

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 236-39/2006**

% Reserved on: 25th February, 2010

Decided on: 6th May, 2010

1. University of Delhi Through Vice Chancellor,
Delhi University, Civil Lines,
Delhi – 110007.
2. Department of Urdu
Through Head of Department
1st Floor, Arts Faculty Building,
University of Delhi,
Delhi – 110007.
3. Prof. (Mr.) Atteequallah Tabish,
Department of Urdu,
1st Floor, Arts Faculty Building,
University of Delhi,
Delhi – 110007.
4. Mr. Razi Haider
Through Department of Urdu
1st Floor, Arts Faculty Building,
University of Delhi,
Delhi – 110007.

..... Appellants

Through: Mr. Arvind Nigam, Sr.
Advocate with Mr. M.K. Singh, Advocate,
for the Petitioner.

versus

Dr. (Mrs.) Waseem Begum
Wife of Mr. Najamuddin,
R/o E/141, Street No. 21
Zakir Nagar, Okhla,
New Delhi – 110025.

..... Respondent

Through: Mr. Om Prakash, Advocate

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MUKTA GUPTA, J.

1. The Respondent applied for appointment to the post of Lecturer with the Appellant No. 2 herein. As the Respondent was not even shortlisted, a writ petition being W.P. (C) No. 7098/2002 was filed before this Court. Vide judgment dated 31st August, 2005, this Court allowed the writ petition with the directions as under:-

“40. In view of the above finding about the process of selection being arbitrary, I am of the view that ends of justice would be met if the petitioner’s case is considered as of 8th November, 2002 by another Selection Committee along with the candidature of all the four selected candidates, and a fresh selection list is prepared. The university is accordingly directed to consider the case of the petitioner along with those of the other four candidates and select one person, having regard to the advertisement dated 18.6.2001, to the post of Urdu Lecturer (17th and 18th Century poetry). The petitioner and the other candidates shall be given reasonable and appropriate notice by the University in this regard, that shall interview them, by adopting such criteria that shall have regard to the qualifications and experience

relatable to the post in question. This process shall be completed within a period of ten weeks from today and a revised appointment list shall be issued thereafter, in accordance with law, in respect of the said post, and the other three posts.

41. The writ petition is allowed to the extent indicated above. No costs.”

2. The facts leading to the filing of the writ petition by the Respondent were that the Respondent pursuant to her post graduation (M.A. & M. Phil) enrolled for the doctorate and was awarded Ph.D. in Urdu in 1994. Thereafter, she worked for six months in Jamia Millia Islamia University and subsequently as a Research Associate for two years in the University Grants Commission (UGC). The Appellant on 18th June, 2001 advertised vacancies for four posts of Urdu Lecturers, as under:

“UNIVERSITY OF DELHI 18th June, 2001

PART –II

Applications are also invited for the following posts which have been advertised in the advt. No. Estab. IV/161/99 dated 15.6.1999; Estab. IV/164/99 dated 15.11.1999 and Estab. IV/165/2000 dated 24.3.2000). Persons who have applied earlier need not apply again. However, applications received earlier will be screened according to the revised essential qualifications.”

Sl. No. Deptt. Post (No. of Posts)/Reservation (if any)

Special/Desirable Qualifications, if any,

xxx

xxx

Urdu Lecturer (4) (SC-1)

First Post : Classical Poetry (17th and 18th Century A.D.). Second Post : Classical Prose (17th and 18th Century A.D.). Third and Fourth Posts Open (SC-1).

xxx

xxx

xxx

NOTE:

1. It will be open to the University to consider names of suitable candidates who may not have applied.
2. xxx xxx
3. xxx xxx
4. Relaxation of any of the qualification may be made in exceptional cases on the recommendations of the Selection Committee.”

3. The Respondent though applied for the post of Lecturer Urdu, was however not shortlisted by the screening committee and hence not called for the interview. The Respondent thus filed W.P. (C) No. 7098/2002. During the pendency of the writ petition as the selection process was over and four candidates were selected, the Respondent amended the writ petition inter alia praying for prohibiting Appellant No. 3 in participating or interfering in the selection process and allowing the Respondent to participate in and to consider her in the selection process and to appoint her to the regular post of Lecturer of Urdu.

