

(2007) 02 OHC CK 0050
In the Orissa High Court

Chittaranjan Sahu

APPELLANT

Vs

The Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Citation : (2007) 103 CLT 569 : (2007) 114 FLR 310 : (2007) 1 OLR 447

Hon'ble Judges : I. Mahanty, J;B.P. Das, J

Bench : Division Bench

Judgement

1. Mahanty, J.—The petitioner in this writ application Shri Chittaranjan Sahu was appointed as a Lecturer in Economics and also put in charge of the post of Principal on 16.5.1964. Thereafter, the petitioner was working as the Principal of D.K. College, Jaleswar, Principal of Paradip College, Paradip, Principal of A.B. College, Vasudevapur and was appointed on 3.10.1989 as the "Development Officer" of Utkal University. He worked as the Development Officer from 3.10.1989 till 31.5.1995 whereafter, for the period from 1.6.1995 till 6.8.1998, he remained in charge of the Director, College Development Council of Utkal University, in addition to his original post of Development Officer.

2. The essence of the grievance of the petitioner relates to the question as to the "scale of pay" he would be entitled to during the period he served as the Development Officer and the period during which he served as a Director of College Development Council. The next question relates to as to what would be the petitioner's pensionary entitlement.

3. In so far as the petitioner's appointment as the Development Officer is concerned, vide office Order dated 3.10.1989 (Annexure-15), he was temporarily appointed as the Development Office of Utkal University in the scale of pay of Rs. 2250/- to 3500/- on being sponsored by the State Government for the said post on foreign service terms and conditions. It would be relevant to note here that at the time of his appointment as the Development Officer of Utkal University, the petitioner was already drawing his salary in the scale of pay of a "Senior Reader" and Principal of D.K. College, Jaleswar and as such, his grade pay which

he was receiving was Rs. 3700/- to Rs. 5700/-(pre-revised). Therefore, although the petitioner was working as the Development Officer of Utkal University, he was paid according to his grade pay scale, i.e., Rs. 3700/- to Rs. 5700 since he was drawing that scale, at the time of his appointment.

4. The Utkal University appointed the petitioner on substantive basis as the Development Officer vide the Resolution;dated 21.3.1995 (Annexure-16). But the petitioner vide the communication dated 13.7.1995 requested that in the event of his absorption, he should be allowed his grade pay which he was drawing as the Senior Reader before his absorption as the Development Officer and the State Government in its" letter No. 70766 dated 9.12.1997 (Annexure-J/2) accorded approval to the same. The decision of the Syndicate dated 26.8.1997 approving the petitioner"s pay scale in Rs. 3700/- to Rs. 5700/- was communicated to the petitioner"by the Registrar of Utkal University vide his letter dated 24.10.1997 (Ahhexure-17).

5. The aforesaid facts would clearly indicate that the petitioner"s pay scale as a Senior Reader was protected by the University on his appointment as the Development Officer of the University in view of the decision of the Syndicate dated 26.8.1997 and was duly approved by the State Govt. vide its letter dated 9.12.1997. In other words, there is no dispute whatsoever to the fact that the petitioner was entitled to the scale of pay of Rs. 3700/- to Rs. 5700/- (pre-revised) for the period he served to the University as the Development Officer.

6. Subsequently, the Utkal University asked the petitioner to remain in-charge of the Director of College Development Council in addition to his original post of Development Officer with effect from 1.6.1995 (Armexure-18). On 29.5.1999, the petitioner made a representation to the Hon"ble Chancellor to allow him the scale of pay of Rs. 4500/ - to Rs. 7300/- (pre-revised) for the period he has served as the Director of College Development Council and had made a further prayer to allow him to continue in the post of the Director, College Development Council till his superannuation on 30.4.2000.

7. The Hon"ble Chancellor vide his letter dated 16.8.1999 (Annexure-3) allowed the first prayer of the petitioner and directed that the petitioner is entitled to the scale of pay of Rs. 4500/- to Rs. 7300/- for the period from 1.6.1995 to 6.8.1998 (the period during which the has served as the Director of College Development Council) and vis a vis the second prayer of the petitioner to the effect that he may be permit Led to continue in the said post till his retirement, this was left by the Hon"ble Chancellor to the discretion of the University,

8. It is pertinent to mention here that on or after 6.8.1998 the petitioner was not allowed to continue in the additional post of Director, College Development Council and continiiedin his parent post of Development Officer till 30.3.2000.

9. The University passed an order yide,Annexure-14 directing that the petitioner be paid the scale of pay of Rs. 4500/- to Rs. 7300/- for the period he had already served as the Director of College, Development Council, i.e., from 1.6.1995 to

6.8.1998 and further directed the petitioner to continue as the Director, College Development Council up to 30.4.2000, i.e., the date of his retirement, in other words, for one month only. Accordingly, the petitioner assumed the Office of the Director, College Development Council with effect from 30.3.2000 and while working as such an order was passed on 26.4.2000 by the Hon"ble Chancellor directing the Utkal University to withdraw its office order dated 30.3.2000 by which the petitioner was appointed as the Director, College Development Council and the said order was communicated to the petitioner on 27.4.2000.

