

Dr. Triloki Nath Singh vs Dr. Bhagwan Din Misra And Ors on 10 August, 1990

Equivalent citations: 1990 AIR 2063, 1990 SCR (3) 727, 1990 ALL. L. J. 724, 1990 (4) SCC 510, (1990) 2 CURLR 529, (1990) 14 ATC 753, (1991) 2 SERV LJ 85, (1991) 1 LAB LN 39, 1990 UJ(SC) 2 522, (1990) 2 UPLBEC 1082, (1990) 61 FACLR 648, (1990) 3 SERVLR 46, (1990) 3 JT 513 (SC), AIR 1990 SUPREME COURT 2063, 1991 SCC (L&S) 226

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Bench: N.M. Kasliwal, A.M. Ahmadi

PETITIONER:

DR. TRILOKI NATH SINGH

Vs.

RESPONDENT:

DR. BHAGWAN DIN MISRA AND ORS.

DATE OF JUDGMENT 10/08/1990

BENCH:

KASLIWAL, N.M. (J)

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KASLIWAL, N.M. (J)

AHMADI, A.M. (J)

CITATION:

1990 AIR 2063 1990 SCR (3) 727

1990 SCC (4) 510 JT 1990 (3) 513

1990 SCALE (2) 268

ACT:

U.P. State Universities Act, 1973 : Sections 31(5), 66(9)--Panel of experts--Constitution of--Subjects of Hindi language and literature and linguistics--Whether separate subject of study.

HEADNOTE:

A Selection Committee consisting of five Members was constituted to recommend names for appointment to the post of Reader in 'Linguistics' in the Department of Hindi of the University of Lucknow. The Selection Committee after inter-

viewing the candidates recommended the name of the appellant while respondent No. 1 was placed in the second position.

Respondent No. 1 filed a writ petition in the High Court challenging the recommendations of the Selection Committee on the ground that the Selection Committee was not legally constituted because three experts on the Committee were experts in Hindi Literature and not Linguistic experts. The High Court allowed the petition and inter alia held that under Statute 171 of the University, the Chancellor was required to nominate experts out of the panel of experts in the subject of 'Linguistics', which was a separate subject of study in the University; that the nomination of experts out of the panel drawn from the subject of Hindi suffered from a serious legal infirmity; and that Explanation II to sub-section (5) of Section 31 of the U.P. State Universities Act, 1973 was wholly inapplicable to the instant case.

Before this Court it was contended on behalf of the appellant that in view of the fact that a Reader in 'Linguistics' was to be appointed in the Department of Hindi as such experts in Hindi Language and Literature were also qualified to act as experts for the selection of Reader in 'Linguistics'.

Respondent No. 1, while supporting the judgment Of the High Court, submitted that Linguistics was a separate subject of study for M.A. Part-I and Part-II and merely because the post of Reader in Linguistics was in the Department of Hindi, it would not make any difference and the experts of Hindi Language and Literature could not be

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appointed as experts in the Selection Committee for the selection of Reader in Linguistics.

Dismissing the appeal, this Court,

HELD: (1) The prospectus of the University makes it abundantly clear that separate courses of study are prescribed for M.A. Part I or Part II in respect of Hindi on the one hand and Linguistics on the other. [734B]

(2) The subject of Hindi Language and Literature and the subject of Linguistics are entirely separate subjects of study. This is clearly borne out from Explanation I to sub-section (5)(a) of section 31 of the Universities Act. [733H; 734A]

(3) Explanation I lays down in a clear manner that for the purpose of this sub-section, a branch of subject in which a separate course of study is prescribed for a post-graduate degree, or for Part I or Part II thereof, shall be deemed to be a separate subject of study. [734A]

(4) It is an admitted position that separate Panels of Experts were drawn for the subjects of Hindi and Linguistics. [732E]

(5) In the instant case, the advertisement nowhere provided that one Reader in Linguistics in the Department of Hindi was to be selected as common to more than one subject of study. Merely because the post of Reader in Linguistics

was required in the Department, it cannot be held that such Reader in Linguistics was to teach the subject of Linguistics as well as the subject of Hindi Language and Literature. [734G-H]

(6) Explanation II to sub-section (5) of section 31 of the Universities Act can only apply in a case where one common teacher is to be selected for more than one subject of study and in that contingency it provides that the expert may belong to either of such subjects of study. [735A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 156(N) of 1976.

