
(2008) 05 OHC CK 0034
In the Orissa High Court

Dr. Bibhuti Kalyan Mahakul

APPELLANT

Vs

Sambalpur University and Others

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Orissa Universities Act, 1989 — Section 5(10)

Citation : (2008) 2 OLR 246

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—Pursuant to an advertisement published under Annexure-1, the petitioner applied for the post of Lecturer in Political Science reserved for S.E.B.C. He was called to face an interview on 7.4.2004 before the Selection Committee and accordingly he faced the interview and got selected for the post. On 27.5.2004, vide Resolution No. 32, Syndicate approved the selection and directed for issuance of appointment order to the selected candidates, including the petitioner. Accordingly on 1.6.2004, appointment order was issued in favour of the petitioner with a consolidated pay of Rs. 10,000/- per month under Annexure-5 and he joined in the post. As it appeared that there was gross violation of statutory provisions, U.G.C. guidelines and Syndicate-directives in respect of award of marks to candidates of various teaching posts, it was resolved by the Syndicate on 21.3.2005 vide Resolution No. (IV) that the Hon'ble Chancellor would be requested to cause an inquiry into the fairness and legality of the selection and allow the Syndicate to review the appointment orders in respect of teaching posts of the University. The Syndicate brought the illegality to the notice of the Hon'ble Chancellor, where after on 23.8.2005, the Hon'ble Chancellor issued notice to the Vice-Chancellor to show cause within 15 days of receipt of notice as to why the Resolution No. 32 dated 27.5.2004 of the Syndicate and consequential order No. 5733/Est.III dated 1.6.2004 of Sambalpur University shall not be annulled. Shri G.R. Dubey a member of the Syndicate was appointed to enquire into the fairness of the selection of University teachers and

accordingly he enquired into it and submitted his report. After receipt of the enquiry report, the Syndicate resolved vide Resolution No. 23 dated 7.2.2006 (Annexure-8) to review its earlier Resolution No. 54 (iv) dated 21.3.2005 and sought for permission from the Hon''ble Chancellor to give appointment to the candidate who stood second in the merit list. In the meantime, the Registrar, Sambalpur University (Opp. party No. 2) Issued Office Order No. 4964/Est-III dated 11.5.2006 (Annexure-9) to the effect that, the Hon''ble Chancellor, in exercise of the power vested on him, under Sub-section 10 of Section 5 of the Act was pleased to annul Resolution No. 32, dated 27.5.2004 of the Syndicate and the consequential appointment order dtd. 1.6.2004 and accordingly the Syndicate terminated the service of the petitioner without giving him a chance of being heard, whereby there was violation of natural justice.

2. Under such premises, the petitioner prayed to quash Resolution No. 23, dtd 7.2.2006 of the Syndicate (Annexure-8) and the order of his termination dtd. 11.5.2006 under Annexure-9.

3. Opp. parties 1 & 2 in their joint counter affidavit averred that it was brought to the notice of the Vice-Chancellor that the marks awarded to the candidates for the post of Political Science by the Selection Committee were not in consonance with Orissa University Amendment Statute, 2003. Since there was a confusion as to whether Syndicate can review its own decision, the Vice-Chancellor vide letter dated 13.4.2005 informed the Commissioner-cum-Secretary of the Hon''ble Chancellor about the mistake and sought for advice of the Hon''ble Chancellor, in response to which, the Hon''ble Chancellor issued show cause notice to the Vice Chancellor under Sub-section 10 of Section 5 of Orissa Universities Act, 1989, as to why the Resolution No. 32, dtd. 27.5.2004 of the Syndicate and consequential Order No. 5733, dtd. 1.6.2004 of the University should not be annulled. On receipt of the show cause notice, the Syndicate in its Resolution No. 200, dtd. 16.9.2005 resolved not to accept the recommendation of the Selection Committee and communicated the same to the Hon''ble Chancellor on 11.11.2005 under Annexure-A/8. After careful consideration of all the documents as well as the decision of the Syndicate, the Hon''ble Chancellor vide order dated 19.4.2006 annulled the Syndicate Resolution No. 32, dtd. 27.5.2004 and the consequential Order No. 5733, dtd. 1.6.2004 of the University. The said order as per Annexure-A/8 was placed before the Syndicate on 11.5.2006 and it was unanimously accepted. Accordingly, termination letter was issued to the petitioner on 11.5.2006. It is the further case of these opp. parties that since the Hon''ble Chancellor and the Syndicate did not take any action against the petitioner due to lapses/misconduct/negligence of the petitioner, there was no need to issue show cause notice to him and as such there was no question of violation of natural justice. Opp. party No. 3 in a separate counter affidavit supported the stand of opp. parties 1 and 2.

