

DURGA DEVI AND ANR.

v.

STATE OF H.P. AND ORS.

APRIL 11, 1997

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

*Service Law :*

*Himachal Pradesh Voluntary Teachers Primary Scheme, 1991 :*

*Appointment of Voluntary Teachers on tenure basis—Challenged on the ground that more meritorious candidates were not selected—Tribunal quashing the selection—On appeal held, Tribunal fell in error in arrogating to itself the power to judge the comparative merits of candidates—It was the function of the Selection Committee—Matter remitted to Tribunal for a fresh disposal on other issues involved in the case on merits in accordance with law, after hearing the parties.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2744 of 1997.

From the Judgment and Order dated 10.12.92 of the Himachal Pradesh Administrative Tribunal, Shimla in O.A. No. 453 of 1992.

J.S. Attri and Devendra Singh for the Appellants.

T. Sridharan and P.D. Sharma for the Respondents.

The following Order of the Court was delivered :

Leave granted.

The appellants were appointed as Voluntary Teachers on tenure basis under the Voluntary Teachers Primary Scheme 1991. Respondent No. 4 challenged their appointment *inter alia* on the ground that he was academically more meritorious than the appellants and therefore the Selection Committee was not justified in preferring the appellants to him. The State Administrative Tribunal allowed the application filed by Respondent No. 4 and quashed the selection of the appellants, by itself judging the comparative merits of the candidates. The appellants have put that order

of the State Administrative Tribunal dated 10th December 1992 in issue.

In *Dalpat Abasaheb Solunke Etc. Etc. v. Dr. B.S. Mahajan Etc. Etc.*, AIR (1990) SC 434 while dealing with some what an identical question, this Court opined :

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved *mala fides*, affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant status. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction. "

In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the selection committee. The observations of this Court in *Dalpat Abasaheb Solunke's* case (*supra*) are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10th December, 1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law

after hearing the parties.

We are informed that both the appellants and the contesting respondent are in service. They shall not be disturbed till the matter is finally disposed of by the Tribunal.

The Appeal is disposed of in the above terms. No costs.

Appeal disposed of.