

Shiv Kumar Vyas Vs. Ignou and Others

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Court : Delhi

Decided On : Feb-07-2000

Reported in : 2000IIIAD(Delhi)395; 2000(53)DRJ781

Judge : S.N. Variava, CJ. and; Cyriac Joseph, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : LPA No. 96/97

Appellant : Shiv Kumar Vyas

Respondent : ignou and Others

Advocate for Def. : Mr. Sandeep Sethi, ; Mr. A.Q. Bhat, ; Mr. Sudhir Kulshresht

Advocate for Pet/Ap. : Mr. Anil Kumar, Adv

Judgement :

ORDER

S.N. Variava, CJ.

1. This Appeal is against an Order dated 3rd March, 1997, by which the Writ Petition filed by the Appellant herein has been dismissed.

Briefly stated facts are as follows :

2. In December, 1993, the 1st Respondent University had advertised for the post of Reader in Engineering and Technology. The last date for submitting the Applications was 7th February, 1994. Pursuant to the advertisement various applications were received by the 1st Respondent University. The Appellant did not make any Application as the advertisement was not in respect of the post of Reader in Civil/Water resources which was his speciality. The Applications, which were received were screened some time in second half of 1995. The Screening Committee prepared a list of persons for being called for interview. The Appellant then learnt that even though the advertisement did not so mention the post was also for Reader in Civil/Water Resources i.e., persons qualified in Civil/Water Resources were also to be considered. The Appellant therefore pointed out his experience and qualification and sought permission to appear in the interview. The Appellant was permitted to appear in the interview. The Interview Committee interviewed the candidates on 15th February, 1996. Thereafter Respondents Nos. 5 and 6 were selected in 2 posts of Readers even though Advertisement was for only one post.

3. The Appellant filed this Writ Petition challenging the selection of Respondents 5 and 6. Before the learned Single Judge the Appellant gave up the challenge to the selection of Respondent No. 6. The grounds in the Writ Petition were interalia : (a) bias against him; (b) that Respondent No. 5 did not have the necessary experience, (c) that he could not have been considered much less selected and (d) Respondent No. 7, who was one of the Members of the Selection Committee, was admittedly the Thesis Supervisor of Respondent No. 5. It was claimed that because of this there was favoritism.

4. The learned Single Judge appears to have been shown the report of the Screening Committee and a Chart prepared by 1st Respondent University. On the basis of that Report and the Chart the learned Single Judge has held that Respondent No. 5 possessed the requisite qualification and that therefore there was no illegality or irregularity in the selection. On this ground the learned Single Judge has dismissed the Writ Petition.

5. The malafides alleged against the 1st Respondent University are on the basis that earlier there had been an advertisement for the post of Reader in Civil/Water Resources which was a specialisation of the Appellant. It is claimed that the Appellant had not been selected at that time. It is claimed that that post subsequently became vacant and was to be advertised. It is claimed that in the advertisement which was issued, in December 1993, this speciality had not been mentioned in order to see that the Appellant could not apply for the post. It is also claimed that the appellant had submitted various requests to pursue a Ph. D. Programme but he had neither received any reply nor any permission. It is claimed that the Appellant did not receive any reply to his application for study leave. It is also claimed that even though the Appellant was permitted to appear in the interview, his Bio-Data was not put up before the Selection Committee. It is submitted that all these clearly show bias against the Appellant. We are unable to accept this submission. In our view no mala fide and bias can be inferred from the above.

6. The question which however requires consideration is whether the 5th Respondent had the requisite qualification including the experience. It is an admitted position that the requisite qualification-cum-experience is as follows:-

(i) First class Master's degree in Civil Engineering.

(ii) About five years minimum experience (three years in case of Ph.D.) inclusive of teaching and/or production of teaching material and relevant field/maintenance experience at supervisory and management levels in industry.

(iii) Exceptional cases of academic merit and experience will be given due consideration.

