

(2008) 03 OHC CK 0045
In the Orissa High Court
Case No : Writ Petition (C) No. 6929 of 2007

Dr. Niranjana Sutar

APPELLANT

Vs

The Chancellor, Biju Patnaik University of Technology

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : (2008) CLT 577 Supp : (2008) 1 OLR 839 Supp : (2008) OLR 577 Supp

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

Bench : Division Bench

Advocate : Tarananda Pattanayak, S. Pattnaik and Ch. Asiwni Kumar Das, for the Appellant; Rabindra Kumar Dash and S. Pattnaik for Opp. Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

S. Panda, J.—In this writ petition, the Petitioner assails the illegal promotion/selection of opposite party No. 6 to the post of Professor in the Department of Instrumentation & Electronic Engineering (higher grade) made under Career Advancement Scheme (in short "CAS") vide Annexure-5 and the order passed by the Chancellor rejecting the representation of the Petitioner under Annexure-10.

2. The facts of the case are as follows:

Initially the Petitioner was appointed as a Reader in the Department of Electrical Engineering in the year 1994 at the College of Engineering & Technology, Bhubaneswar (in short "CET") which was under the Orissa University of Agriculture & Technology, Bhubaneswar (in short "OUAT"). The said College became the constituent College of Biju Pattnaik University of Technology, Rourkela (in short "BPUT") after its establishment by an Act in the year 2002. While the Petitioner was continuing as such, on creation of a new Department and Discipline, i.e. instrumentation & Electronic Engineering (in short "I&EE") at CET under OUAT, he submitted application for the post of Reader and was appointed as a Reader on 3.8.1996 in the I&EE Department at CET. Thereafter, he

was allowed to act as HOD, I&EE, CET from 12.1.1998. The Principal of CET on 20.7.2005 issued one notice inviting applications from amongst the faculty members eligible for promotion to various teaching cadres under CAS. The last date for submission of such application was 10.8.2005. Petitioner submitted his application within the stipulated date as he was eligible by the date of notification having requisite qualification to avail the benefit under CAS. Petitioner has stated that he has acquired Ph.D. and completed 8 years of service as a Reader in I&EE by the time of notification. He was called upon to appear before the Selection Committee constituted for CAS on 22.10.2005. It is his case that he was the only eligible candidate in the Department and Discipline of I & EE but to his utter surprise, on 6.6.2006 the Vice-Chancellor, opposite party No. 2, promoted opposite party no. 6 to the post of Professor in the Department of I & EE under CAS with retrospective effect from on 9.12.2003. He has asserted that opposite party No. 6 has not possessed the requisite qualification and being ineligible to get that post, his promotion to the post of Professor is illegal. The Petitioner applied for the papers relating to selection of opposite party No. 6 under the Right to Information Act (in short "RTI") and found that the name of opposite party No. 6 was recommended as a Reader of Electrical Engineering Department & Discipline and he had appeared before the Selection Committee at Serial No. 1 as he had completed 8 years of service in I&EE but in fact he had never held the post of Reader in I&EE. Thus, against the illegal promotion of opposite party No. 6 under CAS, Petitioner submitted a representation by way of an appeal to the Chancellor on 8.7.2006 stating therein that the said promotion affected the academic career and prospect of the Petitioner. When his appeal was not considered, he filed a Writ Petition before this Court in W.P.(C) No. 15465 of 2006 which was disposed of on 20.12.2006 with an observation that the Chancellor would take a decision on the appeal filed by the Petitioner within a period of two months. The Chancellor disposed of the appeal with a finding that the recommendation made by the Selection Committee recommending the name of the opposite party No. 6 was justified under CAS for the post of Professor because by the cut off date fixed by the authority, opposite party No. 6 was a Ph.D. holder. That apart, opposite party No. 6 is more technically sound and suitable having specific specialization in technical knowledge. The grievance of the Petitioner is that the Selection Committee has not followed the guidelines of AICTE and forgery has been committed only to accommodate opposite party No. 6. His further grievance is that he is holding the substantive post of Reader. Thus, the promotion of opposite party No. 6 is illegal, erroneous and not in conformity with the guidelines and provisions of the Statute and hence the same is not sustainable in the eye of law.

3. Pursuant to the notice issued, opposite party Nos. 2 and 3 appeared and filed their counter affidavit. Though notice was issued to other opposite parties and duly served on them, none have appeared on their behalf. The matter was heard finally on the consent of the parties. In the counter, opposite parties 2 and 3 have specifically stated that Petitioner's assertion that he is a Reader and HOD,

I&EE of CET is not correct. Their case is that originally when the CET was a constituent college of OUAT, the discipline of Electrical Engineer and I&EE was one Department, since both the subjects were perceived to be closely related (emphasis supplied), opposite party No. 6- Dr. P. Kabisatpathy and the Petitioner were appointed as Readers in the I&EE Department with effect from 10.12.1993 and 25.1.1994 respectively. I&EE was separated from the EE Department in the year 1994. Opposite party No. 6 was allowed to continue as a Reader and HOD of I & EE Department due to his specialization in the subject of Control & Automation. Petitioner was allowed to continue as a Reader in the said I&EE Department, when opposite party No. 6 proceeded to IIT, Kharagpur to pursue his Ph.D. Thus, the Petitioner was assigned the work of HOD till January, 2006. Thereafter, he was appointed as Officer-in-Charge of Information and Communication Technology of BPUT. Hence, he was relieved from CET in order to join BPUT. By that time, opposite party No. 6 had returned after completion of his Ph.D. and joined as HOD in the Department of I&EE.

