

(30) Civil Appeal No. 8 of 1986 has been filed in C.P. No. 75 of 1982. The amount found due by the Single Judge has been rightly fixed. However, at the time of passing of the final decree the Court will adjust a sum of Rs. 6,766.97 p. which has been found excess while deciding Civil Appeal No. 10 of 1986 filed by defendant No. 8, B. P. Gupta, appellant. He will also be given adjustment for the amount of sale proceeds of the machinery. To that extent the judgment and decree of the Single Judge stands modified.

(31) Civil Appeal No. 9 of 1986 of C.P. No. 75 of 1982 is dismissed with the observation that the amount of the sale proceeds of the machinery would be adjusted at the time of passing of the final decree.

(32) The parties in all these appeals are left to bear their own costs.

J.S.T.

Before : N. K. Sodhi, J.

DR. GURBACHAN SINGH BAJWA,—Petitioner.

versus

THE PUNJAB AGRICULTURAL UNIVERSITY, LUDHIANA,
—Respondent.

Civil Writ Petition No. 2005 of 1988.

22nd August, 1991.

Haryana and Punjab Agricultural University Act, 1970—S. 20, Statutes 3 & 4—Appointment—Selection process—Provisions empowering Vice Chancellor either to make single recommendation for approval of Board of Management or to appoint a Selection Committee to recommend three names—Vice Chancellor also competent to recommend a person other than those recommended by Selection Committee—Selection Committee recommending only two names to V.C.—Selection process does not end with mere recommendations by Selection Committee—It completes only when recommendee gets approval of the Board of Management on being recommended by V.C.—No right accrues to petitioner to claim appointment otherwise.

Held, that it is only when the recommendation of the Vice-Chancellor has been approved by the Board of Management that the

person so recommended by the Vice-Chancellor would be said to have been finally selected for appointment and it is thereafter that the Vice-Chancellor would appoint him in terms of S. 20 of the Act. The selection process would, thus, get completed the moment the Board of Management grants its approval to the single recommendation made by the Vice-Chancellor. A bare reading of the various clauses of Statute 3(2) of the Statutes makes it abundantly clear that it is primarily the Vice-Chancellor who matters in selecting a candidate for the post but it is only on receiving the approval from the Board of Management that he can make the appointment. The constitution of the Selection Committee and its recommendations to the Vice-Chancellor are just a part of the selection process which does not end with the recommendations by the Selection Committee. It must, therefore, be held that the Selection process u/s 20 of the Act read with the relevant Statutes framed thereunder gets completed only when the Single recommendation made by the Vice-Chancellor is approved by the Board of Management and not earlier. Consequently, the recommendations made by the Selection Committee are not final and the candidates recommended by it cannot be said to have been selected for the post and would, therefore, have no right to claim an appointment.

(2) Constitution of India, 1950—Art. 226—Writ of mandamus—Petitioner recommended for appointment by Selection Committee but not by Vice-Chancellor for approval by Board of Management—Selection process remains incomplete—Mandamus does not lie.

Held, that when the Vice-Chancellor never recommended the name of the petitioner and his name never went to the Board of Management for approval, the petitioner cannot be said to have been selected for the post and consequently, the question of issuing a *mandamus* directing the University to appoint him does not arise.

Petition under Articles 226/227 of the Constitution of India praying that :

- (a) a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the proceedings of the Board of Management of the respondent University dated 19th January, 1988 regarding Item No. A-30 by which the Board of Management accepted the recommendations of the Administrative Committee which had decided not to recommend to the Board of Management any candidate selected by the selection Committee for the post of Director Students' Welfare and also accepted the recommendations for amending the Statute to the detriment of the petitioners, be issued;*
- (ii) it is further prayed that the respondent University be directed to appoint the petitioner as Director Students' Welfare on the basis of the recommendations of the selection committee of the University;*

- (iii) *the relevant record may be ordered to be summoned from the office of the respondent;*
- (iv) *the filing of the certified copies of the Annexures may kindly be dispensed with;*
- (v) *the service of the advance notice of the writ petition on the respondent may also be dispensed with as the petitioner has no time to serve the respondent before filing the writ petition;*
- (vi) *the filing of the extra copies of the writ petition and its annexures at the time of filing the writ petition may also be dispensed with as the same can be filed after issue of notice of motion;*
- (vii) *any other writ, direction or order be issued to the respondent and any other relief to which the petitioner may be found entitled by this Hon'ble Court may also be granted;*
- (viii) *the costs of the petition may be awarded to the petitioner.*

It is further prayed that during the pendency of the writ petition the operation of Annexure P/3 to the extent that it amends the Statutes 3 and 4 of the Punjab Agricultural University debarring any Association Processor from being appointed as Director Students' Welfare may kindly be stayed.

