

J. ASHOKA

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v.

UNIVERSITY OF AGRICULTURAL SCIENCES & ORS.

(Civil Appeal No. 12182 of 2016)

DECEMBER 15, 2016

[T. S. THAKUR, CJI, R. K. AGRAWAL AND
ADARSH KUMAR GOEL, JJ.]

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Service Law:

Selection – University of Agricultural Sciences Statute, 1964 – Statute 15, 30 – Selection process for appointment to the post of Assistant Professor in Sericulture – Select list prepared wherein appellant placed above respondent no.3 – Select list forwarded to the Board of Regents of the University – Board selected two candidates including respondent no.3 – Aggrieved, appellant filed writ petition – High court set aside the order of Board and directed them to reconsider the case of appellant – Board again selected respondent no.3 afresh – Plea of appellant that appointment of respondent no.3 was made on extraneous considerations against the appellant whose merit is much superior to that of respondent no.3 – Held: The Board has power to select the best candidate as per the provisions of the statute – Whenever the Board considers a person placed lower in merit in the select list, it can do so only by recording reasons as to why the case of the person placed above is being overlooked and person below is considered the best for being appointed – On facts, the Board re-considered the matter and assigned cogent and adequate reasons for preferring respondent no.3, viz., her qualification, length of regular service as Assistant Professor and humanitarian grounds – The Considerations cannot be said to be irrelevant – Competence and merit is not only adjudged on the basis of qualification of candidate but also other factors like career of candidate, educational curriculum, experience, general aptitude, personality and all other germane factors – Therefore, action of Board in selecting respondent no.3 in accordance with the relevant statute framed by University – Constitution of India – Arts.14 and 16.

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Dismissing the appeal, the Court

HELD: 1. As per the impugned notification, the requisite

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A qualification for the post of Assistant Professor was Second Class Master's Degree in the concerned subject. The appellant possessed the requisite qualification to be eligible for the said post. However, the Board of Regents, considered Respondent No. 3 as the suitable candidate considering her qualification (Ph.D), continuous service as an Assistant Professor and also on humanitarian grounds. Whenever a selection is to be made on the basis of merit performance, it cannot be for the purpose of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according *en bloc* precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered. There is no escape for anyone from this ordeal and claim for any *en bloc* favoured treatment merely because, any one of them happened to possess an additional qualification than the relevant basic/general qualification essential for applying the post. It would amount to first exhausting in the matter of selection all those, *dehors* their *inter se* merit performance, in possession of additional qualification and take only thereafter separately those with ordinary degree and who do not possess the additional qualification. [Para 17] [96-D-G]

2. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. Therefore, in the instant case, the relevant provisions of the Statute were fully complied with. [Para 18] [96-H; 97-A-B]

3. Clause (2) of Statute 30 of University of Agricultural Sciences Statute, 1964 must be read in consonance with Articles 14 and 16(1) of the Constitution, for the reasons, the University is covered under the definition of State given under the Articles. Hence, when under Clause (2) of Statute 30, the Selection Committee constituted for making selection on the basis of the performance of the candidates at the interview recommends the names in the order of merit, the power of the Board of Regents

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to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that any person placed lower is the best, it can do so, but it has to record reasons for doing the same. But if a person placed below is appointed without assigning any reasons or on irrelevant considerations, there is no other alternative than to hold that such a selection and appointment is arbitrary and violative of Articles 14 and 16(1) of the Constitution. [Para 19] [97-B-D]

4. The Board has power to select the best candidate as per the provisions of the Statute and in the case at hand, the Board re-considered the matter and assigned cogent reasons as to why Respondent No. 3 was preferred. Respondent No. 3 possesses the qualifying post graduate degree coupled with additional qualification of Ph.D. in the same subject. The instant selection is for the post of Assistant Professor of Sericulture. If deeper knowledge of the subject, coupled with possessing the qualifying degree as prescribed in the notification inviting application, is possessed by a candidate and if the Board takes into consideration all these factors including the qualification of Doctorate in the said subject, it cannot be said that the Appointing Authority has taken irrelevant materials into consideration. [Para 20] [97-E-G]

