and the appellant took charge of the office on November 16, 1981. He completed his probationary period of two years on November 15, 1983. The writ petition came up for hearing before the High Court in March 1987, and the High Court by its impugned decision of March 9, 1987 quashed the appellant's appointment.

3. In Civil Appeal No. 3508 of 1989, the facts are that by the same advertisement of July 1980, the University had invited applications for the post of a Deputy Director, Central Farm. The Selection Committee constituted by the University recommended the appellant to the said post on 6/7th

August, 1981, and the Vice-Chancellor issued an Order appointing the appellant on October 19, 1981. The appellant took charge of the office on October 20, 1981. On the same day the respondent Dr. Shelke preferred a writ petition being W. P. No. 3364/81 before the High Court, and obtained an ad interim stay of the appellant's appointment. After hearing the appellant and the University, the High Court vacated the stay Order on November 13, 1981. The appellant cleared his probationary period of two years on October 19, 1983. Thereafter in March 1987 the High Court quashed the appellant's appointment by the impugned common judgment. Hence these appeals.

4. The University has also preferred two separate appeals being Civil Appeals Nos. 3509 and 3510 of 1989 questioning the Order of the High Court quashing the two appointments. All the four appeals are being disposed of by this common judgment.

5. The High Court has given four reasons to set aside the appointment of the appellant in Appeal No. 3507/89 while two reasons (which are common to both) to set aside the appointment of appellant in Appeal No. 3508/89.

6. The first reason which is common to both the appeals is that although the vacancy in the posts in question had arisen as early as in 1975, no applications were invited to fill the same till 1980. The High Court has also stated . that the University in its return, had not explained the said delay. We are at a loss to understand as to how the delay in filling a vacancy can be a ground for setting aside the appointment made. Assuming therefore that there was no explanation given by the University, the appointments made were not liable to be set aside on that ground. If the delay in making an appointment is to be a ground for quashing it, no appointment can be made to the post after what the Court considers as the delay. This is apart from the fact that the University has in a detailed affidavit filed in this Court satisfactorily explained the circumstances in which the filling in of the post was delayed. That explanation is not countered.

7. The second ground given for setting aside the Order of appointment of the appellant in CA No.3507/89, viz. to the post of Chief Extension Education Officer is that there was a deliberate attempt to delay the filling in of the post till 1980 since the University wanted the appellant to qualify himself for the said post. The facts reveal that the minimum educational qualification required-for the post, as per the advertisement, was M.Sc. The advertisement had no doubt also added that the candidate with five years experience will be preferred. However, as the wording of the advertisement itself shows the experience was not an essential qualification. If the University had only the applicant in view there was nothing to prevent it from inviting the applications in 1975 itself when the appellant acquired M.Sc. degree, without insisting on any experience whatsoever. The University likewise could have filled in the vacancy between 1975 to 1980 requiring experience of the proportionate period. The High Court was therefore not right in picking up this circumstance without considering all the aspects of the matter.

The High Court has further relied upon this fact, to make out a case of mala fides on the part of the University. The High Court has however unfortunately lost sight of the fact that by the advertisement in question, it was not only the post of the Chief Extension Education Officer but 79 other posts were advertised. The post in the accompanying appeal was also one of them, and there is

no allegation as far as that appointment or other appointments are concerned that the University had waited to fill in all the said vacancies to enable the selected candidates to acquire the requisite qualifications.

Surprisingly enough the High Court has also found it necessary to refer in this connection to the fact that the appellant was earlier temporarily appointed to the said post from 14th Sept., 1978 to 15th Jan., 1979 though he was not qualified, and on the representation made by one Mr. Dakh the temporary appointment of the appellant was terminated. As has been pointed out by the respondents in their affidavit in reply filed in the writ petition (to which there is no reply), on that occasion the appellant was only asked to hold a temporary charge of the said post for the said short period since the 2nd respondent was away. Since it was pointed out by Mr. Dakh that he was senior to the appellant, even the said temporary appointment was terminated and Mr. Dakh was appointed instead. What is further, it was not only the appellant who was given the temporary charge of the said post. Many others were also asked to hold the said and other posts pending the regular appointments. We are therefore unable to understand as to how the fact that during the said short period the appellant was asked to hold the charge, may be in ignorance of the claim of Mr. Dakh who was senior to him can have a bearing on the regular selection of the appellant.

