

(2005) 01 OHC CK 0002
In the Orissa High Court
Case No : Writ Petition (C) No. 980 of 2002

Dr. Siba Prasad Misra

APPELLANT

Vs

Vice-Chancellor, Berhampur University and Others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

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

Citation : (2005) 99 CLT 721 : (2005) 106 FLR 444

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

Bench : Division Bench

Advocate : J.K. Rath, S.N. Rath, P.K. Rout, S. Mishra, C.K. Rajguru and D.N. Rath, for the Appellant; A.K. Mohapatra, R.C. Sahoo, J.N. Rout, B. Mallick and R.K. Chhotray, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner assails the order of Berhampur University dated 17.7.2002 in Annexure-2, terminating his services from the post of Lecturer (Senior Scale) in Political Science.

2. The brief fact of the petitioner's case is that he was appointed as a Lecturer in Political Science on 28.6.1991 against the leave vacancy of one Dr. J. K. Patnaik, subject to the conditions as laid in Annexure-1 and he joined the post on 29.6.1991. Dr. J. K. Patnaik, in whose leave vacancy the petitioner joined, returned from leave and joined the post which was accepted in office order dated 16.11.1993 with effect from 10.9.1993 F.N. One Dr. A. K. Parichha, who was holding the post of a regular Lecturer in substantive vacancy, was appointed as a Reader, through open advertisement by due process of selection and the petitioner was adjusted against the said vacancy, since he had the qualification and was recruited through the regular process of selection, vide Order dated 7.8.1993 (Annexure-3). The performance of the petitioner having been found satisfactory, he was confirmed in the post with effect from 7.8.1995 by letter No. 4197 dated 3.5.1997 (Annexure-4) and was given senior Lecturer scale of pay

w.e.f. 29.6.1998 by Office Order dated 7.9.1999. The Syndicate, in its Resolution No. 196 dated 24.7.1999 approved the Senior Lecturer's scale of pay which was communicated to him by letter of the Registrar dated 7.9.1999 (Annexure-5). The services rendered by the petitioner as a lecturer against leave vacancy were counted for the purpose of extending him Senior Lecturer's scale. The petitioner obtained Ph.D. in the year 2000 and he was also allowed pay revision w.e.f. 1.1.1996. When the matter stood thus, the Syndicate in its Resolution dated 6.7.2002 terminated the petitioner's services on the plea that he had joined the service as a lecturer under leave vacancy and subsequently against Dr. A. K. Parichha, who was appointed as a Reader in a non-existing vacancy caused due to adjustment of one Dr. J. K. Mahapatra a regular Reader adjusted illegally under Merit Promotion Scheme. A copy of the Resolution of the Syndicate has been annexed as Annexure-6. Hence, the Writ Petition to quash the Syndicate Resolution and the Office Order dated 17.7.2002 in Annexure-12.

3. The Opposite Party No. 1, the Berhampur University has filed the return, refuting the claims the petitioner and denying the allegations made in the Writ Petition. According to the University, the petitioner was appointed against the leave vacancy post of Dr. J. K. Patnaik, who was on study leave from 7.11.1989 to 9.9.1993. It was mentioned in the advertisement itself (Annexure-A) that the leave vacancy was upto 15.8.1993 and in the appoint order, it was clearly indicated that the appointment was temporary and terminable without notice. The appointment was temporary and terminable without notice. The appointment of the petitioner came to an end on 10.9.1993. The Secretary to the Chancellor in his letter dated 13th September, 1990 directed the University that each vacancy has to be filled up by selected through open advertisement. Moreover, the roster point in 1993 falls at Serial No. 1 which was reserved for Scheduled Tribe. No advertisement was made to fill up any regular post of Lecturer in the Department of Political Science, but the petitioner has simply been adjusted against a non-existing vacancy illegally without following the prescribed procedure. It is therefore contended that the continuance of the petitioner as a lecturer is illegal and against the prescribed procedure, for which his services were terminated by Opp. Party No. 2. It is stated that in violation of the Merit Promotion Scheme, the Syndicate in its meeting held on 25.1.1991 resolved for adjustment of Dr. J. K. Mohapatra, Reader in Political Science by Resolution No. 12, when the said Dr. Mohapatra was holding regular post of Reader. Dr. Mohapatra having been appointed against the regular post of Reader in 1986 by way of selection through open advertisement, there was no occasion for adjustment/promotion under the Merit Promotion Scheme, more so, when the promotion as Reader can only be made from the post of a Lecturer and not from a Reader to the post of Reader. A post of Reader was advertised and the selection committee which met on 14.6.1993 prepared a merit list for promotion recommending the names of Dr. J. N. Mohanty, Dr. A. K. Parichha and Dr. M. Gaan in order of merit for one post of Reader. However, the Selection Committee recommended to accommodate Dr. Parichha and Dr. Gaan in the vacancies that

might arise in the succeeding year. The recommendation was in violation of the stipulation made by the Chancellor in his letter in Annexure-C and the mandate of law. It is submitted that since Dr. J. K. Mohapatra was shown to be adjusted under Merit Promotion Scheme and Dr. Parichha was appointed as a Reader in Political Science in a non-existing post said to have been created by adjusting Dr. Mohapatra under the Merit Promotion Scheme, the Lecturers who got promotion as Readers do not fill any actual vacancy. The Syndicate in its Resolution No. 160 (Annexure-7) revoked the order adjusting Dr. J. K. Mohapatra under the Merit Promotion Scheme.

