
(1994) 12 GAU CK 0009
In the Gauhati High Court
Case No : Writ Appeal No. 422 of 1994

Dr. (Ms) Kuntala Patra

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Gauhati University Act, 1947 — Section 15A, 5

University Grants Commission Act, 1956 — Section 12, 13, 14, 25, 26

Citation : (1995) 1 GLR 148

Hon'ble Judges : V.K. Khanna, C.J;D.N. Baruah, J

Bench : Division Bench

Advocate : N.N. Saikia, M. Deka, J. Chutia and A. Dutta, for the Appellant; None appeared, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—This Writ Appeal has been filed against the judgment and order dated 19.8.94 passed in Civil Rule No. 2042 of 1994 by the learned Single Judge dismissing the Civil Rule.

2. The case of the Appellant, in brief, is as follows:

The Appellant was working as Lecturer in the department of Mathematics in Gauhati University. Her academic career was uniformly good. She had continuous teaching experience as Lecturer for a period of 14 years. She obtained her Master Degree in Science (Mathematics) from Gauhati University in the year 1978 securing 1st position in that discipline. She worked as a Research Fellow in the department of Mathematics of the Gauhati University for more than 2 years. Thereafter, she obtained Doctorate Degree (Ph.D) from the Gauhati University in 1980. Besides, she published several works and submitted papers in various conferences of national level.

She was appointed Lecturer in the Assam Engineering College at Jorhat on the basis of selection made by the authority and she worked in that post for about a

year. Thereafter, she was transferred and posted as Lecturer in the Assam Engineering College, Guwahati. Till May, 1990 she worked in that capacity. Later she joined in the department of Mathematics, Gauhati University as Lecturer on being selected. Since then she has been working in that capacity.

The Registrar, Gauhati University - Respondent No. 2 issued Annexure - 1 advertisement and published in the Assam Tribune on 21st June, 1993 inviting applications for filling up various posts including one post of Reader in Mathematics. In response to the said Annexure - 1 advertisement, the Appellant along with three others including the 4th Respondent submitted their applications. In the advertisement it was specifically mentioned that specialisation in Pure Mathematics preferably in Algebra Topology and functional Analysis was necessary. Apart from this no other detail was given regarding qualification. An interview was held for the post of Reader of Mathematics on 3.9.94. Thereafter, the Selection Board prepared a select list in which the names of the 4th Respondent and Appellant were placed at Serial Nos. 1 and 2 respectively. The said select list was forwarded to the Executive Council of the University and the Council approved the said selection. After approval of the selection by Annexure - 3 order dated 30.5.94 the 4th Respondent was offered the post of Reader in Mathematics. According to the Appellant, the eligibility criteria laid down in the advertisement were in sharp contrast to the eligibility conditions prescribed by the Regulations. Under the Regulations for the post of Reader minimum 8 years teaching experience was necessary, However, the Gauhati University prescribed minimum 5 years experience with power to relax the said requirement in ease of candidates with outstanding research work. According to the Appellant, she passed M. Sc. in 1988 and obtained her Ph.D. in 1992. On the date the 4th Respondent submitted her application, she did not have even one year's teaching experience. The 4th Respondent had also no published work to her credit. Therefore, the 4th Respondent was not qualified to apply for the post of Reader in terms of eligibility conditions laid down in the Regulations. Being aggrieved, the Appellant approached this Court by filing the writ application (Civil Rule No. 2042 of 1994).

3. In the writ application the Appellant prayed for a writ in the nature of Mandamus or any other appropriate writ or direction for quashing the qualification Criteria fixed by the Gauhati University and also the appointment letter dated 30.5.94. The said writ application was heard by learned Single Judge and after hearing, by order dated 19.8.94 the Civil Rule was dismissed. Hence the present appeal.

4. We heard Mr. N.N. Saikia, learned Counsel for the Appellant. After hearing the counsel we proposed to decide the appeal at the admission stage.