7. Thus the candidate must have a First class Master's degree in Civil Engineering. Apart from that he also requires about 5 years minimum experience [three years in case of Ph.D.]. The experience must be (a) teaching (b) production of teaching material (c) of relevant field/maintenance experience at supervisory and management level in industry. From the above, it is clear that study or research for a Ph. D. would not be experience which would count. Thus for

example, if a person was to take three or more years to get his Ph. D. the work/research to acquire the Ph.D. would not count unless the Ph.D. was actually acquired. If a Ph.D. was actually acquired then benefit of two years would be given. This is clear because even if a person has a Ph.D. he still requires three years experience. If he is not a Ph.D. but has spent three or more years to get his Ph.D. he cannot be in a better position than if he had got a Ph.D. Thus he cannot get benefit of three or more years spent in acquiring his Ph.D.

8. Unlike the learned Single Judge we called for and looked at the original file of the University. The Report of the Screening Committee was also seen. The Screening Committee had prepared a list of eligible candidates who, according to them, fulfilled the criteria. In that list they included Respondent No. 5 also. According to the Screening Committee, in their Report, Respondent No. 5 fulfilled the criteria. We also looked at the Minutes of the Meeting of the Screening Committee. The Minutes of the Meeting of the Screening Committee show that the Screening Committee was aware that if a person did not have Ph.D. then he would not have met the qualification regarding experience. In respect of two other candidates viz., Mr. Anil Kumar and Mr. G. Mohd. Ismail, the Screening Committee mention that they can be called for interview only provided they complete their Ph.D. Thus in respect of other candidates, who were also doing research towards their Ph.D. and who like Respondent No. 5 had not acquired Ph.D. the Screening Committee does not consider the time spent in acquiring Ph.D. as experience which could be counted. In respect of the 5th Respondent no such note has been put up by the Screening Committee. This in spite of fact that, as indicated hereafter, Respondent No. 5 had not acquired his Ph.D. and did not otherwise have experience.

9. Before us the 1st Respondent University was hard put to explain how the 5th Respondent had the necessary experience. In their Affidavit in Reply they claim that the 5th Respondent had qualifications and experience on the following basis :

'It is submitted that Respondent No. 5 was recommended for selection by the Selection Committee. Respondent No. 5 had, as on that date, teaching experience of 2 years and 4 months and research experience of 3 years in the field of

Construction anagement. He had also presented two papers at International Conference. thereforee, it is incorrect to allege that Respondent No. 5 did not fulfill the prescribed qualifications as regards experience.'

10. To be immediately noted that it is not the case of 1st Respondent University that Respondent No. 5 was selected because of exceptional academic merit or experience. Even the Report of the Selection Committee does not say that selection of Respondent No. 5 is on the basis of exceptional academic merit or experience. Also to be noted that Respondent No. 5 has not been selected on the ground that he had produced teaching material and/or on ground that he had relevant field/maintenance experience of supervisory and management levels in industry. According to the 1st Respondent University, the 5th Respondent was qualified because (a) he had an experience of 2 years and 4 months as a Teacher and (b) Research experience in the field of Construction Management. It could not be denied that the Research experience is Research towards Ph.D. As seen above the Screening Committee were aware that unless and until the Ph.D. was acquired such experience would not count.

11. That such research experience does not count is also clear from a letter dated 30th April, 1998 of All India Council for Technical Education. They make it clear that experience gained during part time employment or for working towards a Ph.D. cannot be considered as experience which is required for the post of a Reader.

12. The 5th Respondent did not file an Affidavit before the learned Single Judge. He has, however, filed an Affidavit before us. Very significantly in this Affidavit, the 5th Respondent fails to explain, what his experience was, which qualified him for the post of a Reader. The Affidavit is significantly silent because the 5th Respondent is aware that he did not have the requisite experience. To be remembered that 7th February, 1994 was the last date for submission of application.

