

**(2010) 04 BOM CK 0083**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 825 and 832 of 2009

Dr. (Mrs.) Kiran Budkuley

APPELLANT

Vs

The Goa University <BR> Dr. Silvia Noronha Vs Goa  
University

RESPONDENT

**Date of Decision :** 19-04-2010

**Acts Referred:**

**Citation :** (2010) 112 BOMLR 2022

**Hon'ble Judges :** U.D. Salvi, J;S.J. Vazifdar, J

**Bench :** Division Bench

**Advocate :** M.S. Sonak, J. Supekar, in Writ Petition No. 825 of 2009, S. D. Lotlikar and N. Shet, in Writ Petition No. 832 of 2009, for the Appellant; S.S. Kantak, General, P. Talaulikar, Additional Government Advocate in Writ Petition No. 832 of 2009, S.S. Kantak, General, P. Talaulikar, Additional Government Advocate for Respondent No. 1 in Writ Petition No. 825 of 2009 and S.N. Joshi, in Writ Petition No. 825 of 2009, for the Respondent

## Judgement

S.J. Vazifdar, J.—Rule in both the writ petitions. By consent, rule is made returnable forthwith and heard finally.

2. Although the impugned actions against the petitioners in the above writ petitions have been taken for different reasons, they arise out of similar set of facts and require the consideration of a common notification. It would be convenient, therefore, to dispose of both the writ petitions by this common order.

3. We will first deal with Writ Petition No. 825/2009.

(A) The petitioner has sought an order setting aside an impugned order, dated 9.10.2009 and a decision dated 27.11.2008, stating that she is ineligible to be considered for promotion to the post of Professor under the Career Advancement Scheme (CAS) with effect from 15.10.2005. The petitioner has also sought a writ of mandamus, directing respondent No. 1 to regard her as eligible for promotion to the post of Professor under the CAS and in terms of Statute SA-19, read with a Notification dated 17.12.2002 and to consider her for promotion to the said

post under the said scheme, by conducting an interview by a Selection Committee constituted of the members as per the said notification.

(B) Respondent No. 2, one Dr. K. S. Bhat, is a Professor in English. The petitioner has sought an order, directing respondent No. 1 to withdraw the promotion granted to him to the post of Professor under the CAS and consequential orders.

It is not necessary to consider this aspect of the matter. It would depend upon the petitioner's eligibility/entitlement to the said post, which we have held she is entitled to be considered for. In the event of her not being promoted to the said post, this relief would not survive. In the event of her being promoted to the said post, all the rights and contentions between the parties, are kept open.

4. (A) In the year 1998, the University Grants Commission (UGC) recommended the CAS for the University Teachers, in different categories, including the Readers. The scheme was accepted by the State of Goa and the Goa University, for implementation with effect from 1.1.1996. Statute SA-19 was, accordingly, amended by the Goa University, approved by the State Government and assented to by the Chancellor.

(B) A notification dated 17.12.2002 was issued by the Registrar to all the concerned authorities, including all the Heads of University Teaching Departments, the Deans/Principals of affiliated colleges and the Directors of recognized institutions. The same notified the amendments to Statute SA-19 (xi) (3) relating to career advancement carried out by the Executive Council of the University and assented to by the Chancellor on 26.11.2002. It is this notification which falls for consideration. The entire notification is relevant for the purpose of this writ petition. It is, necessary, therefore, to set it out in extenso. It reads as under:

It is notified for the information of all concerned that the following amendment to Statute SA-19(xi)(3) relating to career advancement has been carried out by the Executive Council of the University and assented to by the Chancellor on 26th November, 2002.

SA-19(xi)(3) . that a minimum 8 years experience as a Reader be an eligibility:

? that the Professor already appointed under direct recruitment be not eligible.

? that self-appraisal report for the period including five years before the date of eligibility be submitted.

