

(2019) 09 CAL CK 0373

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) 1086 Of 2018

Dr. Niladri Biswas

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

West Bengal University Laws Amendment Act, 2011 — Section 6
University Grants Commission Act, 1956 — Section 12, 13, 14, 25 (2)(f), 25 (2)(g),
26(e), 26(f), 26(g)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 09 CAL CK 0373

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J;Abhijit Gangopadhyay, J

Bench : Division Bench

Advocate : Sakti Nath Mukherjee, Sanghamitra Nandy, Swapan Kumar Datta, Tapas Kumar Dey, L. K. Gupta, Amitava Chaudhuri, N. Roy, M. Chaudhuri, Anil Kumar Gupta

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J

The appellant who was a Professor of University of Kalyani (the University, for short) by this writ petition has challenged an order, dated May 31, 2016 passed by its Registrar which is inter alia to the effect that the 9th Executive Council of the University had resolved that the redesignation of the appellant from Project Officer to Associate Professor and his subsequent promotion from Associate Professor to Professor would be kept in abeyance until the University receives concurrence of the State Government in this respect.

After a contested hearing the writ petition has been disposed of by a learned single Judge with a direction upon the State through the Deputy Secretary, Higher Education Department, Government of West Bengal to decide whether the writ petitioner's claim for re-designation stood approved by the order, dated November 23, 2009. The learned single Judge further has directed that in the

event the State found the petitioner's case was not covered by the order reasons are to be given and informed to the petitioner. Such exercise was to be completed within a period of four weeks from the date of communication of the order.

This order has left the petitioner aggrieved and he has filed the present appeal challenging the validity of the order.

In order to appreciate the scope of the writ petition as well as the context in which the appeal has been filed, it is necessary to briefly take into account the essential facts leading to the appointment of the appellant in the University and his subsequent successive promotions.

By an order, dated October 19, 1987, the appellant was informed that he had been selected for appointment as Project Officer, Centre for Adult & Continuing Education (UGC Sponsored Scheme) of the University on certain terms and conditions which included that the post was temporary and he might continue to hold the post during the tenure of the Scheme which itself was temporary. His pay was fixed in the scale of Rs. 700-1600/- with admissible allowances. He was to acquire the qualification prescribed in the relevant advertisement with regard to his reaching Rs. 1300/- failing which he would not be permitted to draw further increments.

On November 6, 1995, the Secretary, the University Grants Commission (the Commission, for short) informed the Registrar of the University that the Commission had been writing to the universities that the staff working in the department/Centre for Adult and Continuing Education and Extension Programme might be treated at par with other teaching staff working in other faculties of the University. The Universities were also asked to give the same benefit of revised scales of pay to the core staff of such departments/Centers corresponding to the scales of pay of Professors, Readers and Lecturers respectively as per the Scheme of the revised pay scale for teachers with effect from January 1, 1986. By the said letter, the Commission again requested the Universities that the core staff of these departments/Centers might be provided with all facilities as were being availed of by other teaching staff of the universities. The Registrar was specifically requested to have an assurance from the State Government that the recurring liability of the staff involved would be taken over by it after March 31, 1997 or the end of the VIIIth Plan period in case such assurance was not obtained earlier. The circular was sent to the Secretary of Department of Education of the State Government with a request to take over the recurring liability of the staff after March 31, 1997 or the end of the VIIIth Plan period. The Joint Secretary, Department of Higher Education, University Education Branch by a memo, dated August 24, 1998 informed the Registrar of the University that the Governor had been pleased to decide towards continuation of Adult Education Centers as approved by the Commission in the University and approved creation of posts marginally noted therein. The Registrar was further informed that the Governor had been pleased to agree to undertake the financial liability for

maintenance of those posts in the scale of pay as noted in the margin beyond March 31, 1997 or on cessation of assistance from the UGC whichever was later.

This was followed by an order, dated May 18, 1999 issued with concurrence of the Vice-Chancellor of the University that in terms of the resolution of the Executive Council vis-à-vis the order of the State Government regarding the taking over of liability of the posts of Director and Project Officer in their respective scales of pay of the concerned Centre the appointment of the appellant as the Project Officer of the said Centre in the scale of pay Rs. 2200-4000/- with usual allowances stood confirmed from the date of his joining the post on October 19, 1987 at the University.

