Ashok Kumar Sonkar vs Union Of India & Others on 23 February, 2007

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 4761 of 2006

PETITIONER:
Ashok Kumar Sonkar

RESPONDENT:
Union of India & Others

DATE OF JUDGMENT: 23/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B.SINHA, J :

Banaras Hindu University (for short, 'the University) issued an advertisement on 25.03.1995, iner alia, for filling up a vacant post of lecturer in Tridosa Vigyan in the Department of Basic Principles. Relevant clauses of the said advertisement are as under :

"Those who have applied earlier are required to apply again on the prescribed format for the post, otherwise their candidature will not be considered. They will, however, be exempted from any payment against the application. Their cases will be considered according to the up-dated qualification."

Essential qualifications prescribed for the said post are :

"70. Lecturer in Tridosa Vigyan (One) [Department of Basic Principles]

Qualifications :

Essential 1. ABMS or equivalent examination from any recognized institution.

2. M.D. in Sharir-Kriya Desirable 1. Standard publication in the filed of Neurophysiology, Neurochemistry, related to Tridosa Vigyan.

2. Knowledge of Modern Medical Science and Sanskrit."

Appellant applied for the said post on 30.05.1995. As on that day, he had not completed his M.D. in Sharir Kriya, with his application he enclosed a certificate issued by Professor and Head of the Department of Basic Principles, Institute of Medical Sciences, Banaras Hindu University, which reads as under :

> "This is to certify that Dr. Ashok Kumar Sonkar son of Dr. K.P. Sonkar, is a bona fide student of the Department of Basic Principles. He was admitted for the Degree of M.D. (Ay.) Basic Principles (Sharir-Kriya) on 1st August, 1992 and his final examination will be held in October, 1995. His thesis entitled "Clinical evaluation of therapeutic potential of certain indigenous drugs in seizure disorders" will be submitted in the month of June, 1995.
>
> He is sincere, hard working young man, zealous and outwitted scholar and sound character of this department. He is fit to be entrusted for clinical, research, teaching and administrative responsibilities.
>
> I wish him all success in future life."

He passed the said examination only on 30.10.1995. He was allowed to appear before the Selection Committee, despite the fact that he did not hold the requisite qualification till the date of filing of such application. He, however, was selected and offered an appointment. He joined the said post.

In the meanwhile, Respondent No. 4 filed a writ petition before the Allahabad High Court, which was marked as Writ Petition No. 20883 of 1997. The High Court by reason of an order dated 17.02.1998 dismissed the said writ petition on the premise that he had an alternative remedy. Respondent No.4 thereafter moved the President of India in his capacity of the 'Visitor' of the said University. The 'Visitor' was of the opinion that the selection process was illegal. The selection proceeding, therefore, was set aside. However, before the said order was passed, the comments of the University were called for. The University offered its comments. The order of the Visitor was communicated by the Desk Officer, Ministry of Human Resource Development (Department of Secondary Education and Higher Education), Government of India, by a letter dated 18.10.2000, intimating the Registrar of the University that the President of India in his capacity as the Visitor of the University had annulled the appointment of the appellant in exercise of the power conferred upon him under Section 5(7) of the Banaras Hindu University Act, 1915 (for short, 'the Act'), the relevant portion of the said letter is as under :

> "Kindly refer to your letter No.AA/VI-SC/1460 dated the 15 July, 2000 forwarding therewith 1460 a reply of the University to the show cause Notice issued in exercise of the powers conferred upon the President of India in his capacity as the Visitor of the University under Section 5(7) of the Banaras Hindu University Act, 1915. The Visitor, after considering the reply of the University, pleased to annul the appointment of Dr. Ashok Kumar Sonkar as Lecturer in Tridosh Vigyan IMS, Banaras Hindu University with immediate effect.
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> This issue on the basis of communication received from President's secretariat vide their No. 28(2)(xiii) 98- CA (II), dated 21.03.2000. The University may take further necessary action immediately after intimation to this Department."

A writ petition was filed by the appellant before the Allahabad High Court. By reason of the impugned judgment dated 26.05.2006, the said writ petition has been dismissed.

Mr. V. Shekhar, the learned counsel appearing on behalf of the appellant, in support of this appeal, would submit :

> 1) In absence of any cut-off date having been specified in the advertisement and in view of the fact that the statute or statutory rules in this behalf are also silent in regard to the question as to whether the Selection Committee could allow the appellant to take part in the selection process as he had completed his M.D. before he was considered therefor, the High Court committed a manifest error in arriving at the finding.
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> 2) In view of the fact that the appellant was confirmed in the post of lecturer, it was obligatory on the part of the Visitor to give an opportunity of hearing to the appellant.
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> 3) The University having taken a definite stand before the High Court in the earlier writ petition that the appellant was selected in terms of the prevailing practice, the impugned judgment is unsustainable.
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> 4) The jurisdiction of the Visitor being limited under sub-section (2) of Section 5 of the Act, new appointment could not have formed subject- matter of his decision.
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> 5) Respondent No. 4 being himself ineligible, he did not have any locus standi to maintain the writ petition or make a representation before the Visitor of the University.
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> 6) In any event, keeping in view the facts and circumstances of the case, it was obligatory on the part of the High Court in equity to refuse to exercise its discretionary jurisdiction.