5. Whenever the Board of Regents considers a person placed lower in merit in the list of selected candidates recommended by the Selection Committee, it can do so only by recording reasons as to why the case of the person placed above is being overlooked and the person below is considered the best for being appointed. In the present case, adequate reasons have been recorded by the Board, viz., her qualification, length of regular service as Assistant Professor and humanitarian grounds. The competence and merit of a candidate is adjudged not on the basis of the qualification he/she possesses but also taking into account the other necessary factors like career of the candidate, his educational curriculum, experience in the field, his general aptitude, personality of the candidate and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. [Para 21] [97-H; 98-A-B]

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A *P.M. Latha and Another v. State of Kerala and Others*
(2003) 3 SCC 541 : 2003 (2) SCR 653 – held
inapplicable.

*Dr. (Mrs.) G. Durga Nageswari v. University of
Agricultural Sciences* ILR 1991 Kar. 14 – referred
to.

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Case Law Reference

ILR 1991 Kar. 14	referred to	Para 5
2003 (2) SCR 653	held inapplicable	Para 7

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12182
of 2009.

From the Judgment and Order dated 13.02.2012 of the High Court
of Karnataka at Bangalore in WA No. 14 of 2006 (S-RES).

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Basava Prabhu S. Patil, Sr. Adv., B. Subrahmanya Prasad, Anirush
Sanganeria, Chinmay Deshpande, Ananth Narayana M.G., Advs. for
the Appellant.

P. V. Shetty, Sr. Adv., Sanjay R. Hegde, S. Nithin, Anil Kumar
Mishra-I, S. N. Bhat, Advs. for the Respondents.

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The Judgment of the Court was delivered by

R. K. AGRAWAL, J. 1. Leave granted

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2. This appeal is directed against the final judgment and order
dated 13.02.2012 passed by the Division Bench of the High Court of
Karnataka at Bangalore in Writ Appeal No. 14 of 2006 whereby the
High Court dismissed the writ appeal filed by the appellant herein against
the judgment and order dated 17.11.2005 passed by the learned single
Judge of the High Court in Writ Petition No. 46069 of 1999.

3. Brief facts:

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(a) Vide Notification dated 14.08.1995, the University of Agricultural
Sciences, Bangalore advertised 3 (three) posts of Assistant Professors
in Sericulture. Out of the three vacancies, one was reserved for scheduled
caste; one for scheduled tribe and the third in favour of general merit
candidate. The minimum qualification prescribed for the post was
Master's Degree in the concerned subject. The appellant herein, a post-
graduate in Agriculture from the University of Agricultural Sciences,

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Dharwad applied for the said post as a general merit candidate. The appellant herein was called for an interview along with the other candidates A

(b) The Selection Committee, after considering the qualification, experience and the publications to the credit of each of the candidates, prepared a Select List wherein Shri J. Ashoka-the appellant herein was placed at Serial No. 1 and Shri R. Narasimharaju, Shri K.C. Narayanaswamy and Dr. Fathima Sadathulla were placed at Serial Nos. 2, 3 and 4 respectively. B

(c) The Select List was forwarded to the Board of Regents of the University for issuing appropriate appointment orders. The Board of Regents prepared a separate list selecting Shri K.C. Narayanaswamy (Serial No. 3 in the Select List) for the post available under the General Category and Dr. Fathima Sadathulla (Serial No. 4 in the Select List) under the roster of reservation. C

(d) Being aggrieved by the appointment, as aforesaid, the appellant herein and Shri R. Narasimharaju (Serial No. 2 in the Select List) preferred Writ Petition Nos. 6360-6361 of 1996 before the High Court of Karnataka at Bangalore. Learned single Judge of the High Court, by order dated 13.08.1996, allowed the writ petitions while setting aside the order of the Board of Regents with a direction to the University to reconsider the case of the appellant herein in the light of the recommendations made by the Selection Committee. However, learned single Judge further directed to accommodate Dr. Fathima Sadathulla (Serial No. 4 in the Select List) either against any existing vacancy or by creating a new vacancy. D E