? that minimum of five research publications out of which two could be books, be submitted for evaluation/assessment before the interviews;

? that the assessment of the research publication, including books, be done by three eminent experts in the subject which shall be different than those called for interview to be conducted later on:

? that all the recommendations be positive from the three experts. In case the

recommendation of one out of the three is negative, the research publications be sent to the fourth expert for evaluation and assessment. In all, there has to be a minimum of three positive recommendations out of the total of four experts, in case the fourth expert has participated in the exercise due to one negative report out of the initially three experts involved in evaluation:

? that there be a separate column in the evaluation report of the expert saying whether the research publications and books are recommended or not recommended;

? that the University be permitted to hold the interview for promotion under CAS only for those candidates who have cleared by obtaining minimum of three positive recommendations from the experts on their research publications/books:

? that there after the interview be conducted inviting three experts of the concerned subject making sure that these experts be different than those who had assessed and evaluated the research publications;

? that repeat process of promotions/ interview for the rejected candidates can be conducted only after a minimum period of one year from the date of promotion process/interview in which the candidate was rejected;

? that the promotion from Reader to Professor under CAS being a personal position and not against a sanctioned post, the teaching work-load of the Reader be carried forward with him/her and be undertaken by the promotee even in the capacity of the CAS Professor;

5. (A) The petitioner has been a Reader in the Department of English, with respondent No. 1 since 15.10.1997.

(B) The petitioner, under a cover of letter dated 2nd May, 2006, submitted documents for assessment under the CAS. She was informed by respondent No. 1 that only four of her publications were in English and was requested to supply information on two publications stated therein. Alternatively, she was required to provide two published articles, with necessary details for the purpose of evaluation. The petitioner under a cover of letter dated 28/2/2007, enclosed the necessary documents. She also enclosed a copy of a letter addressed by her to the Vice Chancellor, in which she contended that the two papers which were earlier not accepted, ought also to be accepted for the reasons stated therein. It is not necessary to consider the same as, admittedly, she complied with the necessity of furnishing the requisite number of publications. Whether those publications comply with the requirements of the notification or not, is another matter which we will deal with later.

(C) It is important to note that by a letter dated 27.3.2007, respondent No. 1 informed the petitioner that the two publications subsequently submitted by her, were included for the evaluation process under the CAS. The two publications were a poem published in an anthology of poems and a paper published in a journal.

6. The learned Advocate General contended that the poem comprised of merely 24 lines and cannot be considered to be a research publication. He also contended that the publication in the journal was prior to the petitioner being appointed as a Reader. He, therefore, submitted that the petitioner's case was not even required to be considered for evaluation by the Committee constituted under the said notification.

7. Before dealing with the above contentions, we must complete the narration of the facts. Respondent No. 1, under a cover of a letter dated 28.7.08, enclosed the copies of the Reports of the Referees. It is important to note that each of the Referees recommended that the petitioner be promoted to the status of Professor under the CAS.

8. It was contended that the petitioner was, therefore, entitled to be interviewed for promotion under the CAS. The interview is to be conducted by the three experts of the concerned subjects. As per the notification, these three experts were to be other than those who had assessed the petitioner's publications.

9. The interviews were held in June, 2008 for the said post. The petitioner was, however, not invited to attend the interview. The petitioner made a representation dated 8.7.08 to the Executive Council.

10. Considering the submissions made before us, it is not necessary to refer to the various representations made by the petitioner to the authorities, as well as the Chancellor of the Goa University and the directions passed thereon. Ultimately, by the impugned communication dated 27.11.08, the petitioner was informed that her case was not considered for promotion to the post of Professor under the CAS, as she allegedly did not satisfy the eligibility criteria as per the statutory provisions. Being aggrieved by the same, the petitioner appealed to the Honourable Chancellor of the Goa University who, by the impugned order dated 9.10.09, dismissed the appeal.

11. The grounds on which the petitioner's representations and the appeal were dismissed, were reiterated before us, on behalf of the respondent by the learned Advocate General. It will be sufficient, therefore, for us to deal with these submissions while considering the validity of the impugned orders.

12. At the outset, it is important to note that the learned Advocate General admitted that the Committee which subsequently considered the petitioner's application and opined that she was not even eligible to be considered was not the one contemplated by the said Notification dated 17.12.2002. He submitted that indeed this Committee had no power to take any decision regarding the quality of the petitioner's publications. It did not have any authority to assess the petitioner's papers and documents. The learned Advocate General, however, submitted that this was merely a screening committee only to ensure that the documents tendered were as per the requirements of the notification. He admitted that this committee did not have the power or authority to assess the publications. Indeed, they had no such powers for the simple reason that the

notification requires the committee to be comprised of "three eminent experts in the subject". Admittedly, none of them were experts, at least in the subject. This committee comprised of Professors in Zoology, Physics and Latin American Studies, whereas the petitioner had applied for the post of Professor in the Department of English.