Mr. G.E. Vahanvati, the learned Solicitor General and Dr. Rajeev Dhawan, the learned Senior Counsel, appearing on behalf of the respondents, however, supported the impugned judgment.

Section 5 of the Act provides that the President of India shall be the Visitor of the University. Sub-section (7) of Section 5 of the Act, however, confers power upon the Visitor of the University, without prejudice to the other provisions contained in the said Section, by order in writing, to annul any proceeding of the University which is not in conformity with the said Act, the Statutes or the Ordinances. Proviso appended thereto, however, mandates the Visitor to call upon the University to show cause why such an order should not be made and if any cause is shown within a reasonable time shall consider the same, before making any such order.

Indisputably, the recruitment of the academic staff of the University is governed by the provisions of the said Act and the Statutes and Ordinances framed thereunder.

The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussions made hereinafter.

The question came up for consideration, inter alia, before a 3-Judge Bench of this Court in Ashok Kumar Sharma and Another etc. v. Chander Shekher and Another etc. [(1993) Supp. (2) SCC 611], wherein Thommen, J. speaking for himself and Ramaswami, J. opined :

> "13. It is true Rule 37 is in terms applicable only to Public Service Commission candidates and due notice of provisional entertainment of their application, subject to their passing examination before the date of interview, is a requirement peculiar to Rule 37 and is not applicable to the present case.
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> 14. If the principle of Rule 37 is by analogy applicable, the fact that notice of provisional entertainment of applications, subject to passing of the examination before the date of interview, is a requirement in the interests of candidates who fell within that category. The appellants are by analogy persons of that category, but they have no complaint on any such ground.
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> 15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle

of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was, on the facts of this case, the correct view. Accordingly, we set aside the impugned judgment of the Division Bench and restore that of the learned Single Judge. In the result, we uphold the results announced by the recruiting authority. The appeal is allowed in the above terms. However, we make no order as to costs."

Sahai, J., however, gave a dissenting note, stating :

" The notification, therefore, provided not, only, the conditions which a candidate was required to possess when applying for the post mentioned in the notification but he was also required to support it with authenticated certificate and if he failed to do so then the application was not liable to be entertained. In legal terminology where something is required to be done and the consequences of failure to do so are also provided then it is known as mandatory. The mandatory character of possessing the requirements as provided in the first part of the notification stands further strengthened from the third and last part of the notification which prohibited the candidates from applying if they did not possess the requisite qualifications. In view of these clear and specific conditions laid down in the advertisement those candidates who were not possessed of the B.E. qualifications were not eligible for applying nor their applications were liable to be entertained nor could they be called for interview. Eligibility for the post mentioned in the notification depended on possessing the qualification noted against each post. The expression, shall be possessed of such qualifications, is indicative of both the mandatory character of the requirement and its operation in praesenti. That is a candidate must not only have been qualified but he should have been possessed of it on the date the application was made. The construction suggested by the learned counsel for the appellant that the relevant date for purposes of eligibility was the date of interview and not the date of application or July 15, 1982 the last date for submission of forms is not made out from the language of the notification. Acceptance of such construction would result in altering the first part of the advertisement prescribing eligibility on the date of applying for the post as being extended to the date of interview. If it is read in the manner suggested then the requirement that incomplete applications and those not accompanied by the requisite certificates shall not be entertained, shall become meaningless. Purpose of filing certificate along with application was to prove that the conditions required were satisfied. Non-filing of any of the certificates could have resulted in not entertaining the application as the requirements as specified would have been presumed to be non-existent. Fulfilment of conditions was mandatory and its proof could be directory. The former could not be waived or deferred whereas the defect in latter could be cured even subsequently. That is proof could be furnished till date of interview but not the eligibility to apply for the post. Any other construction would further be contrary to the last part of the notification."

A review application was filed which was admitted. The matter was again placed before a 3-Judge Bench of this Court in Ashok Kumar Sharma and Others v. Chander Shekhar and Another [(1997) 4 SCC 18]. One of the issues which fell for consideration of the Bench being Issue No. 1 reads as under :

> "(1) Whether the view taken by the majority (Honble Dr Thommen and V. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?"

It was held :

> " So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.
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> The said decision is, therefore, an authority for the proposition that in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as such.

> Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.
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> In Bhupinderpal Singh & Others v. State of Punjab & Others [(2000) 5 SCC 262], this Court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview, inter alia, stating :
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> "13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, A.P. Public Service Commission v. B. Sarat Chandra, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, Rekha Chaturvedi v. University of Rajasthan, M.V. Nair (Dr) v. Union of India and U.P. Public Service Commission U.P., Allahabad v. Alpana the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

[See Jasbir Rani and Others v. State of Punjab & Another [JT 2001 (9) SC 351 : (2002) 1 SCC 124].

Yet again in Shankar K. Mandal and Others v. State of Bihar and Others [(2003) 9 SCC 519], this Court held that the following principles could be culled out from the aforementioned decisions :

> " (1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.
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> (2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications. (3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority."