10. Learned Counsel for the petitioner submitted that the Petitioner had only three days to go on superannuation and, therefore, no necessity existed for directing withdrawal of the Order dated 30.3.2000 and the said withdrawal was made solely with the intention for causing grave personal ridicule and financial loss to the petitioner, at the fag end of his service career. The learned Counsel further submitted that the further intention behind the withdrawal of the order was to deny the petitioner pensionary benefits that would have accrued in his favour had he retired three days after, as the Director of College Development Council and therefore, the order of the withdrawal was wholly illegal, unjust and unfair.

11. Mr. S.K. Das, learned Counsel appearing for the Chancellor strenuously objected the contentions raised by the learned Counsel for the petitioner and drew attention of the Court to the affidavit filed on behalf of the Chancellor and stated that in so far as the claim of the petitioner is concerned regarding the scale of pay for the period he had served as the Director of College Development Council which was duly approved, the Hon"ble Chancellor has accorded his consent thereto and, therefore, the petitioner was justified in raising his claim in that regard. But so far as the Order dated 27.4.2000 (Annexure-6) is concerned, he submitted that a decision has been taken earlier by the University on 31.10.1997 vide Annexure-10 to the effect that the post of Director, College Development Council would be filled up by a person of the rank of Professor or Principal having at least ten years experience, but the said decision had subsequently been modified, whereby no person could be appointed as the Director of College Development Council in addition to his own duties and that a Professor of the University alone could be kept in charge of the said post. In other words, Sri Das pointed out that since the Hon"ble Chancellor had ordered that only a Professor of the University can be kept in charge of the Director, College Development Council in addition to his own duties in accordance with instructions issued by the Government in Higher Education Department, it was not possible to accord approval to the appointment of the petitioner who admittedly was not a Professor to hold that post.

12. Mr. Rath, learned Counsel for the petitioner in reply submitted that the reasons assigned in the order of the Hon"ble Chancellor are wholly illusory. To this effect, he submitted that even after removal of the petitioner from the post of Director-in-charge, College Development Council vide Order dated 27.4.2000

(Annexure-6) the person who was appointed as the Director, College Development Council was once again put "in-charge" of the post of which the petitioner had been "in-charge" and, therefore, ascribing this as a reason for removal of the petitioner, cannot form a legal basis. Mr. Mohapatra, learned Counsel appearing for the University conceded to this fact and admitted that after removal of the petitioner from the post of Director, College Development Council, the next incumbent who was put in charge of such post was not a regular appointee but was put "in-charge" of the post.

13. From the contentions narrated hereinabove, it would be clear that the petitioner who has already served as the Director, College Development Council for a period of three years, i.e., from 1.6.1995 to 6.8.1998 and once again from 30.3.2000 to 27.4.2000, was removed from the said post only three days prior to the date of his superannuation. It would also be relevant to take into account the fact that 27.4.2000 was a Thursday and two intervening days between the petitioner's superannuation on 30.4.2000 (Sunday), i.e., 28th and 29th of April, 2000 were Friday and Saturday. It was unusual to remove the petitioner from his post three days before the date of superannuation and having served in that post for more than three years spells out that the object was clearly to not only publicly ridicule the petitioner but also to ensure that financial benefits that would have accrued in his favour had he retired as the Director of College Development Council would not be available.

14. Although the, petitioner in this writ application has sought for a direction for payment of damages and interest, we are of the view that the claim for damages ought not to be granted in a writ application and in the circumstances of the case and in view of the direction we intend to pass in the present writ application.

15. On consideration of the contentions advanced by the learned Counsel for the parties, we dispose of the writ application with the following directions:

(i) The petitioner is entitled to the scale of pay of Rs. 3700/- to Rs. 5700/-(pre-revised) along with the revisions thereon for the period he served as the Development Officer of Utkal University.

(ii) The petitioner is also entitled ,to the scale of pay of Rs. 4500/- to Rs. 7300/-(pre-revised) along with the revisions thereon for the period from 1.6.1995 to 6.8.1998, i.e., the period during which he served as the Director, College Development Council.

(iii) The petitioner is entitled to the salary as the Development Officer for the period from 7.8.1998 to 30.4.2000 in the scale of pay of Rs. 3700/- to Rs. 5700/- (pre-revised) along with the revision thereon.

(iv) All outstanding dues in terms of this order be calculated within two months from today and released in favour of the petitioner within one month thereafter.

(v) The petitioner's pensionary benefits also be revised in pensionary accordance with the aforesaid directions within a period of two months from today and the

arrear, if any, be paid within one month thereafter.

We make it clear that in the event the aforesaid directions are not complied with within the time stipulated, the petitioner shall be entitled to the interest at the rate of 16% per annum for any delay in compliance of the directions. The interest payable shall be deducted from the salary of the officers responsible for the delay.

B.P. Das, J.

I agree.