(e) Aggrieved by the order dated 13.08.1996, the University filed Writ Appeal Nos. 8289-8290 of 1996 before the Division Bench of the High Court. The Division Bench of the High Court, by order dated 16.02.1999 partly allowed the appeals by setting aside the order passed by learned single Judge only in respect of Dr. Fathima Sadathulla (Serial No. 4 in the Select List) that the candidate may be accommodated against any existing vacancy or by creating a new vacancy. However, Dr. Fathima Sadathulla was permitted to continue in the post till issuance of the fresh appointment order. F G

(f) The Board of Regents cancelled the appointments of Shri K.C. Narayanaswamy and Dr. Fathima Sadathulla in the meanwhile. On 26/27.03.1999, while reconsidering the panel, the Board decided to select H

A afresh Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture, considering her qualification (Ph.D.), length of regular service as Assistant Professor and also on humanitarian grounds. Based on the decision of the Board of Regents dated 27.03.1999, by a subsequent order dated 22.05.1999, the University again appointed Dr. Fathima Sadathulla.

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(g) Being aggrieved by the order dated 22.05.1999, the appellant herein preferred Writ Petition No. 46069 of 1999 before the High Court. Learned single Judge of the High Court, by order dated 17.11.2005, dismissed the petition filed by the appellant herein.

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(h) The appellant herein, aggrieved by the order dated 17.11.2005 filed Writ Appeal No. 14 of 2006 before the Division Bench of the High Court. The Division Bench of the High Court, by order dated 13.02.2012, dismissed the appeal filed by the appellant herein.

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(i) Aggrieved by the order dated 13.02.2012, the appellant herein has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Basava Prabhu S. Patil, learned senior counsel for the appellant and Mr. P.V. Shetty, learned counsel for the respondents.

Rival Submissions:

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5. Learned senior counsel appearing for the appellant contended before this Court that the resolution passed by the Board of Regents selecting the third respondent suffers from patent illegality inasmuch as totally irrelevant materials were taken into consideration and the case of the appellant was not at all considered while selecting the third respondent who was ranked lower in the panel of Select List recommended by the Selection Committee. Elaborating his contentions, learned senior counsel submitted that once the Selection Committee empanels the candidates in the order of merit and sends its recommendation, the Board of Regents shall have to follow the order of merit. In support of this contention, he placed reliance on the judgment in *Dr. (Mrs.) G Durga Nageswari vs. University of Agricultural Sciences* ILR 1991 Kar. 14.

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6. According to learned senior counsel, the third respondent has been appointed against the post which was never advertised. He referred to Statute 15 (2)(a) of the University of Agricultural Sciences Statute, 1964 and also the provisions of Statute 30(2)(d) contending that the impugned order is the result of *male fide* action and violates the rights

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guaranteed under Articles 14 and 16 of the Constitution. The appointments were made on extraneous considerations against the appellant whose merit is much superior to that of the third respondent. It was further contended that once the Selection Committee has selected the appellant herein and placed him at Serial No. 1, the first respondent cannot overlook him on totally extraneous considerations and the exercise of such power is *mala fide*.

7. It was further contended by learned senior counsel that the factors taken into consideration for preferring the third respondent such as possessing Ph.D. qualification, length of regular service and humanitarian considerations were all irrelevant and hence the entire decision of the Board of Regents is vitiated. In support of this contention, he relied upon *P.M. Latha and Another vs. State of Kerala and Others* (2003) 3 SCC 541 wherein it was held as under:-

“10. We find absolutely no force in the argument advanced by the respondents that BEd qualification is a higher qualification than TTC and therefore, the BEd candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher’s Certificate is given to teachers specially trained to teach small children in primary classes whereas for BEd degree, the training imparted is to teach students of classes above primary. BEd degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.