5. Mr. N.N. Saikia, learned Counsel appearing on behalf of the Appellant challenged the judgment of the learned Single Judge on the following grounds:

(a) That the Regulations having been framed in exercise of the power u/s 26(e)

of the Act, the decision of the learned Single Judge was erroneous in law in holding that the qualifications prescribed for appointment of the teaching post in the Regulations were not mandatory in character and not binding.

(b) The qualifications and terms and conditions for appointment to the post as referred to in Annexure - 1 advertisement were contrary to and not in consonance with the qualifications prescribed in the Regulations and, therefore, appointment made as per the Annexure - 1 advertisement was Illegal and without jurisdiction.

(c) The 4th Respondent having not possessed requisite qualifications, her appointment was illegal, void and liable to be set aside.

6. We perused the impugned judgment and the records of the Civil Rule.

7. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. In order to co-ordinate and to determine the standards of education impacted in various universities, the Central Government must have some power. Therefore, it was felt necessary for constitution of a Commission to ensure that the available resources were utilized to the best possible manner. In that view it was proposed to establish a University Grants Commission as a corporate body which would enquire into the financial needs of Universities and allocate and disburse grants to Universities for any general or specified purpose. The Commission would also have the power to recommend to any university the measure necessary for the reform and improvement of a university education and to advise the universities concerned upon the action to be taken for the purpose of implementing such recommendation. In that view the University Grants Commission Act, 1956 (for short, "1956 Act") was enacted, Section 4 of the 1956 Act provides for establishment of a Commission by the name of the University Grants Commission" (for short, the Commission). This Commission shall be a body corporate. u/s 12 of the 1956 Act, it shall be the general duty of the Commission to take in consultation with the Universities or other bodies all such steps as it may think fit for the promotion and co-ordination of university education and for determination and maintenance of standards of teaching, examination and research in universities and for the purpose of performing its functions under the said 1956 Act, the Commission may take various steps as mentioned in the said section. Powers conferred u/s 12 can be exercised by the Commission only in consultation with the Universities or other bodies concerned u/s 25 of the Act, the Central Government may, by notification in the official gazette, make Rules to carry out the purpose of the Act. u/s 26 of the 1956 Act, the Commission may by notification in the official gazette make Regulations consistent with the Act and the Rules made thereunder in respect of the steps mentioned therein.

8. In exercise of the powers vested in Clause (c) of Sub-section (1) of Section 26 the Commission framed a set of Regulations, namely "the University Grants

Commission (Qualifications required of a person to be appointed to the Teaching Staff of a University and Institution affiliated to it) Regulations, 1991 (for short, the Regulation). The said Regulation was notified on 19.9.91. Clause (2) of the said Regulation provides that no person shall be appointed to a teaching post in any university if such person does not fulfil the requirement as to the qualifications provided in Schedule -1. As per Schedule-I minimum 8 years teaching experience with research work is necessary for appointment to the teaching post.

9. Learned Counsel for the Appellant submitted that the 4th Respondent was appointed contrary to the provisions of the Regulations inasmuch as she did not have the requisite qualification of 8 years' teaching experience.

10. Learned Single Judge dealt with this aspect in detail. It has been observed that U.G.C. in its recommendations has prescribed certain norms giving details of qualifications, etc. for appointment of Reader. But as per Section 14 of the 1956 Act, if any university fails within a reasonable time to comply with any recommendation made by the Commission u/s 12 or 13 or contravenes any of the provisions of the Rules made u/s 25 or Regulations made u/s 26, the Commission after taking into consideration the cause, if any shown by the university, may withhold from the University the grants proposed to be made out of the fund of the Commission. The learned Judge further observed that if the university did not comply with the terms and conditions required to be fulfilled for filling up the post of a Reader in the department of Mathematics, Gauhati University, as prescribed in the Regulations, this itself would not make the appointment of the Respondent No. 4 illegal. u/s 14 of the 1956 Act, for such failure if any, particularly u/s 26(f) and (g) of the 1956 Act, the only step the Commission could take was to stop grants to the university and except withholding the grant to the university, nothing could be done. Therefore, it was not mandatory on the part of the university to comply with the requirement so prescribed by the U.G.C. The Respondent No. 1 being an autonomous body which had its own statute conferring powers to the university to dictate qualifications relating to its own teaching staff for the good and benefit of the university. Section 5 the Gauhati University Act, 1947 (for short, the Gauhati University Act), empowers the university to appoint or recognise any person as Professor, Teacher or Lecturer of the University and the University shall be the sole authority to determine all matters under the said Gauhati University Act concerning the appointment in accordance with the Act. u/s 15-A of the Gauhati University Act, the Selection Committee is to make recommendation to the Executive Council for appointment of Professors, Readers, etc. This was done in the instant case also. The Gauhati University Act is an exhaustive and self-contained Act providing the ways and means for appointment of a teacher, namely. Professor or Reader Therefore the 1950 Act or the Regulations made thereunder cannot be said to be mandatory.

