
(2004) 12 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No's. 337, 338, 339, 341, 348, 408, 409, 517, 536 and 557 of 2004

Dr. Birendra Kumar Nayak and Others

APPELLANT

Vs

The Registrar, Utkal University and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Orissa Universities Act, 1989 — Section 21(2), 5(10), 5(9)

Citation : (2005) 99 CLT 228 : (2005) 1 OLR 66

Hon'ble Judges : P.K. Tripathy, J; P.K. Mohanty, J

Bench : Division Bench

Advocate : Ashok Mohanty, for Caveator, G.P. Mohanty and P.K. Panda, in W.P.C Nos. 348, 517 and 536/2004, Aswini Kumar Mishra, J. Sengupta, D.K. Panda, P.R.J. Dash, G. Sinha and A. Mishra, in W.P. C No. 348/2004, Jayant Kumar Rath, S.N. Rath, D.N. Rath and P.K. Rout, in W.P. C No. 517/2004, J. Pattnaik and Bijay Ku. Das, in W.P. C No. 517/2004, for the Appellant; K.P. Nanda and P.K. Ray for O.Ps. 1 and 2 and S.K. Das and S.D. Swain for O.P. No. 3 and Ashok Mohanty, for Caveator, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—Petitioners in this batch of Writ Petitions were appointed as Professors in different Post Graduate Departments of Utkal University under Career Advancement Scheme, introduced by the University Grants Commission and adopted by the State Government as well as the University, with effect from 31.12.1999 pursuant to the decision of the Syndicate dated 27.6.2001. They are aggrieved by and call in question the Order dated 3.1.2004 of the Registrar, utkal University reverting and placing them in the grade of Readers in their respective Departments with retrospective effect from 31.12.1999 on the ground of adverse entry in their A.C.Rs. in view of the order of the Chancellor of the University. On the prayer and consent of the Learned Counsel for the parties, since common question of law and almost similar set of facts are involved in all the Writ Petitions, they were heard analogously and are disposed of by this common

judgment.

2. The undisputed fact of these cases is that the petitioners were appointed as Readers in their respective departments, being duly selected by the Selection Committees and appointed by the Syndicate of Utkal University (hereinafter called "the University"). On introduction of the Career Advancement Scheme by the University Grants Commission (hereinafter called "the U.G.C.") and adopted by the Government of Orissa in its Resolution No. 653412/HE/I-HE/UM-36/99 dated 31.12.1999 the University issued advertisement on 20.3.2001 inviting application from eligible candidates seeking promotion under the Career Advancement Scheme. The petitioners having applied for the posts of Professors in the respective departments, they were called to the interview. Petitioners were promoted by the Syndicate of Utkal University being duly recommended by the Selection Committee constituted in accordance with the stipulations of the U.G.C. and the Orissa Universities Act and the Statute made thereunder. Petitioners however were granted promotion retrospectively from 31.12.1999. Thus petitioners enjoyed privileges and status of Professors in their respective departments till 4.1.2004 when they were served with the notices that they are reverted and placed in the grade of Readers with effect from 31.12.1999 purportedly on the ground of adverse entries in their A.C.Rs. as found by the Chancellor of the University. No such adverse entry however was ever communicated to them either before or even after the order dated 4.1.2004.

3. The main thrust of argument of the Learned Counsel appearing for the petitioners is that when petitioners were duly-selected and recommended by the Selection Committee and promoted to the posts of Professors in their respective Departments by Order dated 28.6.2001 with effect from 31.12.1999, the Chancellor of the University is not vested with any power under law to interfere with the same and directed emotion or reversion to their former post of Readers on the alleged ground that the Selection Committee had not considered their ACR/CCRs. The Chancellor of the University being not the Appellate Authority to sit in appeal over the selections made and appointment orders issued in their favour, but only having a limited power of deciding the dispute, in case there is a difference of opinion between the Selection Committee and the Syndicate, as contemplated u/s 21 (5) of the Orissa Universities Act, 1989 (in short, "the Act") the Chancellor, in absence of any reference made under the said provision, could not have issued the direction for reversion of the petitioners that too after a lapse of about four years. It is contended that even otherwise, adverse entry in the A.C.Rs. of the petitioners having not been communicated to them, the same could not have been acted upon in law to hold that the Selection Committee or that the Syndicate while accepting the recommendations having failed to notice the adverse entries, the order of promotion was bad in law to dislodge them from the promotional post of Professors to that of Readers, even without affording an opportunity of hearing.