13. Even though neither the University nor the 5th Respondent have chosen to give any details or particulars about the experience which the 5th Respondent had we permitted Mr. Kulshrestha to show to us what qualification and experience the

5th Respondent had. We have also seen from the file, the Application made by the 5th Respondent for the said post. What Mr. Kulshrestha points out to us is what is set out in the Application. In other words apart from what is set out in the Application, no further or other experience could be shown to us. In the Application Form, it is clearly mentioned that the Ph.D. is under progress. The Application Form shows the experience as follows :_

(a) From 10th August, 1987 to 7th September, 1988, part time Lecturer in the Government Engineering College, Bilaspur.

As seen above, the period of part time lectureship could not have been counted.

(b) From 3rd October, 1989 to 18th July, 1990, permanent Lecturer at Bhillai Institute of Technology, Durg, M.P.

This gives to the 5th Respondent approximately nine and half months of experience.

(c) From 9th August, 1990 to 9th August 1993 the 5th Respondent was doing his research towards his Ph.D.

As seen above this could not have been counted.

(d) From 10th August, 1993 to 7th February, 1994, a permanent Lecturer in the 1st Respondent University.

This gives to the 5th Respondent another six months experience.

14. Apart from the above no other experience has been set out in the Application form nor could any be shown to us. Very honestly Mr. Kulshrestha stated that apart from this there was no other experience.

15. The Selection Committee interviewed the candidates on 15th February, 1996. At one stage Mr. Sethi very faintly suggested that as the 5th Respondent had worked in the 1st Respondent University up to that date, his experience up to that date had been taken into consideration. However, correctly, this was not seriously pressed. It could not be denied that only experience which could be taken into

consideration is experience up to the last date of submitting Application i.e. 7th February, 1994. Experience after that date could not be taken into consideration. The Affidavit of the 1st Respondent University indicates that the experience after 7th February, 1994 was not taken into consideration. As set out above, in their Affidavit, the 1st Respondent claimed that the 5th Respondent had teaching experience of two years and four months. The teaching experience of two years and four months is (a) as a part time Lecturer from 10th August 1987 to 7th September, 1988, (b) as a permanent Lecturer from 3rd October, 1989 to 18th July, 1990 and (c) as a permanent Lecturer from 10th August 1993 to 7th February, 1994. This gives exactly a period of two years and four months. That was the teaching experience taken into consideration. In so calculating the 1st Respondent University has also calculated the experience as a part time Lecturer. This period could not have been taken into consideration at all. Even if that period was taken into consideration the 5th Respondent still did not have requisite experience of about five years. To be noted that even if the 5th Respondent was a Ph. D. he would still have required three years teaching experience. Even then he would not have had teaching experience of three years. The other experience considered is research experience of 3 years. Admittedly that is research towards Ph.D. It can hardly be said that if he was a Ph.D. he would not have had the requisite experience but because he took 3 years time to work towards his Ph.D. he could be considered to have had experience. To be remembered that the 5th Respondent had not yet obtained his Ph.D. It is thus very clear that the 5th Respondent did not have the requisite experience. He not having the requisite experience could not have been called for interview. In spite of this the Screening Committee included his name on the basis that he had the requisite experience. In case of 5th Respondent the Screening Committee even omitted to mention that he could be called for interview only provided he completed his Ph.D. The 5th Respondent is then selected. The fact that he was called for interview and subsequently selected clearly shows that the whole process was pre-determined.

16. Mr. Kulshrestha has relied upon a number of authorities in order to try and justify what is unjustifiable.

17. He relied upon the case of Madan Lal and Others Vs . State of J& K and Others, : [1995]1SCR908 . In this case, the Supreme Court was considering a challenge to the selection of Munsifs in the State of Jammu and Kashmir undertaken by the Jammu and Kashmir Public Service Commission. The Supreme Court was not considering a matter where the selected candidate did not have requisite qualification and/or experience. In the case before the Supreme Court, the candidates had the requisite qualification and experience. The Supreme Court noted that the Petitioners had appeared in the oral interview; that they took a chance and only when they were not successful they filed the Petition. The Supreme Court held that it is a well settled principle that candidates who had taken a calculated chance and appeared in interview to get themselves selected subsequently could not challenge the process of interview on the ground that it was unfair or that the Selection Committee was not properly constituted. This principle has no application to facts of this case. In this case there is no challenge to the selection process. The question is whether or not the 5th Respondent had the requisite experience and could have been selected. This authority therefore can be of no assistance to the 5th Respondent.