S. S. Nijjar, Sr. Advocate, with H. S. Sawhney and J. S. Sathi, Advocates, for the petitioner.

J. S. Khehar, Advocate with H. S. Gill, Advocate M. S. Sohal, Advocate Sanjeev Sharma, Advocate D. S. Kamra, for the Respondent.

JUDGMENT

N. K. Sodhi, J.

Whether the process of selection under section 20 of the Haryana and Punjab Agricultural University Act, 1970 (referred to here-in-after as the 'Act' read with the relevant statutes framed thereunder is completed on the recommendation of a name by a Selection Committee and whether the University could deny appointment to such a recommendee are the two meaningful questions involved in this writ petition.

(2) Through an advertisement issued in June, 1987, the Punjab Agricultural University, Ludhiana (for short, 'the University')

invited applications for the post of Director Student's Welfare in the scale of Rs. 1,775—2,400 plus Rs. 200 as special pay and the qualifications for the post which had been approved by the Board of Management were mentioned therein. The petitioner who fulfilled the requisite qualifications and was working as an Associate Professor of Horticulture in the University, was amongst the ten applicants who applied for the post and only eight of them including the petitioner were called for interview on 21st October, 1987. The Selection Committee constituted for the purpose recommended two names and the petitioner was placed at No. 1 in order of preference. One Shri Surjit Singh was put at No. 2. The Vice-Chancellor on the basis of some allegations contained in an anonymous complaint, an F.I.R. dated 22nd November, 1974 and the judgment of a criminal Court in Sessions Trial No. 9 of 1975 dated 11th February, 1975 recommended that the petitioner be not appointed to the said post and instead Shri Surjit Singh who was at No. 2 amongst the recommended candidates be appointed. These recommendations were made to the Administrative Committee. The matter was then placed before the Administrative Committee in its meeting held on January 7, 1988 and the said committee recommended to the Board of Management that none of the recommendees of the Selection Committee be appointed and the post of Director of Student's Welfare be made a four years tenurial post as in the case of Dean of Colleges of the University. It was also recommended by the Administrative Committee that the Director of Students' Welfare be appointed from amongst the Professors/Deans after circulating the post in the University. The petitioner at that time was working as an Associate Professor of Horticulture in the University. The Board of Management in its meeting on January 19, 1988 accepted the recommendations of the Administrative Committee and decided to make the post of Director of Students' Welfare as a four-year tenurial post. The proceedings of the Administrative Committee and the Board of Management disclose that the fact that the petitioner had been involved in a criminal case, that an F.I.R. had been registered against him though he had been acquitted by the criminal Court had not been brought to the notice of the members. The petitioner then challenged his non-selection by the Vice-Chancellor by filing the present writ petition and seeks a *mandamus* directing the University to appoint him as Director of Students' Welfare on the basis of the recommendations of the Selection Committee.

(3) The post of Director of Students' Welfare was to be filled up in accordance with the provisions of Section 20 of the Act and Statutes No. 3 and 4 framed by the University. In order to appreciate the

-
- (b) After advertising the post and receiving the applications or after having obtained the suggestions or recommendations from appropriate persons, institutions and agencies, the Vice-Chancellor may either submit a single recommendation for the approval of the Board of Management or appoint a selection Committee to make recommendations.
- (c) The selection committee shall consist of two persons nominated by the Vice-Chancellor from amongst Deans and Directors and three other persons nominated by the Vice-Chancellor. The Vice-Chancellor may nominate himself as Chairman or nominate a Chairman or request the committee to select its own Chairman.
- (d) Where the Vice-Chancellor finds that it is not possible to appoint a selection committee, he may constitute an *ad hoc* selection committee.
- (e) The Chairman of the committee shall scrutinise all the applications, suggestions and recommendations and prepare a list of the candidates who shall be either called for interview or considered in absentia. He may also include in such a list names of any person/ persons who have not applied or have not been recommended by persons, institutions and agencies to whom the matter had been referred.
- (f) After interviewing the candidates or considering them in absentia, as the case may be, the committee shall recommend to the Vice-Chancellor, as far as possible, at least three persons in order of preference.
- (g) After receiving the recommendations of the Selection Committee, the Vice-Chancellor may, if he considers it necessary, request the committee to consider additional names or to review or reconsider its recommendations. He may also, if he considers it necessary, himself interview persons recommended by the selection committee and/or others whom he considers to be suitable.
- (h) The Vice-Chancellor shall then submit a single recommendation for the approval of the Board of Management. Where the Vice-Chancellor recommends a