4. The opposite parties i.e. the Utkal University, its functionaries and the

Chancellor, in their counter affidavits filed separately, have denied the allegations and the claim of the petitioners more or less on the same ground, except on some factual aspects. It is their case that the Chancellor of the University, in view of the provision of Sub-section (9) of Section 5 of the Act is vested with the power to issue directions or instructions not inconsistent with the provisions of Act and the Statutes made thereunder, on any matter connected with the University, when any authority or the Vice-Chancellor fails to act in accordance with the provisions of the Act, the Statutes or the Regulations.

5. The Under Secretary to the Chancellor-Opp. Party No. 3 in the counter affidavit has asserted that certain complaints were received in the office of the Chancellor regarding placement/promotion of ineligible University teachers under the Career Advancement Scheme. Therefore, all Universities were asked to submit particulars containing the years of service rendered by the applicants and their CCRs in their pre-promotional cadre for assessing their eligibility for promotion under the Scheme and the Chancellor after considering the CCRs of the applicants approved the promotions of several applicants except a few including the petitioners.

6. In the additional affidavit filed by the University, it has been disclosed that different Selection Committees constituted for the purpose of recommending names for promotion to the post of Professors under the Career Advancement Scheme of the UGC submitted their single page proceedings recommending the names of the petitioners for promotion without awarding any mark towards the candidate's performance, academic records, CCRs or on any other count. The single page proceedings of the respective Selection Committees have been annexed to the additional affidavit in each of the Writ Petitions as Annexure-C and it has been stated that no other document is available to have been prepared by the Selection Committees while making the selections and recommending names for promotion.

7. It is contended on behalf of the Opp. Party No. 3 that the Chancellor did not approve the promotion of the petitioners to the rank of Professors due to adverse entries in their CCRs and observed that the University may take steps to revert the petitioners in due course of law. A copy of the impugned order of the Chancellor dated 8.8.2003 has been annexed as Annexure-3. It is submitted that on the basis of the recommendation of the Government of India and the University Grants Commission guidelines (hereinafter called "U.G.C. guidelines"), the State Government had implemented the scheme of revision of pay scales for University and College teachers vide Resolution No. 653 12/HE. dated 13.12.1999 a true copy of which has been annexed as Annexure-B to the counter and as such the selection and promotions were to be made strictly in accordance with such guidelines, but the Selection Committees and the Syndicate; having been found not to have followed the same, the selection was improper and invalid.

8. In view of the pleadings of the parties and submissions made at the Bar, the

core questions that fall for consideration are :

(a) Whether the Chancellor of the University in exercise of powers vested in him under Sub-section (9) of Section 5 of the Orissa Universities Act could direct the University to revert the petitioners to their former post of Reader on the alleged ground that the respective Selection Committees while recommending the names of the petitioners for promotion to the post of Professors under the Career Advancement Scheme had committed illegality in not considering the adverse CCRs. of the candidates it interviewed;

(b) Whether the Selection Committees constituted by the University for the purpose of recommending names for promotion to the post of Professors under the Career Advancement Scheme have acted in accordance with the relevant provisions of the Orissa Universities Act, 1989 the Orissa Universities First Statute, 1990 and the Regulations of the U.G.C. in respect of such promotion; and

(c) Whether the Syndicate while accepting such recommendation of the respective Selection Committees has acted in accordance with law and in terms of Sub-section (2) of Section 21 of the Act in scrutinizing all papers concerning the selections before taking decision to promote such persons to the post of Professors in different departments of the University.

9. In order to appreciate the contentions, it is necessary to consider the relevant provisions of the Orissa Universities Act, Orissa Universities First Statute, 1990 and the U.G.C. Regulations or Guidelines for appointment of Professors under the Career Advancement Scheme.

