
(2018) 02 OHC CK 0001

In the Orissa High Court

Case No : 2050 of 2003

Bishnu Mohan Chhotaray

APPELLANT

Vs

Registrar, Utkal University and others

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Citation : (2018) 02 OHC CK 0001

Hon'ble Judges : B.R.Sarang

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The petitioner in W.P.(C) No.2050 of 2003 was appointed as a Jr. Assistant in Utkal University on 16.12.1987 in the scale of pay of Rs.780-

1160/- with usual D.A. and other allowances as admissible to the post, pursuant to which he joined on 17.12.1987. He was confirmed in the said

post of Jr. Assistant as per office order no.2477 dated 21.02.1991 w.e.f. 17.12.1989. The petitioner in W.P.(C) No.2051 of 2003 was

appointed as a Jr. Assistant in Utkal University on 16.12.1987 in the scale of pay of Rs.780-1160/- with usual D.A. and other allowances as

admissible to the post, pursuant to which he joined on 18.12.1987. He was confirmed in the said post of Jr. Assistant as per office order no.2477

dated 21.02.1991 w.e.f. 18.12.1989. The petitioner in W.P.(C) No.2052 of 2003 was appointed as a Jr. Assistant in Utkal University on

25.01.1986 in the scale of pay of Rs.780-1160/- with usual D.A. and other allowances as admissible to the post, pursuant to which she joined on

27.01.1986. She was confirmed in the said post of Jr. Assistant as per office order no.87 dated 27.10.1988 w.e.f. 25.03.1988. While the

petitioners were so continuing, the Syndicate of the University taking into consideration the increase of work load in different departments, in its

meeting held on 14.12.1994, upgraded 22 posts of Jr. Assistant to that of Sr. Assistant on the basis of the recommendation of the Sub-Committee

constituted by it on 17.11.1994. Such decision was in consonance with Section 10 of the Orissa Universities Act, 1989. Consequentially, the

posts of the petitioners were upgraded to Sr. Assistant, vide office order dated 18.03.1996, in the scale of pay of Rs.1400-40-EB-50- 2300/-

with usual D.A. and other allowances, pursuant to which the petitioners in W.P. (C) Nos.2050 and 2052 of 2003 were joined on the very same

day, i.e., 18.03.1996, whereas petitioner in W.P.(C) No. 2051 of 2003 was joined on 17.04.1996, and they were allowed annual increments

admissible to the posts from time to time. On the basis of the revision of scale of pay w.e.f. 01.01.1996, the scale of pay of the petitioners was

also revised to Rs.3050-4590/- in the scale of pay of Jr. Assistant and thereafter they were allowed to draw the Sr. Assistant scale of pay of

Rs.4750-7500/- with usual D.A. and other allowances pursuant to order dated 15.09.2001. While they were so continuing, the upgradation

orders issued on 18.03.1996 and 17.04.1996 were withdrawn by the authority, vide office order dated 12.01.2001, but the salary, which was

paid for the post of Sr. Assistant during that upgradation period from 18.03.1996 to 12.01.2001 and 17.04.1996 to 12.01.2001, though was

calculated and about to be recovered, was kept in abeyance vide office order dated 10.12.2001. Thereafter, the petitioners were regularly

promoted to the post of Sr. Assistant, w.e.f. 15.09.2001 and are getting the scale of pay of Rs.4750-7500/- along with usual D.A. and other

allowances and also increments admissible to the post till date.

2. All the three writ petitions, having similar cause of action, have been heard together and are disposed of by this common judgment.

3. In all the three writ petitions, similar prayer has been made, which is reproduced below:-

i) issue a writ of certiorari or any other appropriate writ or order quashing Annexure-5, 6 and 8 as illegal;

ii) issue a writ of mandamus or any other appropriate writ or direction/order directing the opposite party to promote the petitioner to the post of

Senior Assistant w.e.f. 14.12.1994 when his immediate Junior Shri B.K. Nayak (S.C.) at Sl.No.198 of the seniority list was so promoted.

