

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10722 OF 2013

(Arising out of Special Leave Petition (C) No. 3038 of 2008)

Dr. Mrs. Poonam Tandon
Appellant

....

Versus

The Chancellor, Lucknow University & Ors

.... Respondents

JUDGMENT

S. A. BOBDE, J.

1. Leave granted.
2. The appellant has challenged the order of the Allahabad High Court, by which the High Court has set aside the order of the Chancellor dated 13th March 2007 passed under Section 31(8)(a) of the U.P. State Universities Act, 1973 (hereinafter referred to as the 'Act'). By the said order, the Chancellor had approved the appointment of the appellant by holding that the appellant possessed the prescribed and required qualification for the post of Professor of Physics (Specialization in Experimental Solid

State). The Chancellor had passed this order on a reference made under Section 31(8) (a) of the Act.

3. The appellant was selected by the duly constituted Selection Committee consisting of the Vice Chancellor, Lucknow University, three experts in the field of Physics appointed by the Chancellor, the Head of Department, Physics, Lucknow University, the Registrar, Lucknow University and two other members as representatives of the SC/OBC. The Selection Committee unanimously resolved to recommend the appellant's name for the aforesaid post to the Executive Council, Lucknow University under Section 31(4) of the Act.
4. The Executive Council considered the recommendation of the Selection Committee but did not agree with it and passed the following recommendation:

"Resolved that the recommendation under reference be referred, under Section 31(8) (a) of the U.P. State Universities Act, 1973, to H.E., The Chancellor, Lucknow University for his decision because the lone candidate recommended namely Dr. Mrs. Poonam Tandon does not have research publications in the field of Experimental Solid State Physics and as such she is not "actively engaged in research" in this field of specialization; also she has not taught the subject under reference at any stage so far. Consequently, she has not fulfilled the minimum qualification for the post of Professor as laid down in Statute 11.02".

5. Upon this, the Chancellor perused the record and held that the appellant holds the prescribed and requisite qualifications for appointment to the post of Professor in Physics. The Chancellor observed that the candidate has been recommended by the Selection Committee only after due consideration of competence of the candidate in Experimental Solid State Physics. The Chancellor, however, observed that the Executive Committee ought to have been clear and specific in its dissent.

6. The matter was carried to the High Court by two candidates who were aggrieved by non-selection. The Division Bench of the High Court held that since the Chancellor had observed that there was no disagreement, which is a requirement of the Section and therefore the reference under Section 31(8) (a) of the Act was not a competent reference, the matter should have been referred by to the Executive Committee for taking a fresh decision. The High Court further held that the Chancellor ought not to have answered the question of eligibility and qualification of the respondent No.4.

7. We have heard learned counsel for the parties and have carefully perused the orders of the Authorities. We find that the order of the Chancellor was unexceptionable.

The Executive Council had by a majority referred the question whether the appellant does has the requisite qualifications, to the Chancellor for decision (supra). The Chancellor was therefore bound to answer that question and in fact has done so. The reasoning of the High Court that because the Chancellor observed that the Executive Council had not expressed clear and specific dissent about the qualification and appointment of the appellant, the Chancellor could not have entertained the reference and decided it, is wholly untenable and contrary to law. The Chancellor had not observed that there was no disagreement expressed by the Executive Council for appointing the appellant but had only observed that the disagreement had not been clearly specified. This did not mean that the Chancellor had held the reference to be incompetent. Indeed the resolution of the Executive Council clearly referred the question of the appellant's qualification to the Chancellor and letter of the Executive Council dated 19th October, 2006 clearly -states that the Executive Council "did not agree" with the recommendation of the Selection Committee and therefore had passed the resolution referring the matter. The reference was clearly competent under Section 31 (8) (a) of the Act, which reads as follows:

"In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final.

[Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final"]

8. The learned counsel for the appellant relied on a decision of this in **Neelima Misra v. Harinder Kaur Paintal and Others:** (1990) 2 SCC 746. Our view is in consonance with the same.

9. There was no reason for the High Court to interfere with the order of the Chancellor, which must be upheld. As a result, the judgment of the High Court is set aside. The University Authorities shall act in accordance with the decision of the Chancellor and shall give effect to the directions issued by the Chancellor as contained in the order dated 13th March, 2007.

10. The appeal is allowed.

11. In the circumstances of the case, however, we make no order as to costs.

.....J.

CHAUHAN]

[DR. B.S.

**.....J.
[S.A. BOBDE]**

**New Delhi,
November 28, 2013**

SUPREME COURT OF INDIA



JUDGMENT