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DECISION-MAKING FOR SELECTION ON MERIT

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EXECUTIVE SUMMARY

The case at hand is about one reputed college belonging to one of the states from western part of India, which selected a lady Assistant Professor, initially on a full time regular post but was never given an appointment to that effect compelling her to work on part-time or lecture basis for a whole year and then in the subsequent year the institution appointed an ineligible candidate in her place. The original selection of the qualified candidate was done by duly constituted selection panel but the same was changed by the next selection panel. Fulfilling all the necessary eligibility conditions and being originally selected by the duly constituted panel, this candidate was denied the initial full-time appointment. In the subsequent year the same post was unwarranted re-advertised and another unqualified candidate was selected as against this qualified candidate to the same post. On account of such injustice, the originally selected candidate after exhausting all other remedies such as representations was compelled to approach the High Court by way of Writ Petition. The matter was considered by the High Court and the claim of the originally selected candidate was upheld by the Honourable High Court ordering the employer to issue the necessary appointment order to the Petitioner. This is a classic case for the failure of recruitment and selection process in a government-controlled institution arising out of bad decision-making where the norms of selection based on merit were not followed by the institution. The case being cited here brings to light what consequences result when the well-established principles for recruitment and selection are flouted due to faulty decision-making by an organization seeking to recruit personnel. The facts of the case and decision taken are detailed out in the case study. The author's perception is also expressed in the proceeding section wherein the author has criticized such faulty and flawed decision-making by the organization letting it being drawn into litigation and suffering a loss of face for its failure in pursuing correct decision-making. This case is an example where the faulty decision making by the organization paved the way for an employee to drag the organization to Court and prove that the decision of the organization in employing an unqualified candidate, after first selecting a meritorious candidate, was guided by extraneous factors and not merit, compelling the organization to reverse its faulty decision, thereby ensuring justice to the protagonist.

DECISION-MAKING FOR SELECTION ON MERIT

Vinita Parkar had been eagerly awaiting the Appointment Order from the Institution's head in June 2009 to the full time post of Assistant Professor in the subject of Hindi. She had successfully cleared the interview held in May 2007 but for the two intervening years she was appointed on contract with the oral promise that once the approval is received from the State University she would be given the regular appointment. Thus despite having selected this candidate on merit the institution did not appoint her to the post and instead, in the month of May 2009 Vinita was asked to submit for yet another interview for the same post on the pretext that the interview held in May 2007 was no more valid due to lapse of two years. As she was given the assurance that this fresh interview, consequent to a new advertisement for the same post, was a mere formality and would not affect her earlier selection, Vinita had willingly appeared before the new Selection Panel.

She was also aware that apart from her there was no other qualified candidate for the post appearing for this fresh interview. However, in June 2009 she was shocked to learn that though she was continued as an Assistant Professor on contract, another person was appointed to the regular full time post of Assistant Professor in the subject of Hindi. Vinita could not fathom how despite her earlier selection on merit and despite she being the only eligible candidate at the latest interview, someone else and obviously one who was not eligible, could have been selected for the full time regular post while she was retained on a temporary contract post.

Vinita Parkar who was born in 1982, came from a rural background from a state in western India. She was the eldest daughter of parents who were farmers eking out their existence by toiling on their small ancestral piece of agricultural land. Vinita was a first generation learner. Her

parents had no schooling but were progressive in their outlook of educating their daughter. Her early life was spent in utter poverty and in the rural underdeveloped region of one of the least developed parts of the state. She had completed her schooling in the government school in her ancestral village. Her desire was to become a teacher and it was kindled by her Hindi language school teacher who was very caring and supportive towards. It was this inspiration that had set her on the way to college and university education. Vinita had graduated from college in 2001 majoring in Hindi. Thereafter in 2003 she had completed her Master's degree in Hindi from one of the well-known universities of the region. Immediately in 2004 she had enrolled for Ph.D programme under the same state university and also joined as an Assistant Professor on temporary clock-hour basis in one of the colleges affiliated to this university intending to make a career in higher education as a teacher.

Her dream was to become an Assistant Professor in Hindi and knowing well that to achieve this goal she needed to clear the National Eligibility Test (NET) conducted by University Grants Commission (UGC) of India she had started persevering towards this end. She subjected herself to rigorous study to prepare for clearing the NET. Just around this time she got married to a close friend and a colleague Rajiv who like her, was also a teacher of Hindi and also a first generation learner from the same region. Vinita passed her NET exam in the year 2006 and was awarded her Ph.D in 2007. Hence she had succeeded in getting herself fully qualified to be selected and appointed as an Assistant Professor in Hindi by June 2007.