4. In view of the prayer made before this Court, it appears that the petitioners have filed these applications challenging withdrawal of upgradation

of the post of Jr. Assistant to Sr. Assistant made in their favour vide office order dated 18.03.1996 and 17.04.1996, pursuant to office order

dated 12.01.2001 in Annexure-5; consequential fixation of scale of pay as Jr. Assistant pursuant to office order dated 30.08.2001 in Annexure-6;

and steps taken pursuant to office order dated 10.12.2001 towards recovery of excess payment made for the period from 18.03.1996 to

15.09.2001 and 17.04.1996 to 15.09.2001 and direction given to wait for recovery of the salary for the time being until further orders as

approved by the Vice-Chancellor and also consequential fixation of their seniority over and above Sri B.K. Nayak (S.C.) against serial no.198.

5. Sri D.K. Sahoo-1, learned counsel for the petitioners in course of argument abandoned the prayer for granting promotion w.e.f. 14.12.1994 as

Sr. Assistant over and above Sri B.K. Nayak (S.C.) and confined the prayer only to allow the petitioners to continue as Senior Assistant pursuant

to the upgradation of post and subsequently regular promotion granted to them. He further contended that the calculation made for recovery of the

amount should not be given effect to and rather they should have been allowed to continue with the benefits as admissible to the post held by each

of the petitioners. It is contended that when the petitioners were continued as Jr. Assistant pursuant to the decision taken by the Syndicate and the

same having been upgraded, the benefit of scale of pay to the post of Sr. Assistant having been extended and they have been discharging higher

responsibility, subsequently such upgradation order could not have been withdrawn without affording any opportunity of hearing and without

complying the principles of natural justice and without assigning any reason and more so, the steps taken for calculating the amount for recovery

cannot also sustain in the eye of law. It is further urged that for the period from 18.03.1996 to 12.01.2001 since the petitioners have discharged

their duty in the higher post by way of upgradation of Jr. Assistant to Sr. Assistant and received the scale of pay admissible to the post, the same

could not have been decided to be withdrawn and, therefore, the Vice-Chancellor has directed not to recover the amount and wait for recovery of

the salary for the time being until further orders. It is also contended that no recovery has been made till date and more so this Court vide order

dated 18.04.2003 passed interim order to the extent that there would be interim stay of recovery of the amount, if not already recovered.

6. Mr. K.P. Nanda, learned counsel for opposite party University also admitted the fact narrated above and stated that pursuant to the decision

taken by the Syndicate the posts of the petitioners have been upgraded from Jr. Assistant to Sr. Assistant on the basis of the work load available

which is permissible under Section 10 of the Universities Act. But when the State Government did not approve such upgradation, the upgradation

orders passed on 18.03.1996 and 17.04.1996 have been withdrawn by order dated 12.01.2001. In the counter affidavit it is specifically stated

that due to non-grant of approval by the State Government, the orders of upgradation have been withdrawn. Thereby, no illegality or irregularity

has been committed by the authority concerned by passing such orders, which do not warrant any interference by this Court at this stage.

7. Though there are other private opposite parties, it appears that none have entered appearance despite valid service of notice. But they have

addressed letters dated 15.02.2016 to the Court, which have formed part of the record, stating inter alia that they have already been given

promotion following the principles of the ORV Act.

8. This Court has heard Mr. D.K. Sahoo-1, learned counsel for the petitioners and Mr. K.P. Nanda, learned counsel for the contesting opposite

party-Utkal University. Pleadings between the parties have been exchanged and with the consent of learned counsel for the parties, this matter is

being disposed of finally at the stage of admission.

9. The undisputed fact being that the petitioners were appointed as Jr. Assistant and while they were continuing in the said post, pursuant to the

decision taken by the Syndicate, their posts have been upgraded w.e.f. 18.03.1996 and 17.04.1996 respectively, which is permissible under

Section 10 of the Orissa University Act. Due to such upgradation, the petitioners have been discharging their duty in upgraded post as Sr.

Assistant and they have been allowed to draw the scale of pay admissible to the said post and as such they have also been allowed to draw the

revised scale of pay w.e.f. 01.01.1996 as Jr. Assistant and subsequently in the

post of Sr. Assistant. For ready reference, the upgradation order dated 18.03.1996 is reproduced below:

OFFICE ORDER NO. ESTT.II/35/5155/96, Dated. 18.3.96.