4. It has been specifically stated that adjustment of Dr. Mohapatra under the Merit Promotion Scheme was illegal and as such the appointment of Dr. A. K. Parichha as against a non-existing vacancy and further appointment of the petitioner as lecturer against the vacancy purportedly created by appointment of Dr. Parichha, as a Reader was illegal. Similarly, it is stated that the Resolution of the Syndicate dated 17.4.2002 to continue Dr. A. K. Parichha against the post of Professor and to absorb him in the regular post of Reader from 1.7.2003 when a post was supposed to fall vacant due to retirement was illegal. There is no provision in the Act and Statue for such irregular adjustment without any sanctioned post and without approval of the Government. The Resolution of the Syndicate in allowing the petitioner to continue as a Reader against the post of Professor being irregular, the Hon"ble Chancellor in exercise of power conferred u/s 21 and Section 5(10) of the Act asked the university for withdrawal of the appointment order issued in favour of Dr. A. K. Parichha in absence of any sanctioned post by letter dated 3.6.2002. The Syndicate in obedience to the orders of the Chancellor, resolved for reversion of Dr. Parichha to his former post of Lecturer vide Resolution No. 203 dated 6.7.2002 (Annexure-6). Dr. Parichha having been reverted to his former post of Lecturer (Senior Scale) by Order dated 17.7.2002 (Annexure-12), there was no post of Lecturer for adjustment of the petitioner and as such, it was cancelled. The petitioner was appointed as a Lecturer against the leave vacancy caused due to study leave taken by Dr. J. K. Patnaik, a Lecturer in Political Science from 7.11.1989 to 6.11.1991. Due to illegal adjustment of Dr. Parichha as a Reader in the non-existing vacancy purportedly caused due to adjustment of Dr. J. K. Mohapatra, who was holding a regular post of Reader in the post of Reader under the Merit Promotion Scheme, Sri Mishra, the petitioner, was appointed as a regular Lecturer in the said non-existing post by Order dated 7.8.1993 pursuant to the Resolution of the Syndicate No. 297 dated 5.8.1993. On the orders of the Chancellor u/s 5(10) of the Orissa Universities Act, the Syndicate revised its Resolution No. 161 dated 17.4.2002 and Resolution No. 168 dated 25.5.2002 (Annexure-8) and resolved as follows :

"(1) Dr. A. K. Parichha may be reverted to his former post of lecturer with immediate effect; and

(2) The services of Dr. S. P. Mishra, who has been appointed in a non-existing

post of the University, be terminated with immediate effect."

5. In *Dr. Amiya Kumar Parichha v. Vice-Chancellor, Berhampur University*, W.P.(C) No. 972 of 2002, decided today, it has already been held that in view of the specific provision in Chapter-II of Part-II of the Statute read with Section 21 (2) of the Orissa Universities Act, the vacancy/vacancies in the post of teachers in various grades are to be filled up on the recommendation of the Selection Committee for each such post and therefore the Syndicate had no power to authorize the Vice Chancellor to appoint the petitioner therein in the subsequent vacancy. In *K. Shekar Vs. V. Indiramma and Others*, , the Apex Court had laid down that in case where the post, which was advertised was a temporary tenure post and where by virtue of the corrigendum, the post was made permanent, the post should have been re-advertised so as to give fair notice to all prospective candidates regarding the nature of the vacancy to be filled. It was not open to the appointing authority to retrospectively and subsequent to the appointment, change the nature of the post advertised by issuing the corrigendum. The petitioner admittedly was appointed temporarily in a leave vacancy post. The advertisement itself was for filling up of a leave vacancy post against the sanctioned leave of one Dr. J. K. Patnaik, Lecturer in Political Science, who went on leave from 7.11.1989 to 9.9.1993. Dr. Patnaik joined the post on 10.9.1993 on return from leave. The petitioner having been appointed against the leave vacancy of Dr. J. K. Pattnaik, he had to vacate the post in terms of the advertisement as well as the appointment order. The decision of the Syndicate dated 13.7.1993 and the consequential Order dated 7.8.1993 adjusting the petitioner against the vacancy purportedly caused due to appointment of Dr. Parichha, a regular Lecturer to the post of Reader that too on promotion of Dr. J. K. Mohapatra as a Reader under the Merit Promotion Scheme was illegal and ab initio void. The petitioner admittedly was holding the post of a, Lecturer in Political Science against the leave vacancy and if, according to the University, regular post of Lecturer fell vacant because of adjustment of Dr. Parichha, then it was incumbent upon the University under the University Law to advertise the post and make the appointment through the process of selection in accordance with law. The petitioner was adjusted without following due process of law. In case of *Dr. A. K. Parichha (supra)*, this Court has already held that appointment of Dr. Parichha to the post of Reader was per se illegal and to a non-existing post and on such appointment, the petitioner therein did not acquire any vested right to hold the post of Reader nor could he complain against the reversion to his substantive post of Lecturer. In any event, Dr. Parichha, who was appointed as a Reader against a non-existing post having been reverted back to his substantive post of Lecturer, in which the petitioner was purportedly adjusted, he cannot complain that the termination of his service was either illegal or discriminatory.

6. In any event, it appears that the initial appointment of the petitioner was against the leave vacancy of one Dr. J. K. Patnaik, who returned back from leave on 10.9.1993, and the petitioner was to vacate the post in terms of the advertisement as well as the order of appointment. But the University without

any tangible reason and to circumvent the provision of the Statute and the U.G.C. Regulations, adjusted a regular recruited Reader to the post of a promotee Reader under the Merit Promotion Scheme, appointed one Dr. Parichha, the petitioner in W.P.(C) No. 972 of 2002 against that imaginary vacancy and consequently, in the vacancy of Dr. Parichha, the petitioner was adjusted, which is contrary to law and against the spirit of the U.G.C. guidelines for merit promotion.

7. In any view of the matter, we do not find any merit in the Writ Application to interfere in the impugned order and accordingly, the same is dismissed. However, there shall be no order as to cost.

P.K. Tripathy, J.

8. I agree.