DR. UMA KANT AND ANR. A

v.

DR. BHIKA LAL JAIN AND ORS.

OCTOBER 4, 1991

[M.H. KANIA, N.M. KASLIWAL AND M. FATHIMA BEEVI, JJ.] B

Rajasthan University Teachers and Officers (Selection for appointment) Act, 1974:

Sections 3(1) & 5(1)—Expression 'Appointment' and 'For every selection'— Scope of. C

Section 6—Appointment of Professor—Selection Committee—Constitution and procedure—Preparation of 'Selection List' and 'Reserve List' — Approval by University Syndicate—Appointment of candidate included in the Selection List—Superannuation of appointed candidate—Appointment of candidate recommended in the Reserve List— Validity of— Held with the appointment of candidate included in the Selection List, Reserve List does not become extinct— Appointment of candidate recommended in the Reserve List held valid—Purpose of Reserve List explained. D

Section 3(1) of the Rajasthan University Teachers and Officers (Selection for Appointment) Act, 1974 provides that no teacher in any University in Rajasthan shall be appointed except on the recommendations of the Selection Committee constituted under Section 5, and, under Section 3(2) any appointment made in contravention of Section 3(1) is null and void. Section 6(4) of the Act provides that the Selection Committee, while making its recommendations to the Syndicate, shall prepare a list of candidates selected by it in order of merit and shall further prepare a Reserve List in the same order and to the extent of 50% of the vacancies for the post of teachers or officers. E F

The University of Rajasthan invited applications for the post of Professor in the Department of Botany. The Selection Committee recommended the name of a candidate in its selection list which was approved by the University Syndicate and the recommended candidate was appointed as Professor. The appellant's name was included in the Reserve List which was to remain valid for one year as per the Syndicate's G H

A resolution. Subsequent to the retirement of the initially appointed Professor, the appellant, who was on the reserve list, was appointed as Professor. The non selected candidates challenged the appointment of initially appointed Professor as well as of the appellant and a Single Judge of the High Court held the Selection Committee's constitution valid but
B declared the appellant's appointment illegal on the ground that once a person selected by the Selection Committee is appointed, the reserve list gets exhausted and the person named in the reserve list cannot be appointed against a future vacancy.

On appeal, the Division Bench of the High Court upheld the order
C of the Single Judge by holding that once a person selected by the Selection Committee joins the reserve list becomes extinct and if some vacancy is caused thereafter, a fresh and de novo Selection Committee procedure is to be started. Against the order of the Division Bench of the High Court, appeals were filed in this Court.

D Allowing the appeals and setting aside the order of the High Court, this Court,

HELD: 1. A reserve list is always prepared to meet the contingency of anticipated or future vacancies caused on account of resignation,
E retirement, promotion or otherwise. This is done in view of the fact that it takes a long time in constituting a fresh Selection Committee which has a cumbersome procedure and in order to avoid ad hoc appointments keeping in view the interest of the student community. [422 F]

2. The High Court committed a clear error in restricting the scope
F of reserve list only against the post for which the selection was made and which according to it could only be available to the incumbent in the reserve list if the person recommended in the main list did not join such post. Thus it was wrong in taking the view that a regular vacancy of Professor having arisen on the retirement of initially appointed Professor,
G again a fresh Selection Committee should have been constituted and no appointment on such post could have been made from the reserve list prepared by the Selection Committee. The interpretation given by the High Court is not borne out from any of the provisions of Section 3(1), Section 5 or sub-section (4) of Section 6 of the Rajasthan University Teachers and
H Officers (Selection for appointment) Act, 1974. [423 B; 422 C-D]

3. Section 5 of the 1974 Act only provides for the constitution of Selection Committee and the words 'for every selection' used in sub-section (1) of Section 5 only mean that in case of every selection of a teacher or of an officer in University, a Committee would be constituted of the persons mentioned in sub- section (i) of the said Section 5. [423-E]

3.1 A reading of Section 5 with Section 6(4) makes it quite clear that the Selection Committee constituted shall recommend not only the candidates selected by it in order of merit but shall further prepare a reserve list to the extent of 50% of the vacancies and persons kept in the reserve list will be considered as having been selected for the concerned post and shall be entitled for appointment if any vacancy is caused during the validity period of the reserve list. The suitability of the persons kept in the reserve list is also adjudged by the Selection Committee which is constituted for selection of a teacher in the University. Thus no fault can be found that the incumbent recommended in the reserve list by the Selection Committee was not selected for the concerned post of teacher. [423 G-H, 424 A-B]

4. In the instant case, the initially appointed Professor was going to retire after sometime. Therefore, it was perfectly valid to select one more person and to keep him in the reserve list for being appointed on the regular vacancy which was shortly anticipated on account of retirement of initially appointed Professor. The Selection Committee approved and recommended the name of the appellant in the reserve list finding him suitable for appointment on the post of Professor. The Syndicate which is the highest executive body in the University had also approved the appellant's name in the reserve list. Therefore, the selection and appointment of the appellant is valid. [422 H, 423-A, 422 G, 424 F]

5. It is well settled that in matters relating to educational institutions, if two interpretations are possible, the courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities. [424 E]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4094 & 4095 of 1991.