10. The Government resolution Annexure-B at Para 4.9.0 deals with Career Advancement Scheme for promotion of University and College teachers. Para 4.10 deals with promotion from the post of Reader to that of Professor after 8 years of service as Reader and other eligibility criteria including presentation of self-appraisal report by the applicants. Para 4.7 deals with Selection Committee and mandates that the guidelines prescribed by the U.G.C. shall be followed keeping in view the existing rules of the State Government and the qualification and procedure for selection for the post of Professor prescribed by the U.G.C.

11. The University Grants Commission, in its letter dated 24.12.1998 issued guidelines relating to revision of pay scales, minimum qualification for appointment of teachers in Universities and Colleges and also other measures for maintaining the standards. The U.G.C. also has framed regulations called "U.G.C. Regulations, 2000" regarding "Minimum qualification for appointment and advancement of teachers in "Universities and Colleges" and forwarded it to different Universities in its letter dated 27.10.1999 which is more or less similar to the U.G.C. Notification dated 24.12.1998 emphasizing therein that the Universities/Colleges should ensure that the selection to the post of Professor is made after following rigorous selection procedure through Selection Committees constitutes for the purpose. Clause-2.6.0. of the U.G.C. Regulation, 2000 is with

regard to minimum qualification for appointment and career advancement of teachers of the Universities and College and is extracted below for ready reference.

"2.6.0. The Selection Committee for promotion to the post of Professor should be the same as that for direct recruitment. For the promotion from Reader to Professor, the following method of promotion may be adopted.

The candidate should present herself/himself before the Selection Committee with some of the following :

- (a) Self-appraisal reports (required).
- (b) Research contribution/books/articles published.
- (c) Any other academic contributions.

The best three written contributions of the teacher (as defined by her/him) may be sent in advance to the Experts to review before coming for the selection. The candidate should be asked to submit these in 3 sets with the application.

- (d) Seminars/Conferences attended.
- (e) Contribution to teaching/academic environment/institutional corporate life.
- (f) Extension and field outreach activities."

12. Section 21 of the Orissa Universities Act, and Statute 258 of the Orissa Universities First Statute, 1990 deal with the procedure for appointment of teachers of the University. They read thus :

"21. Appointment of officers, teachers and other employees of the University:

(1) xx xx xx (2) The teachers of a University shall be appointed by the Syndicate of that University on the recommendation of a Selection Committee after scrutinizing all the papers concerning the selection.

(3) The Selection Committee referred to in Sub section (2) Shall consist of:

- (i) the Vice-Chancellor;
- (ii) Director;
- (iii) three experts selected by the Vice-Chancellor from out of a panel prepared by the Syndicate of the University; and
- (iv) an expert nominated by the Chancellor in case of appointment to the post of Professor.

(4) The quorum at a meeting of the Selection Committee shall be four of whom at least two shall be experts including the expert nominated by the Chancellor, if any.

(5) Where the Selection Committee fails to make differs from the

recommendation made by the Committee, the matter shall be referred to the Chancellor whose decision thereon shall be final.

(6) xx xx xx STATUTE 258

258. Subject to the provisions of the Statutes and the qualification and experience, if any, prescribed by the University Grants Commission, the appointing authority of the respective posts shall be competent to make recruitment to the various posts and to lay down an objective system of evaluation of the career, experience etc. Of the candidates for the posts :

Provided that the past performance of the candidates in any of the organizations or institutions as reflected in their Confidential Character Rolls or performance Appraisal Reports or other such equivalent documents may be given a weightage of not more than fifteen percent of the aggregate marks or points in the system of evaluation.

NOTE : A system of evaluation of candidates for various teaching posts which may be adopted mutatis mutandis for other posts also is given in Schedule-A.

The objective system of evaluation of candidates, which is said to have been adopted by the University, as given in Schedule-A is extracted below for better appreciation.

SCHEDULE-A

(Statute - 258)

An Objective System of Evaluation of Candidates for Teaching posts.