By a communication, dated June 3/8, 2004 the appellant was informed that the Executive Council in its 24th meeting had inter alia resolved that the appellant was to be promoted to the next higher scale of pay of Rs. 12000-18300/- retaining his designation.

The next date of importance is November 23, 2009 when the Deputy Secretary, Higher Education Department, Government of West Bengal informed the Registrar of the University about the approval to the proposal for redesignation of the post of Director and Project Officer of the concerned Centre to the posts of Professor and Lecturer respectively, subject to the condition that the posts were to be filled up according to the UGC Guideline and the University Act and Statutes. Subsequently the Screening Committee, constituted for conversion of the Director and Project Officer of the concerned Centre to equivalent teaching posts, after taking into consideration the resolution of the Executive Council, various government and UGC memos inter alia recommended the appellant to the post of Reader in the department of Adult & Continuing Education and Extension of the University. However, the Executive Council of the University fixed the designation of the appellant as Lecturer (Selection Grade) which was of the same rank, grade and scale as that of the Reader.

Subsequently, the Registrar of the University by a memo, dated March 1, 2010 enquired from the Principal Secretary, Higher Education Department, Government of West Bengal from which date the conversion of the relevant Centre would be effective i.e., whether from November 23, 2019 representing the order of the Deputy Secretary or from the date of recommendation of the Screening Committee. The Deputy Secretary in turn informed the Registrar that the appellant was to be re-designated as Lecturer (selection grade) subject to the condition that those posts were filled up according to the UGC Guidelines, University Act and Statues. By an order, dated December 17, 2013 the appellant was re-designated as the Associate Professor in the concerned department. And by an order, dated June 10, 2015 he was promoted to the post of Professor on the basis of a unanimous resolution of the selection committee. In the meantime he had been discharging the duties of the head of the department.

The next and the most important date in the sequence of events which has led to

the filing of the writ petition is May 31, 2016 when the Registrar informed the appellant that the re-designation of the post he held and his subsequent promotions had been kept in abeyance until the University received concurrence of the State Government. This order was assailed in the writ petition as arbitrary, mala fide and violative of the principles of natural justice.

The defence of the University, both in the affidavit-in-opposition to the writ petition as well as in the appeal before us is that without obtaining 55% marks in the Master degree the appellant is not entitled to the reliefs prayed for in the writ petition. He joined the University with a Master degree in Sociology with 48.62% marks as the Project Officer of the relevant Centre on temporary basis, initially for a period of five years with certain terms and conditions. It was specifically mentioned that he would have to acquire qualification prescribed in the relevant advertisement within a certain period for his reaching the scale of pay of Rs. 1300/- failing which he would not be entitled to draw further increment. He failed to fulfill the minimum criteria within a period of 14 years when he reached the scale of pay of Rs. 1300/-. In the year 1990 when the pay of the appellant was revised the caution criteria as mentioned in the letter of appointment issued to the appellant was forgotten by the Finance Department of the University.

It has been the further case of the University that the Higher Education Department, Government of West Bengal informed the University that conversion would be made subject to the fulfillment of the UGC Guideline and the University Act and Statutes. The Screening Committee constituted by the Vice-Chancellor recommended the re-designation of the appellant from Project Officer to Lecturer (Selection Grade) violating the existing norms of the UGC. The recommendation was sent to the Higher Education Department, Government of West Bengal which replied that the re-designation of the core staff of the newly formed Department of Adult Continuing Education and Extension would be done subject to the fulfillment of the UGC Guideline the Act and Statutes of the University.

On a writ petition being filed by the appellant in the year 2010 the then Vice-Chancellor of the University gave all benefits to the appellant violating the norms of the State Government, the UGC Regulations, the University Act and the Statutes. The Executive Council of the University, therefore, in the meeting decided to withhold the re-designation and subsequent promotion of the petitioner subject to the condition of the State Government's concurrence in this respect.