From the Judgment and Order dated 3.12.1974 of the Allahabad High Court in Writ Petition No. 418 of 1974. Ms. Rachna Gupta and Ms. Rani Chhabra for the Appellant.

R. Bana for the Respondents.

The Judgment of the Court was delivered by KASLIWAL, J. This Civil Appeal by Special Leave is directed against the Judgment of the High Court of Judicature at Allahabad (Lucknow Bench) dated 3.12.1974. The High Court by a common order disposed of number of Writ Petitions but we are concerned with Writ Petition No. 418/74 filed by Dr. Bhagwan Din Misra who is respondent No. 1 before us. Brief facts of the case are that in the month of August, 1973 an advertisement appeared in the daily Newspaper "National Herald" inviting applications for the post of Reader in 'Linguistics' in the Department of Hindi of the University of Lucknow. Interview of the candidates was held on 8.4.74 at 3.00 p.m. by a Selection Committee consisting of five members viz. the Vice Chancellor of the University, Dr. K.N. Shukla, Head of the Department of Hindi and Modern Indian Languages Lucknow University, Dr. Bhagirath Misra, Head of the Department of Hindi Saugar University, Saugar, Dr. Harbanslal Sharma, Head of the Department of Hindi, Aligarh Muslim University, Aligarh and Shri Shyam Sunder, Head of the Department of Hindi Bihar University, Muzaffarpur. It may be noted that the three experts from outside as mentioned above were experts in Hindi Literature and not Linguistic experts. The Selection Committee after interviewing the various candidates recommended the name of the appellant, Dr. Triloki Nath Singh for being appointed to the post of Reader Linguistics in Hindi Department and the respondent No. 1, Dr. Bhagwan Din Misra was placed in the second position.

Dr. Bhagwan Din Misra, respondent No. 1 filed a writ petition in the High Court inter-alia stating that the Selection Committee was not a legally constituted Committee and its recommendation should not be acted upon. The writ petition was contested on behalf of the University as well as by the appellant. The High Court held that the prospectus of the University showed that 'Linguistics' was a separate subject of study. There were two courses in M.A. Part-I and Part-II, one in Hindi Language and Literature, and, the other in Linguistics. The High Court observed that even candidates, having passed the B.A. examination in Sanskrit or English, or M.A. Examination in

Sanskrit or English were also eligible for admission in M.A. in Linguistics in the Department of Hindi. Linguistics was thus a separate subject of study and even graduates, who might not have passed the B.A. Examination with Hindi, were entitled to be admitted and awarded the degree of M.A. in Linguistics. The Chancellor under Statute 17 1 of the University was required to nominate experts out of the panel of experts in the subject of 'Linguistics'. The High Court further held that having regard to the fact that 'Linguistics' was a separate subject of study in the University of Lucknow and the Chancellor had drawn a panel of experts in 'Linguistics', the nomination of experts out of the panel drawn for the subject of Hindi suffered from a serious legal infirmity, substantially affecting the constitution of the Selection Committee, which could not have been cured under Section 66(a) of the Uttar Pradesh State Universities Act, 1973 (hereinafter as the Act of 1973) and as such the recommendation of the Selection Committee was liable to be quashed.

The High Court as a result of the above findings allowed writ petition No. 418/74 and quashed the recommendation of the Selection Committee dated 8th April, 1974 for appointment to the post of Reader in 'Linguistics' in the Department of Hindi. Dr. Triloki Nath Singh has thus filed the present appeal challenging the order of the High Court. We have heard counsel for both the parties. It may be mentioned that the Lucknow University neither filed any appeal against the order of the High Court nor any counsel appeared on its behalf before us. Learned counsel for the appellant contended that under Explanation II to sub-section (5) of Section 31 of the Act of 1973 the experts drawn out of the panel of experts in Hindi could make selection of Reader in 'Linguistics' in the Department of Hindi. It was further contended that in view of the fact that a Reader in 'Linguistics' was to be appointed in the Department of Hindi as such experts in Hindi Language and Literature were also qualified to act as experts for the selection of Reader in 'Linguistics'. Learned counsel tried to seek support from the papers taught for M.A. in Linguistics as well as for M.A. in Hindi in order to convince that some papers were common to both the subjects, and as such there was nothing wrong or illegal in case the experts of Hindi Language and Literature were appointed for the selection of Reader in Linguistics.