13. The decision of this "screening committee" therefore is irrelevant to the petitioner's entitlement to be considered for the said post.

14. We have mentioned earlier that the three experts in the subject appointed in accordance with the notification had positively recommended the petitioner for promotion as a Professor under the CAS. Curiously, their decision is challenged by the respondent before us on two grounds.

15. Firstly, it was submitted that none of the experts stated that the petitioner's papers/works constituted "research publications". For instance, it was contended that the first recommendation merely states that the petitioner's bio-data is quite impressive; that the petitioner's participation and presentations in seminars, refresher courses, etc., on a variety of topics, is evidence of her wide interests expected of a University teacher of the rank of Professor; that her publications speak of her literary insight and analytical faculty; that some of her publications show her awareness of and concerns with the current academic issues being taught and discussed on the University campuses and that the overall impression is that the petitioner's biodata and publications are quite remarkable. The learned Advocate General, however, contended that in this entire assessment, the expert has not stated that the publications constituted "research publications" as required by the notification. He submitted, therefore, that the expert merely evaluated the petitioner's work as a piece of work, but not as a research publication.

The learned Advocate General further contended that the petitioner's works having been forwarded to the experts, they must have proceeded on the basis that they are bound to presume that these are research publications, without themselves deciding as to whether they are research publications or not.

16. This contention was not even raised before the Hon'ble Chancellor of the Goa University. We have, however, considered the same. We find it difficult to accept this submission. The submission presumes that the experts appointed by the respondent, knew nothing of what they were expected to do. It is obvious that the experts knew what they were appointed for and the circumstances in which they were appointed. It is too much to accept that the experts did not know that they were appointed to discharge their functions pursuant to the said notification. It is these experts who were to decide whether the publications constituted "research publication". There is nothing to suggest that the experts did not know that they were to assess the publications and while doing so, they were to determine whether or not the works constituted "research publications". Besides, if they were not to decide this, who was to decide it ? There is no other

authority or entity stipulated in the notification. The notification does not even remotely suggest that anybody other than the experts mentioned therein are to assess whether the works constituted research publications.

17. (A) It was next contended that one of the experts had observed that the publications are not of very great merit; that the petitioner writes extremely well, but does not show remarkable power of analysis; that a lot of her work is also somewhat marginal to English studies and that her contributions to teaching, administration and curricular life are very satisfactory. This, it was contended, was a negative recommendation. It was not.

(B) Merely because in certain respects the expert was not impressed by the petitioner's work, does not indicate that it was a negative report. What concludes the matter is that upon an overall assessment, this expert has positively and expressly recommended that the petitioner be promoted to the post of Professor under the CAS with retrospective effect from 15.10.05.

Secondly, even assuming the contention based on this recommendation to be well founded, the respondent was bound then to send the petitioner's work to a fourth expert for evaluation and assessment which they, admittedly, failed to do.

18. The next contention of the learned Advocate General is that one of the petitioner's publications was not during the period of 8 years when she was a Reader. The learned Advocate General relied upon a communication by an Officer of the UGC, in response to a clarification sought by the respondent.

19. It is pertinent to note that a clarification was sought after the impugned action was taken. Moreover, the clarification is from an Officer of the UGC. It does not appear to be a decision of the UGC itself. Be that as it may, the same is of no assistance to the respondent.

20. Even this communication does not support the respondent's contention. It does not bar the consideration of a work prior to the candidate being appointed as a Reader. The communication states that the research publications must be written during the eligibility period of 8 years, after the candidate becomes a Reader. It goes on to state "any deviation from these rules may not be approved by the UGC, except in specific circumstances fully justified". The communication, therefore, does not state that the publication prior to the said period cannot and will not be approved by the UGC. It merely states that it may not be approved by the UGC. This is further clarified by the fact that the communication indicates that in certain cases such research publications would be considered if fully justified. The respondent, therefore, was not entitled even on the basis of this communication to bar the petitioner from being considered/ interviewed. Even assuming that the communication is justified and tenable in law, the decision whether to approve the alleged deviation or not is of the UGC and not the respondent.