The respondents have further alleged that the petitioner was supposed to fulfill the essential qualification by September 30, 2001 but he completed his Ph.D. degree in 2009. At the time of the petitioner's joining in the University as Project Officer good academic result meant securing an overall 55% marks but he got less than that. Since the petitioner did not fulfill the eligibility criteria the University did not confer benefit of re-designation from Project Officer to Lecturer (Selection Grade). The benefit of Career Advancement Scheme was offered to the appellant like other officers of the University. But the University never

declared that the benefit of re-designation was given to the petitioner in view of the State Government's order, dated November 23, 2009.

The further case of the University is that the then Vice-Chancellor of the University never re-designated the appellant as a Lecturer (Selection Grade) following the UGC Regulations. He exercised his powers in terms of Section 6 of the West Bengal University Laws Amendment Act, 2011 which did not give any power to the Vice-Chancellor to re-designate any officer to the post of a Lecturer violating the UGC or the State Government norms. The Vice-Chancellor, in fact, had violated all the previous decisions of the Executive Council as well as the State Government's orders, dated November 23, 2009 and March 15, 2010 respectively. Therefore, the Executive Council had taken the correct decision in its meeting held on May 23, 2016.

By the action of the then Vice-Chancellor the appellant had got the re-designation from Project Officer to Associate Professor with effect from December 17, 2013 and got the promotion from Associate Professor to Professor on and from the very same date. Thus, he had totally violated all norms and Regulations of the UGC and the State Government. As on December 13, 2013, the appellant got the re-designation from Project Officer to Associate Professor and from Associate Professor to Professor. The affidavit-in-opposition particularly mentions that the recommendation for re-designation of the appellant should have come through the recommendation of the selection committee as in the case of appointment of teaching posts where presence of the Chancellor's nominee in the respective subject was essential. But in the present case such recommendation came from the Screening Committee which was in violation of the decision of the earlier Executive Council as well as the orders of the Government as mentioned before.

Since the appellant knew that he did not fulfill the minimum eligibility criteria for being appointed a lecturer the decision of the University cannot leave him aggrieved in any manner and he has also failed to justify his entitlement to the reliefs prayed for in the writ petition.

The State of West Bengal filed an affidavit-in-opposition to the writ petition. The stand of the State Government is much the same as that of the University. The State Government says that the UGC by a letter, dated November 6, 1995 informed the Registrar of the University that the core staff in the concerned Centre might be treated at par with the other teaching staff working in other faculties of the University. The University was also asked to give the same benefit of revised scales of pay to them. By a letter, dated March 15, 2010, the State Government informed the University that November 23, 2009 might be regarded as the effective date for conversion and re-designation of the existing core staff of the Centre to the teaching posts.

It has been specifically mentioned in the State's affidavit that the University authorities had failed to consider the marks of the appellant in the Master degree

as per the UGC norms though it was clearly mentioned in the earlier government orders. Subsequently the University sought instruction and post-facto concurrence regarding the conversion and the designation of the appellant. The Screening Committee should have taken into consideration the fact that only a candidate who has 55% marks in the post graduate examination can be appointed as a Lecturer. The Executive Council should not have approved the recommendation of the Screening Committee to re-designate the post of the Project Officer of the concerned Centre. Both the Screening Committee as well as the Executive Council had overlooked the government order, dated November 23, 2009 and approved the re-designation of the appellant. Thus, the re-designation was effected in violation of the UGC norms as the appellant did not fulfill the eligibility criteria mentioned therein. The State Government has specifically contended that the appellant was not eligible to be placed in the rank and scale of the Lecturer (Selection Grade) for want of requisite academic qualification and for non-fulfillment of the UGC norms. The State respondents had prayed for dismissal of the writ petition.

The learned single Judge in the order impugned has observed that by a letter, dated November 6, 1995 the UGC had left it to the discretion of the University to treat the petitioner at par with the other teaching staff. Whether the exercise of the discretion was in fulfillment of the condition as mentioned in the government order, dated November 23, 2009 is for the State to consider as the University had already exercised its discretion in favour of the petitioner. Therefore, the Deputy Secretary of the concerned department of the State has been directed to decide whether the petitioner's claim to re-designate stood approved by the order, dated November 23, 2009.

