

KULDIP CHAND
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. 2745 of 1997.

From the Judgment and Order dated 10.12.92 of the Himachal Pradesh Administrative Tribunal, Shimla in O.A. No. 212 of 1992.

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

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

The following Order of the Court was delivered :

Leave granted.

The appellant was appointed as Voluntary Teacher on tenure basis under the Voluntary Teachers Primary Scheme 1991. Respondent No. 4 challenged his appointment on the basis that he was academically more meritorious than the appellant and that the Selection Committee was not justified in awarding him 21 marks in *viva voce* as against 16 marks to respondent No. 4. The State Administrative Tribunal allowed the application of respondent No. 4 and quashed the selection of the appellant. The appellant has put the order of the State Administrative Tribunal dated 10th

December 1992 in issue.

The State Administrative Tribunal, in our opinion, fell in complete error in judging the comparative merit of the candidates and finding fault with the award of 21 marks in *viva voce* to the appellant as against 16 marks awarded to respondent No. 4. The Tribunal exceeded its jurisdiction in entering into the field exclusively reserved for the selection committee. The finding that the appellant 'manipulated' his selection is not supported by any material and reasons and is purely a conjectural finding.

In *Dalpat Abasahe Solunke, Etc. Etc. v. Dr. B.S. Mahajan Etc. Etc.*, AIR (1990) SC 434, while dealing with some what 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."

The above observation apply to the facts of the present case with full force.

In the instant case the selection of the appellant was quashed by the Tribunal by finding fault with the award of 21 marks in *viva voce* to the appellant without assigning any reasons. The selection of the appellant was not quashed on any other ground. 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 hereby quashed and the matter is remitted to the Tribunal for a fresh disposal on the other issues involved in the case on merits in accordance with law and after hearing the parties. No costs.

Appeal allowed.