18. Reliance was next placed on the case of Ajay Hasia and Others Vs . Khalid Mujib Sehravardi and Others, : (1981)ILLJ103SC . In this case, the selection was challenged on various grounds. One of the grounds was that 15% or more marks were allocated for oral interview. The Supreme Court held that this was arbitrary and unreasonable. The Supreme Court also held that interviews for only 2 or 3 minutes per candidate and asking or irrelevant questions vitiated the entire selection process. However, the Supreme Court took into consideration the fact that the selection had been for the academic year 1979-80 and a period of 18 months had elapsed. The Supreme Court held that now immense hardship would be caused to the students if the selection was set aside. The Supreme Court did not set aside the selection and permitted the students to continue. To be noted that this was not the case of an individual who had been wrongly selected. This was a case where a large number of students were being affected by selection process. The Supreme Court noted that the selection, of many of those selected, could not otherwise be questioned. The Supreme Court noted that these students would also be affected. It is on this ground that the Supreme Court did not set

aside the selection. In this case the selection of only one person i.e. 5th Respondent has been challenged. The only person to be affected would be the 5th Respondent. No other person, who was innocent, is being affected. Moreover, in the case before the Supreme Court the selected candidates had fulfilled the requirements of qualification and eligibility whereas in this case Respondent No. 5 did not satisfy the eligibility criteria for selection.

19. Reliance was placed upon the case of Rajendra Prasad Mathur Vs . Karnataka University, reported in : [1986]2SCR912 . In this case also the question before the Supreme Court was whether the action of the Karnataka University in not recognising the Higher Secondary Examination held by the Secondary Education Board, Rajasthan was arbitrary and unreasonable. The Supreme Court held that this was not unreasonable and arbitrary. The Supreme Court held that it was for each University to decide the question of eligibility and that it was not the right for Court to sit in judgment over the decision of the University relating to academic question of equivalence because it is not a matter on which the Court possessed any expertise. In this case, Supreme Court also took note of the fact that the students had during the pendency of the Petition, pursued the course of study in the respective School and Colleges. This was done under interim Orders of the High Court and Supreme Court. The Supreme Court noted that their admission would be disturbed if they were now thrown out after a period of four years. The Supreme Court held that the blame for wrongful admission lay upon the Engineering Colleges which granted them admission. The Supreme Court noted that those students would not have known that Higher Secondary Examination was not recognised as an equivalent. The Supreme Court held that these students might have genuinely presumed that they were eligible for admission. The Supreme Court held that, as the fault lay with the colleges which gave admission, the students could not be made to suffer. In our view, none of these principles has any application to the facts of the present case. In this case the 5th Respondent well know that he did not have the requisite experience. He thereforee should not have applied for the post of Reader. He still applied. In spite of his not having the requisite experience the Screening Committee recommends his name. Without having requisite experience he is then selected. This is an entirely different situation. The 5th Respondent has no equities in his favour.

20. Reliance was also placed upon the case of *The Chancellor and Another v. Dr. Bijayananda Kar and Others*, reported in 1994 (1) SLR 17 (SC). In this case, the Selection Committee consisted of experts in the field. The Supreme Court held that decision of Academic Authorities should ordinarily not be interfered with by Court. The Supreme Court has held that the question whether a candidate fulfills the requisite qualification or not is a matter which should be entirely left to be decided by the Academic Authority. There can be no dispute with this proposition in cases like the one before the Supreme Court. Those are cases where a Court would find it difficult to find out whether a candidate was eligible or not. This principle however can have no application where it is clear that the candidate did not have the requisite qualification or experience.