4. The learned Single Judge framed the following four issues for consideration:-

- (1) The correctness and the legality of the screening process adopted by the university;
- (2) Whether the non-consideration of the petitioner vitiated the selection process;
- (3) The effect of consideration of the fourth Respondent; and

(4) Whether the selection was illegal and arbitrary on account of participation by the third Respondent, in the interview.

5. The first and the second issues were held against the Appellant and in view thereof, the writ petition was allowed with the directions as mentioned above in the first paragraph. With regard to the third issue it was held that the Appellant acted in violation of Article 14, though that factor alone did not vitiate the selection as the Respondent No. 4 therein was not finally selected. The fourth issue of bias was held against the Respondent. Aggrieved by the order dated 31st August, 2005, the Appellants have preferred the present appeal.

6. In support of his case, learned counsel for the Appellant contends that in every selection and appointment, the University adopts a short-listing criteria which has been adopted by the Appellant in this case as well, as the number of applications was high. The short listing criteria adopted by the Appellants as per Executive Council Resolution No. 297 dated 27th January, 1998, followed in all the selections, is as under:-

“GUIDELINES/NORMS FOR CALLING CANDIDATES FOR INTERVIEW FOR THE POST OF LECTURER

Categories in order of preference:

Category No.	Bachelor's Degree	Master's Degree	M. Phil Degree	Ph.D.	Remarks.
Cat.1	I I II	I I I	B.Phil - M.Phil	Ph.D. Ph.D. Ph.D.	Candidates besides fulfilling the

division i.e., 50% marks in the Bachelor's course though Ist division in M.A. with Ph.D. degree, fell in the IIIrd subcategory and hence she was not shortlisted for being called to the interview. According to the learned counsel for the Appellant such a procedure enables the institution to invite candidates having high academic qualifications for interview and to further assess their in depth knowledge by giving adequate time during interview. It is further contended that the post of Lecturer is the entry point and academic record is of prime importance, hence, the Executive Council formulated the guidelines based on the academic record.

8. Learned counsel for the Appellant further contends that the learned Single Judge has gone on the premise that the two posts related to specific subject or topics namely 17th and 18th Century AD Classical Poetry and 17th and 18th Century Classical Prose respectively and that the University was under an obligation to ensure that only those who answered this description and had requisite experience and qualification relatable to such posts, were considered and appointed. It further held that as there was no application of mind to the needs of the post resulting in the exclusion of the Respondent and inclusion and consideration of others, the procedure adopted was arbitrary. According to the learned counsel for the Appellant, finding of the learned Single Judge does not stem from the pleadings. As a matter of fact, the respondent in its amended petition has not laid any claim only with regard to the post of Lecturer Urdu (17th and 18th

Century Poetry). As per the amended petition, the respondent has claimed that though it fulfills the criteria and meets the requirement of both the posts advertised in Urdu Classical Poetry and Classical Prose 17th and 18th Century AD, however, still she was not called for the scheduled interview. Thus, the respondent is laying claim in the petition not only for 17th and 18th Century Urdu Classical Poetry but also for Classical Prose. Moreover, in the prayer clause in the writ petition, the Respondent has sought appointment to the post of Lecturer Urdu, thus seeks appointment on anyone of the four posts. It also stated that the four candidates selected were not a party in the writ petition and thus besides their applications, the details of their academic achievements and expertise was not available on the writ record.

9. During the course of arguments, learned counsel for the Appellant had submitted that though the Respondent stakes her claim for lecturer in Urdu poetry because of her specialization in the 17th and 18th Century Urdu Poetry during arguments, however, perusal of the application filed by the Respondent would show that she did not apply for Classical Urdu Poetry but mentioned as against the Column Post Applied For-Lecturer Open. Thus her case was to be considered for the two general posts and not for the post of Lecturer in Urdu Poetry 17th and 18th Century, which fact has been controverted by the learned counsel for the Respondent.