The High Court has further failed to appreciate that the University is not an individual who can be said to have had an interest in a particular person or persons. As has been pointed out by the University and the appellant, during the period 1975 to 1980, the University had more than one Vice-Chancellor and Registrar. It is certainly not suggested that all of them had interest in the appellant.

8. The next reason given by the High, Court for setting aside both the appointments is that the appellants were comparatively less meritorious. This is what the High Court has stated on the point in paragraphs 17 and 18 of its judgment :

17. A bare look at bio-data at Exh. B and scrutiny statement, it would unmistakably indicate that except the 7th respondent all were duly qualified and eligible to be considered for the post of Chief Extension Education Officer and Deputy Director, Central Farm for short duration.

18. Coming to the comparative merits as disclosed in bio-data Exh. B, the correctness which was not disputed by any respondent, it is clear that as many as four candidates including the petitioner in WP 3363/81 were eligible to be considered/appointed as Chief Extension Education Officer but for the reasons best known to the University why no attempt whatsoever was made on the part of the University to advertise the said post between 1975 and 1980. The comparative table of merits at Exh. B unmistakably indicates that the petitioner was M.Sc. First Class and he was working as Agricultural Supervisor from 8-7-1959 to 18-4-1963; as Agricultural Officer from 19-4-1963 to 12-5- 1968; as Lecturer from 13-5-1968 to 13-8- 1980; as Reader from 1-6-1971 onwards and at the relevant time i.e. in the year 1980 he was Associate Professor. As against this respondent No. 7 has completed his M.Sc. by Research and

claims to have earned 3.81 points which according to him was a First Class. He was Agricultural Officer from 28-3- 1971 to 31-5-1973...from 31-5-1973 to 14-7- 1975, as Superintendent from 15-5-1975 to 11-6-1978 and as Assistant Professor from 14-6-1978 onwards in the Pay Scale of Rs. 700-1600. As against this the petitioner was Reader from 1-5-1971 and it was not disputed that the Reader's post was higher in cadre and pay scale to the Assistant Professor. As stated earlier even the other candidates who were serving in the University were also eligible as they had put in more than 5 years service after post graduation (M.Sc). It is in this context we have to consider the advertisement for filling the vacancies that was issued in the year 1980....

9. 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 mala fides 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.

10. The fourth and the last ground given by the High Court to set aside the appointment of the appellant in CA No. 3507/89 is that the fourth and the fifth respondents to the Writ Petition were guides of the appellant when he was doing his M.Sc. by Research. We are unable to understand as to how the fact that they were his guides when the appellant was doing his M.Sc. would influence their decision in selecting him, or vitiate the selection made. They must have been guides to many who had appeared for the interview. As senior teachers in the Faculty in question, it is one of their duties to guide the students. In fact, very often the experts on the selection Committees have to be drawn from the teaching faculty and most of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the members of the Selection Committees. In fact, as stated by the 4th respondent in his affidavit before the High Court, even the 2nd respondent, the aggrieved candidate was also his student. Curiously enough the High Court has discarded the said fact by observing that in point of time, the appellant was closer to the 4th respondent as a student since the appellant was his student at a later date. It is not necessary to comment further on this reasoning.

As an aside of the very same reason, the High Court has also found the presence of the sixth respondent on the Committee as vitiating the selection, and the only reason given by the High Court

in that behalf is as follows :

...In this background if we consider the reply of sixth respondent, Shri Shyamrao S. Kadam, the member of the Selection Committee were of the opinion that the apprehension expressed by the petitioner that the members of the Selection Committee had shown favour to the 7th respondent cannot be said to be without any substance.

There is no discussion or finding given by the High Court on the alleged role played by the 6th respondent. We are therefore at a loss to know in what manner the 6th respondent had influenced the decision of the Selection Committee. Probably the Court had nothing further to say with regard to the alleged "role" of the 6th respondent. We therefore refrain from saying anything more on the subject.

11. Dr. Ghatate, the learned Counsel appearing for the aggrieved respondent in each of the appeals tried to urge that the Constitution of the Selection Committee itself was defective inasmuch as no experts from other University were invited to participate in it as required by the Statutes. This ground was not urged before the High Court. It involves a question of fact. There was therefore no opportunity either for the appellant or the University to meet it. Probably the facts on the point were against the contesting respondents and that is why the said point was not raised although they had chosen to urge all other vague and unsubstantial points. We cannot therefore permit Dr. Ghatate to urge the said point here for the first time.

12. In the circumstances, we allow all the appeals and set aside the decision of the High Court. Respondent No. 1 in each of the appeals will pay the costs.