The stand of the University in the affidavit-in-opposition was also its stand in the appeal. Mr. Gupta, the learned Senior Counsel appearing for the University submitted that the appellant was appointed on October 19, 1987 as the Project Officer but not in the scale of a Lecturer. The letter, dated August 24, 1998, written by the Joint Secretary, Higher Education Department, Government of West Bengal to the Registrar of the University showed that the post of the Project Officer existed till then. The Guideline of the UGC as well as the Kalyani University's Act require constitution of selection committee for appointment to the posts of Professor, Reader or Lecturer. Instead of forming a selection committee the Screening Committee recommended the appellant for the post of Reader. The Government memo, dated November 23, 2009 was ignored and the recommendation consequently was in violation of the stipulation thereof. The Executive Council recommended the appellant to be re-designated as a Lecturer (Selection Grade) and the matter was sent to the State Government for approval.

A further stand of the University is that the series of documents clearly show that re-designation of the appellant had not taken place for a very long time and the appellant continued to be a Project Officer. The University asked for approval of the State as re-designation would involve expenditure over and above the

budgetary sanction of the State Government. The appellant was re-designated to an academic post and subsequently promoted by the former Vice-Chancellor in exercise of his delegated authority.

Mr. Gupta had made a grievance that on December 17, 2013, the appellant rose from the status of Project Officer to Professor by skipping the post of Lecturer. The Executive Council did not take any decision to that effect. When the University sought for concurrence of the State Government the Higher Education Department, Government of West Bengal by a communication, dated July 18, 2017 clearly stated that the terms and conditions of re-designation of the post of Project Officer would be guided by the Government's order, dated November 23, 2009 and no deviation would be allowed. The University argued that the appellant never held the post of a Reader or Lecturer (Selection Grade). The salary of a Reader or Lecturer did not make him a Reader or Lecturer. The government order, dated December 31, 2012 which inter alia contained the guidelines for re-designation did not authorize such promotion at all.

There is no memo or government order promoting a Project Officer to be re-designated as an Associate Professor without being first re-designated as a Reader or a Lecturer (Selection Grade).

Mr. Gupta argued that any appointment in violation of the statutory rules of persons not qualified is bad and it confers no legal right on such person. In *Asok Kumar Sonkar Vs. Union of India and Others*, reported in (2007) 4 SCC 54, the Supreme Court observed that the appellant in that case did not hold the requisite qualification on the cut off date and, therefore, he was not eligible for the post. Relying on this judgment it was argued that redressal of a situation such as this does not even call for compliance of the principles of natural justice. The principle of audi alteram partem may not be applied to a given case unless prejudice is shown. It is not necessary where it would be a futile exercise. A court of law does not insist on compliance of the principle of natural justice with useless formality. It will not issue any such direction where the result would remain the same in view of the facts situation prevailing or in terms of the legal consequences. The Supreme Court observed that if an appointment is illegal it is non-est in the eye of law which renders the appointment to be a nullity. Therefore, it would be wholly improper, the Supreme Court observed, to invoke the equity jurisdiction. The principles of equity in a case of this nature will have no role to play. Sympathy should not be misplaced.

More than a decade before the earlier judgment the Supreme Court in the case of *Ramindar Sharma (SMT) and Another Vs. State of Punjab and Others*, reported in (1995) 1 SCC 138, the Supreme Court held that since the appellant did not possess the prescribed qualification the appointment was bad and, therefore, was liable to be set aside.

Mr. Gupta next relied on *MP State Coop., Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, reported in (2007) 8 SCC 264. In that case the Supreme Court laid

down certain principles which are to be followed in the matter of public appointments. The list of principles inter alia mentions that an appointment made in violation of the mandatory provision of the statute and in particular ignoring the minimum educational qualification and other essential qualifications would be wholly illegal. Such an illegality cannot be cured by taking recourse to regularization. The Supreme Court reiterated that the court should not exercise its jurisdiction and misplace sympathy.