13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forgot that in extending relief on equity to BEd candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the

A advertisement, it is not redressing the injustice caused to the
appellants who were TTC candidates and would have secured a
better position in the rank list to get appointment against the
available vacancies, had BEd candidates been excluded from
the selections. The impugned judgment of the Division Bench is
B both illegal, inequitable and patently unjust. The TTC candidates
before us as appellants have been wrongly deprived of due chance
of selection and appointment. The impugned judgment of the
Division Bench, therefore, deserves to be set aside and of the
learned Single Judge restored.”

C 8. *Per contra*, learned counsel for the respondent-University
contended before this Court that the action of the Board in selecting
the third respondent is strictly in accordance with the relevant Statutes framed
by the University. Learned counsel while placing reliance on Statute
15(4) of the Statute framed by the University contended that the Board
has the power to select the best candidate as per the provisions of the
D Statute and, in the present circumstances, had exercised its power
judiciously by assigning cogent reasons as to why the third respondent
was preferred. It was further contended that a perusal of the resolution
would disclose that the Board of Regents, after considering the entire
panel of the Select List, has preferred the 3rd respondent as she possessed
E Ph.D. in Sericulture and was found more suitable for the post of Assistant
Professor of Sericulture. The other aspects considered by the Board
were that she had been working in the University since the date of her
initial appointment, and that if she was not preferred she would lose all
avenues of alternative appointment whereas the appellant herein, who
was appointed in a regular post of Assistant Professor and was working
F in another University in the same post, would not be put to any hardship.
It is further submitted that the Board was well within its province in
examining the matter keeping in mind these humanitarian considerations
also without ignoring the merit.

G 9. Learned counsel further contended that the Board has
preferred a person possessing an additional qualification of Ph.D. in
Sericulture to a candidate who only possessed a Master’s Degree.
Having regard to the nature of the functions of an Assistant Professor,
requiring deeper knowledge of the subject and the third respondent having
Ph.D. to her credit, was found well suited and more equipped for the
post in question, which cannot be considered as an arbitrary or
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unreasonable method adopted or of taking irrelevant materials into consideration. A

10. Learned counsel further contended that there is absolutely no failure of justice insofar as the action taken by the Board of Regents in preferring the third respondent to the appellant, as the appellant is holding a regular post of Assistant Professor in the Agricultural University at Dharwad and his non-selection has in no way affected his interest, whereas if the third respondent was to be ignored it would have deprived her of her livelihood and would have rendered her jobless for the rest of her life despite possessing such a high qualification of Ph.D. Therefore, these considerations which had obviously weighed in the mind of the Board, cannot be termed as irrelevant and hence there is no failure of justice so as to call for interference by this Court. B
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Discussion:

11. From the material on record, it is undisputed that the Selection Committee constituted for the purpose prepared a panel of candidates in the order of merit and recommended the name of the appellant herein along with three others for selection. In the said list, the name of the appellant was at Serial No. 1 while that of the others, namely, Sri. R. Narasimharaju, Dr. K.C. Narayanaswamy and the third respondent Dr. (Mrs.) Fathima Sadathulla were placed at Serial Nos. 2, 3 & 4 respectively. The Board of Regents selected the third respondent and one Dr. K.C. Narayanaswamy for the posts of Assistant Professors of Sericulture. The appellant herein, who was placed at Serial No.1, along with one R. Narasimharaju, whose name was shown at Serial No. 2 in the Select List recommended by the Selection Committee, approached the High Court by filing Writ Petition Nos. 6360-6361 of 1996. The said writ petitions were allowed on 13.08.1996 holding that the Board of Regents has not exercised its power in a reasonable manner as it did not assign any reason for preferring the third respondent and another candidate, viz., Dr. K.C. Narayanaswamy, who were placed below in the Select List. Thus, while setting aside the appointment of the two candidates made on 18.12.1995, a direction was issued to the University to reconsider the case of the appellants therein as also of the two other candidates, viz., Dr. (Mrs.) Fathima Sadathulla, the third respondent herein and Dr. K.C. Narayanaswamy. However, as Dr. (Mrs.) Fathima Sadathulla, (the third respondent herein) had been continuing in service, she was directed to continue till the matter was considered afresh or the D
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- A University could find a way out to accommodate her either in the existing vacancy or by creating a new vacancy. This direction was issued to enable the third respondent herein to continue in the service of the University. As Dr. K.C. Narayanaswamy had not joined the service despite his appointment, it was held that his case need not be reconsidered. The petitioners therein, viz., Shri J. Ashoka (the appellant herein) and Shri R. Narsimharaju were directed to be absorbed straight away in service. The University preferred writ appeals against the said order. The Division Bench of the High Court, by order dated 16.02.1999, in Writ Appeal Nos. 8289-8290 of 1996 allowed the appeals in part by setting aside the direction issued by learned single Judge to accommodate
- C Dr. (Mrs.) Fathima Sadathulla either in the existing vacancy or by creating new one.