In pursuance of the orders passed by the Vice-Chancellor, the following senior Assistants, who were promoted vide this office order

No. Estt. II/35/24014/94 dated 26.12.94, against the Upgraded posts of Senior Assistants are adjusted in the Substantive posts of

Senior Assistants with effect from 18.03.1996 until further orders.

1. Bishnu Prasad Behera

2. Ranjit Kumar Mohanty

REGISTRAR

2. OFFICE ORDER NO. ESTT. II/35/5156/96 Dated 18.3.96

In pursuance of the orders passed by the Vice-Chancellor, on recommendation of D.P.C., the following Junior Assistants are

temporarily promoted to the upgraded posts of Seniority of others, in the scale of pay of Rs. 1400-40-1800-EB-50-2300/- with

usual D.A. and other allowances as admissible under the rules of the University from time to time from the date of their joining in the

post until further orders.

1. Smt. Pankajini Panigrahi

2. Sri Bisnumohan Chhotaray

REGISTRAR

Dt. 18.3.96

Office order No.. ESTT.II/35/7191/96, Dated. 17.04.96.

1. In pursuance of the orders passed by the Vice-Chancellor, Sri Bichitra Kumar Mishra, who was promoted vide this office order

No.Estt-II//35/24014/94, dated 26.12.1994 against the upgraded post of Senior Assistant is adjusted in the substantive post of

Senior Assistant with effect from 02.04.1996 until further orders.

REGISTRAR

Office order No.. ESTT.II/35/7192/96, Dated. 17.04.96.

2. In pursuance of the orders passed by the Vice-Chancellor on the

recommendation of D.P.C. Sri Biswanath baral, Junior Assistant

is temporarily promoted to the upgraded post of Senior Assistant without prejudice to the seniority of others, in the scale of pay of

Rs.1400-40-1800-EB-50-2300/- with usual D.A. and other allowances as admissible under the rules of the University from time to

time from the date he joins the post, until further orders.

REGISTRAR

10. On perusal of aforementioned order, it clearly indicates that the petitioners have been promoted against the upgraded post of Sr. Assistant and

adjusted in substantive post w.e.f. 18.03.1996 and 17.04.1996 until further orders. As a consequence thereof, they have been allowed to continue

in the promotional post of Sr. Assistant which has been upgraded by the authority concerned. But, vide order dated 12.01.2001, the upgraded

order has been withdrawn which reads as under:

OFFICE ORDER

No. Estt.II/2220/2001.

Dated 12.1.2001

In pursuance of the decision of the syndicate, dated 24.9.99, office orders No. Estt. II/35/5166/96, Dtd. 18.3.96,

Estt.II/35/7192/96, dt. 17.4.96, Estt.II/35/17673/96, dt. 26.8.96, and Estt.II/35/23938/96, dt. 4.10.96 temporarily promotions of

the following junior Assistants to the post of Senior Assistants on upgraded basis are hereby withdrawn.

1. Smt. Pankajini Panigrahi
2. Sri Bishnumohan Chhotaray
3. Sri Biswanath Baral
4. Sri Ashok Kumar Ray
5. Sri Saroj Kumar Pradhan
6. Sri Devi Prasanna Tripathy.

By order of the Vice-Chancellor

Sd/- Illegible

12.1.2001.

REGISTRAR.

11. While withdrawing the upgradation orders on 12. 01.2001, it appears that no opportunity of hearing has been given nor has there been

compliance of principle of natural justice and, as such, no reason has also been given as to why the upgraded posts have been withdrawn by the

authority concerned. The petitioners, being aggrieved by such action of the authority, have approached this Court by filing these writ petitions and

this Court while entertaining the application issued notice to the opposite parties and in response to the same, a counter affidavit has been filed by

the contesting opposite party-University. In paragraphs-3 and 4 of the said counter affidavit, it is stated as follows:-

3. That in reply to Paragraphs 1 to 13 of the writ petition, it is humbly submitted that the averments made by the petitioner is not correct. Due to

work load in the different P.G. Departments of the University, the Syndicate in its meeting dt. 14.12.1994 resolved that 22 posts of Junior Asst.

working in different P.G. Teaching Departments be upgraded to Senior Assistants without creation of extra post either at higher or lower level.

