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**(2007) 12 CAL CK 0062**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 12975 (W) of 2007**

Nkhiles Guha

APPELLANT

Vs

University of Kalyani and Others

RESPONDENT

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**Date of Decision :** 20-12-2007

**Acts Referred:**

**Citation :** (2008) 117 FLR 480

**Hon'ble Judges :** Aniruddha Bose, J

**Bench :** Single Bench

**Advocate :** Sounak Mukherjee, for the Appellant; Amitava Chaudhuri, Bhudev Bhattacharjee and Lina Majumdar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Aniruddha Bose, J.—The writ petitioner in this case is an academic and. research scholar, and has served. the University of Kalyani in the capacity of a professor of history since the year 1978. The petitioner claims to have been the head of the history department and also served as Chairman of the Undergraduate Board of Studies as also the Post Graduate Board of Studies of the University in the past. 1 le claims to be the author of several books and article on Indian-history, in the writ petition, he has also highlighted several other achievements in his field of expertise.

2. The petitioner was due to retire under the normal circumstance; upon attaining the age of superannuation i.e. sixty years 911 30th April, 2007. The dispute in the present writ petition is over his re-employment in the same. University, which, is permissible under certain circumstances as per the regulation guiding the aspect of re-employment of a whole time employee of the University. The relevant regulation appears to be University Ordinance 16 (USC), as described in the affidavit-in-opposition of the university authorities shall refer to the text, of the material portion of this ordinance in the later part of this judgment. It is the case of the petitioner that the University authorities hah on their own invited from him an application for re-employment by a communication

of the Deputy Registrar of the University issued on 30th November, 2006. The petitioner accordingly made the application. The petitioner however, was given re-employment for only one month, with effect from 1st May, 2007. The petitioner thereafter sent a notice to the Vice-Chancellor of the University on 29th May, 2007 through his learned Advocate pointing out that his re-employment was contrary to the provisions of the University Ordinance. Under the provisions of the Ordinance, re-employment can be made for a period of two years. It is the petitioner's contention that since the Ordinance stipulates re-employment for a period of two years, the University authorities having decided on re-employment of the petitioner cannot re-employ him only for a month. The relevant provision of the Ordinance has been reproduced in the affidavit-in-opposition filed on behalf of the University, and the same is set out below:

Retirement and reemployment. U.Ord. 16 (USC): (1) A whole-time employee of the University shall retire from service with effect from the afternoon of the last day of the month in which he attains the age of superannuation, i.e. completes 60 years of age.

(2) Subject to the provision of retirement under paragraph (1), the Executive Council may grant re-employment to a talented teacher of the University for a limited period beyond the age of 60 years considering his academic activities, particularly during the last 5 years preceding, the date of his superannuation, supported by relevant documents; and on receipt of such documents the Executive Council shall form a Screening, Committee consisting of the following members to consider the relevant documents and the service records of the teacher concerned;

(a) The Vice-Chancellor;

(b) The Dean of the Faculty Council for Post-graduate and undergraduate studies concerned,

(c) An expert in the field of specialisation of the teacher concerned, to be nominated by the Chancellor, and

(d) Two experts in the field of specialisation of the teacher concerned to be nominated by the Executive Council,.

(3) Three members, of whom at least two shall be experts in the field of said specialisation, shall form quorum for a meeting of a Screening Committee;

Provided that:

(i) Such re-employment shall initially be for a period of two years and subsequently for further period not exceeding one year, and in no case such re-employment shall be given if the teacher concerned has attained 65 years of age.

(ii) The recommendations of the Screening Committee regarding reemployment shall be made; on the basis of the performance of the teacher concerned as a teacher and/or quality of research papers or books written by him. The

recommendations should also justify that he cannot be suitably replaced immediately or his continued availability will be indispensable.

(iii) Re-employment shall not be offered as a matter of course but only in exceptional cases with sufficient justification as indicated in clauses (ii) and subject to any law in force.