21. Reliance was next placed upon the case of *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs . M. Tripura Sundari Devi*, : (1990)ILLJ153SC . In this case, the minimum qualification was a 2nd Class Post Graduate Degree. The Respondent had a 3rd Class Post Graduate Degree. This was inadvertently not noticed and he was selected and appointed. At time he approached the Authorities to assume duty, this mistake was noticed and he was not permitted to join. This therefore, was a reverse case where an unqualified person was not allowed to join when the mistake was realised. The Supreme Court held that there was nothing wrong in not allowing him not to resume his duties Mr. Kulshreshta relied on the fact that the Supreme Court noted that the person had been serving in the post, pursuant to an Order of Tribunal and that he had subsequently acquired the experience for the post and the Supreme Court thus permitted him to continue. In that case there were many others who were also under qualified and who had still been appointed. The Supreme Court also noted that the person had now become over age. Also the selection was by mistake and not a deliberate favouritism. It is clear that the Supreme Court took a sympathetic view on the peculiar circumstances of that case. This case can thus be of no assistance to the 5th Respondent.

22. Reliance was next placed upon the case of *Arunaben T. Bhojak Vs . Secretary Ahmedabad Education Society, Lal Bhawan, Badra, Ahmedabad and others* : (1996)IIILLJ330SC . In this case the post was reserved for a Scheduled Tribe (ST)

candidates. The ST candidate initially lacked the requisite experience. The reserved post was then filled up by a general candidate. The ST candidate approached the Court. Pending Appeal she was selected and appointed. She then acquired the requisite experience. The Supreme Court held that there was nothing wrong in the appointment as the post was reserved for a ST candidate. The Supreme Court held that when a ST candidate was available his/her appointment cannot be held to be illegal. This again is on peculiar facts of that case. She was the only ST candidate. In our case, it cannot be said that there were no other eligible candidates. There were a number of eligible candidates. With so many other eligible candidates being available, there could be no justification in selecting a person who does not have requisite experience. Also this selection is not for a reserved post.

23. Thus no authority could be shown which supports the 1st Respondent or the 5th Respondent. On the other hand authorities relied upon by Mr. Anil Kumar show that the law is that such appointments should not be allowed to be continued.

24. Mr. Anil Kumar relied upon the case of State of Rajasthan Vs . Hitendra Kumar Bhatt, : (1997)6SCC574 . In this case, an ineligible person had been called for an interview under an Order of the Court. He was provisionally selected. The Supreme Court held that the cutoff date for acquiring the qualifications was the last date of submitting the applications. The Supreme Court held that no special rights were created in favor of the candidate because he was called for an interview on account of an Order of the Court. In this case also the person had put in several years of service and was even confirmed. The Supreme Court held that too sympathetic a view could not be taken in such situations. The Supreme Court held that he cannot be allowed to continue in service as on the cut-off date he did not have the requisite qualifications. The Supreme Court held that the fact that he did not have the requisite qualifications on the cut-off date could not be ignored in individual cases. This authority is, on facts, almost identical to the present case. The principles laid down in the authority fully apply to this case. In this case also only an individual is involved. On the cut-off date, the 5th Respondent did not have the requisite experience. He could not have been called for interview, yet he is

called for interview and then selected.

25. Reliance was next placed upon the case of Charles K. Skaria and Others v. Dr. C. Mathew and Others, reported in AIR 1980 SC 1230. In this case, the Supreme Court held that the cut-off date is the final date for making applications. The Supreme Court held that if this is not so then having a cut off date would made no sense. This authority makes it clear that the only experience which could have been considered was experience up to 7th February, 1994. No experience after that date could be considered. As seen above, the Affidavit of the 1st Respondent University shows that experience only up to 7th February, 1994 has been considered. On that date the 5th Respondent did not have the requisite experience.