Further the Syndicate in its subsequent meeting dt. 21.3.1995 resolved that 2 Senior Typists be also inducted as Senior Assistants and payment to

all those 24 upgraded employees shall be made after approval of the State Govt. and Chancellor. Accordingly Utkal University authorities

promoted 22 Junior Assistants to the upgraded post of Senior Assistants and inducted two Senior Typists to the post of upgraded Senior Asst. in

anticipation of the approval to the Chancellor and State Govt. Since power to create post in the University is vested with the State Govt. so the

University moved the Govt. vide office letter No. Estt.II/695/12758/96 DT. 22.6.1996 for approval of these 24 upgraded Senior Assistant posts.

4. That it is humbly submitted that the proposal of the University dt. 22.6.1996 was not accepted by the State Govt. and Hon"ble Chancellor. On

the other hand Hon"ble Chancellor appointed Commission of Inquiry headed by Sri T.K. Mishra. The Commission of Inquiry submitted his report

recommending to withdraw such promotion which have been given beyond the sanctioned strength. Accordingly Hon"ble Chancellor directed the

University to withdraw the promotion made beyond the sanctioned strength. Accordingly the Syndicate of the University in its meeting dt.

24.9.1999 resolved that the promotion given to the 24 employees of the University beyond the sanctioned strength without prior approval of the

Hon"le Chancellor and the State Govt. should be withdrawn. In pursuant to the decision of the Syndicate dt. 24.9.1999 and direction of the

Hon"ble Chancellor, the promotion granted to the writ petitioner was withdrawn and Annx-5 is the order of the University dt. 12.1.2001 i.e. the withdrawal order.

12. It appears that for the first time in the counter affidavit it has been explained that 22 posts of Jr. Assistant have been upgraded to Sr. Assistant

by the University in anticipation of approval of the Chancellor and State Government. It is further stated in the counter affidavit that since power to

create post in the University is vested with the State Government, the University moved the State Government vide office letter dated 22.06.1996

for approval, but no approval was received. Further, pursuant to appointment of Commission of Inquiry and its report recommending to withdraw

such promotion, which has been beyond the sanction strength, the order of withdrawal dated 12.01.2001 was passed. The reason which has been

assigned in the counter affidavit is not made available in the orders impugned itself and, as such, on perusal of orders dated 18.03.1996 and

17.04.1996, the upgradation of post has been made without any condition, meaning thereby the orders do not reflect that such upgradation was

subject to approval of the State Government as well as Chancellor. Similarly, Annexure-5, the order of withdrawal of such upgradation, has also

been passed without assigning any reason. More so, no opportunity of hearing was given to the petitioners nor was there any compliance of

principle of natural justice, which is required in law. Reason being, by upgradation of the post from Jr. Assistant to Sr. Assistant, the petitioners

have acquired a right to continue against the post. If at all the authority wants to withdraw the said orders of upgradation, then the right which has

been accrued in favour of the petitioners to continue against the said post being affected, therefore, it requires an opportunity of hearing in

compliance of the principles of natural justice. The consequential decision taken on 10.12.2001 in Annexure-8 to recover the amount having been

directed to wait until further orders which has got approval of the Vice-Chancellor and also by virtue of the interim order passed by this Court on

18.04.2003, since the amount has not been recovered till date and, as such, in the meantime the petitioners have been promoted to the regular

posts against the substantive vacancies of Sr. Assistant w.e.f. 15.09.2001, now the only question remains to be considered that for the period from

12.01.2001 to 15.09.2001 and 17.04.1996 to 15.09.2001 whether the petitioners are entitled to get the benefit in the post of Sr. Assistant or not.

13. In *Mahipal Singh Tomar v. State of Uttar Pradesh*, 2013 (12) SCALE 30 4, the apex Court held that in administrative law, the "rules of natural

justice" have traditionally been regarded as comprising "audi alteram partem" and "nemo judex in causa sua". The first of these rules requires the

maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation.

The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased. The first

principle is of great importance because it embraces the rule of fair procedure or due process. Generally speaking, the notion of a fair hearing

extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. This has been used by the Courts for

nullifying administrative actions. The premise on which the Courts extended their jurisdiction against the administrative action was that the duty to

give every victim a fair hearing was as much a principle of good administration as of good legal procedure.

