

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4568-4569 OF 2021  
(Arising out of SLP (C) Nos. 3523-3524 of 2019)

T. V. BINDU

Appellant(s)

VERSUS

UNIVERSITY OF KERALA & ORS.

Respondent(s)

O R D E R

Leave granted.

By notification dated 03.02.2003, the respondent-University initiated the process of selection for the post of Lecturer in the Department of Education. There were four vacancies. The second and the fourth vacancies were not reserved and were earmarked as 'Open' vacancies, whereas the first and the third were demarcated specially for Scheduled Castes and OBC respectively. The appellant, respondent Nos. 4 and 5 along with others applied. Their applications were considered. The Rank List was made in which the fourth respondent was placed at the first rank. The fifth respondent was positioned in the second position, whereas the appellant before us was by virtue of the marks obtained placed at the third position. The marks obtained by the appellant, respondent Nos. 4 and 5 are as follows:

Appellant                      - 74.1

Respondent No. 4      - 78.1

Respondent No. 5      - 76.9

This selection took place in the year 2007. The writ petition was filed in the year 2010 by the appellant. The learned Single Judge allowed the writ petition. The learned Single Judge found favour with one contention. The contention which appealed to the learned Single Judge was that the appellant was not granted the maximum marks which the appellant would have secured for the articles which the appellant had published. The appellant was given four marks out of ten. That is for the two articles which were published in what was perceived as approved journals. The complaint of the appellant was however, that the appellant had also published three articles in the journal by the name 'Experiments in Education'. The contention which was primarily taken by the University was that the appellant had not laid claim based on the articles published in the said journal. We may at once notice how the learned Single Judge dealt with the same:

20. In answer to the said submission, the learned counsel for the petitioner invited my attention to Ext. P17 which is the true copy of the application form dated 28.3.2003 submitted by the petitioner. At Page No. 4 of the application form, the number of papers is shown as 9. At page No. 2 of the application, it is stated that separate list is attached. The learned counsel for the petitioner alleges that in the list of enclosures attached to

the application against item No. 7, it has been stated that copies of all the published papers have been enclosed. If only 4 papers were available at the time of verification of Ext. P17, definitely, that would have been mentioned by the respondent university then and there. Therefore, this Court cannot agree with the stand taken by the respondent university that the petitioner had sent only two publications along with her application.

23. For the reasons stated above, there cannot be any dispute that the position would have been different, if the marks for three publications in the journal 'Experiments in Education' were also awarded to the petitioner. The petitioner would have got the maximum marks of 10 on that count. Instead, she was awarded only 4 marks which is an apparent and grave mistake."

Moving on the other contention, learned Single Judge found that the appellant was entitled to be awarded marks for the articles published in the journal 'Experiments in Education'. Exhibit P-7 which was impugned by the appellant came to be quashed to the extent the Selection Committee was found to have violated the norms in regard to the award of marks overall. Respondent Nos. 1 and 2 were directed to correct the error in the award of marks and to grant marks to the appellant as per the norms for the five publications of the appellant in the journals approved by the respondent University. It is further found there was no need to conduct the *de novo* interview. The Selection Committee was to be convened and marks were to be awarded for the publications correcting the errors. Two writ appeals were generated by this judgment. One was filed by the University

and the other was filed by the fifth respondent. The learned Single Judge did not interfere with the appointment made to the reserved categories.

The Division Bench, by the impugned judgment, set aside the judgment of the learned Single Judge. The Division Bench went on to find that the records indicated that the approved journal is 'Experiments in Function' and not 'Experiments in Education'. 'Experiments in Education' was approved in 2003 which at any rate could not be counted for awarding marks.

We have heard Shri V. K. Biju, learned counsel on behalf of the appellant, Shri Prashant Padmanabhan learned counsel on behalf of respondent Nos. 1 to 3, Shri Romy Chacko, learned counsel on behalf of respondent No. 4 and Shri P. A. Noor Muhamed, learned counsel on behalf of respondent No. 5.

Learned counsel appearing for the appellant points out that the Division Bench was in error having regard to the following:

He would point out that a perusal of the documents would show that the Board of Studies recommended inclusion of the journal 'Experiments in Education' by proceedings dated 16.11.1995. It was followed up by the Faculty of Education taking a decision on 06.02.1996 by which the

decision of the Board of Studies was approved. It was finally followed up by the Academic Council by its decision on 15.05.1996. The University, it is pointed out, also acknowledge the fact that the journal was approved in the year 1996. The publications made by the appellant of the articles in the journal should have been counted and the Division Bench has clearly erred. It is further pointed out that information was received under the Right to Information Act by the appellant wherein it is again indicated that the journal 'Experiments in Education' was approved in the year 1996. Our attention is also drawn to the communication by the University itself indicating that the journal 'Experiments in Education' was approved in the year 1996.