12. Pursuant to the directions issued by the Court, the Board of Regents has reconsidered the matter on merits on 27.03.1999 and has resolved to select afresh Dr. (Mrs.) Fathima Sadathullah as Assistant Professor of Sericulture. It is useful to extract the resolution passed which is at item No. 2D of the Minutes of 271st (Spl.) Meeting of the Board of Regents held on 26th and 27th March 1999, which is as under:-

“Item 2D. Appointment of Assistant Professor in the Department of Sericulture (In the pay scale of Rs. 2200-75-2800-100-4000)

- E After judicious examination of the directions issued by the Hon’ble High Court of Karnataka dated 13.08.1996 in Writ Petition Nos. 6360 and 6361 of 1996 filed by Mr. J. Ashoka and Mr. Narasimha Raju, respectively, challenging the appointment of Dr. K.C Narayanaswamy and Dr. Fathima Sadathulla as Assistant Professors of Sericulture under General Merit Category and the orders dated 16-2-1999 of the Hon’ble High Court of Karnataka dismissing the Writ Appeal No. 8289 and 8290/96 filed by the University to defend its action, the Board decided to quash the appointments of the following two candidates :

- G 1. Dr. K.C Narayanaswamy as Assistant Professor of Sericulture, and
- H 2. Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture (vide Order No. AO/Est.I(1)Appt/95-96 dated December 18, 1995)

However, the Board while reconsidering the panel, decided to select afresh Dr. (Mrs). Fathima Sadathulla as Assistant Professor of Sericulture, considering Ph.D., qualification, length of regular service as Assistant Professor possessed by her and also on humanitarian grounds.

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(emphasis supplied by us)

Since Dr. K.C Narayanaswamy has already been appointed as Associate Professor of Sericulture vide Order No. AO/EST-I(1)/Appt/98-99 dated 16-11-1998, the Board did not find any reason to consider his case for this position.”

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By a subsequent order dated 22.05.1999, the University again appointed Dr. Fathima Sadathulla. Being aggrieved, the appellant herein preferred a Writ Petition being No. 46069 of 1999 before the High Court. Learned single Judge of the High Court, by order dated 17.11.2005, dismissed the petition filed by the appellant herein. The appellant herein filed a Writ Appeal being No. 14 of 2006 before the Division Bench of the High Court. The Division Bench of the High Court, by order dated 13.02.2012, dismissed the appeal filed by the appellant herein.

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13. In this context, it would be relevant to quote the impugned notification which reads as under:-

“UNIVERSITY OF AGRICULTURAL SCIENCES
 No. AO/RT/11/13/95-96 Administrative Office
 GKVK, Bangalore-65
 Date : 14.8.95

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NOTIFICATION

Ref: This office advertisement notification
 No. AO/RT/11/13/94-95 dated 30.6.1994.

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Posts of Assistant Professors advertised under above reference are reclassified in accordance with the Govt. order dated 20-5-1995.