It was lastly submitted by the University that if the government is of the opinion that the University would have to take a decision in the matter finally, the University will take a decision on its own; otherwise, it was submitted that if the Division Bench holds that the learned single Judge should not have left the matter to be considered and decided by the State Government the issue should be left to be decided by the University without the Division Bench pronouncing any judgment on merits as neither the University nor the learned single Judge had taken a final decision on the merit.

The stand of the University and the elaborate argument advanced in justification of the action taken by them, however, overlooks a very basic and cardinal aspect involved in the matter. Though mentioned earlier it is worth reiterating that the UGC by a letter, dated November 6, 1995 "once again" requested the Registrar of the University to treat the core staff of the relevant Centre so that they might be provided with all facilities which were provided to the other teaching staff of the University. It meant that the same benefit would have to be conferred on the core staff of the Centre which were available to teachers of different grades. When the UGC requested the University to confer the same benefits enjoyed by a teaching staff upon the core staff of the concerned Centre it did not make any recommendation for reconstitution of the cadre. The decision of the Government to approve the re-designation of the post of the appellant as a Lecturer (Selection Grade) retrospectively and consequently to convert the Centre into a separate department was pursuant to the direction given by the UGC in its letter, dated November 6, 1995. The financial liability for maintenance of the relevant posts had been undertaken by the State which will be obvious from the letter, dated August 24, 1998.

Once the Centre was converted into a full-fledged department and the working core staff were re-designated as teachers of various grades, there was no question of applying the recruitment qualifications framed for regular teaching posts. The conversion had taken place pursuant to the UGC direction. Therefore, for that conversion the University could not insist on the qualification for being appointed as a fresh teacher as laid down by the UGC. For subsequent filling up of any vacancy in the converted department compliance with the UGC norms laying down the qualifications would have been a necessity.

A very certain aspect of the matter appears to have eluded the University. The appellant was never appointed as a Lecturer nor was he ever recruited according to the recruitment rules. He was simply re-designated as holding a teaching post.

Recruitment under the recruitment rules and conversion of a post are very different and mutually exclusive.

It has been submitted by Mr. Mukherjee, the learned Senior Counsel appearing for the appellant, that reference to the UGC Guidelines and University Act and Statutes for re-designation, as mentioned in the letter, dated November 23, 2009, has no application to the project employees. The consequences of failure of a University to comply with the recommendation of the UGC have been spelt out in Section 14 of the University Grants Commission Act, 1956. It inter alia says that if any University fails to comply with any recommendation made by the UGC under Sections 12 or 13 of the Act or contravenes any provision of any Rule made under Section 25 (2)(f/g) or of any Regulation made under Clause (e) or (f) or (g) of Section 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. At that point of time the University avoided the consequences of Section 14 by complying with the UGC recommendation. Now they cannot turn back and raise an issue about the lack of qualification of the petitioner.

It also cannot be lost sight of that after accepting the financial liability by the State the appointment of the appellant was confirmed. With the taking over of the financial liability the State did not have practically any role to play. Once the financial liability for maintenance of the relevant posts was unequivocally undertaken by the State Government its role in the matter ended. The affidavit of the State of West Bengal mentions that the University authorities failed to take the marks obtained by the petitioner into consideration and now the University had sought for instruction and post-facto concurrence regarding the conversion of the Project Officer to the Associate Professor. While the State Government really ascribes the so-called failure to the authorities of the University, what has been glossed over is that now the appellant cannot be asked to go back for want of prescribed educational qualification as his re-designation was not in terms of the recruitment rules.

The appellant submitted, and not without justification, that the recruitment rules or norms which are otherwise to be applied for regular recruitment could not be made applicable to the re-designation of the posts held by the appellant pursuant to the UGC direction. The compliance of the UGC norms not being a requirement of UGC for this purpose, or at least not being mentioned by it, the University at that point of time had accepted it. The stand now sought to be taken by them, if had been taken earlier, would have violated the directives of the UGC and would have been contrary to the nature of the Scheme. It is no good arguing that conferment of the financial benefits of Lecturer (Selection Grade) or Reader did not make the appellant any one of them as he was never appointed as such. Such an argument overlooks that it is only because he was not appointed as a Lecturer or a Reader or did not go through the regular recruitment process and his posts were re-designated pursuant to the UGC direction that the recruitment

rules for appointment to regular academic posts did not per se apply to him.