4. Petitioner was an applicant for the post of Professor in Computer Science and Application (CS&A) and I&EE for both direct recruitment and promotion under CAS in pursuance of the advertisement made on 25.11.2004. In the said advertisement, it was specifically mentioned that "Minimum eligibility does not ensure that a candidate will be called and selected for any post". It was further mentioned therein that qualification, experience and scale of pay are according to the norms and provisions prescribed by the AICTE. Petitioner as well as opposite party No. 6 appeared before duly constituted Selection Committee for both direct recruitment and promotion under CAS for the post of Professor in the discipline of CS&A and I&EE. As per the requirement under AICTE, preference shall be given to the candidate having Ph.D. qualification and research publication. Opposite party No. 6 having requisite qualification was selected for the post of Professor and as the Petitioner had not possessed Ph.D. qualification and research publication by the cut off date i.e. 31.3.2004, he was not selected.

5. It appears from the record that earlier an advertisement was made by the BPUT inviting applications to fill up the vacant sanction posts of Professor, Reader and Lecturer in respect of its two constituent colleges, i.e. University College of Engineering (UCE), Burla and College of Engineering and Technology (CET), Bhubaneswar in the year 2003 for giving promotion under CAS but the same was not acted upon. Thus, Anr. advertisement was issued in the year 2004 to fill up the vacant posts of Professors, Readers and Lecturers. The selection was conducted in respect of total 53 sanction posts (21 for CET, Bhubaneswar and 32 for UCE, Burla) for both the Colleges through direct recruitment as approved by the Government of Orissa, Department of Industries. When the post of Professor in CS&A & IAEE in CET was advertised, the applications were invited from different faculties of both the constituent colleges. UCE, Burla invited applications from the candidates to be submitted by 31.3.2004 whereas CET, Bhubaneswar invited applications to be submitted by 31.3.2005. In order to maintain uniformity, it was decided by BPUT to consider the applications of the candidates

eligible upto 31.3.2004. On that basis, selection process continued and finally interview was conducted from October, 20th to October, 26th, 2005.

6. Petitioner did not raise any objection to the cut off date i.e. 31.3.2004 and participated in the selection process. As on the relevant date, i.e., 31.3.2004, the Petitioner had not possessed requisite qualification for the post of Professor, his case was not considered by the selection committee. It is relevant to mention here that none of the candidates except opposite party No. 6 had the requisite qualification by the cut off date. Hence, the name of opposite party No. 6 was recommended for the post of Professor under CAS in I & EE discipline. None of the other candidates was selected for the regular post of Professor under direct recruitment.

7. Although earlier promotion was given on the basis of merit through a duly constituted Selection Committee which is the same for direct recruitment, promotion under the CAS is solely based on the guidelines prescribed by the UGC/AICTE. The basic purpose of the aforesaid promotion is to provide promotional opportunities to the University teachers in order to remove stagnation. The said post will automatically abolish on the retirement of the incumbent or on his resignation. As per the guidelines issued by the UGC/AICTE/Government of Orissa, Department of Industries, the required eligibility criteria for promotion under CAS from the post of Reader to Professor are as follows:

- (i) Minimum eight years experience as a Reader
- (ii) Obtain Ph.D. Degree or has equivalent published work
- (iii) Self appraisal report for five years
- (iv) Minimum four research publication out of which two could be the books
- (v) Any other academic contribution
- (vi) Seminar/conference attended (at least four)
- (vii) Participation in orientation/refresher courses/summer school (Total duration of four weeks),
- (viii) Significant contribution to teaching/academic environment/ institutional corporate life
- (ix) Development of course material/monograph
- (x) Participation in continuing programme.

8. The law is well settled that possession of requisite educational qualification is mandatory and the same should not be uncertain and if uncertainty is allowed to prevail, the employer would be flooded with the applications of ineligible candidates. A cut off date for the purpose of determining the eligibility of candidates concerned must, therefore, be fixed and the university has rightly fixed the same. The Petitioner having appeared at and participated in the

interview, when the result of the same is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process. For promotion from the post of Reader to the post of Professor, the UGC have issued guidelines known as CAS which has been accepted by the State of Orissa, Department of Industries & AICTE. Keeping in mind the said guidelines, BPUT has implemented the Scheme and selection has been made under the said guidelines which is mandatory in nature and binding upon all the teaching staff of the colleges and universities. Thus, eligibility criteria for the post of Professor have been made as per the UGC guidelines and cut off date was fixed to 31.3.2004 only to avoid uncertainty and future complicity.

9. Since the Petitioner did not fulfill the mandatory requirement, as stated above, and had also not possessed Ph.D. degree by the cut off date, i.e. 31.3.2004, his candidature for the post of Professor was rightly not considered by the Selection Committee. However, subsequently BPUT have Issued a letter on 6.8.2006 to the Principal of its two constituent colleges, i.e. ICE, Burla and CET, Bhubaneswar, for submission of applications to fill up the posts of different faculties fixing 31.3.2006 as the cut off date. Petitioner acquired Ph.D. degree in the year 2005, if he has applied in response to the letter dated 6.8.2006 and selection process is yet to commence, then his candidature may be considered as per the Statute and guidelines issued by BPUT.

With the above observation the writ petition is dismissed. There shall be no order as to costs.

P.K. Tripathy, J.

10. I agree.