Sl. NO.	Discipline	Backlog Current	Classification and No. of Posts
1	2	3	4
1 to 3	Xxx	Xxx	Xxx
9	Sericulture	Current-3	SC-1, GM-1, ST-1
10 to 39	Xxx	Xxx	Xxx-

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A For the following posts of Assistant Professor, applications are invited afresh.

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|---|-----------------------------------|---------------|
| | 1) Agronomy | Cat.II-A – 1 |
| | 2) Agril. Entomology | Cat. II-A – 1 |
| B | 3) Kannada | SC (Backlog) |
| | 4) Poultry Science | ST (Backlog) |
| | 5) Fishery Engineering Technology | SC (Backlog) |

C Candidates who have applied for the posts of Assistant Professor in response to the Notification dated 30-6-94 (Other than the above post), need not apply again. If eligible candidates belonging to Cat.II (A) are not available, candidates belonging to GM will be considered as per Govt. order dated 20.6.95.

D Qualifications : A minimum of Second Class Master's degree in the concerned subject. Preference will be given to Experienced candidates. (emphasis supplied by us)

1. Application fee is Rs. 20/-

E 2. Application to SC/ST candidates will be issued free of cost only if they submit a requisition enclosing a xerox copy of the certificate issued by the competent authority in the form prescribed in Government Order No. SBC 213 SAD 85 dated 28.3.1987.

3. Number of vacancies notified is subject to alteration and the University reserves the right to Increase or decrease the number.

F 4. 'Application form' and other instructions may be had from the undersigned or presentation of a crossed postal order/challan of the value indicated above drawn in favour of the comptroller, University of Agril. Sciences, Bangalore, purchased/remitted only after 21.8.95 at the State Bank of India GKVK/Hebbal.

G 5. Application can also be had by post by sending the requisite postal order with self addressed envelope (12" x 4") affixing the stamp of the value of Rs. 3.00 indicating the category to which he/she belongs.

H 6. Ex-Servicemen of children of Defence Personnel killed or disabled in action are exempted from payment of application fee

provided they furnish a certificate issued by the appropriate authority. A

7. Separate application shall be submitted for each post.

8. Last date for obtaining blank application form is 20.9.95.

9. Last date for receipt of filled in application form from the candidate is 25.9.95. The candidates staying abroad may send equivalent prescribed fee in foreign currency either in the form of Demand Draft/Cheque drawn in favour of the Comptroller, University of Agriculture Sciences, GKVK, Bangalore 560 065, INDIA. Candidates staying abroad may send their application in plain paper giving details of the Bio-data and enclosing copies of their educational qualifications. B C

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(A.KOTRESH)
Administrative Officer" D

14. In the case at hand, the question is not as to whether the Board could not proceed to select and appoint a candidate whose name according to the recommendation made by the Selection Committee is lower in preference to the candidate who is placed above, but the question is whether the Board can do so without recording reasons for preferring a person placed below in preference to a person placed above by the Selection Committee. In this regard, it is necessary to state that Clause (2) of Statute 30 requires the Selection Committee to recommend the names in the order of merit and when the Selection Committee has done so, there must be some basis to alter the merit as fixed by the Selection Committee. Otherwise, the exercise of the power would be arbitrary and come into conflict with the right to equality and injunction against arbitrariness in State action and the right to equality and equality of opportunity in matters relating to employment under the State guaranteed under Articles 14 and 16(1) of the Constitution. E F

15. At this stage, it would be appropriate to quote Statute 30 (2) which is as under:- G

“(2)(a) The Selection Committee shall review applications for the posts and consider the qualifications of all applicants including University Officers and other employees who may be qualified for the post. If a qualified candidate(s) is found, the Committee H

A shall recommend in order of merit not more than three qualified persons for appointment.

