

Ganpath Singh Gangaram Singh Rajput vs Gulbarga Univ.Tr.Regr.& Ors on 1 November, 2013

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Bench: Kurian Joseph, Chandramauli Kr Prasad

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9866 OF 2013
(@ SLP (C) No. 35063 of 2009)

GANAPATH SINGH
GANGARAM SINGH RAJPUT ... APPELLANT

Versus

GULBARGA UNIVERSITY REP.
BY ITS REGISTRAR & OTHERS ... RESPONDENTS

WITH
CIVIL APPEAL NO. 9867 OF 2013
(@ SLP (C) No. 35173 of 2009)

GULBARGA UNIVERSITY REP.
BY ITS REGISTRAR & OTHERS ... APPELLANTS

Versus

SHIVANAND & OTHERS ... RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

Ganpath Singh Gangaram Singh Rajput as also the Gulbarga University, aggrieved by the judgment and order dated 19/24th of November, 2009 of the Karnataka High Court in Writ Appeal No. 3216 of 2004 quashing the appointment of aforesaid Ganpath Singh Gangaram Singh Rajput as Lecturer in MCA in the Post-graduate Department of the University, have preferred these special leave petitions.

Leave granted.

Short facts giving rise to the present appeals are as follows:

The appellant, Gulbarga University, hereinafter referred to as 'the University', issued notification dated May 22, 1998 inviting applications for appointment to various posts including the post of Lecturer in Masters' in Computer Application, for short, MCA. The minimum qualification, for appointment to the post of Lecturer and with which we are concerned in these appeals, is good academic record with at least 55% of marks or an equivalent grade at the Masters' Degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University.

Shivanand, respondent no. 3 herein, and Ganpath Singh Gangaram Singh Rajput, respondent no. 3 of the writ petition (appellant herein), besides other persons offered their candidature for appointment to the post of Lecturer in MCA. The appellant claims to have passed the M.Sc. examination in Mathematics with First Class with distinction. It is an admitted position that Shivanand possessed a post-graduate degree in MCA and was eligible in terms of the advertisement. The University, in terms of Section 53 of the Karnataka Universities Act constituted a 'Board of appointment' for selecting suitable candidates. It consisted of experts holding high positions in academic field including a Professor each from University of Pune, Bombay University and Kuvempu University. The Board of appointment interviewed the candidates and ultimately made a recommendation for the appointment of the appellant, hereinafter referred to as 'Ganpat', who admittedly did not have a post-graduate degree in MCA, but had a Masters' Degree in Mathematics. The recommendation so made was placed for consideration before the Syndicate which approved his appointment.

Shivanand challenged the aforesaid selection and appointment in a writ petition filed before the High Court, inter alia, contending that Masters' Degree in Mathematics will not make Ganpat eligible in terms of the advertisement and, therefore, his selection and appointment to the post of Lecturer in MCA is illegal. Shivanand further pointed out that since he possessed a post-graduate degree in MCA and fulfils all other conditions, he ought to have been selected for appointment. Ganpat as also the University resisted the prayer of Shivanand and contended that the expression 'relevant subject' used in the notification would mean any subject which is relevant for the purpose of holding the post of Lecturer in MCA. It was contended that Masters' degree in Mathematics is a degree in a relevant subject and thus Ganpat possessed the basic qualification. While defending the appointment it was further contended that in the syllabus for MCA, Mathematics is the core subject and, therefore, a candidate having a post-graduate degree in Mathematics is eligible for appointment as Lecturer in MCA. It was also pointed out that when an expert body like the Board of appointment had found that a post-graduate degree in Mathematics is a relevant subject for the purpose of adjudging the eligibility and the same having been approved by the Syndicate of the University, a body consisting of experts, the same was not fit to be interfered with by the High Court in exercise of its writ

jurisdiction. The learned Single Judge considered the submission, dismissed the writ petition and upheld the appointment of Ganpat, inter alia, observing as follows:

“8.....The use of the word ‘relevant subject’ in relation to the qualification for Lecturers’ post is the bone of contention between the parties. It is also Sri. Chandrashekar’s assertion that it should relate only to a Master degree in Computer Applications and nothing else, while, the University would contend that it could also mean such of those who have secured a Masters degree in Mathematics. It is not in dispute that the Head of the Department, M.C.A. is held by a person who is also a Ph.D. holder in Mathematics. It is not in dispute that Mathematics is also subject which is taught in the Masters degree in Computer Applications course. What one can reasonably infer from the pleadings of the parties is that ‘relevant subject’ could mean candidates who possessed Masters Degree in such of those subjects as are offered in the M.C.A. course. Mathematics being one of the subjects, it cannot be said that Masters Degree in Mathematics was not a “relevant subject” and it was only a Masters in Computer Applications.