Professors And Readers I Class II Class III Class (1) General Career Matriculation 2 1.5 1 Intermediate 3 2 1.5 Degree (Honours) 5.5 3.5 2 (pass) Distinction 1 - - P.G. Degree* 48-52.9% - 6 4 53-56.9% - 7 - 57-59.9% - 7.5 - 60-and above 8 - - (2) Research Degree* (a) M. Phil 5 (b) Ph.D. 10 (c) For both M.Phil & Ph.D. 12 (3) Teaching Experience 10 Only Honours and P.G. Teaching (One mark for each completed year, subject to a maximum of 10 marks over and above the minimum prescribed years). (4) Research Publications 10 (Publications in National/ International Journals only). (5) Viva-Voce 25 (6) Confidential Character Roll/ 13.5 Performance Appraisal report or other such equivalent documents. Total Marks 90

FOR LECTURERS:

Same as above except that in the case of teaching experience, the maximum marks shall be 5(five) at the rate of one mark for each completed year in the case of P.G. teaching, 3/4 marks for Honours teaching and 1/2 mark for graduate level teaching.

NOTE : In case of candidates from Universities/ Institutions which follow a system of Grades, their grades shall be converted to mark as under:

"O" Grade 90%-100% "A" Grade 70%-79% "B" Grade 60%-69% "C" Grade 50%-59% "D" Grade 40%-49% (2)* Except in the case of multi-disciplinary subjects, marks are to be awarded only where the degree etc. are in the concerned subjects.

(3) In the case of candidates with more than one Bachelor's Degree, only the degree in the concerned subject shall be awarded marks, the Divisions obtained being treated on par with Honours."

13. in view of the aforesaid provisions of law governing the field, for appointment/promotions to the post of Professors in the University under the Career Advancement Scheme formulated by the U.G.C, and adopted by the State Government as well as the University, the Selection Committees constituted by the University in different subjects/disciplines are required to follow an objective system of evaluation of the career, experience, research publications and the Confidential Character Roll (CCR)/Performance Appraisal Report (PAR) or other such equivalent documents of the candidates, before making recommendation in favour of the candidates for appointment. The appointing authority, the Syndicate is mandated to appoint persons so recommended by the Selection Committee after scrutinizing all papers concerning the Selection. However, if and when the Syndicate does not agree with the recommendation or the Selection Committee does not make or fails to make any specific recommendation, the matter is to be referred under Sub-section (5) of Section 21 to the Chancellor whose decision thereon has to be treated as final. We are at this stage not inclined to delve into the question and determine as to whether the respective Selection Committees have or have not proceeded with the selection in accordance with law or as to whether the Syndicate which is the appointing authority acted in accordance with law in accepting such recommendation and issuing appointments in favour of the petitioners, since the basic question that falls for consideration is as to whether the Chancellor of the University is empowered under Sub-section (9) of Section 5 of the Act and competent to issue the impugned direction for reversion of the petitioners to their former posts of Readers even on the assumption that the Selection Committees have acted illegally in selecting the petitioners and recommending their names for promotion without considering their adverse CCRs/PARs and consequently the promotion given by the Syndicate on the basis of such illegal recommendations.

14. Now let us consider the core question as to whether the Chancellor of the University is competent and empowered under Sub-section (9) of Section 5 of the Act to issue the impugned direction to the University to revert the petitioners to their former post of Readers. The contentions of the Learned Counsel appearing for petitioners in all these Writ Petitions are that the petitioners having been duly selected by the respective Selection Committees and the Syndicate having accepted such recommendations and appointed them in the post of Professors, the Chancellor being neither the Appellate Authority nor any reference having been made under Sub-section (5) of Section 5 of the Act, could

pass the impugned order in purported exercise of the power under Sub-section (9) of Section 5 on the alleged ground that the petitioners had adverse entries in their CCRs which the Selection Committees did not take into consideration while making recommendation. In order to appreciate the contentions raised, it is necessary to consider the scope and ambit of Sub-sections (9) and (10) of Section 5 of the Orissa Universities Act which reads as hereunder:

"5(9) The Chancellor shall be competent to issue directions or instructions not inconsistent with the provisions of this Act and Statutes on any matter connected with a University when any authority or Vice-Chancellor fails to act in accordance with the provisions of this Act, the Statutes, or the Regulations.