(4) A teacher of the University may be granted re-employment after his retirement if he is physically fit and mentally alert subject to the provisions paragraphs (1) and (2);

(5) Pay of a teacher of the University on re-employment granted under paragraph (2) shall be fixed in accordance with the normal rules applicable to an employee of the State Government under which such Pay plus pent: and other benefits do not exceed, the last pay drawn at any stage.

3. By a communication dated 31st May, 2007, the university authority informed the petitioner that the Executive Council of the Kalyani in its meeting held on 31st May, 2007 had resolved not to extend the benefit of re-employment to the petitioner with effect from 1st June, 2007. It is this decision which is under challenge in the present writ petition.

Apart from the irregularity in his initial re-employment to which I have referred to earlier, the petitioner's further case is that the University authorities are following an arbitrary policy in the case of re-employment, and he has cited two cases of Professor B.C. Barui and Professor R.C. Nath of the same department who had been granted re-employment though the petitioner claims to be the most deserving senior most professor and a renowned historian.

4. In the writ petition, the petitioner has alleged that the rejection by the executive Council of the benefit of re-employment to the petitioner is an arbitrary measure, which has caused him prejudice and has resulted in his defamation His further claim is that the authorities did not consider the qualification of the petitioner. An unreported judgment of this Court in W.P. No. 6973 (W) of 1999 delivered on 21st may, 2004 in the case of Prasanta Kr. Chatterjee v. University of Bunhuan has been relied on by the learned Advocate for petitioner in. let submissions.

5. The University has contested this writ petition by filing affidavit-in-opposition. The case of the University is that for the purpose of granting reemployment, the Executive Council of the University is required to constitute a screening committee. At the time when the petitioner had retired there was no screening committee. The Vice-Chancellor of the University granted the petitioner re-employment for a period of one-month exercising his discretionary power. Thereafter the screening committee was formed, and the screening committee on May 25, 2007 decided unanimously against extending the benefit of re-employment to the petitioner and the Executive Council had accepted such recommendation. The recommendation of the screening committee has been

annexed as "R2" to the affidavit in opposition of the University and the same is reproduced below:

On the basis of papers submitted before the screening committee relating to last five years teaching and or research activities as well as papers submitted regarding non-dispensibility of the concurred teacher in the Depth of History as expressed by the Departmental Committee, the screening committee unanimously feels that benefit of re-employment cannot be extended to Prof. Nikhilesh Guha of the Depth of History,. University of KaSyatu.

6. In reply affidavit the writ petitioner has questioned the legality of the constitution of the screening committee itself in that the Chancellor's nominee who was invited to the screening committee was not present in the meeting of committee.

7. Learned Counsel for the petitioner strongly emphasised that under the University Ordinance re-employment cannot be effected below a period of two years and in the instant case the authorities erred in law by giving him reemployment but for a period of less than two years.

8. I have considered the rival submissions. Strong reliance was placed by the learned Counsel for the petitioner in the case of Dr. Prasanla Kumar diallerjce (supra), in which a similar provision in the Ordinance pertaining to Uurdwan University was considered by this Court, and an Hon"ble Single Judge of this Court was pleased to quash the decision of the Executive Council rejecting reemployment of a professor. However, in this decision, as tire petitioner hat crossed the maximum age up till which he could be re-employed, the authorities were directed lo treat him notionally re-employed, and certain financial benefits were directed to be giver..

9. I accept the argument of the learned Counsel for the University that a retired professor has no vested right to be re-employed. But since there is provision in the Ordinance for being considered for re-employment, it is well within the jurisdiction of this Court to examine as to whether the procedure has been adopted in a lair and equitable manner for considering the case of the petitioner for re-employment. And if it is found that all the relevant materials were considered, by the University authorities while considering the petitioner's case, then there would be no scope for further interference by this Court. On the aspect of absence of the nominee of the chancellor from the meeting of the screening committee, 1 do riot think her absence ought to vitiate the recommendation of the screening committee, as the Ordinance stipulates that three members could form the quorum for a meeting of a screening committee, of whom at least two shall be experts in the relevant field. Under these circumstances. I am of the view that the petitioner's contrary submission on this count cannot be accepted in this proceeding.