The opportunity for employment as Assistant Professor in Hindi came in May 2007 with an advertisement in a local newspaper in her state and being fully qualified and eligible she had applied for this full time position in one of the oldest

and a premier institution of higher education on the west coast of India.

Being fully qualified and eligible for the post, the Selection Committee had selected her on merit and recommended that she be appointed to the post of Assistant Professor in Hindi subject on starting pay of Rs.8000/- basic in view of the advertisement dated 29.04.2007 and consequent to the interview held on 12.06.2007.

The Principal not only kept the appointment in abeyance for almost two years but went ahead and unwarrantedly issued an advertisement dated 07.05.2009 and even held fresh interview on 02.07.2009 attempting to change the recommendation of the Selection Panel of 2007 by getting the new Panel to recommend another candidate who was not qualified, since she did not possess NET.

In view of the recommendation of this new Selection Committee, the Principal on 30.07.2009 forwarded the name of the other candidate to the region's State University, for approval, for her appointment on full time basis despite the fact that she did not possess the requisite qualification, namely NET. The University communicated vide letter dated 26.08.2009 to the Principal that the other candidate was not qualified for the post as (regular/full time basis), as she was not having required minimum qualification of NET/SET or M.Phil or Ph.D. The Principal, despite this communication continued to keep the other unqualified teacher on the full-time post and the Vinita on a temporary contract post.

Hence even though the Vinita had the requisite qualification of having passed NET examination she was not recommended by the new Selection Panel under the chairpersonship of the Principal, and instead had recommended an ineligible and unqualified candidate for a full-time regular post. The other teacher selected for the post did not possess either NET/SET or M.Phil or PhD and was in no

way eligible for appointment to a full-time regular post of lecturer. Given the fact that the Vinita possessed all the eligibility requirements for the post of lecturer, there was no reason and or ground to consider the candidature of any other unqualified person by the authorities of this college. Given the original recommendation made by the duly constituted Selection Committee in clear and unequivocal terms for the academic year 2007-08, the recommendation and report of the Selection Committee for the year 2009 was not tenable and was prima facie a totally flawed decision.

Clearly the very basic right of Vinita was violated by the decision of this new Selection Committee. This caused a great deal of stress and agony to Vinita who was struggling for many years to achieve her dream of becoming a teacher in a college. Having been denied the appointment Vinita made efforts to represent her case before the College and the University authorities but to no avail, as the College was not willing to relent from the decision taken by it through the new Selection Panel. The College authorities had continued to prefer the unqualified candidate to occupy the position leaving Vinita no other option but to challenge the same before the regional High Court by way of a Writ Petition. The wrong decision by the authorities of the institution denied Vinita her rightful appointment to the position. The only way left for her to secure her right to employment and to keep her dream to make a teaching career in higher education field alive was to fight.

Vinita was extremely upset and disappointed that despite having all the requisite qualifications, including NET and PhD, a candidate who did not possess any of these, but merely a Master's degree was given the position which was not merited by that candidate. The sole perpetrator of this situation was the faulty decision of the authorities. For a girl who came from a poor rural background and who had

struggled for years to achieve every qualification and requirement for a career in higher education, the future suddenly seemed quite bleak and gloomy. But she was never the one to give up. She had always believed that hard work and determination is the only way to true success. She had always learnt that adversity is an opportunity to overcome it and show one's true mettle and inherent strength. Though the opportunity seemed to be slipping out of her hands, Vinita still had deep faith that she will still be able to achieve her dream of becoming a teacher at an institution of higher learning under the University.

Vinita Parker looked back and her whole struggle as a first generation learner came back to her mind vividly with all the sacrifices she and her family had made to help her reach the pinnacle of higher education. But now it all seemed in vain as an undeserving candidate was unscrupulously appointed to a position of Assistant Professor she deserved the most. She suddenly realized that she was pitted against the most powerful forces of the Institution where she intended to make her career and wondered whether she could ever win against such injustice. She began to feel depressed and defeated and wondered whether she could ever win this yet another battle to achieve her dream of becoming a Professor. Her husband reassured her and promised to stand by her in any decision she may take to secure justice. Now with slim chances of a permanent job and a young child, Vinita was not sure what course to follow. This was not an easy decision to take even though her husband was very supportive; she was not sure which course of action to take considering their adverse financial condition.