21. The most important point is that the notification does not require the work to

have been done or published only during the said period of 8 years or during the period when the candidate was a Reader. In other words, it does not bar the research publication from being evaluated if it was published before the candidate became a Reader. The interpretation of the Officer of the UGC or even of the UGC itself in respect of the notification is not binding on this Court. Thus, the contention of the learned Advocate General, looked at from any angle, must be rejected.

22. What is even more important to note is that in any event, the petitioner had also forwarded the publications which pertained to the said period of 8 years.

23. The learned Advocate General then stated that one of the petitioner's works/publications was a poem of merely 24 lines. He submitted that this cannot constitute a research publication.

24. Whether the work constitutes a research publication or not is for the expert to decide. It was not for the screening committee to decide. It is not even for us to decide. We are not experts in the field. The members of the screening committee, admittedly, were not experts in the field. The screening committee, admittedly, was not entitled, under the notification, to consider this aspect.

25. In the circumstances, the petitioner in Writ Petition No. 825/2009 is entitled to be considered for promotion to the post of Professor under the CAS. The respondent, Goa University shall, therefore, permit the petitioner to appear for the interview and consider her case, in accordance with the Notification dated 17.12.2002.

26. This brings us to Writ Petition No. 832/2009.

27. The difference in the case of this petitioner is that according to the respondent she was not entitled even to be interviewed as one of her publications is to be found in a book. It was contended that as per the said communication of the UGC, the work cannot be considered to be a research publication, entitling to be evaluated under the said notification.

28. The communication from the UGC does not create an absolute bar against publications in books, being considered for evaluation under the said scheme. It merely states that "Generally chapters in a book or articles in books cannot be considered as Research Publications for the purpose of CAS of the UGC". The term "generally" clarifies this position. Whether, in a given case, such a publication ought to be considered or not, is for the experts to decide and not for the so called screening committee. The notification itself contains no such bar. It is doubtful whether the UGC itself can reject or disapprove the publications on this ground, when the notification itself creates no such bar.

29. The UGC cannot by a subsequent order alter the terms of the notification under the guise of a clarification. It is interesting to note the exchange of correspondence in this regard between the petitioner in Writ Petition No. 832/09 and the UGC.

30. By a letter dated 27.11.09, the petitioner's Advocate requested the UGC to clarify two points. By a letter dated 8.12.09, the UGC furnished the said clarification. The clarifications sought/ questions raised by the petitioner in the said letter, were as under:

Question 1. Is there a total bar in considering research publications published as articles in books having ISBN number, as "research publications" for the purpose of promotion from Reader to Professor under Career Advancement Scheme ?

Question 2. Whether in each and every case, all universities have invariably refused to consider articles published in books as "research publications" for the purpose of promotion from Reader to Professor under Career Advancement Scheme ?

31. The UGC's response to the said letter was as under:

With reference to your letter dated 27.11.2009 on the subject cited above, I am directed to give point wise reply as under:

Point No. 1

As per the existing guidelines are silent on this point.

Point No. 2

UGC has not prescribed any norms of research publications. This may be decided by the University concerned with the help of subject experts in the concerned field.

32. In the circumstances, the petitioner in Writ Petition No. 832/2009 is also entitled to be considered for promotion to the post of Professor, in accordance with the Notification dated 17.12.2002. The respondent, Goa University shall, therefore, permit the petitioner to appear for the interview and consider her case, in accordance with the said notification.

33. In the result, both the writ petitions are disposed of and the Rule in both the Writ Petitions is made absolute, in the following terms:

(A) The impugned order dated 9/10/2009 of the Chancellor, Goa University, as also the respondent's decision dated 27.11.2008 in Writ Petition No. 825/2009 are quashed and set aside;

(B) The impugned order dated 9/9/2009 of the Chancellor, Goa University, as also the respondent's decisions as contained in letters dated 26/7/09; 29/1/09; 18/12/08 and 27/12/08 in Writ Petition No. 832/2009 are quashed and set aside;

(C) The petitioners in the above writ petitions are entitled to be considered for promotion to the post of Professor under the CAS. The respondent, Goa University shall permit them to appear at the interviews and consider their cases, in accordance with the said Notification dated 17.12.2002.

There shall be no order as to costs.