On the other hand learned counsel for the respondent No.1 supported the Judgment of the High Court. It was submitted by him that Linguistics was a separate subject of study for M.A. Part-I and Part-II and merely because the post of Reader in Linguistics was in the Department of Hindi, it would not make any difference and the experts of Hindi Language and Literature cannot be appointed as experts in the Selection Committee for the selection of Reader in Linguistics.

We have considered the arguments advanced by learned counsel for both the parties and have perused the record. There is no controversy between the parties that the prospectus of Lucknow University Department of Hindi and Modern Indian Languages prescribed the courses of study for M.A. Part-I and Part-II in the subject of Hindi Language and Literature, and Linguistics separately. The prospectus of Lucknow University, Department of Hindi and Modern Indian Languages prescribed the following courses of study for M.A. Part-I and Part-II for Hindi Language and Literature and the other for Linguistics- M.A. Parts I and II There shall two courses in M.A. Parts I and II one in Hindi Languages and Literature and the other in Linguistics. Students may choose either of these two courses. M.A. part I (Language and Literature) Paper I Prachin Hindi Kavya Paper II Madhyayugeen Kavya Paper III Basic and Modern Indian Language Paper IV History Hindi

Literature and Criticism Paper V Adhunik Hindi Gadya M.A. and Part II (Language and Literature) There shall be four papers and a viva voce test.

Paper I Linguistics and Historical Grammar of Hindi Paper II Vishesh Kavi Paper III Adhunik Kavya Paper IV Essay or Thesis or Folk Literature. M.A. Part I (Linguistics) Paper I Introduction to the principle of General Linguistics Paper II Phonetics and Phonemics Paper III Descriptive Grammar of Hindi Paper IV Applied Linguistics.

M.A. Part II (Linguistics) There will be four papers and a viva voce test.

Paper I Morphology and syntax Paper II Comparative and Historical Linguistics with special reference to Indo-Aryan and Hindi Language. Paper III Dialectology with special reference Hindi Area.

Paper IV Essay or Thesis.

The above courses of study show beyond any manner of doubt that Hindi Language and Literature and, Linguistics are two different and separate subjects. It is also important to note that even graduates who have not passed the B.A. examination with Hindi could be admitted and awarded the degree of M.A. in Linguistics. Merely because the Linguistics is also a subject of study in one paper of Hindi, it cannot be said that Linguistics and Hindi Language and Literature fall under the same subject of study in the University. It is an admitted position that separate Panel of Experts was drawn for the subjects of Hindi and Linguistics.

As the Learned counsel for the appellant has strenuously placed reliance on Explanation II to sub-section (5) of Section 31 of the Act of 1973 it is necessary to reproduce the same. Sub-Section (5) of Section 31 reads as under:

"31.(5)(a) A panel of six or more experts in each subject of study shall be drawn up by the Chancellor after consulting the corresponding Faculty in Indian Universities or such academic bodies or research institutions in or outside Uttar Pradesh as the Chancellor may consider necessary. Every expert to be nominated by the Chancellor under sub-section (4) shall be a person whose name is borne on such panel.

(b) The Board of each Faculty shall maintain a standing panel of sixteen or more experts in each subject of study, and every expert to be nominated by the Vice-

Chancellor under sub-section (4) shall be a person whose name is borne on the panel.

(c) A panel referred to in clause (a) or clause (b) shall be revised after every three years."