The learned counsel appearing for the University does not dispute the correctness of the documents which have been produced. He would contend, however, that the contention was taken before the learned Single Judge in the counter affidavit that the appellant had not really laid claim on the strength of the articles which were published in the journal in question and therefore, it could not have been considered by the Selection Committee. He would therefore, reiterate the said contention before us viz., that the appellant had not sought to draw support from the articles before the Selection Committee and therefore, the Selection Committee could not, at any rate, be blamed for not awarding

any marks for the articles in question.

Shri Romy Chacko, learned counsel appearing for respondent No. 4 would point out there is a procedure. He would submit that the Board of Studies would have to recommend, which is to be followed by the Faculty of Education and then, finally, the Academic Council would have also to put its approval for the inclusion of journal in question. He would submit that, last but not the least, the procedure to be followed is publication by the University of the fact that a particular journal has been included as approved journal. He would point out that the words 'Experiments in Education' was not there. There is some interpolation. He would further seek to persuade us to hold that the Division Bench having had the occasion to have gone through the records at the stage of hearing of the appeals, it had rightly come to the conclusion that there was no case made out by the appellant based on the documents. He further drew our attention to Exhibit R1(a) which is produced along with the counter affidavit by the University before the learned Single Judge. He pointed out that the journal 'Experiments in Education' is conspicuous by its absence in the said List. He would submit that the High Court having had the occasion to peruse the record and having regard to the case filed by the University, it is not open for this Court to overturn the view taken by the High

Court which is the correct view. As far as the publication is concerned that is relied upon by the appellant it cannot be treated as publication as required in law. In regard to the reply given to the application under the Right to Information Act, it is pointed out that the order which is referred to in the reply given to the query is not produced. Therefore, no assistance could be drawn from the same. He would further contend that the appellant had approached the High Court belatedly viz., after a period of three years from the date of selection.

Respondent No. 4 as it turns out was appointed as Lecturer (as it was then) and later on, been selected as an Associate Professor and at the present Juncture, she had been selected also as a Professor but the order is kept in abeyance in view of the pendency of the matter in this Court.

Shri P.A. Noor Muhamed, learned counsel appearing for respondent No. 5 would also essentially reiterate the same contentions. He would further draw our attention to the fact that in the R1(a) List, the last item is seen to be a journal which is inserted as per the notification in 2004 and the journal 'Experiments in Education' does not figure in the said List and this is a List which was relied upon by the University. He does not dispute that his client stands appointed in the year 2018 in another University as

Professor.

A perusal of Exhibit P1 which is dated 16.11.1995 would show that the Board of Studies did recommend the inclusion of the journal 'Experiments of Education' as an approved journal:

"IV. LIST OF STANDARD JOURNALS:

The Board recommended to include the journal "Experiments in Education" in the List of the Standard Journals."

We find further that the Faculty of Education in its meeting held on 06.02.1996 has, after referring to the recommendation of the Board, including the journal 'Experiments of Education' in the List of Standard Journal approved the said recommendation of the Board of Studies.

Lastly, the Academic Council also has on 16.05.1996 approved the rest of the minutes of the Faculty which would apparently include the recommendation to include the journal 'Experiments of Education'. Finally, in reply of the University under the Right to Information Act, we find in the details of the orders issued from 1993, reference is made to the University List of Standard Journals dated 19.07.1996 and it included 'Experiments in Education'.

It may be true that the order which is referred to in the answer given under the Right to Information Act has not been produced.



We would think that in the first place there is no stipulated procedure to be followed in the matter of publication. It is not the case of any of the parties that the University is duty bound in law to publish the List of approved journals by way of publication in the gazette. No statutory provision is brought to our attention indicating any stipulated and inviolable procedure in publishing a matter of this nature. No doubt, there must be some form of publication. This is for the reason that candidates who appear for selection as members teaching staff should know before hand which are the journals in which the articles published would secure them appropriate marks. But having regard to the facts present in this case, we are of the view that the Division Bench has erred in not finding that the documents would clearly show that the journal 'Experiments in Education' was included as approved after the process was undergone at the hands of the concerned bodies of the University, viz., the Board of Studies, Faculty of Education and finally, the Academic Council.

