
(2018) 07 GAU CK 0067
In the Gauhati High Court
Case No : Civil Writ Petitionl No.4086 Of 2017

Dr. Amalendu Nag

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Assam College Employees (Provincialisation) Rules, 2010 — Rule 5
Constitution of India 1950 — Article 245(1)

Citation : (2018) 07 GAU CK 0067

Hon'ble Judges : SUMAN SHYAM, J

Bench : Single Bench

Advocate : B. D. Das, B. Purkayastha, K. Gogoi

Final Decision : Disposed Off

Judgement

1. Heard Mr. B. D. Das, learned senior counsel assisted by Mr. B. Purkayastha, learned counsel for the petitioner. I have also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Assam, appearing for the respondents.

2. The order dated 24/02/2017 issued by the respondent no. 2 i.e. the Director of Higher Education, Assam, refusing to grant approval for appointment

of the petitioner in the post of Principal of Srikishan Sarda College, Hailakandi, based on the recommendation of the Governing Body of the College is

under challenge in this writ petition.

3. The facts of the case, briefly stated, are these. On 06/06/2016, the President of the Governing Body of Srikishan Sarda College, Hailakandi had

issued an advertisement notice inviting candidature for recruitment in the post of Principal in the said College. Responding to the advertisement notice

dated 06/06/2016, the writ petitioner, who is working as an Associate Professor

in the said College had submitted his candidature. There were three candidates including the petitioner who had participated in the process. On completion of the selection process, the petitioner was found to have scored the highest mark i.e. 70.81 and was accordingly recommended by the Governing Body for appointment to the post of Principal. However, by the order dated 24/02/2017, the request for approval was turned down by the respondent no. 2 on the ground that the petitioner did not fulfill the requisite criteria of research guide necessary for the post of Principal and accordingly, rejected the recommendation with a further direction to issue fresh advertisement for the post of Principal. Aggrieved thereby, the present writ petition has been filed.

4. It is the admitted position of fact that the procedure for recruitment to the post of Principal in the College would be governed by the provisions of

Assam College Employees (Provincialisation) Rules, 2010. Rule 5 of the Rules of 2010 lays down the procedure for recruitment for the post of

Principal. The qualification and experience required for the post of Principal, has been laid down in the UGC guidelines which was notified on

30/06/2010. Para 4.2.0 of the said guidelines lays down the qualification for the post of Principal, which is quoted below :-

4.2.0 PRINCIPAL

(i) A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognized

University.

(ii) A. Ph. D. Degree in concerned/alied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.

(iii) Associate Professor/Professor with a total experience of fifteen years of teaching/research/administration in Universities, Colleges and other

institutions of higher education.

(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based performance Based Appraisal System (PBAS), as set out in

this Regulation in Appendix III for direct recruitment of Professors in Colleges.

5. There is no wrangle at the bar that the writ petitioner fulfills all the eligibility norms as provided in the advertisement notice and had also scored the

highest marks in the selection process. The only controversy in this case is pertaining to fulfillment of the norms prescribed by Sub-Clause (ii) of

Clause 4.2.0 of UGC guidelines, 2010 relating to research guideship. According to the petitioner, he had acted as a Research Guide of Shri Nandalal

Nath, who had completed his M. Phill studies in Political Science during the year July, 2006 to June, 2007 under the guide ship of the petitioner from

Madurai Kamaraj University under the Directorate of Distance Education. In support of his claim, the petitioner has also annexed a copy of the

certificate dated 20/04/2009 so as to contend that when the said certificate was issued, there was no Rule or Government notification, prohibiting M.

Phill/ Ph. D courses through distance Education mode. Referring to the certificate dated 20/04/2009. Mr. Das, learned senior counsel for the petitioner

submits that the findings recorded by the respondent no. 2 in the order dated 24/02/2017 to the effect that the petitioner did not fulfill the criteria of

research guide necessary for the post of Principal was not based on a proper consideration of the certificate dated 20/04/2009 and hence, is wholly

untenable in the eye of law.

6. Mr. K. Gogoi, learned Standing Counsel, Higher Education Department on the other hand, has placed heavy reliance on the provisions of the UGC

(Minimum Standards and Procedure for Awards of M. Phil/Ph.D Degree) Regulation, 2009 (Hereinafter referred to as Regulations of 2009), more

particularly clause 5 of the said regulations to contend that there is a total ban on conducting M. Phill and Ph. D programmes through distance

education mode and that is the reason, the petitioner has been held to be deficient with regard to the qualification norms as regards research guideship

because he had relied upon the certificate issued by Shri Jagdish Prasad Jhabarmal Tibrewala University of Rajasthan, in support of his qualification

as Ph. D guide.Â

7. By referring to a decision of the Supreme Court in the case of Prof. Yashpal and another Vs. State of Chattishgarh and others reported in (2005) 5

SCC 420, Mr. Gogoi submits that the law has been settled by the Hon'ble Supreme Court, that an University cannot offer off-campus Ph.D/M. Phill

course and that too beyond the territory of the State in which the University is located and, therefore, the certificate produced by the petitioner as

proof of having rendered guideship in respect of a scholar from the Shri Jagdish Prasad Jhabarmal Tibrewala University of Rajasthan, would be of no

avail to him since such a recourse would be impermissible under the UGC

regulations. It is also the submission of Mr. Gogoi that the regulation in force at the time of issuance of the advertisement notice would be applicable in the case of any recruitment process and since in the present case, the advertisement dated 06/06/2016 was issued after coming into effect of the UGC Regulations of 2009, the view taken by the Director of Higher Education cannot be faulted. Under the circumstances, the learned Standing Counsel prays for dismissal of the writ petition.