By the letter, dated November 6, 1995 the UGC requested the University to have an assurance from the State Government that the recurring liability of the staff would be taken over by it after March 31, 1997 or the end of the VIIIth Plan period in case such assurance was not obtained earlier. Thus, there was no requirement of the UGC Scheme to be approved either by the University or the State. The role of the State was only a very limited one, both in terms of the nature of working as well as its duration. It was only to signify the acceptance of the financial liability and its role was only till that date. The State also in its turn while accepting the financial liability could not either modify or alter the Scheme of the UGC. The liability was accepted without any reservation which had led to fixing of the appellant's higher scale of pay from the date of his joining the University.

Yet another aspect of the matter cannot be ignored. The order of confirmation, dated May 18, 1999 was issued in supersession of the previous order, dated October 19, 1987. If the earlier order was superseded the respondents cannot project Clause 5 of the said order where there was a stipulation for acquiring qualification in terms of the advertisement. The word 'supersession' is a noun form of the verb 'supersede'. In *Kolkata Municipal Corporation Vs. Pawan Kumar Saraf*, reported in AIR 1999 SC 738, the Supreme Court observed that the word 'supersede' in law means to obliterate, set aside, annul, replace, to make void or inefficacious or useless or repeal. While explaining the expression "in supersession of all previous notifications" the Supreme Court in the *State of Orissa Vs. Titagarh Paper Mills Company Ltd.*, reported in AIR 1985 SC 1293 observed that all that was done was to repeal and replace the previous notifications by new notifications.

In the present case the order, dated May 18, 1999 did not wipe out the liability already taken. Condition no. 5 mentioned in the earlier order which had been superseded could not be pressed into service by the University as a breach of condition mentioned in his letter of appointment.

There cannot be any doubt that the real objection of the University is to the entry of the appellant into the regular cadre of the teaching staff which was done in terms of the UGC Scheme. The State Government having once accepted the financial liability and the University having given effect to the UGC Scheme it is not clear why by the order impugned the re-designation of the appellant to various academic posts had been kept in abeyance till the University received concurrence of the State Government. While issuing the order the University seems to have lost sight of the fact that after the acceptance of the financial liability there was no scope for any approval or concurrence by the State.

It appears that the respondents have persistently confused between the case of the appellant and that of a candidate applying for an academic post like a Lecturer or a Reader. For the appellant it was a case of acquiring the status by

dint of the UGC order and pursuant to the Scheme framed by it. It is not a case where the University had initiated a regular recruitment process where the qualifications as laid down by it have to be complied with. In fact, what the UGC had offered was in the nature of complete package and it had been accepted by the University. No option was left to the University. This essential thing makes it very different from a case of conversion of a post per se.

It will be all the more obvious if one considers the Statements of Objects and Reasons of the University Grants Commission Act, 1956. It inter alia says: "the Constitution of India vests Parliament with exclusive authority in regard to 'coordination and determination of standards in institutions for higher education or research and scientific and technical institutions' ". The Preamble of the Act also makes it clear that it was enacted to make provision for the same and for that purpose the UGC was established. This subject has been listed in item no. 66 of list 1 of the 7th schedule to the Constitution of India and is thus entirely within the domain of the central legislature. Therefore, the State had to leave the Centre with the staff to be dealt with in accordance with the UGC Scheme; non-compliance of the Scheme was to invite the consequences mentioned in Section 14 of the University Grants Commission Act.

On the top of everything the order impugned in the writ petition is an unreasoned one. All that it says is that the Executive Council in its meeting held on May 23, 2016 had resolved that the re-designation of the appellant from Project Officer to Associate Professor and his subsequent promotion from Associate Professor to Professor would be kept in abeyance until the University received concurrence of the State Government. The appellant has never been informed why this decision has been taken by the University authorities and why should all re-designations of the posts held by him and subsequent promotions be kept in abeyance. He ought to have been informed of the reasons for taking such a harsh decision. It is all the more so as it has affected him prejudicially and has the effect of nullifying his service career in one go.