It would be very unreasonable to hold “relevant subject” to mean only a Masters in Computer Applications. It would also be irrational to conclude that the non mention of the specific educational qualification for the post of Lecturer in M.C.A. could lead to only one conclusion that a candidate with a Masters degree in Computer Applications, alone, would meet the requirement.” Shivanand, aggrieved by the same, preferred appeal and both the parties reiterated the same contentions. The submission made by Shivanand found favour with the Division Bench of the High Court and while doing so it observed as follows:

“28. This is nothing sort of trickery and fraud on persons applying to the post. The University had perhaps deliberately or with a design to achieve this result of selecting a person with post-graduate qualification in Mathematics, though it had called for applications to fill up the post of Lecturer in MCA course. That is why the action of the University falls short of the constitutional mandate of the State being in conformity with Articles 14 and 16(1) of the Constitution of India, affording equal opportunity to all eligible candidates. In fact the method of selection made by adopting this procedure, is so flawed that it can never pass the test before a Court, more so while in exercise of jurisdiction of judicial review of administrative action. We say so far the reason that the post notified for being filled up by the University in MCA course should be one with reference to the vacancy and the vacancy can only be in a particular subject of the department and cannot be generally with reference to the course.” Accordingly, the Division Bench of the High Court allowed the appeal and quashed the appointment of Ganpat as Lecturer in MCA.

Ms. Kiran Suri, advocate appears on behalf of the appellant Ganpat whereas the University is represented by Mr. S.N. Bhat, advocate. They contend that Mathematics is a relevant subject for MCA course and, therefore, a person holding post-graduate

degree in Mathematics is eligible for appointment as Lecturer in MCA. It is further pointed out that in Gulbarga University, different Mathematics subjects are taught in MCA and, therefore, it cannot be said that a person possessing Masters' degree in Mathematics is not eligible for appointment as Lecturer in MCA. It has also been pointed out that as to whether a particular qualification is relevant or not for holding a post is best decided by the experts concerned and, in the present case, Mathematics, having been recognized as a relevant subject for MCA course not only by the University but by the Board of appointment consisting of eminent academicians from various Universities, the Division Bench of the High Court ought not to have substituted their opinion. In support of the submission reliance has been placed on a decision of this Court in the case of B.C. Mylarappa v. Dr. R. Venkatasubbaiah, (2008) 14 SCC 306 and our attention has been drawn to Paragraph 26 of the said judgment which reads as follows:

“26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made hereinabove, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.” Yet another decision on which reliance is placed is the decision of this Court in the case of Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, (2008) 9 SCC 284 and our attention has been drawn to Paragraph 29 of the judgment which reads as follows:

“29. It may be mentioned that on a clarification sought from UGC whether a candidate who possesses a Masters degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa, UGC wrote a letter dated 5-3-1992 to the Registrar, M.D. University, Rohtak stating that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a candidate who possesses Masters degree in Public Administration is eligible as Lecturer in Political Science and vice versa. Thus, this is the view of UGC, which is an expert in academic matters, and the Court should not sit in appeal over this opinion and take a contrary view.” Mr. Naveen R. Nath, advocate appearing on behalf of respondent Shivanand, however, contends that a person holding the post-graduate degree in Mathematics is not eligible for appointment as Lecturer in MCA. It is pointed out that the advertisement was composite and related to appointment of various posts in different subjects and, hence, the expression ‘relevant subject’ has to be understood in that context. It has been pointed out that the applications were invited for filling the posts of Professor, Reader and Lecturer in the Department of English, Urdu, Persian, Chemistry, Bio-Chemistry, Applied Electronics, Geology, Law etc., including MCA. According to the learned counsel, the relevant subject in the

advertisement here would mean the subjects for which applications were invited. According to him, the Board of appointment misdirected itself in going into the question as to whether Mathematics is a relevant subject or not in MCA. Accordingly, he submits that the opinion of the Board of appointment as approved by the Syndicate is not that sacrosanct so as to deprive High Court the power of judicial review.

We have bestowed our consideration to the rival submissions and we do not find any substance in the submission of the learned counsel for the appellant and the authorities relied on are clearly distinguishable.

Main thrust in the appellant's contention is that when an expert body i.e. Board of appointment consisting of high academicians, has found Ganpat eligible and qualified and which has been approved by the Syndicate, another expert body, the High Court ought not to have acted as a Court of appeal, examined the pros and cons and come to the conclusion that Ganpat did not possess the requisite qualification. There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us. In our constitutional scheme the decision of the Board of appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind itself of the famous words of Lord Acton "power corrupts and absolute power corrupts absolutely".

Now we revert to the authorities of this Court relied on by the appellants. B.C. Mylarappa (*supra*) deals with the appointment to the post of Professor, in which one of the eligibility condition for appointment was '10 years' of experience of post-graduate teaching'. The Board of appointment considered the selected candidate eligible by taking into consideration his experience as Lecturer and Research Assistant and in the absence of any mala fide, this Court observed that its opinion is not fit to be rejected. This would be evident from Paragraph 24 of the judgment, which reads as follows:

"24. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said

post.” However, this judgment cannot be read to mean that the courts are denuded of the power to scrutinize the experience in a given case and come to a contrary conclusion. As stated earlier, when the view taken by the expert body is one of the possible views, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to ‘qualification’ and ‘experience’. In case of experience it is best known to the expert body in the field in regard to the actual work done and, therefore, its opinion is of higher degree deserving acceptance ordinarily. Hence, in our opinion, this judgment did not fetter the power of the High Court.