14. In view of the law laid down by the apex Court, the order dated 12.01.2001 withdrawal of the upgradation from Jr. Assistant to Sr. Assistant

has been passed without assigning any reason and as such without complying the provisions of natural justice and without affording opportunity of

hearing to the affected parties.

15. The apex Court in *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269 held that if there is power to decide and determine to the

prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the

prejudice of a person is made, the order is a nullity. Similar view has also been taken in *A.K. Kraipak v. Union of India*, AIR 1970 SC 150, A.R.

Antulay v. R.S. Nayak, (1988) 2 SCC 602, *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I.T. & W.T.)*,

AIR 1989 SC 1038. Thus, even though the said provision may not provide for notice to be given to the party affected before issuance of any

order, but the same has to be read down in the said provision. In *Smt. Menaka Gandhi v. Union of India*, AIR 1978 SC 597, the Constitution

Bench of the apex Court held as follows:-

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the

omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of

natural justice.

Similar view has also been taken by this Court in *Bijay Kumar Paikaray v. State of Odisha and others*, 2017 (I) ILR -CUT- 252 : 2017 (I) OLR-

439.

16. ""Nihil quod est contra rationem est licitum"" means as follows:

nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and applied

continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws

obligatory and lasting.

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent to note that

a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have been properly thought out.

It is vital for the purpose of showing a person that he is receiving justice.

17. In *Re: Racal Communications Ltd.* (1980)2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of errors of

law by the court. In *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) 1 All E.R. 694, it has been held that a failure to give reasons

may permit the Court to infer that the decision was reached by the reasons of an error in law.

18. In *Union of India v. Mohan Lal Capoor*, AIR 1974 SC 87 it has been held that 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 and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt

support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts

on record. It is vital for the purpose of showing a person that he is receiving justice. Similar view has also been taken in *Uma Charan v. State of*

Madhya Pradesh, AIR 1981 SC 1915.

19. The order dated 12.01.2001, having been passed without any reason and without complying the principles of natural justice, cannot be

sustained in the eye of law. But, subsequently, to justify the action taken by the opposite party- University, in the counter affidavit though reasons

have been assigned stating that due to non-approval of the State Government such order impugned has been passed, the same cannot be tenable in

the eye of law.

20. The apex Court in *Gordhandas Bhanji*, AIR 1952 SC 16 held as follows:

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to

have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with

reference to the language used in the order itself.

21. The Constitution Bench of the apex Court in *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851, the

apex Court held :

.. when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be

supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court

on account of a challenge, get validated by additional grounds later brought out. Orders are not like old wine becoming better as they grow old.

22. In view of the law laid down by the apex Court, as discussed above, and applying the same to the present context, it is made clear that while

upgrading the post from Jr. Assistant to Sr. Assistant, no condition has been stipulated therein stating that such upgradation was subject to

approval by the State Government or the Chancellor. In absence of any condition stipulated therein, the order dated 12.01.2001 withdrawing such upgradation, without assigning any reason and without giving opportunity of hearing, violates the principles of natural justice. Thereby, the order in Annexure-5 dated 12.01.2001 withdrawing the upgradation of Jr. Assistant to Sr. Assistant cannot sustain in the eye of law. Accordingly, the same is hereby quashed. As regards the consequential determination of recovery of the salary paid to the petitioners in upgraded post, though steps have been taken for recovery but by virtue of the order passed by the Vice-Chancellor as well as this Court, the same, having not been recovered, cannot be recovered as the petitioners have discharged their duty in the higher post of Sr. Assistant and are entitled to get the scale of pay admissible to the said post. Consequentially, the orders dated 30.08.2001 in Annexure-6 and dated 10.12.2001 in Annexure-8 are hereby quashed.

23. The opposite party no.1 has filed a memo on 19.11.2014 incorporating the circular dated 14.08.2013 and the final gradation list of Sr.

Assistant as on 01.03.2013 after implementation of catch up rules in accordance with the decision taken by the Syndicate on 13.02.2013, the

same having not been challenged, the fixation of seniority remains as it is, in which this Court is not inclined to interfere or make any observation to

that effect. As such, the petitioners do not want to press their prayer, with regard to fixation of seniority, made in their writ petitions.

24. The writ petitions are accordingly allowed to the extent indicated above. No order to costs.