A From the Judgment and Order dated 6.3.1991 of the Rajasthan High Court in D.B. Civil Special Appeal (Writ) Nos. 48 & 50 of 1990.

P.P. Rao, M.K. Ramamurthi, S.K. Singh, Sudhanshu Atreya, Sushil Kumar Jain, Ms. Bina Gupta, Manoj Swarup, Miss. Lalita Kohli, R.F. Nariman and Mrs. Binu Tamta for the appearing parties.

B The Judgment of the Court was delivered by

KASLIWAL, J. Special Leaves granted.

Briefly stated the facts are that University of Rajasthan invited applications for the post of Professor in the department of Botany. The Selection Committee constituted under Sec. 5 of the Rajasthan University Teachers and Officers (Selection for appointment) Act of 1974 (herein after referred to as the 'Act of 1974') held interviews on 20th June, 1989 and selected Dr. G.S. Nathawat for the post of Professor in Botany. The name of Dr. Uma Kant was mentioned in the reserve list by the Selection Committee. The syndicate of the University approved the list and appointed Dr. Nathawat on the said post. Dr. Nathawat retired on 30th September, 1989 and Dr. Uma Kant who was already selected and kept in the reserve list was appointed as Professor in the department of Botany. Dr. Bhikalal, Dr. Shiv Sharma, Dr. Sudhakar Mishra and Dr. T.N. Bhardwaj who were not selected filed a writ petition in the High Court initially challenging the appointment of Dr. Nathawat on the ground that the Selection Committee was not constituted in accordance with law and objection was also raised that once a selected person joins the post, the reserve list exhausted itself. Dr. Bhikalal and others subsequently impleaded Dr. Uma Kant also as one of the respondents in the writ petition. The respondents, in their reply to the writ petition, submitted that the selection committee was properly constituted. The appointment of Dr. Uma Kant was rightly made as the life of the reserve list was initially for six months and subsequently extended to one year by a resolution of the Syndicate dated 3.12.1983. Learned Single Judge held that the constitution of the Selection Committee was valid but as regards the appointment of Dr. Uma Kant from the reserve list it was held that once a person selected by the Selection Committee had been appointed the reserve list stood exhausted and the person named in the reserve list could not be appointed against a future vacancy. The appointment of Dr. Uma Kant was held illegal and it was directed that Dr. Uma Kant be removed from the said post of Professor of Botany. Both Dr. Uma Kant as well as the University of Rajasthan filed special appeal before the Division Bench. The Division Bench of the High Court by a common order dated March 6, 1991 upheld the order of

the Learned Single Judge and dismissed the appeals. The Division Bench after considering Sections 3, 5 and 6 of the Act of 1974 held that the purpose of preparation of the reserve list seems to be that if the person selected at No. 1 does not join then the next man in the reserve list should be appointed. But if the person selected by the Selection Committee is given appointment and he joins, then, selection made by the Committee is exhausted and the reserve list is of no avail and becomes extinct. It was also held that once a person selected by the Selection Committee has joined, that post is filled and some vacancy is caused thereafter a fresh and de novo selection committee procedure has to be started because that will be a case of future vacancy arising after the post had been filled up on the recommendations of the Selection Committee.

Aggrieved against the order of the Division Bench of the High Court, Dr. Uma Kant as well as the University have come in appeal by grant of special leave.

In order to appreciate the controversy we would advert to certain relevant provisions of the Act of 1974. Relevant provisions of Sections 3, 5 and 6 are as follows:

Section 3 - Restrictions on appointments of teachers and officers:

(1) Notwithstanding anything contained in the relevant law, as from the commencement of this Act, no teacher and no officer in any University in Rajasthan shall be appointed except on the recommendations of the Selection Committee constituted under Sec. 5.

(2) Save as otherwise provided in sub-s. (3), every appointment of a teacher or of an officer in any University made in contravention of sub-s. (1) shall be null and void.

Section 5 - Constitution of Selection Committee

(1) For every selection of a teacher or of an officer in a University, there shall be constituted a committee consisting of the following:–

(i) Vice Chancellor of the University concerned, who shall be the Chairman of the Committee;

(ii) an eminent educationist to be nominated by the Chancellor for a period of one year;

(iii) an eminent educationist to be nominated by the State Government for a period of one year;

(iv) One member of the Syndicate to be nominated by the State Government for a period of one year; and

(v) such other persons as members specified in column 2 of the Schedule for the selection of the teachers and officers mentioned in column 1 thereof.