10. On the other hand, learned counsel for the Respondent contends that the selection process was vitiated on account of erroneous criteria for short listing adopted by the screening committee. It is also contended that the shortlisting criterion was not mentioned in the advertisement and thus could not have been resorted to. Reliance is placed by the learned counsel for the Respondent on the decisions rendered in the following cases *Mrs. Rekha Chaturvedi vs. University of Rajasthan & Ors. JT 1993 (1) SC 220 para 12 and 13; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. vs. M. Tripura Sundari Devi 1990 (3) SCC 655 para 6 and S.P. Jain vs. Guru Govind Singh Indraprastha University 2003 VIII AD (Delhi) pg 331; and Dhirendra Krishan vs. BHEL 1999 (50) DRJ (DB).*

11. We find from the pleadings that no such plea has been made to show that it was only the Respondent and no other candidate who possessed the qualification for the post of Lecturer Urdu Classical Poetry 17th and 18th Century AD. In fact the selected candidates were neither a party before the learned Single Judge nor were the complete details of their academic achievements available before it except the copies of their application forms.

12. We find that the learned Single Judge has upheld the University's compulsion in adopting a screening procedure to be undeniably legitimate. The issue in the present appeal is narrow to the extent that once the learned Single

Judge had held that the University can adopt a screening procedure legitimately whether it could have held the screening procedure to be arbitrary because it did not take into consideration the qualification necessary for the post of 17th and 18th Century Urdu Poetry i.e. as to whether the candidates screened and found fit actually possessed the qualifications and experience relatable to the post. According to the learned Single Judge, there was no application of mind to the needs of the post.

13. In the present case, the University has adopted a uniform screening criteria as per which in category I, various sub-categories have been formed as enumerated above, according to which subcategories I and II are of people who have first divisions both in the graduation and the post graduation. We find force in the contention of the learned counsel for the appellant that it is for the interview board to assess the aptitude of the incumbents to the concerned post. From the pleadings it is not borne out that from the candidates screened nobody possessed the qualification necessary for the post, that is, Urdu Classical Poetry 17th and 18th Century except the Respondent.

14. In *Dr. J.P. Kulshrestha and Ors vs. Chancellor, Allahabad University and Ors reported as 1980 (3) SCC 418*, the Hon'ble Supreme Court held as under:-

“10. We may dispel two mystiques before we debate the real issues. Did the selection committee act illegally in resorting to the interview

process to pick out the best? We think not. Any administrative or quasi-judicial body clothed with powers and left unfettered by procedures is free to devise its own pragmatic, flexible and functionally viable process of Transacting business subject, of course, to the basics of natural justice, fair play in the action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and otherwise keeping within the leading strings of the law. We find no flaw in the methodology of 'interview'. Certainly, cases arise where the art of interviewing candidates deteriorates from strategy to stratagem and undetectable manipulation of results is achieved by remote control tactics masked as viva voce tests. This, if allowed, is surely a sabotage of the purity of proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So it is that courts insist, as the learned Single Judge has, in this very case, suggested on recording of marks at interviews and other fair checks like guide-lines for marks and remarks about candidates and the like. If the court is skeptical, the record of the selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad. Dr. Martin Luther King Jr. was right when he wrote:

So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more, to use moral means to preserve immoral ends.

11. The second obscurantism we must remove is that blind veneration of marks at examination as the main measure of merit. Social scientists and educational avant garde may find pitfalls in our system of education and condemn the unscientific aspects of marks as the measure of merit system and however urgent the modernization of our course culminating in examinations may be, the fact remains that the court has to go by what is adopted by universities. Judges must not rush in where even educationists fear to tread. So, we see no purpose in belittling the criterion of marks and class the Allahabad University has laid down, although to swear religiously by class and grade may be exaggerated reverence and false scales if scrutinized by progressive criteria.