10. I also do not accept the argument of the petitioner that if re-employment is granted, it should automatically presumed to be for two years. Since the term of

re-employment was initially for" one month, the petitioner cannot extend it automatically to two years on the ground that the Ordinance stipulates reemployment for a minimum period of two years. In such a situation, the petitioner ought to have raised objection at the time of accepting re-employment. The objection raised by him through the letter of his learned Advocate was at a time nearing completion of the period of one month. As regards the allegation of discrimination, I do not think this Court on the basis of available material can embark upon evaluation of quality of assessment made by the designated authority of the University of individuals for the purpose of re-employment in the post of professor. That is for experts in the field of education, as stipulated in the University Ordinance, to decide.

11. In the present case the respondents have disclosed the recommendation of the screening committee. From this recommendation, I find that what has been considered by the screening committee are--

- (i) papers relating to last five years teaching and or research activities,
- (ii) papers submitted regarding non-dispensibility of the teacher in the department of history as expressed by the screening committee.

The Executive Council has in its decision -endorsed the decision of the screening committee. These are all the materials disclosed by the University to demonstrate that the case of the petitioner was considered in a proper manner.

12. The ordinance stipulates the materials which are to be considered by the council. These are "academic activities, particularly during the last five years preceding the date of superannuation." Proviso (ii) of Clause 2 of the said provision further stipulates that the recommendations of the screening committee for the purpose of re-employment should be made on the basis of performance of the teacher concerned as a teacher and/or quality of research papers or books written by him. The screening committee is also required to consider the relevant service records of the teacher concerned. I find from annexure "P2" to the writ petition that the petitioner had submitted in Part III of the "Self-Appraisal Report of Teachers" particulars of various projects undertaken by him from the recommendation of the screening committee, it does not appear that any of these research activities have been considered by the screening committee. The screening committee has also not considered the service record of the petitioner, nor his performance as a teacher or quality of his research papers has been considered beyond the five year period preceding his date of superannuation. At least there is no reflection of consideration of such materials in the recommendation. In the affidavit-in-opposition of the University also, there is no indication to that effect.

13. From these factors, conclusion becomes inevitable that the screening committee had failed to consider the relevant materials, which they were bound to consider under the law, while considering the petitioner's application for reemployment. The screening committee confined its examination to the report

of the departmental committee and the petitioner's records five years prior to the date of superannuation. His service otherwise appears to be without any blemish. In his case, it was the learned Vice-Chancellor himself who had granted him reemployment for a limited period, and it would be safe to presume that the holder of such a high office would not have ignored the past records of the petitioner while granting him re-employment. The University authorities having gone this far, in my opinion, the screening committee's negative recommendation without any proper discussion of the petitioner's academic records, teaching experience as also research papers suffers from the vice of non-consideration of relevant materials, being the record of the petitioner's performance beyond the five-year period immediately preceding his date of retirement. If an authority, who is required to take a decision on certain point considering different factors mandated by the statute, but confines its consideration to only some of the factors, then such a decision in my opinion cannot be sustained,

14. Learned Counsel for the respondents sought to distinguish the judgment of Dr. Paraviesh Chatterjee (supra) on facts in the context of the present case. I accept that there is difference in the factual context in these two cases. This writ petition accordingly is decided on its own merit.

15. Under these circumstances, the impugned recommendations/orders of the screening committee and the Executive Committee stand quashed. The University is directed to reconsider the petitioner's case afresh within eight weeks and communicate the decision within a further period of one week. Up till lapse of one week from the date, of communication of the decision, the University shall not take any step which would defeat the petitioner's claim which may arise if the screening committee decides in favour of the petitioner. If necessary, a fresh screening committee shall be constituted for this purpose.

16. This writ petition is accordingly allowed in the above terms.

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