In the case of *Union of India Vs. M. L. Kapur*, reported in AIR 1974 SC 87, the Supreme Court was considering the effect upon the rights of an aggrieved person who is entitled to the protection under Articles 14 and 16 of the Constitution of India. The need to record reasons was emphasized as the only remaining visible safeguard against possible injustice and arbitrariness. In *Siemens Engineering & Manufacturing Company of India Ltd. Vs. Union of India and Others*, reported in AIR 1976 SC 1785, the Supreme Court held that providing reasons is like the principle of *audi alteram partem* which is a basic principle of natural justice which must inform every quasi-judicial process and the rule must be observed in its proper spirit.

In *Gurdial Singh Fijji Vs. State of Punjab*, reported in AIR 1979 SC 1622, the Supreme Court observed that the reasons are the links between the materials on which certain conclusions are based and the actual conclusion and, therefore, the speaking orders are the necessary concomitant of the rules of natural justice.

Administrative orders are liable to be quashed in the absence of reasons. The courts have recognized even the right to know the reason for any administrative decision which affects an individual and this has been accepted as a part of the principles of natural justice. In the cases of *State of West Bengal Vs. Atul Krishna Sha and Others*, reported in AIR 1990 SC 2205, right to reason was recognized as an indispensable part of sound system of judicial review. In *S. N. Mukherjee Vs. Union of India*, reported in AIR 1990 SC 1984, the Supreme Court accepted the requirement to record reasons as one of the principles of natural justice which govern exercise of power by administrative authorities.

Over the years the law has recognized and accepted that every State action must be informed with reasons and any order without informing the person aggrieved of the reasons for passing the same must be held to be violative of the principles of natural justice. If right to know the reasons is a part of natural justice, as recognized in the judicial decisions any action of the respondents by not communicating the reasons behind an order has the effect of robbing him of his inalienable right.

In the present case the appellant was merely served with an unreasoned order and he was not in a position to know why the authorities had passed the order till he decided to approach the court. If he had not approached the Court he would have continued to be in darkness about why he suffered an order. It is true that in the affidavit the respondents have disclosed why they had taken such decision but that is hardly any substitute for a speaking order which was required to be passed by the University. In the *Union of India Vs. H. P. Chothia*, reported in AIR 1978 SC 1214, the Supreme Court observed that absence of a speaking order cannot be cured by a counter affidavit giving reasons which should have been in the order itself and it has been persistently held that an order violating the principles of natural justice is liable to be set aside and struck down for that reason alone. It is also to be appreciated that the service rendered by the petitioner for the past few decades cannot suddenly be kept in abeyance. After all, the appellant was dealt with under the UGC Scheme. The appellant has made a grievance and we find sufficient justification for it that both the circular as well as the impact of the University Grants Commission Act, have eluded the respondents on the basis of which re-designation and fixation of the scale of pay of the appellant was done.

The order impugned in the writ petition has the effect of affecting the life of the appellant in a very adverse manner. After keeping the re-designation and the successive promotions awarded to him in abeyance for five years the University asked him to retire and in the process he had lost two years of service and that too by a non-speaking order. As a matter of fact the appellant's rights to life, as extended and expanded by successive judicial pronouncements have been badly jeopardized.

The judgments relied on by Mr. Gupta in support of the contention that the appointment in violation of the statutory rules of persons not duly qualified is bad

and confers legal right upon such person is far too well-settled. We have, however, already seen that the re-designation and successive promotions of the appellant cannot be said to be fresh appointments per se where for want of the prescribed qualification the selection may be held to be bad. As such, the judgments have no application to the facts of the present case.

It has been the stand of the respondents that failure to give hearing to the appellant did not amount to violation of principles of natural justice. The same would have been an empty formality as admittedly the appellant did not satisfy the eligibility criteria for being appointed as a Lecturer or for successive promotions. Two judgments have also been relied on the point.