8. In his reply argument, Mr. Das has vehemently argued that UGC Regulation of 2009 cannot be given retrospective effect and the said position has been clarified in the recent decision of the Supreme Court in the case of P. Suseela & Ors. Etc. etc. Vs. University Grants Commission & Ors. Etc etc. reported in (2015) 8 SCC 129. Mr. Das has also produced a copy of the RTI reply furnished from the office of the Director of Higher Education, Assam on 22/06/2017 enclosing the list of incumbents who have been appointed in the post of Principal in the various aided Colleges in Assam, on the basis of their guideship rendered through distance education mode prior to the coming into effect of the 2009 Regulations. The learned senior counsel submits that the respondents have consistently recognised such guideship and have accepted the candidature of similarly situated persons in the past but in the present case, a different view has been taken only to cause prejudice to the interest of the petitioner.

9. I have considered the submissions advanced by the learned counsel for the parties and have also meticulously gone through the evidence on record.

10. As noted above, the only controversy in the present case is pertaining to the issue as to whether the guideship rendered by the petitioner in the case of students pursuing Ph. D and M. Phill course through distance education mode can be recognized as a qualification within the meaning of Clause 4.2.0(ii) of the UGC Regulations of 2010. In order to answer the said question, it would be necessary to note herein that the Regulations of 2009 imposes a complete ban on conducting M. Phill/ Ph. D programme through distance education mode. The said regulation came into effect from 01/06/2009. However, the Regulations of 2009, which was gazetted on 11-07-2009, does not have retrospective effect. Although, the learned Standing Counsel, Higher Education has forcefully argued that even before coming into effect of the Regulations of 2009, M. Phill/Ph. D programmes

through distance education mode was impermissible under the existing regulations, yet, he has failed to draw the attention of this Court by producing any circular to that effect. Under the circumstances, this Court is of the view that prior to coming into effect of the Regulations of 2009, there was no ban in imparting guideship of M. Phil and Ph. D programmes through distance education made. In other words, prior to 11-07-2009, it was open for a Ph. D guide to render guideship to a scholar pursuing M. Phil / Ph. D through distance education mode from any University. Therefore, unless there is a specific regulation issued by the competent authority, viz. UGC in this case, prohibiting guideship in the case of M. Phil/Ph. D through distance education mode, the work done by a scholar under a guide located in another State or outside the University cannot be rendered as non est in the eye of law merely on such count.

11. In the present case, the respondent no. 2 has relied upon a letter from the Ph. D Coordinator of Shri Jagdish Prasad Jhabarmal Tibrewala

University of Rajasthan, stating that the petitioner has acted as a Ph. D guide of that University to negate the candidature of the writ petitioner.

However, there is no mention of the certificate dated 20/04/2009 issued by the Madurai Kamaraj University in the impugned order. The certificate

issued by the Jagdish Prasad Jhabarmal Tibrewala University is also not available on record.

12. In the case of Prop. Yaspal & Another (Supra), one of the issues raised before the Supreme Court was whether or not the enactment by the State

Legislature conferring power upon the University to have off-campus centers outside the State was valid. While dealing with the issue, the Hon'ble

Supreme Court has held that such state enactment enabling incorporation of Universities having power to have off-campus centres outside the State

would be ultra vires Article 245(1) of the Constitution of India. In the aforesaid case, the issue as to whether guideship can be rendered through

distant education mode by an outside guide was not the issue. Therefore, I am of the view that the ratio of the decision in the case of Prof. Yaspal and

another (Supra) would not have any bearing in the facts of the present case.

13. I find from the record that on 11/03/2017, the petitioner had submitted a representation before the respondent no. 2 specifically highlighting the

fact that the certificate dated 20/04/2009 has not been considered by the

authorities but it is not in dispute that the representation dated 11/03/2017, has not been considered by the respondent no. 2 till date. Since the order dated 24/02/2017 has been issued by the respondent no. 2 without considering the certificate dated 20/04/2009 and due to the reasons stated herein above, I am of the opinion that the impugned order is unsustainable in the eye of law. The same is accordingly set aside.

14. The matter is now remanded back to the respondent no. 2 for a fresh consideration of the recommendation made by the Governing Body through its resolution no.1 dated 03/01/2017, in the light of the observations made herein above. The aforesaid exercise would be carried out and completed within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. Whatever, be the outcome of the consideration, the same shall be intimated to the petitioner in writing.

15. With the above observation, the writ petition stands disposed of.

Â There would be no order as to costs.