26. Reliance was also placed upon an unreported Judgment of Supreme Court dated 12th May, 1998 in Civil Appeal No. 2662/98. In this case the question was whether students studying in the institutions not affiliated to the Board of Secondary Education could be permitted, by Interim Order of High Court to appear in Examination conducted by the Board and whether the Board can be compelled to issue certificates to those students who had appeared at the examination pursuant to the directions of the Court. The Supreme Court held that this could not be done. The Supreme Court held that they were conscious of the fact by setting aside the directions of the High Court, great injustice would be caused to the students. The Supreme Court held to permit students of unaffiliated institutions to appear in the examination conducted by the Board under Orders of Court and then to compel the Board to issue certificates in favor of those who had undertaken examination would tantamount to subversion of law. The Supreme Court held that it would not be justified in sustaining the Orders issued by the High Court on misplaced sympathy. The Supreme Court set aside the Order of the High Court.

27. On the law, as laid down by the Supreme Court, it is clear that on grounds of misplaced sympathy persons who have been selected without their having the requisite qualification or experience cannot be allowed to continue merely because some time has been taken in litigation. It is to be seen that there is no delay on the part of the Appellant. The Appellant immediately came to the Court. Unfortunately,

the learned Single Judge did not go through the original file. We have no doubt that if the original file had been looked at, appointment of 5th Respondent would have been undoubtedly set aside immediately. The learned Single Judge is only shown the Report of the Screening Committee and a Chart prepared by 1st Respondent University. These do not reflect the correct position. These suggest that 5th Respondent had the requisite experience when he did not possess the same. Even today, it could not be shown that the 5th Respondent had the requisite experience on 7th February, 1994. Under these circumstances, the selection of the 5th Respondent cannot be justified at all. It is entirely vitiated and requires to be and is set aside. The mere fact that during the pendency of these proceedings, the 5th Respondent has continued can be no justification for allowing him to continue. To do so would be to give a premium to dishonesty and manipulation. At least after the Petition was filed, the 1st Respondent University and/or the 5th Respondent should have fairly and honestly admitted that the 5th Respondent did not have the requisite experience. 1st Respondent university should themselves have agreed to cancel the selection. The 5th Respondent should have withdrawn himself. The 5th Respondent and the University both sought to wrongly justify the selection. In so doing they have utilised laws delays. Wrongly justifying what could not be justified and then continuing in the post during the intervening period cannot be a ground for allowing the 5th Respondent to continue.

28. It must be mentioned that the Appellant has also challenged the appointment of 5th Respondent on the ground that Respondent No. 7 was the Thesis Supervisor of Respondent No. 5 and that Respondent No. 7 was a Member of the Selection Committee. In support of this submission, reliance has been placed upon the case of Ashok Kumar Yadav & Others Vs . State of Haryana, : AIR 1987 SC454 . In this case close relatives of some of the candidates were Members of the Selection Committee. Those relatives did not withdraw from the interview and selection. The Supreme Court held that the concerned Members should have withdrawn from the Selection Committee. The Supreme Court held that the Selection was vitiated because they did not withdraw. In our view there is big difference between close relatives and a person who is merely a Teacher or Guide or Instructor. The Teacher or Guide or an Instructor will have a large number of students studying under him. It can not be said that a Teacher or guide or

Instructor will favor a candidate merely because he/she is studying under him. In this view, we are supported by the case of Dalpat Abasaheb Solunke and Others Vs . Dr. B.S. Mahajan and Others, : (1990)IILLJ470SC relied upon by Mr. Kulshreshta. In this case it has been held that where there is a duly constituted Selection Committee and in that Committee a person who was a Teacher of the Candidates is included then such inclusion would not vitiate the selection. We thus hold that the presence of Respondent No. 7 did not vitiate the selection.

29. The Impugned Judgment is accordingly set aside and the Petition is made absolute in terms of Prayer A.

30. In our view, it is not possible to grant the other reliefs. Those other reliefs stand rejected.

31. As there is now a vacancy in the post of Reader, the 1st Respondent may re-advertise the post. It is hoped that, in that case, now at least selection will be made only from persons who have the requisite qualifications and experience.

32. It is clarified that the Respondent No. 5 will not be entitled to experience as a Reader. He was wrongly appointed and has wrongly worked as a Reader pending the Petition and this Appeal. His work, during this period, will count as experience as a Lecturer only.

33. The Appeal stands disposed of accordingly.

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