Vinita therefore decided to consult a professional person who is well-versed in such service matters and who could help her out with her problem. She decided to meet him and therefore sought an appointment. But something extra-

ordinary happened as she left to meet that person that evening. While sitting in the auto rickshaw on her way to meet that person to explain her case, she suddenly recalled the inspiring lines from one of the most impactful poems, titled "Koshish Karnewalon kiharnahihoti" by a great Hindi poet and writer, Dr Harivanshrai Bacchan, the father of Bollywood superstar Amitabh Bacchan :

"The boat that fears the waves never gets across

But those who try despite all odds are never defeated

The tiny ant that carries a grain and climbs a wall

Slips and falls a hundred times, but never gives up,

It soars and slips, then slips and soars until it reaches its goal

A diver who scours the deep for pearls comes up empty many a times

It is not so easy to get pearls from so deep the waters

But his hands are not always empty 'cause one who tries never always fails.

So until you succeed sacrifice your sleep and rest

Never run away from the battlefield 'cause you won't win unless you try

For those who try never fail."

The following options loomed before her:

1. To go for an expensive and most likely prolonged legal remedy
2. To again represent to the higher authorities of the University, such as the Registrar, Vice Chancellor and Chancellor for justice.
3. To apply for openings in other institutions which respect merit and get appointed on merit.

PERCEPTION OF THE CASE

WRITER

Having sought professional advice Vinita realized that the best option before her was a legal battle. She was now more than ever determined to fight the battle for justice. She had now made up her mind to pursue the legal battle despite all odds and

when she met the lawyer who was specialist in service matters words flowed out of her mouth freely and courageously. The lawyer was convinced about the merit of her case and agreed to take up the matter before the High Court in the form of writ for enforcement of her fundamental right to livelihood and against arbitrary and discriminatory decision of the College which had denied her the appointment.

A Writ Petition was presented before the High Court under the Articles 14, 16, 226 and 227 of the Constitution of India seeking the protection of her fundamental right to livelihood as provided under Article 21 of the Constitution. The College, being a grant-in-aid institution receiving public funds from the Government, and the State University being an instrumentality of the State came within the ambit of the Writ jurisdiction of the High Court and the case came to be admitted by the High Court against the College and the University. The Petitioner Vinita Parkar, in her Writ Petition had prayed for issuance of Writ of Mandamus or an order or a direction commanding Principal to appoint the Petitioner to the full time regular post of Assistant Professor on regular pay scale as applicable to the said post from the academic year 2009. The University pointed out to the High Court that the appointment made by the College of an unqualified candidate was against the established norms and hence violative of the UGC and University recruitment rules.

The case was argued over several days and the High Court heard the concerned parties on 17.6.2009, 24.7.2009 and 28.8.2009 and reserved the passing of the judgment for a later date. There seemed to be a glimmer of hope to Vinita against the bad decision of the authorities. The High Court having heard the all the concerned parties, finally passed orders on 13.10.2009. The High Court held that the appointment of the other candidate to the post was without merit, arbitrary and hence unlawful and that the post should be

rightfully be given to Vinita Parkar who was fully qualified and eligible for the appointment. The High Court ordered that Vinita Parkar be appointed to the said post with effect from June 2009 and paid all dues for the period from June to October 2009. The University was ordered to accept the appointment of Vinita Parkar as legitimate and meritorious.

Based on the orders of the High Court, the College immediately terminated the unlawful appointment of the other candidate and issued the Order of Appointment to Vinita Parkar. The University also immediately issued the approval for the appointment of Vinita Parkar as the Assistant Professor in Hindi. Finally Vinita Parkar got justice but not without fighting for it.

This is therefore a classic example of failure of rule based decision making by the appointing authority. The case resulted in not only acrimony between the petitioner and the authorities but also exposed the College to ridicule and criticism by the High Court as well as the University and even the teaching fraternity and society at large.

It is said that a “stitch in time saves nine”. But here is a case of an institution due to flawed and faulty decisions taken, in contradiction to well established norms such as appointment of candidate on merit, became the butt of ridicule which could have been avoided by a just decision-making by concerned authorities. This could have prevented scorn in the eyes of the court and the public. The fundamental or root cause of this entire happening has been flawed decision-making which apparently was guided by extraneous, motivated and even malicious considerations. Such decisions cause the reputation of an organization to take a serious beating and lowers the good name and good image of an organization in the eyes of the society.