In M.A. Murthy v. State of Karnataka & Others [(2003) 7 SCC 517], a contention was made that Ashok Kumar-II (supra) was to operative prospectively or not. The said contention was rejected, stating :

> " It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No. II. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

Recently, this Court in Kendriya Vidyalaya Sangathan and Others v. Sajal Kumar Roy and Others [(2006) 8 SCC 671], opined that the conditions laid down for exercising the power of relaxation must be scrupulously followed, stating :

> " The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. ..."

Therein, this Court noticed the decision in Food Corporation of India and Ors. v. Bhanu Lodh and Ors. [(2005) 3 SCC 618], wherein, inter alia, it was held :

> " The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an "open sesame" for all and sundry. The wholesale go- by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act "

We, therefore, see no infirmity in the judgment of the High Court, in this behalf.

The power of the Visitor is not only confined under sub-section (2) of Section 5, but also under sub-section (7) of Section 5 of the Act. Even otherwise sub-section (2) of Section 5 cannot be construed narrowly. The power of the Visitor to cause an inquiry to be made is in respect of any matter connected with the University. Sub-section (7) of Section 5 provides for a power in the Visitor without prejudice to the provision contained in sub-sections (2) to (6) of Section 5 of the Act. An express power, thus, has been conferred upon the Visitor to annul any proceeding of the University. The only condition attached thereto is that the same should found to be not in conformity with the statutes or ordinances. The selection process carried out by the Selection Committee would indisputably be a proceeding under the Act. Section 17 provides for a statute making power, including clause

(l), which reads as under :

> "(l) the classification and the manner of appointment of teachers in the University and the colleges;"

Submission of Mr. Shekhar that the Visitor committed an error in passing the impugned judgment as 'any irregularity in the procedure by any authority shall not render the same invalid, unless the same affects the merits of the case' is stated to be rejected. Appointment of a teacher must conform to the constitutional scheme as adumbrated under Articles 14 and 16 of the Constitution of India and the terms of the Act or the statute or ordinances governing the field. Any violation of the provisions thereof would entitle the Visitor to exercise his jurisdiction under sub-section (7) of Section 6. It is also beyond any cavil that in exercising the said power, the statutory provisions interpreted by this Court must be followed.

This bring us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillar of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

It is also, however, well-settled that it cannot be put any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.

A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

In Aligarh Muslim University and Others v. Mansoor Ali Khan [(2000) 7 SCC 529], the law is stated in the following terms :

> "25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.
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> In Karnataka State Road Transport Corporation and Another v. S.G. Kotturappa and Another [(2005) 3 SCC 409], this Court held :
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> " The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given "

In Punjab National Bank and Others v. Manjeet Singh and Another [(2006) 8 SCC 647], this Court opined :

> " The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In P.D. Agrawal v. State Bank of India and Others [(2006) 8 SCC 776], this Court observed :

> "The Principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

It was further observed :

> "Decision of this Court in S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379], whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460], the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula. [See Viveka Nand Sethi vs. Chairman, J. & K. Bank Ltd. & Ots. (2005) 5 SCC 337 and State of U.P. vs. Neeraj Awasthi & Ors. JT 2006 (1) SC 19. See also Mohd. Sartaj vs. State of U.P. (2006) 1 SCALE 265.]"

The principles of equity in a case of this nature, in our opinion, will have no role to play. Sympathy, as is well-known, should not be misplaced.

In Maruti Udyog Ltd. v. Ram Lal & Others. [(2005) 2 SCC 638], a Division Bench of this Court, wherein one of us was a member, noticing some decisions, observed :

> "44. While construing a statute, sympathy has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.
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> 45. In A. Umarani v. Registrar, Coop. Societies this Court rejected a similar contention upon noticing the following judgments: (SCC pp. 131-32, paras 68-70)
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> 68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

> 69. In Teri Oat Estates (P) Ltd. v. U.T., Chandigarh it is stated: (SCC p. 144, paras 36-37)
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> 36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.
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> 37. As early as in 1911, Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd. observed: (All ER p. 123 E) We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o the wisp to take as a guide in the search for legal principles.

70. Yet again, recently in Ramakrishna Kamat v. State of Karnataka this Court rejected a similar plea for regularisation of services stating: (SCC pp. 377-78, para 7) We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."

It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularized. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of law, which renders the appointment to be a nullity.

We have noticed hereinbefore that in making appointment of the appellant, the provisions of Articles 14 and 16 of the Constitution and statutory rules were not complied with. The appointment, therefore, was illegal and in that view of the matter, it would be wholly improper for us to invoke our equity jurisdiction.

Mr. Shekhar is also not correct in contending that the University had supported the case of the appellant. It was categorically stated by the University in its counter affidavit that the writ petition being devoid of any merit should be dismissed. In any event, we have ourselves taken into consideration the merit of the matter and in that view of the matter the stand of the University either before the Visitor or in the writ proceedings initiated by Respondent No. 4 is wholly irrelevant.

For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.