It is true that in several cases courts both in India and abroad have declined to blindly insist on compliance of the principles of natural justice where the result of such hearing would have been the same. It is in those classes of cases that the court held that the principles of natural justice cannot be stretched to an absurd point as to lead to an exercise in futility. But the present one is not one such case where the exception to the requirement of complying with the principles of natural justice could be restored to. When the respondent University submitted that a hearing would have been an empty formality they obviously were proceeding on the basis of the eligibility criteria for the relevant posts. That such eligibility criteria did not stand in the way of the appellant's being first re-designated and then successively promoted upto the state of Professor, was an aspect which left the University severely isolated and alone. It is quite possible, and we believe such to be expected of the University that if this aspect of the matter had been presented to the respondents they might have taken a different view. At least it was not one such case where an opportunity of being heard, if had been given to the appellant, would have inexorably led to the same conclusion.

We cannot also accept the submission of the University that if the Government asks the University to take a decision the University will take a decision of its own. We have already found that the Government after it has undertaken financial liability has hardly any role to play as re-designation of the appellant had been done in terms of the UGC Scheme and circular.

It cannot also be accepted that in case the appellate court holds that the learned single Judge should not have left the matter to be considered and decided by the State Government the issue should be left to be decided by the University without the appellate court pronouncing any judgment on merits.

We find no reason why we should not pass any order on merits. The case has been argued before us on merits, we have examined the merits of the respective cases and, therefore, in fitness of things the appeal should be disposed of on merits. There is no scope for referring the matter back to the University for taking a decision after an elaborate affidavit and arguments. The University has laid bare its stand that the appellant did not satisfy the eligibility criteria and

was, therefore, not entitled to ask for any reliefs in the writ petition. The University authorities having described the impugned decision of the Executive Council as "the right decision", there is no point in referring the matter back to them. They cannot also be heard that the University has not taken any final decision on merits. On the contrary, the University having made clear its views known through the affidavit and the submission in court referring the matter back to the University for a decision by itself would be an empty formality.

Even if the learned single Judge has not decided the issue finally we, after an elaborate discussion on the merits of the respective cases, find no reason to remand the matter to the learned single Judge. Apart from leading to multiplicity of proceedings and giving the dispute a longevity larger than it deserves it will not serve any practical purpose. We are of the view that the learned single Judge ought to have decided the issues involved in the matter without referring it to the State Government for a decision. This is because, as has been mentioned earlier, the State Government has hardly any role to play in it after it had taken the financial liability. That apart, the State government has also taken a decision in the matter already. It has echoed the stand of the University in the affidavit that re-designation of the posts of the appellant was done in violation of the UGC norms and he lacked eligibility criteria. Thus, if the order of the learned single Judge is retained and the matter is sent to the State government the result would be a foregone conclusion.

It is a settled principle of law that if a court of first instance does not decide the lis between the parties and refers it to a third party for a decision and if the appellate court is of the view that the lis ought to have been decided in one manner or the other the appellate court has not only jurisdiction but a duty to decide the issue which had not been done by the first court.

For the reasons aforesaid, we are of the view that the appellant has been able to establish sufficiently that the memo impugned in the writ petition was liable to be cancelled and set aside. We direct the memo, dated May 31, 2016 to be set aside and quashed and direct the respondent authorities not to give any further effect to the said memo. Consequently, the petitioner should be allowed to continue as the Professor and head of the relevant department till he attains the age of superannuation in normal course. In case the petitioner has already been made to retire or even otherwise the University must calculate and pay the arrears of salary which he would have been entitled to had the order impugned not been issued for the entire period he had not been allowed to work as the Professor of the relevant department. Such calculation shall also carry with it an interest at the rate of 10% per annum from the date he was not paid the salary of the Professor pursuant to the memo impugned in the writ petition till the date of the actual disbursement of the arrear salary. The entire exercise should be completed within a period of six weeks from the date of the communication of the order. In case the arrear salary is not disbursed within the said period it shall carry an additional interest of 4% per annum after the expiry of the period fixed

by us.

The appeal is allowed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.