

(1989) 09 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 1610 of 1988

Lila Chandra Goswami

APPELLANT

Vs

Vice Chancellor, Gauhati University, Gauhati

RESPONDENT

Date of Decision : 12-09-1989

Acts Referred:

Citation : (1989) 2 GLJ 386

Hon'ble Judges : B.L.Hansaria, J and H.K.Sema, J

Bench : Division Bench

Advocate : T.Goswami, R.L.Yadav, B.K.Goswami, B.Acharyya, A.R.Barthakur, A.K.Thakur, Advocates appearing for Parties

Judgement

B. L. Hansaria, J.—The petitioner while serving as a Reader in the Department of Applied Botany and BioTechnology of Gauhati University applied for the post of Professor in the aforesaid department in response to an advertisement dated 9.2.86. One Shri C. M. Sarma also applied who too was holding the post of Reader in the department. A Selection Committee was constituted to select the person adjudged fit for the post The Selection Committee consisted of 9 (nine, persons, la its deliberations held on 20.11.1987, three persons recommended the name of the petitioner in the first place to the followed by that of Shri C. M. Sarma. On the other hand, 6 (six) persons gave first preference 10 Shri C. M. Sarma and the second preference to the petitioner. When this recommendation reached the Executive Council, the same was considered in its meeting held on 27.2.88 when it was resolved to refer back the matter to the Selection Committee. The Selection Committee reconsidered the matter in its meeting held on 24.5.1938 and a decision was taken to readvertise the post. This recommendation of the Selection Committee was accepted by the Executive Council in its meeting held on 2".6. 1988 following which the post was readvertised on 23.7.1988. The petitioner filed his representation in the meantime and not getting any relief approached this Court by filing the present application on 7.9. 1988 under Article 226 of the Constitution of India.

2. In assailing the decision of the Executive Council to refer the matter back to the Selection Committee vide its proceedings held on 27.2. 1988, it has been contended by Shri Barthakur that as the petitioner was placed first in order of merit above Shri C.M. Sarma by three members of the Selection Committee which consisted of the Head of the Department and two experts, the Executive Council ought to have accepted that recommendation instead of giving more weight to the recommendations of six other members of the Selection Committee who were not experts in the field. As to this, the contention of Shri Goswami is that the Executive Council being confronted with two panels it thought it fit to give another opportunity to the Selection Committee to come to a consensus decision. It was for this purpose that the matter was referred back to the Selection Committee. We do not find any legal wrong having been committed by the Executive Council in referring the matter back to the Selection Committee being confronted with two panels. In saying so, we have borne in mind the first proviso to section 15A (i) (c) of the Gauhati University Act, 1947, hereinafter the Act, which has stated that where the Executive Council proposes to make an appointment otherwise than in order of merit arranged by the Selection Committee to a post of the present nature, it shall record its reasons in writing and submit them to the Chancellor who may approve of the proposal or return it to the Executive Council for reconsideration. According to Shri Barthakur, it was this procedure which was required to be followed by the Executive Council when it was confronted with two panels. In this connection, Shri Goswami has also drawn our attention to subsection (3) of section 15A of the Act which states that if the Executive Council does not accept any of the recommendations of the Selection Committee it shall refer the matter to the Chancellor stating clearly the reasons for not agreeing with the Selection Committee and the decision given by the Chancellor thereon shall be final. The present is really not a case of not accepting the recommendation of the Selection Committee inasmuch as the Executive Council was confronted with two panels prepared by the Selection Committee. If in such a situation the matter was desired to be looked into afresh by the Selection Committee, we are of the view that no illegality was committed by the Executive Council. In any case, it is not such an illegality which would render the decision ultra vires needing interference by this Court.

3. When the matter went back to the Selection Committee, the position was reviewed. But the Committee could not reach a consensus decision and, therefore, recommended that the post be readvertised. The Executive Council also agreed to the Selection Committee and resolved in its meeting held on 21.6.1988 to readvertise the post. Though in this connection our attention has been invited by Shri Barthakur to a decision of this Court rendered in Civil Rule No. 558/81 (Dr. Siddheswar Saikia vs. Gauhati University) disposed of on 4.1.1983, in para 6 of which it was stated that the Selection Committee had no power to review, recall or revise its order, on the facts of the present case, we are of the opinion that the second resolution passed by the Selection Committee recommending readvertisement of the post because of the failure to reach a

consensus cannot really be regarded as review/revision of its earlier order.

4. Having given our considered thought to the controversy at hand, we are of the opinion that the decision of the Executive Council in agreeing with the Selection Committee to readvertise the post cannot be said to be arbitrary, unreasonable or in anyway discriminatory. We, however, find that the petitioner had not applied pursuant to the readvertisement of the post. An opportunity shall be given to the petitioner to apply for the post even now within a period of two weeks from today. On this being done, further steps as contemplated by the Act and the statutes relating to selection of candidates for the aforesaid post of Professor of Applied Botany and BioTechnology would be taken by the respondents within a further period of 6 (six) weeks. We have given the above time schedule to see that if the petitioner's candidature is recommended he may be appointed as Professor before he retires in February, 1990.

5. The petition is disposed of accordingly. The stay order passed earlier stands vacated.

6. Before parting, we may state that it has been stated before us by Sri Goswami that under the University Rules if a person serves as a Reader for a number of years, he can apply to the University to get himself designated as a Professor. If that be so, it would be open to the petitioner to take recourse to this remedy also.

H.K.Sema, J.I agree.