11. In determining the question whether any particular provision in a statute is

mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. The scheme and object of the statute is also to be seen. No general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e. a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the Court has to decide the legislative intent. Whether the legislature intends in making the statutory provisions that non-observance of this would entail invalidity or not. To decide this, the Court has to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same. There are several tests to determine whether the provision is to be treated as mandatory or not. One of the distinctions is that in those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself the neglect to perform it is indicated as fatal. The Supreme Court in many cases held that a substantial compliance with the statute or with the rules framed thereunder is enough even if there be no literal compliance and there is no reason to adopt a different line of reasoning in the construction and interpretation of the Constitution. In such cases one must consider the real purpose of the provision whether statutory or constitutional, to find out whether notwithstanding the apparently mandatory form of the words used any deviation therefrom was to be struck down. Noncompliance of provision of a statute or Constitution will not necessarily render a proceeding invalid if by considering its nature, its design and the consequences which follow from its non-observance one is not led to the conclusion that the Legislature of the Constitution-makers intended that there should be no departure from the strict words used.

12. From reading of the statute and the provisions of the Regulations and the 1956 Act it is abundantly clear that the non-compliance of the direction's of the Regulations or Rules, the Commission can withhold the grant only. So the non-compliance of the provisions cannot by itself show that the appointment made in contravention with the provisions will be illegal. It was argued before the learned Single Judge that the Respondent No. 1 did not adopt some of the norms and conditions put by the Commission in its Regulations so far the qualifications for appointment of Professor or Reader was concerned. Therefore, the qualifications prescribed in the Regulations could not be said to be the sole guiding principle for appointment to the post. The Gauhati University Act having provided requisite qualifications for appointment of teaches, the qualification prescribed under the Regulations made under the provisions of the 1956 Act may not always be binding on the 1st Respondent. Beside, learned Single Judge uphold the selection holding that there was no malafide action or any violation of the principles of natural justice in giving appointment to the 4th Respondent.

13. On a plain reading of Section 26(e) of the 1956 Act further reveals that the qualifications prescribed by the Regulations made under the said Act should ordinarily be required of any person to be appointed to the teaching staff of the University. This gives a clear indication that though normally the qualification prescribed by the Regulations should be adhered to, but that does not mean that it should be followed in each and every case. The University is governed by its own statute, i.e. Gauhati University Act and the said Act being a self-contained and exhaustive Act, the University is within its power to prescribe qualifications for appointment of Professor, Reader and Teachers. As per Section 14 of the 1956 Act the Commission may withhold from the University the grants proposed to be made out of the fund of the Commission. Considering all aspects, we have no hesitation to come to the conclusion that the qualifications prescribed by the Regulations is only directory and not mandatory and for non-compliance with the requirement of the Regulation regarding qualifications, appointment cannot be invalid.

14. In view of the above, we do not find any infirmity in the decision of the learned Single Judge. There is nothing on record on which we can come to a different finding. Therefore, we are not inclined to interfere with the decision. The Writ Appeal, accordingly stands dismissed.

However, in the facts and circumstances of the case, we make no order as to costs.