(emphasis supplied by us)

B (b) In case no qualified person is recommended and/or appointed as under (2) above, the Selection Committee shall

(a) contact various institutions and agencies (such as ICAR, State Departments, Colleges, etc.) for the purpose of obtaining applications from qualified persons and (b) otherwise advertise for qualified applicants in such manner as may be approved by the Vice-Chancellor. On receipt of such further applications the Committee shall prepare a list of all applicants and shall recommend in order of merit, not more than three qualified persons for appointment.

C (3) If the Selection Committee fails to nominate an acceptable person for an office, the Board shall take such steps as are necessary to select a suitable person.

D (4) Out of the qualified persons recommended by each Selection Committee the Board shall choose the best individual for appointment in all cases of appointments to be made by the Board.”

E It can be seen from the above that under Clause 2 of Statute 30, the Selection Committee constituted for the purpose is required to make recommendation of names for appointment in the order of merit not more than three qualified persons for appointment. Clause (4) of Statute 30, however, empowers the Board of Regents to choose the best individual for appointment in the case of appointment to be made by the Board.

F 16. In *Dr. Mrs. G Durga Nageswari (supra)*, it was held as under:-

G “9. The above case no doubt interpreted the Indian Administrative Service Regulations. Regulation 5(5) of the said Regulations required recording of reasons for suppression. But as can be seen from the above paragraph of the Judgment, the Supreme Court based its conclusion on the right to equality guaranteed under Articles 14 and 16 (1) of the Constitution and observed that recording of reasons for overlooking the claim of

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a person who is above and select a person below was necessary. A
The said principle was applied by this Court in the case of T.K.
DEVARAJU vs STATE OF KARNATAKA. This Court pointed
out that the Regulation 5(5) of the Indian Administrative Service
Regulation was only for the purpose of giving effect to Article
14 and 16(1) of the Constitution and the position would be the
same even in the absence of such a regulation because of B
recording of reasons is the only way to ensure obedience to the
fundamental right guaranteed under Articles 14 and 16(1).
Therefore, in our opinion, clause (4) of the Statute 30 must be
read along with Articles 14 and 16(1) of the Constitution, for the
reasons, the University of Agricultural Sciences is state as defined C
in Article 12 of the Constitution and hence bound by the Articles
included in the Fundamental Rights Chapter. Therefore, when
under clause (2) of Statute 30, a Selection Committee constituted
for making selection on the basis of the performance of the
candidate at the interview recommends the names in the order
of merit, the power of the Board of Regents to choose best D
among them means normally it should proceed in the order of
merit as arranged by the Selection Committee, and if it is of the
view that any person placed lower is the best, it can do so, but it
has to record reasons. If reasons are recorded then it can be
said that the provisions of Articles 14 and 16(1) are complied E
with. But if a person placed below is appointed without assigning
any reason, there is no other alternative than to hold that such a
selection and appointment is arbitrary and violative of Articles
14 and 16(1) of the Constitution.

10. In the present case, it is not disputed that no reasons had F
been recorded by the Board of Regents as to why the 2nd
respondent was selected for appointment in preference to the
petitioner though the petitioner was placed at SI.No. 1 and the
2nd respondent was placed at SI.No.3. The learned Counsel for
the University submitted that reasons were not recorded in view
of the earlier decision of this Court in Keshayya's case in which G
it was held that the Board of Regents had the power to select
any one of the persons whom it considers best and make the
appointment. But the precise question raised in this case and
which was not raised in Keshayya's case is as to whether the
Board of Regents could do so without assigning any reason. As H

A shown earlier, the recording of reasons is a must having regard
to the Right guaranteed to the citizens under Articles 14 and
16(1) of the Constitution. Therefore, we are of the view that
whenever the Board of Regents considers that a person placed
lower in merit in the list of selected candidates recommended by
the Selection Committee, it can do so only by recording reasons
as to why the case of the person placed above is being overlooked
and the person below is considered the best for being appointed.
In the present case, no reasons have been recorded, may be for
the reason the Board considered that it was unnecessary as stated
by the learned Counsel. He however submitted that the Board
of Regents has stated that respondent-2 is more suitable than
the petitioner. That is the conclusion and not the reason. That
conclusion must be preceded by the reason which is wanting in
this case.