Section 6 - Procedure of Selection Committee

(1) The quorum required for the meeting of a selection committee constituted under Section 5 shall not be less than five, out of which at least two shall be the experts, if the selection to be made is for the post of a lecturer or any other post of a teacher equivalent thereto. The quorum required for the meeting of a selection committee for the selection of non-teaching posts shall be not less than one half of the number of members of the Selection Committee, out of which at least one shall be an expert.

(2) The selection committee shall make its recommendations to the Syndicate, if the Syndicate disapproves the recommendations of the selection committee, the Vice-Chancellor of the University concerned shall submit such recommendations alongwith reasons for disapproval given by the syndicate to the Chancellor for his consideration and the decision of the Chancellor thereon shall be final.

(3) Every selection committee shall be bound by the qualifications laid down in the relevant law of the University concerned for the post of a teacher, as the case may be, of an officer.

(4) The Selection Committee while making its recommendations to the Syndicate under sub-section (2) shall prepare a list of candidates selection by it in order of merit and shall further prepare a reserve list in the same order and to the extent of 50% of the vacancies in the post of teachers or officers for which the selection committee was constituted under sub-section (1) of Section 5 and shall forward the main list and the reserve list alongwith its recommendations to the Syndicate.

Initially the reserve list was to remain valid upto six months from the date of approval of the Syndicate as per the resolution of the Syndicate dated 10th July, 1978 and subsequently the Syndicate by its resolution passed in its special meeting on 3.12.1983 decided that the reserve list recommended by the Selection Committee for selection of employee be treated valid for one year instead of six months. According to the University this was done in order to curtail the ad-hoc appointments and also because the regular selections take a lot of time. It may also be noted that the Syndicate in its meeting held on 10th July, 1978 had resolved as under:

> i. Every Selection Committee may draw a Reserve List of suitable candidates upto a number not exceeding 50% of the number of post for which vacancies exist (part vacancy be rounded or to the next whole number) and place them in order of priority.
>
> ii. The Reserve List of drawn be treated valid upto six months the date of approval by the Syndicate of the recommendations of the selection committee(s).
>
> iii. On the vacancies caused within the cadre during six months of the approval of the recommendations, the candidates found suitable and placed in the reserve list be appointed in the order of priority given by the Selection Committee.

As already mentioned above the period of six months was subsequently extended to one year by resolution dated 3.12.1983. The University has taken a categorical stand that since 1978 not only in the University of Rajasthan but all other universities in the State of Rajasthan reserve lists are prepared and appointments are being made from the reserve list against future vacancies arising on account of resignation, retirement or promotion. A long list of appointments made from reserve list in various departments of the University of Rajasthan from time to time after joining of the persons from the main list from 1978 to 1990 have been furnished by the appellants before this court by an additional affidavit. It has also been stated that even out of the petitioners who had filed the writ petition, Dr. T.N. Bhardwaj himself was kept in the reserve list and was thereafter appointed on the post of reader having fallen vacant subsequently on account of the promotion of Dr. P. Khanna as Professor.

Section 3 (1) of the Act of 1974 puts a restriction that no teacher in any university in Rajasthan shall be appointed except on the recommenda-

A tions of the Selection Committee constituted under Sec. 5 (1), and, under Sec. 3(2) any appointment made in contravention of sub- section (1) of sec. 3 shall be null and void. In the present case Dr. Uma Kant was recommended by the Selection Committee constituted under Section 5. Sec. 5 only provides for the constitution of Selection Committee. The High Court has found that there was no violation of Section 5 in the Constitution of the B Selection Committee and the said finding has not been challenged before us on behalf of the respondents. Section 6 provides for the procedure of Selection Committee and sub-section (4) of Section 6 clearly provides that the Selection Committee shall prepare a list of candidates selected by it in order of merit and shall further prepare reserve list in the same order and to the extent of 50% of the vacancies in the post of teachers or officers for C which the Selection Committee was constituted. The Syndicate in its Resolution dated 10th July, 1978 had resolved that the reserve list recommended by the Selection Committee shall be valid upto six months from the date of the approval of the Syndicate which was subsequently extended to one year instead of six months in a resolution passed on 3.12.1983. In our view the High Court was wrong in taking the view that a regular vacancy of D Professor having arisen on the retirement of Dr. G.S. Nathawat on 30th September, 1989 again a fresh Selection Committee should have been constituted and no appointment on such post could have been made from the reserve list prepared by the Selection Committee on 20th June, 1989. Section 6(4) clearly provided for the preparation of reserve list to the extent of 50% of the vacancies in the post of teachers or officers for which E the Selection Committee was constituted. It is not in dispute that the main list and the reserve list prepared by the Selection Committee on 20th June, 1989 were approved by the Syndicate. We agree with the contention of the university that a reserve list is always prepared to meet the contingency of anticipated or future vacancies caused on account of resignation, retirement, promotion or otherwise. This is done in view of the fact that it takes a F long time in constituting a fresh Selection Committee which has a cumbersome procedure and in order to avoid ad-hoc appointments keeping in view the interest of the student community. The Selection Committee in the present case was constituted for the selection of Professor in Botany and such Selection Committee had approved and recommended the name of the appellant Dr. Uma Kant in the reserve list finding him suitable for G appointment on the post of Professor in Botany. The Syndicate which is the highest executive body in the university had also approved the name of Dr. Uma Kant in the reserve list which remained valid upto one year and we cannot accept the contention raised on behalf of the respondents that the reserve list is exhausted as soon as the person recommended in the main H list joined the post. In the present case Dr. G.S. Nathawat was selected on