12. We have stated earlier that the prescription of first class or high second class is part of the Ordinance as a qualification for a Reader's

post. Is this condition mandatory or directory? The High Court at the two tiers has taken contrary views. But we are inclined to hold that a high second class is a mandatory minimum. A glance at the relevant portion of Ordinance 9 reveals that wherever relaxation of qualifications is intended, the Ordinance specifically spells it out and by necessary implication, where it has not said so, the possession of such qualification is imperative. We must remember that a Reader is but next to a Professor and holds high responsibility in giving academic guidance to post-graduate students. He has to be a creative scholar himself capable of stimulating in his students a spirit of enquiry and challenge, intellectual ferment and thirst for research. If the teacher is innocent of academic excellence, the student, in turn, will be passive, mechanical, negative and memorizing where he should be innovative, imaginative and inventive. The inference is irresistible that a Reader who guides the students and raises his faculties into creative heights is one who himself has had attainments to his credit. Putting aside for a moment the value of examinations and marks as indicators of the student's potential, we must agree that the ordinance has a purpose when it prescribes atleast a high second class for a Reader's post. It is obligatory.

15. The Hon'ble Supreme Court in the case of *B. Ramakichenin Alias Balagandhi vs. Union of India and Ors, reported as (2008) 1 SCC 362*, held that:-

“15. It is well settled that the method of shortlisting can be validly adopted by the selection body vide *M.P. Public Service Comission v. Navnit Kumar Potdar* (vide paras 6, 8, 9 and 13) and *Govt. of A.P. v. P. Dilip Kumar*.

16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.

17. However, for valid shortlisting there have to be two requirements – (i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a BSc. degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in BSc and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention that only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able for interview hundreds and thousands of eligible candidates; (ii) if a prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed.”

16. In our view the screening procedure adopted by the Appellant cannot be said to be arbitrary merely because it did not take into consideration the qualification necessary for the post of 17th and 18th Century Urdu Poetry. As held by the Hon’ble Supreme Court fixing of a shortlisting criteria on the basis of marks attained may be an archaic one but still holds the field. It is further for the academic body to devise ways and means to find out the best suitable candidate for the concerned post. In the absence of pleadings to the effect that except the Appellant nobody else possessed this qualification, we cannot hold that the screening procedure was arbitrary. In fact, that would be substituting our opinion over that of the academic institution which is to be best left to them.

17. The contention of the learned Counsel for the Respondent that the shortlisting criteria could not have been resorted to, as the same was not mentioned in the advertisement also deserves to be rejected in view of the decision of the Hon'ble Supreme Court in the case of ***B. Ramakichenin Alias Balagandhi vs. Union of India and Ors. (Supra)***.

18. We are conscious of the fact that in the writ petition and the present appeal the appointments made were subject to outcome of the final decision and thus no equity flows in favour of the selected candidates. However, to come to the conclusion that the selected candidates did not have the experience for the post, it is essential to have the details of their experience as part of pleadings and the same cannot be merely inferred from the applications on record. Even in the case of Respondent the fact that she has done work on Poet Mushafi of 18th Century A.D. in her M.Phil is evident from the pleadings in the petition and not from the application, where in the column "Title of Ph.D. Thesis" it is written "Biswi Sadi Mai Urdu Gazal". Thus we find force in the contention of the learned counsel for the Appellant that it is to be left to the Interview Board to assess the aptitude of the candidate in relation to the post.

19. Learned counsel for the Respondent also contended that the entire selection process was vitiated on account of the presence of Sh. S.R. Kidwai in the Selection Committee, as he was the guide to two of the selected candidates. This

issue has already been held against the Respondent by the learned Single Judge in detail and we need not go further into it. Learned counsel for the Respondent also raised the issue of calling Appellant No. 4 for the interview though he applied for the post after the last date. Learned counsel for the Appellant in this regard relies on the note (1) to the advertisement wherein it was permissible even to call candidates who had not applied. However, the appellant no. 4 has not been selected and it is for this reason the learned Single Judge did not go into this issue in detail and nor is it relevant for the present appeal.

20. In view of the facts stated hereinabove, the appeal is allowed. The impugned order dated 31st August, 2005 is set aside. However, we may note that the Appellant has applied for the post of Urdu Lecturer advertised subsequently and thus will be considered for the said post by the Respondent in accordance with law.

(MUKTA GUPTA)
JUDGE

(MADAN B. LOKUR)
ACTING CHIEF JUSTICE

MAY 06, 2010
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