17. As per the impugned notification, the requisite qualification
for the post of Assistant Professor was Second Class Master's Degree
in the concerned subject. The appellant possessed the requisite
qualification to be eligible for the said post. However, the Board of
Regents, considered Respondent No. 3 herein as the suitable candidate
considering her qualification (Ph.D), continuous service as an Assistant
Professor and also on humanitarian grounds. Whenever a selection is to
be made on the basis of merit performance, it cannot be for the purpose
of eliminating all others preventing thereby even an effective and
comparative consideration on merits, by according *en bloc* precedence
in favour of those in possession of additional qualification irrespective of
the respective merits and demerits of all candidates to be considered.
There is no escape for anyone from this ordeal and claim for any *en
bloc* favoured treatment merely because, any one of them happened to
possess an additional qualification than the relevant basic/general
qualification essential for applying the post. It would amount to first
exhausting in the matter of selection all those, *dehors* their *inter se*
merit performance, in possession of additional qualification and take only
thereafter separately those with ordinary degree and who do not possess
the additional qualification.

Conclusion:

18. Reasons are the links between the materials on which certain
conclusions are based and the actual conclusions. They disclose how

the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We, therefore, are of the considered opinion that the relevant provisions of the Statute were fully complied with.

19. In our considered view, Clause (2) of Statute 30 must be read in consonance with Articles 14 and 16(1) of the Constitution, for the reasons, the University is covered under the definition of State given under the Articles. Hence, when under Clause (2) of Statute 30, the Selection Committee constituted for making selection on the basis of the performance of the candidates at the interview recommends the names in the order of merit, the power of the Board of Regents to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that any person placed lower is the best, it can do so, but it has to record reasons for doing the same. But if a person placed below is appointed without assigning any reasons or on irrelevant considerations, there is no other alternative than to hold that such a selection and appointment is arbitrary and violative of Articles 14 and 16(1) of the Constitution.

20. The Board has power to select the best candidate as per the provisions of the Statute and in the case at hand, the Board re-considered the matter on 27.03.1999 and assigned cogent reasons as to why Respondent No. 3 was preferred. Though learned senior counsel for the appellant very much relied upon *P.M. Latha (supra)*, we are of the considered opinion that the above case does not have any bearing on the decision of this case. Respondent No. 3 possesses the qualifying post graduate degree coupled with additional qualification of Ph.D. in the same subject. The instant selection is for the post of Assistant Professor of Sericulture. If deeper knowledge of the subject, coupled with possessing the qualifying degree as prescribed in the notification inviting application, is possessed by a candidate and if the Board takes into consideration all these factors including the qualification of Doctorate in the said subject, it cannot be said that the Appointing Authority has taken irrelevant materials into consideration.

21. Whenever the Board of Regents considers a person placed lower in merit in the list of selected candidates recommended by the Selection Committee, it can do so only by recording reasons as to why

- A the case of the person placed above is being overlooked and the person below is considered the best for being appointed. In the present case, adequate reasons have been recorded by the Board, viz., her qualification, length of regular service as Assistant Professor and humanitarian grounds. The competence and merit of a candidate is adjudged not on the basis of the qualification he/she possesses but also taking into account the other
- B necessary factors like career of the candidate, his educational curriculum, experience in the field, his general aptitude, personality of the candidate and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held.
- C 22. It was also brought to the notice of this Court that the present appellant is at present working on a regular post of Assistant Professor in some other University whereas Respondent No. 3 would be put to undue hardship if she would discontinue from the post. In this view of the matter, we are of the considered opinion that the action of the Board
- D in selecting the third respondent is strictly in accordance with the relevant Statutes framed by the University and the Board had exercised its power judiciously by assigning cogent reasons as to why the third respondent was preferred.
- E 23. In view of the above, the appeal is dismissed with no order as to costs.

Ankit Gyan

Appeal dismissed.