20th June, 1989 and was going to retire on 30th September, 1989 and in these circumstances it was perfectly valid to select one more person and to keep him in the reserve list for being appointed on the regular vacancy which was shortly anticipated on account of retirement of Dr. Nathawat. The High Court committed a clear error in restricting the scope of reserve list only against the post for which the selection was made and which according to the High Court could only be available to the incumbent in the reserve list if the person recommended in the main list did not join such post. Such interpretation is not borne out from any of the provisions of Section 3(1), Section 5 or sub-s. (4) of Section 6 of the Act of 1974. The High Court took the view that the expression 'appointment' in sub-sec. (1) of Sec. 3 shall mean appointed initially. Then, sub-sec. (1) of Sec. 5 provides that for every selection of a teacher in university, there shall be constituted a Committee consisting of persons mentioned therein. The High Court held that the words "for every selection" are very pertinent and when read with Sec. 3(1) and 3(2), it only means that whenever there is a regular vacancy for a post, a Selection Committee has to be constituted. When Dr. G.S. Nathawat retired on 30th September, 1989, a regular vacancy arose and therefore a Selection Committee should have been constituted afresh.

In our view the High Court was wrong in taking the aforesaid view. Sec. 5 only provides for the constitution of Selection Committee and the words "for every selection" used in sub-sec. (1) of Sec. 5 only mean that in case of every selection of a teacher or of an officer in university, a Committee would be constituted of the persons mentioned in sub-clause (i) to (v) of the said Section. So far as the present case is concerned, even the High Court has arrived to the conclusion that the Committee constituted for the selection of a professor in Botany was proper and in accordance with the provisions of Sec. 5 of the Act of 1974. The appellant, Dr. Uma Kant was found suitable for the post of professor in Botany and his name was recommended in the reserve list by the duly constituted Selection Committee. Sec. 6(4) of the Act of 1974 clearly provides that the Selection Committee while making its recommendations to the syndicate under sub-sec. (2) shall prepare a list of candidates selected by it in order of merit and shall further prepare a reserve list in the same order and to the extent of 50% of the vacancies for the post of teachers or officers. Thus a reading of Sec. 5 with Sec. 6(4) makes it quite clear that the Selection Committee constituted shall recommend not only the candidates selected by it in order of merit but shall further prepare a reserve list to the extent of 50% of the vacancies and persons kept in the reserve list will be considered as having been selected for the concerned post and shall be entitled for appointment if any

A vacancy is caused during the validity period of the reserve list. The suitability of the persons kept in the reserve list is also adjudged by the Selection Committee which is constituted for selection of a teacher in the university. Thus no fault can be found that the incumbent recommended in the reserve list by the Selection Committee was not selected for the concerned post of teacher. In our view the very purpose of preparing a reserve B list would be defeated if the view taken by the High Court is accepted that once a person selected by the selection committee has joined that post then selection made by the Committee is exhausted and the reserve list is of no avail and becomes extinct. There was no meaning or purpose of keeping the reserve list alive for a long period of one year, as no person selected for the post can at all be expected not to join for such a long period of one C year.

If we examine the matter from another angle, it would be clear that according to the university such a procedure is in vogue in all the universities of Rajasthan that a reserve list is used for the appointment on a vacant post caused during the validity period of the reserve list, and D numerous appointments had been made in the last decade from the reserve list. The university has also submitted that if the view taken by the High Court is held to be correct, it will create chaotic situation in the university as all appointments so far made from the reserve list will become assailable. It is well settled that in matters relating to educational institutions, if two interpretations are possible, the courts would ordinarily be reluctant to E accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.

In the result, we allow these appeals, set aside the impugned Judgment of the High Court and hold the selection and appointment of the F appellant, Dr. Uma Kant as valid on the post of Professor in Botany in the University of Rajasthan.

T.N.A Appeals allowed.