Explanation/---For the purposes of this sub-section, a branch of subject in which a separate course of study is prescribed for a post-graduate degree or for Part I or Part II thereof shall be deemed to be a separate subject of study. Explanation 11-- Where the post of teacher to be selected is common to

more than one subject of study, the expert may belong to either of such subjects of study. The High Court while considering a similar argument made before it held that Explanation II could be availed of by the Chancellor when he has drawn a fresh panel of experts in each subject of study under sub-section (5)(a). The High Court further held that Explanation II cannot be divorced from the substantive provision contained in sub-section (5)(a). It cannot stand independently of and separate from the sub-section. The Explanation must be read so as to harmonise and clear up any ambiguity in the main sub-section. The High Court thus concluded that Explanation II was wholly inapplicable to the instant case and the question had got to be determined whether the experts who constituted the Selection Committee were the experts drawn out of the panel, under Clauses 168 and 169 of the Statutes. The High Court then observed that according to the prospectus of the University Linguistics was a separate subject of study in the University of Lucknow and the Chancellor had a panel of experts on Linguistics drawn under Statutes 168 and 169, the nomination of experts out of the panel drawn for the subject of Hindi suffered from a serious legal infirmity substantially affecting the constitution of the Selection Committee which could not have been cured by Section 66(a) of the Act. We are examining the matter in a slightly different manner. Even if the panel already constituted by the Chancellor prior to the coming into force of the Uttar Pradesh State Universities Act, 1973, is treated as a panel constituted under sub-section (5)(a) of Section 31 of the Act of 1973 Explanation II does not render any help to the appellant. We are in complete agreement with the High Court that subject of Hindi Language and Literature and the subject of Linguistics are entirely separate subjects of study. This is clearly borne out from Explanation 1 to sub-section (5)(a) of Section 31 of the Act of 1973. Explanation I lays down in a clear manner that for the purpose of this sub-section, a branch of subject in which a separate course of study is prescribed for a post-graduate degree or for Part I or Part II thereof shall be deemed to be a separate subject of study. The prospectus of the University makes it abundantly clear that separate courses of study are prescribed for M.A. Part I or Part II in respect of Hindi on the one hand and Linguistics on the other. Explanation II lays down that where the post of teacher to be selected is common to more than one subject of study, in that case the expert may belong to either of such subjects of study. The advertisement issued in the present case was placed before us and which clearly made a mention at Serial No. 24 "One Reader in Linguistics in the Department of Hindi". At Serial No. 23 there was a separate mention "Three Readers in Hindi". The qualifications essential for the above posts as mentioned in the advertisement reads as under:

"QUALIFICATIONS:

ESSENTIAL: First or high Second Class Master's Degree and Doctorate in the subject concerned with a good academic record and experience of teaching honours/postgraduate classes for not less than five years and published research work of high standard in the subject concerned. The essential degree qualification for the post of Readers in Faculty of Law will be LL.M. degree."

The above provision laying down essential qualifications also goes to show that first or high second class degree and doctorate in the subject concerned was an essential qualification. As already mentioned above posts were mentioned separately for three Readers in Hindi and one Reader in Linguistics in the Department of Hindi. Explanation II could only apply in a case where the post of

teacher to be select- ed was common to more than one subject of study. Advertise- ment no where provided that one Reader in Linguistics in the Department of Hindi was to be selected as common to more than one subject of study. Merely because the post of Reader in Linguistics was required in the Department of Hindi, it cannot be held that such Reader in Linguistics was to teach the subject of Linguistics as well as the subject of Hindi Language and Literature. It may also be noted that from a perusal of the above advertisement alongwith the prospectus of the University clearly goes to show that for the post of Reader in Linguistics it was necessary to have an essential qualification of first or high second class Master's degree and Doctorate in the subject of Linguistics. Explanation II can apply in a case where one common teacher is to be se- lected for more than one subject of study and in that con- tingency it provides that the expert may belong to either of such subjects of study. In the case in hand before us the advertisement did not mention that the post of one Reader in Linguistics in the Department of Hindi was common with any other subject of study. Thus the appointment of all the experts in the present case of subject of Hindi for the selection of one Reader in Linguistics in the Department of Hindi was totally wrong and illegal.

In view of the discussion made above, we do not find any ground in the appeal to interfere with the Order of the High Court. In the result this appeal fails and is rejected with no order as to costs.

R.S.S.
failed.

Appeal