person other than the person/persons recommended by the Selection Committee, he shall state his reasons for doing so.

- (i) The Board shall either confirm the recommendations or in case the Board refuses to confirm the recommendations, the Vice-Chancellor shall, in due course, present another recommendation."

A bare reading of these provisions makes it clear that the Director of Students' Welfare is to be appointed by the Vice Chancellor with the approval of the Board of Management and the procedure required to be followed for filling up this post is the same which is followed in appointing Directors of Research and Extension of Education and others as is mentioned in Statute 3 quoted above. According to this procedure the Vice-Chancellor can have the post advertised with such qualifications as may be prescribed by the Academic Council which was done in the present case. After advertising the post and receiving the applications, the Vice-Chancellor could have submitted a single recommendation for the approval of the Board of Management or he could appoint a selection committee to make recommendations. In the instant case, the Vice-Chancellor followed the latter course and constituted a Selection Committee. The Selection Committee after interviewing the candidates or considering their bio-data in absentia is required to recommend to the Vice-Chancellor as far as possible three persons in order of preference. The Selection Committee in the instant case recommended two names and the petitioner was placed at No. 1 in its order of preference.

(4) The learned counsel for the petitioner contends that the name of the petitioner having been recommended by the Selection Committee, the Selection process was complete and that there was no legal justification for the Vice-Chancellor in not appointing him to the post of Director of Students' Welfare which is lying vacant. The stand of the university is that the selection process in the case of the petitioner had not been completed and according to it, the process would have been completed only after the name had been approved by the Board of Management and it was thereafter that the Vice Chancellor could make the appointment.

(5) Having heard learned counsel for the parties at length, I find merit in the contention advanced on behalf of the respondents. It is not disputed that the appointment to the post was to be made by the Vice Chancellor with the approval of the Board of Management. The Selection Committee in the present case after interviewing the candidates recommended to the Vice-Chancellor two names in order

of preference including that of the petitioner who was placed at No. 1 though it was required to recommend three names. This recommendation by the Selection Committee to the Vice-Chancellor is not final. After receiving the recommendations, the Vice-Chancellor can, if he considers it necessary request the Committee to consider additional names or to review or reconsider its recommendations. He may also, if he considers it necessary, himself interview the persons recommended by the Selection Committee and also others who may not have been recommended whom he considers to be suitable. According to clause (h) of Statute 3(2), the Vice Chancellor has then to submit a single recommendation for the approval of the Board of Management. He cannot recommend more than one name. He is required to recommend any one of the names recommended by the Selection Committee but he is not obliged to pick up the persons placed at No. 1 by the Selection Committee. It is also open to the Vice-Chancellor to recommend a person other than those recommended by the Selection Committee but in that event he shall have to state his reasons. The Board of Management shall then either confirm the recommendations or in case it refuses to confirm the recommendation, the Vice-Chancellor is required to present another recommendation in due course. It is only when the recommendation of the Vice-Chancellor has been approved the Board of Management that the person so recommended by the Vice Chancellor would be said to have been finally selected for appointment and it is thereafter that the Vice-Chancellor would appoint him in terms of section 20 of the Act. The selection process would, thus, get completed the moment the Board of Management grants its approval to the single recommendation made by the Vice-Chancellor. A bare reading of the various clauses of Statute 3(2) of the Statutes makes it abundantly clear that it is primarily the Vice-Chancellor who matters in selecting a candidate for the post but it is only on receiving the approval from the Board of Management that he can make the appointment. The constitution of the Selection Committee and its recommendations to the Vice-Chancellor are just a part of the selection process which does not end with the recommendations by the Selection Committee. It must, therefore, be held that the selection process under section 20 of the Act read with the relevant Statutes framed thereunder gets completed only when the Single recommendation made by the Vice-Chancellor is approved by the Board of Management and not earlier. Consequently, the recommendations made by the Selection Committee are not final and the candidates recommended by it cannot be said to have been selected for the post and would, therefore, have no right to claim an appointment.