It is to be noticed the stand of the University is that the practice of publication was commenced in the year 2000-2001. This is evident from the counter affidavit filed in this Court:

"9. With regard to the averment of the Petitioner

regarding the non-availability of the University Order including "Experiments in Education" as approved journals it is submitted as follows. Practice of keeping copy of orders have started from 2000-2001 onwards only. An official list including all the journals approved so far were issued only in 2013."

We are concerned with the decision which is of the year 1996. We are unable to accept the contention of the respondents that it is not to be treated as approved journal for the reason that it is not published for the reasons which we have indicated herein.

As regards the contention of the University that the appellant had not laid claim to full marks on the basis of the publication of articles in the said journal, we would think that the learned Single Judge has dealt with the same and entered his findings as noticed hereinabove. From the judgment of the Division Bench, we do not find any attempt at dislodging the said finding. No ground as such taken in the writ appeal filed by the parties is brought to our notice. That apart, we must indicate that this is a pure question of fact and we cannot permit the parties to raise this before the Court as such.

The inevitable upshot of the above discussion is that the impugned order cannot be allowed to be sustained.

We are dealing with this matter after 14 years of the selection. The subsequent developments need to be noticed.

As far as respondent No. 5 is concerned, on her own showing she has been selected by direct recruitment in the year 2018 as a Professor in the Mahatma Gandhi University and she has joined. It is pointed out by the learned counsel for the University, however, that she was allowed to retain her lien with the respondent University. We also take notice of the fact that consequent upon the fifth respondent joining in the Mahatma Gandhi University, the vacancy which has arisen has not been filled. As far as respondent No. 4 is concerned, learned counsel for respondent No. 4 would point out that respondent No. 4 was accorded time bound promotion as Associate Professor and she has been approved for being appointed as Professor again under the Career Advancement Scheme. The order is kept in abeyance in this regard.

Shri V. K. Biju, learned counsel for the appellant, does bring to our notice that the appellant is employed as a Lecturer in the Government Training College, Trivandrum. She is working since 2010.

Having noticed the subsequent developments as well as the conclusion which we have reached in regard to the illegality in the selection made, we pass the following order:

- (1) The appeals are allowed.
- (2) The impugned order will stand set aside.
- (3) We find that the appellant was entitled on the

strength of the marks which she has already obtained admittedly and the further marks she would be entitled on the strength of the three articles published in the journal in controversy, to be treated as having attained the first position. Resultantly, respondent No. 4 would be pushed down to position No. 2 in the selection.

The respondent University will on the basis of the said finding, issue order of appointment to the appellant taking note of the position as such within a period of four weeks from today.

We, however, make it clear that the appellant will not be entitled to arrears of salary. Instead she will be entitled to notional fixation and fitment in her grade from the date of such appointment as Assistant Professor with all consequential annual increments etc., and continuity of service on such basis. We further make it clear that there will be no recovery of any emoluments drawn by respondent No. 5 who having regard to the rank obtained by her, would be pushed down to rank No. 3 as a result of our decision, and would have to be ousted otherwise. We also make it clear that the directions issued as aforesaid should not be understood to takeaway the benefit of the service which

respondent No. 5 has rendered till she was appointed as  
Professor in Mahatama Gandhi University.

No orders as to costs.

....., J.  
[ K.M. JOSEPH ]

....., J.  
[ S. RAVINDRA BHAT ]

New Delhi;  
August 03, 2021.

ITEM NO.1                                      Court 12 (Video Conferencing)                                      SECTION XI-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Civil Appeal Nos. 4568-4569/2021  
(Arising out of SLP (C) Nos. 3523-3524/ 2019)

T V BINDU		Appellant(s)
	VERSUS	
UNIVERSITY OF KERALA & ORS.		Respondent(s)
(With IA No. 36985/2021 - CLARIFICATION/DIRECTION)		

Date : 03-08-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH  
          HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Appellant(s)      Mr. V. K. Biju, AOR  
                              Mr. Abhay Pratap Singh, Adv.  
                              Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv.  
                              Mr. Parthsarthi Mahesh Saraf, Adv.  
                              Mr. Shaji George, Adv.  
                              Ms. Vijay Laxmi, Adv.

For Respondent(s)    Mr. Prashant Padmanabhan, AOR  
  
                              Mr. Romy Chacko, AOR  
                              Mr. Ashwin Romy, Adv.  
  
                              Mr. P. A. Noor Muhamed, AOR  
  
                              Mr. Venkita Subramoniam T.R., AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending application stands disposed of.

(NIDHI AHUJA)  
AR-cum-PS

(BEENA JOLLY)  
COURT MASTER (NSH)

[Signed order is placed on the file.]