4. Learned Counsel appearing for the petitioner submitted that as per the provision contained u/s 21(2) of the Orissa Universities Act, the teachers of a

University shall be appointed by the Syndicate of that University on the recommendation of the selection committee, after scrutinizing all the papers concerning the selection. Once the Syndicate appoints a candidate, it becomes *functus officio* and thereafter it has no power to review the appointment order and annul the same. In the present case, when the recommendation of the selection committee was approved by the Syndicate and accordingly the petitioner was given appointment, the Syndicate ceased to have power to review its earlier decision. He further submitted that the petitioner had published a research paper in "Third Concept" which is an International Journal of ideas. This journal has been assigned a number "ISSNO; 970-7247" i.e. International Standard Serial Number 970-7247. It also publishes articles of internationally reputed persons. So, it cannot be said that the petitioner had no international research publication. The petitioner was awarded 10 marks in research publication out of 15 marks. As per the statute, 10 marks were fixed for publication in International Journal and 5 marks in National Journal. The Selection Committee, which is an expert body in its wisdom, took into consideration the articles published by the petitioner and awarded 10 marks. The said decision cannot be interfered with either by the Syndicate or by the Honourable Chancellor, particularly when it was in consonance with the 2003 statute. Learned Counsel for the petitioner further submitted that the service of the petitioner was terminated without giving him a chance of hearing, whereby there was violation of natural justice. Hence he urged to allow the writ petition.

5. Per contra, learned Counsels for the opp. parties submitted that the marks awarded to the petitioner by the Selection Committee were not in consonance with the Orissa Universities (Amendment) Statute, 2003. Under para-3, Schedule-A of the said statute, for each completed year, one mark in case of P.G. teaching, 0.75 marks for Honours teaching and 0.5 marks for Graduate Level teaching were fixed subject to a maximum of 10 marks were fixed. But in fact the petitioner had no teaching experience either in P.G., Honours or Graduate level. As found from Annexure-A, he was teaching in +2 college only, but 4 marks were awarded in his favour towards teaching experience. Similarly, as per para-5 of the said schedule, 10 marks were fixed for research publication in international journals and 5 marks for 6uch publication in national journals. The petitioner had 8 publications, out of which only 4 had been published in national journals and he had no international publication to his credit. So he ought have been awarded at best 5 marks for research publication but he was awarded 10 marks there. In other words, he was awarded 5 extra marks in research publication. In toto, he was awarded 9 extra marks illegally. If 9 marks are deducted from the marks secured by the petitioner he would get only 47.75 marks. The candidate who stood second in the interview having secured 48.50 marks should have been placed in the top of selection list. He further submitted that the Syndicate has power to review its own decision and under Sub-section 10 of Section 5 of the Orissa Universities Act the Honourable Chancellor has been bestowed with power to annul any illegal decision of the Syndicate. Furthermore, learned Counsel for

the opp. parties submitted that since services of the petitioner was not terminated because of any misconduct on his part, no show cause notice was required to be issued to him prior to termination of his service. So, there was no violation of natural justice. Accordingly, he pressed to dismiss the writ petition.

6. When it was brought to the notice of the Honourable Chancellor, that the appointment of the petitioner was illegal, he issued notice to the Syndicate to show cause as to why his appointment would not be cancelled. Since it was felt by the Syndicate that the marks were not awarded in accordance with 2003 statute, the Syndicate resolved not to approve the selection list prepared by the selection committee, but the appointment of the petitioner was not annulled because of such resolution. The Hon'ble Chancellor has power under Sub-section 10 of Section 5 of the Orissa Universities Act to annul any proceeding of the Senate, Syndicate, Academic Council or any other authority, which is not in conformity with the Act, Statutes, Regulations or the directions issued under Sub-section (9). Since the selection of the petitioner was not in consonance with 2003 statute, as would be discussed by and by the Hon'ble Chancellor annulled the selection and the appointment order of the petitioner by exercising the power conferred u/s 5(10) of the Orissa Universities Act 1989. Accordingly his services were terminated by the Syndicate.

7. Moreover, Sub-rule 3 of Rule 22 of the Orissa Universities Statute stipulates that the Syndicate has power to revise its earlier decision. It would be profitable to quote the said provision, which reads as follows:

Decision of the majority at any meeting of the Syndicate shall be deemed to be the decision of the Syndicate and shall be binding on all. The decision arrived at in the meeting of the Syndicate cannot be revised within a period of six months except by a 2/3rd majority.

As per this provision, the decision arrived at in a meeting of the Syndicate can be revised after six months, if majority of the members so desire. If such a decision is required to be revised within a period of six months, then 2/3rd majority is required. In the present case, vide Resolution No. 32 dated 27.5.2004, the Syndicate approved the selection of the petitioner and accordingly he was appointed on 1.6.2004 and the said order was revised as contended on behalf of the petitioner on 7.2.2006 i.e., about two years after by majority of the members in office.

8. As per the rejoinder of the petitioner to the counter of opp. party No. 3 the petitioner had published a research paper in "Third Concept" which is an International journal of different ideas. This journal has been assigned number "ISSNO 970-7247" i.e. International Standard Serial No. 970-7247. It also publishes articles of internationally reputed persons. There is no counter to it. So it cannot be said that the petitioner had no international research publication. He was awarded 10 marks out of 15 in research publication. As per 2003 Statute, 10 marks were fixed for publication in international journal and 5 marks in national

journal. As it appears, the petitioner was awarded 5 marks for publication in International journal and 5 marks in National Journal. So, it cannot be said that 10 marks were illegally awarded to the petitioner for research publication. But as stated earlier, even though the petitioner has no teaching experience, either in P.G., Honours or Graduate level, he was awarded 4 marks illegally. If 4 marks is deducted from the marks secured by the petitioner, then the correct marks secured by him would be 47.75. Since Dr. Suresh Chandra Patel, who was second in the list had secured 48.50 marks would top the list.

9. Therefore, there is no illegality in terminating the service of the petitioner and as such the writ petition stands dismissed.

P.K. Tripathy, J.

10. I agree.