(6) In the present case, the Vice-Chancellor on receipt of the recommendations from the Selection Committee did not recommend the petitioner even though his name appeared at No. 1 because there were some allegations against him based on an F.I.R. and a copy of the judgment of a criminal Court dated 11th February, 1975 and instead recommended Shri Surjit Singh who was at No. 2. When these recommendations were considered by the Administrative Committee both the recommendees of the Selection Committee were dropped and it was decided that the post of Director of Students' Welfare be made a tenurial post. The decision of the Administrative Committee was placed before the Board of Management in its meeting held on 19th January, 1988 who accepted the recommendation of the Administrative Committee and decided to make the post a tenure post. It is clear that the Vice-Chancellor never recommended the name of the petitioner and his name never went to the Board of Management for approval. The petitioner cannot, therefore, be said to have been selected for the post and consequently, the question of issuing a *mandamus* directing the university to appoint him does not arise.

(7) It was strenuously contended on behalf of the petitioner that according to the Statutes referred to in the earlier part of the judgment, the Vice-Chancellor had no authority to send his recommendations to the Administrative Committee which is totally alien to the provisions of the Statutes and therefore, its proceedings as well as those of the Board of Management approving them are *null and void*. I find no merit in this contention as well. Section 14 of the Act gives power to the Board of Management to appoint and constitute such committees as it may deem necessary for its proper functioning. It is in the exercise of this power that the Administrative Committee had been constituted by the Board in order to regulate its own functioning. The Administrative Committee in the instant case worked like a conduit pipe through which the recommendations reached the Board of Management which was the final authority to grant its approval to the recommendations. If the recommendations of the Vice-Chancellor are routed through this committee which has been set up by the Board for its own proper functioning, in my opinion, there is nothing illegal about it. For the sake of argument, if one were to assume that the Administrative Committee was wholly alien in the context of the Statutes, even then the case of the petitioner does not get advanced since his name by way of single recommendation was never recommended by the Vice-Chancellor and obviously could not be approved by the Board of Management.

(8) The learned counsel for the petitioner strongly relied upon the judgment of K. P. Bhandari, J. in *Dr. B. S. Sidhu, Agronomist v.*

The Punjab Agricultural University and others (1), in support of his contention that the constitution of the Administrative Committee was illegal and that, as in that case, the petitioner hereto was entitled to a *mandamus* directing the university to appoint him. I am afraid I do not find myself in agreement with some of the board observations made by the learned Judge but, be that as it may, the case of Dr. Sidhu is distinguishable on facts. Apart from other distinguishing features, in that case the petitioner there had not only been selected by the Selection Committee but was recommended by the Vice-Chancellor as well to the Board of Management. The petitioner herein had not even been picked up by the Vice-Chancellor.

(9) In the result, I find no merit in this petition and dismiss the same. The parties are left to bear their own costs.

J.S.T.

Before, : *Jawahar Lal Gupta, J.*

SUKHCHAIN SINGH ATWAL,—*Petitioner.*
versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14913 of 1989.

13th November, 1991.

Constitution of India, 1950—Art. 226—Army Rules, 1954—Rls. 13, 14 & 17—Discharge of J.C.O. from Army service—J.C.O. convicted by criminal court under section 323 read with S. 34 I.P.C., however, released on probation of good conduct—Discharge made on the ground that retention in service is not desirable since J.C.O. was not acquitted but punished—Before order of discharge passed petitioner granted extension of service upto 1994—Order of discharge not based on conduct which led to conviction is bad—Reinstatement with consequential benefits ordered—Termination of service does not follow from mere conviction.

Held, that the order of discharge in this case has not been passed against the petitioner on the ground that the conduct leading to conviction rendered him unsuitable for retention in service. The action, on the contrary, has been taken primarily on the ground of his conviction and the fact that the petitioner had remained as an