As regards the decision of this Court in the case of Rajbir Singh Dalal (supra), the same is clearly distinguishable. In the said case the controversy which fell for consideration was as to whether public administration is one of the branches of Political Science and in the face of the opinion of the expert body that they are interchangeable, the conclusion of the High Court that they are distinct and separate was not approved. This would be evident from the following passage from the said judgment.

“45. As has been pointed out by my learned Brother, the University has in its counter-affidavit taken a stand that Public Administration is one of the branches of Political Science and the Selection Committee comprised of eminent scholars had rightly chosen the appellant for the post of Reader after considering his academic achievements and also relying upon the view of the University Grants Commission in its letter dated 5-3-1992 stating that the subjects of Political Science and Public Administration are interchangeable and interrelated and that a candidate who possesses a Masters degree in Public Administration is eligible to be appointed as Lecturer in Political Science. Similarly, a candidate possessing a Masters degree in Political Science is eligible for appointment to the post of Lecturer in Public Administration.

46. Despite the aforesaid views expressed by the expert bodies such as the University and the University Grants Commission, the High Court has held Public Administration and Political Science to be distinct and separate disciplines.....” In the present case, there is no such plea. Here, the plea is that as Mathematics is one of the subjects in MCA and, therefore, Ganpat possessing Masters’ degree in Mathematics is eligible. It is not the plea of the University that Masters’ degree in Mathematics is interchangeable with MCA.

Not only this, in the aforesaid case, this Court came to the aforesaid conclusion due to different eligibility criteria prescribed for appointment to the post of Reader and Lecturer. It was pointed out by this Court that in the case of Reader the requirement was Masters’ degree in an ‘appropriate subject’, whereas for appointment as Lecturer it was ‘relevant subject’. Said case related to the appointment of Reader. On account of the use of different expressions, this Court came to the conclusion that post- graduate degree holder in Political Science is eligible to be appointed to the

post of Reader in Public Administration. This would be evident from paragraphs 48 and 49 of the judgment, which read as follows:

“48. The recruitment rules followed by the University clearly indicate that in order to be appointed as Lecturer in a particular discipline a candidate must have a postgraduate degree in the relevant subject. On the other hand, for appointment to the post of Reader such a condition has not been specified. In fact, in Regulation 2 it has been generally indicated that no person shall be appointed to a teaching post in the University or in any institution, including constituent or affiliated colleges recognized under the UGC Act, 1956, or any institution deemed to be a university under Section 3 of the said Act, in a subject, if he/she does not fulfil the requirement as to the qualifications for the appropriate subject.

49. In my view, the omission in the Regulations cannot be said to be unintentional or a case of casus omissus. In my view, the expression “appropriate subject” was intended to cover the post of Reader and once the expert bodies had indicated that the appellant who held a postgraduate degree in Political Science was eligible to be appointed to the post of Reader in Public Administration and had been rightly appointed to such post, it is normally not for the courts to question such opinion, unless it has specialised knowledge of the subject.” (underlining ours) This Court did not say that Political Science is the relevant subject for appointment as Lecturer in Public Administration.

Having set the legal position in the right perspective, we now proceed to consider the facts of the present case. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the ‘relevant subject’. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean post-graduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters’ degree in the Mathematics is not the relevant subject. The advertisement requires Masters’ degree in ‘relevant subject’ and not ‘appropriate subject’. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment. It shall not make any difference even if Mathematics is taught in the Masters’ of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that ‘relevant subject’ would mean ‘such of those subjects as are offered in the MCA course’. If Mathematics is taught in a post-graduate course in Commerce, a Masters’ degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters’ degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having post-graduate degree in any of the subjects taught in MCA would make the holders of a Masters’ degree in those subjects as holder of Masters’ degree in Computer Application and, therefore, eligible for appointment. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the

appellant Ganpat did not have a Masters' degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a candidate possessing Masters' degree in MCA is available, the Board of appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. Natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters' of Computer Application.

Mr.Bhat and Ms. Suri lastly assail the order of the High Court issuing mandamus for appointment of Shivanand as Lecturer in MCA. It is contended that after setting aside the appointment of Ganpat, the High Court should have directed for consideration of the case of Shivanand and such other candidates who were found eligible for consideration. It is also contended that Shivanand may have the right of consideration but certainly not the right of appointment.

We find substance in this submission. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion.

In the result, we dismiss these appeals with modification in the direction as aforesaid with cost, which we assess at Rs.50,000/-(Rupees fifty thousand) only in both the cases, payable by the appellants in both the appeals equally.

..... J (CHANDRAMAULI KR PRASAD)
.....J (KURIAN JOSEPH) New Delhi, November 01, 2013.