(10) The Chancellor may, by order in writing annul any proceeding of the Senate, Syndicate, Academic Council or any other authority which is not in conformity with this act, the Statutes, the Regulations or the directions issued under Sub-section (9);

Provided that before making any such order he shall call upon the authority concerned to show cause as to why such an order should not be made and if any cause is shown within a reasonable time, he shall, after giving an opportunity of hearing if so deemed proper, consider the same."

15. It is the specific case of the opposite parties that the Chancellor in terms of the power vested in him under Sub-section (9) of Section 5 of the Act, issued the impugned direction to the University to revert the petitioners to their former post of Readers after following due procedure of law. According to the opposite parties each of the petitioners had adverse entries in his/her CCR for different years which were not considered by the respective Selection Committees, while recommending their names for promotion to the posts of Professors under the Career Advancement Scheme formulated by the University Grants Commission. The Syndicate committed gross illegality in accepting such recommendations without proper scrutiny of records of the Selection Committee as required under Sub-section (2) of Section 21 of the Act and issued orders of appointment. In its additional affidavit the University has submitted that the Selection Committees constituted in respect of different subjects, recommended names for promotion in question in a single page proceeding (Annexure-C) without awarding any mark with regard to performance, experience and achievements of the candidates interviewed. Even though it has not been specifically spelt out by the University, it obviously means that in terms of and as required under Statute 258 of the Orissa Universities First Statute, 1990 the respective Selection Committees have not awarded marks in an objective system of assessment as in Schedule-A to the Statute. In such view of the matter now without going into the question as to whether the authorities had acted contrary to the provision of law, it has to be determined as to whether the direction of the Chancellor in the manner issued is in consonance with the power vested u/s 5(9) of the Act.

16. A plain reading of Sub-section (9) of Section 5 quoted herein before leaves

no room for doubt that the Chancellor is competent to issue directions or instructions, not inconsistent with the provision of the Act and the Statute on any matter connected with the University when any authority or Vice-Chancellor fails to act in accordance with the provisions of the Act, the Statute and the Regulations. But the direction or instruction contemplated under Sub-section (9) has to be consistent with the provisions of the Act and the Statute, when any authority or the Vice-Chancellor fails to act in accordance with the provisions therein. Thus, a direction as contemplated can be issued when the authorities or Vice-Chancellor fails to act in accordance with the provisions of the Act, the Statute or the Regulations. The authority or the Vice-Chancellor can be said to have failed to act, only if it can be said that they neglected to do something which they were expected to do or they left some acts possible or expected action unperformed. In the case at hand, according to the opinion of the Chancellor, the Selection Committee has acted illegally in recommending the names of the petitioners for appointment to the post of Professors without considering the CCRs which were adverse and hence the direction. It is an elementary rule of interpretation that construction of a section is to be made of all parts together and it is not permissible to omit any part of it. The whole section should be read together. Sub-sections in a section must be read as parts of an integral whole and as being interdependent each portion throwing light, if need be on the rest. It is also the settled law that words and phrases occurring in a Statute are to be taken not in isolation or detached manner dissociated from the context but are to be read together and construed in the light of the purpose and the object of the Act itself. The direction or instruction contemplated under Sub-section (9) is in the nature of command to do a thing or instruction to guide the authority to act in accordance with law, when the authorities failed to act. The action to issue a direction, instruction or a command in the context would arise in case, where an authority of the University has failed to perform a duty enjoined upon it by law which it has not done or has failed to do. But such direction or instruction as contemplated under Sub-section (9) would not authorize a direction to undo a thing that is said to have already been done contrary to the provisions of law. In the instant case, even according to the opinion of the Chancellor the authorities of the University have already acted illegally and by the direction it was intended that such illegal action, should be undone or rectified by following due course of law. The direction contemplated under Sub-section (9) in our considered opinion, would not cover a case, where the authorities have already acted in a manner inconsistent with law.

In a case where the authorities have already acted illegally in contravention of the mandate of law, the legislature has taken care of the situation by enacting Sub-section (10) of Section 5 authorizing the Chancellor to annul proceedings of any such authorities which is not in conformity with the Act, Statute or Regulations of the University. Had it been the intention behind the enactment of Sub-section (9) of Section 5 to issue a direction for correcting the illegalities or irregularities already committed by such authorities, then there was no necessity

for bringing in a specific provision, like Sub-section (10) authorizing the Chancellor to annul a proceeding or decision of an authority, which is contrary to the provision of law. In order to appreciate the intention of the legislature behind the provisions of a Sub-section, the section must be read as a whole and the words and phrases occurring in a Statute are to be read together and construed in the light of the purpose and object of the Act itself. Viewed from such angle, the power vested in the Chancellor, authorizing issue of direction or instruction cannot be construed as a direction for undoing an act already done which is allegedly contrary to the provision of law. Such a direction/instruction has to be construed as a mandate to the authorities concerned to follow the mandate of law, which it has not done or which it should do. The occasion for issuing a direction under Sub-section (9) would therefore not arise where the authorities have purportedly acted in accordance with law, which in the opinion of the Chancellor is contrary to the mandate of law. In such a situation, in our view, the provisions of Sub-section (10) of Section 5 would come into play which authorizes the Chancellor to annul any proceeding of such authority after issuing a show cause in terms of the proviso thereto.

17. In aforesaid view of the matter, we are of the considered opinion that in a situation like the present case, where the Chancellor forms an opinion that the Selection Committees and the Syndicate, have acted in violation of or not in conformity with the mandate of the provisions of Statute 258 of the Orissa Universities First Statute and Section 21 (2) of the Orissa Universities Act, 1989 the power of issuing directions or instructions, as contemplated under Sub-section (9) of Section 5 are not available to be exercised. In such a situation, where the Chancellor forms an opinion that the authorities have acted in violation of the Statutory provision of law or the decision was not in conformity with law, he is empowered to annul such decision or action by exercise of powers vested under Sub-section (10) of Section 5 after issuing notice and affording opportunity to such authority to have its say in the matter.

18. In view of our finding that the power under Sub-section (9) of Section 5 could not have been exercised in directing reversion of the petitioners on the ground that the selections and appointments made were not in conformity with law, it has to be considered as to whether the direction issued by the Chancellor can be sustained otherwise, treating it to be one under Sub-section (10) of Section 5 of the Act. It is the settled proposition of law that when an authority takes action which is within its competence, it cannot be held to be invalid merely because it purports to be made under a wrong provision of law, if it can be shown to be within its power under any other provision. But in this case, even though the Chancellor is vested with the power under Sub-section (10) of Section 5 to annul any decision of the Selection Committee as well as of the Syndicate in case he holds that the decision was not in conformity with law, but before exercise of such power, it is required under the proviso thereto, to issue a notice to the concerned authority and afford an opportunity to have its say in the matter and as such the final order to revert the petitioners thereby in effect

annulling the decisions and the appointments made, cannot be saved, even if it is taken to have been issued under Sub-section (10) of Section 5 of the Act since undisputedly no show cause has been served on such authorities before the order was passed, Thus the impugned orders of the Chancellor under Sub-section (9) of Section 5 of the Act directing the University to revert the petitioners to their former post of Readers are quashed. Resultantly, the orders of the University reverting the petitioners to their former post of Readers are also quashed.

19. However, the Chancellor of the University having been vested with the powers under Sub-section (10) of Section 5 to deal with a matter of the present nature, where he forms an opinion that the decision of the selection committee and that of the Syndicate in accepting the same are vitiated because of the non-compliance of the statutory provisions, it is open to the Chancellor to consider the matter afresh and proceed in accordance with law, if deemed fit and proper.

20. The contentions raised by the Learned Counsel for the parties as to whether or not the decisions of the Selection Committees and/or of the Syndicate are vitiated due to non-compliance with the provisions of law and as to whether the uncommunicated adverse entries in the CCRs of the petitioners could be relied upon by the Chancellor to hold the selections bad or as to whether the CCRs. were adverse, at this stage need not be gone into and findings recorded lest it may prejudice either of the parties since those questions are left open for fresh consideration by the Chancellor in accordance with law in an appropriate proceeding under Sub-section (10) of Section 5 of the Act, if deemed proper.

21. All the Writ Petitions are accordingly allowed to the extent indicated but however there shall be no order as to costs.

P.K. Tripathy, J.

22. I agree.