

(2010) 01 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition 17718 (W) of 2005

Ramprasad Das

APPELLANT

Vs

The Visva Bharati University and Others

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Visva Bharati Act, 1951 — Section 20G

Citation : (2010) 2 CALLT 34

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Animesh Mukherjee, for the Appellant; P.S. Bose and Mr. Sankar Samanta, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—In the writ petition the petitioner who was initially appointed to the post of lecturer in Visva Bharati University (for short "the university") and subsequently placed in the senior scale lecturer, has challenged the action of the Selection Committee constituted by the university in not recommending him to the post of Lecturer (Selection Grade). The grievance of the petitioner is two fold. According to him, since the petitioner belonged, to the scheduled caste category, the selection committee should have been constituted with a member of the scheduled caste community as postulated in paragraph 5.0.0 of the U.G.C. Notification on revision of pay scales, minimum qualifications for appointment of teachers in Universities and Colleges and other measures for the maintenance of standards of 1998 (for short "the UGC notification"). Therefore, such committee has no existence in the eye of law and any recommendation made is invalid. Moreover, assuming the selection committee was constituted validly, since the petitioner had submitted relevant documents, such as documents relating to educational qualification, self-appraisal report, document relating to attending seminar, those should have been considered. However, there is nothing to show from the minutes of the meeting, being annexure R-7 to the affidavit in

opposition filed by the respondents that the case of the petitioner was considered in the light of the documents submitted since under the scheme he has a legal right to be considered for the post in question.

2. Learned senior advocate appearing on behalf of the University referring to the U.G.C. notification submitted that the constitution of the selection committee was in accordance with the provisions contained in the Viswa Bharati Act, 1951 and as enumerated in paragraph 7.3.0 of the U.G.C. notification. Refuting the submission that the case of the petitioner was not considered by the selection committee, it was submitted that the petitioner should come out with a categorical case that he has a legal right to be promoted. Promotion to a particular post is not a personal right. Moreover, from the petition it is evident that the petitioner is the judge of his own cause. Submission has been made that since it is an academic matter and when decision recommending the respondent No. 7 to the post of Lecturer (Selection Grade) was made by the selection committee - an expert body, in view of the settled position of law, Court should not interfere. Learned senior advocate referred to the following judgments in support of his submission which are as under: Medical Council of India Vs. Sarang and Others, ;University of Mysore v. Gouinda Rao, reported in AIR 1965 SC 486 The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, ; The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another, ; Bittu Sehgal v. Union of India, reported in (2001) 9 SCC 187; Anil Kumar Shaw Vs. State of West Bengal and Others, .

3. The issues which require consideration are (1) whether the selected committee was properly constituted under the UGC notification and (2) whether the case of the petitioner was considered by the selection committee.

4. In order to answer the first issue, it is necessary to refer to the provisions which relate to the qualification and appointment to the post of Lecture (Selection Grade) that is, paragraphs 7.3.0 of the UGC notification, which is as under:

7.3.0. LECTURER (SELECTION GRADE)

Lecturers in the Senior Scale who do not have a Ph.D. degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfil the other criteria given above for the post of Reader and have a good record in teaching and, preferably, have contributed various ways such as to the corporate life of the institution, examination work, or through extension activities, will be placed in the Selection Grade subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade. They could offer themselves for fresh assessment after obtaining Ph.D. and/or fulfilling other requirements for promotion as Reader and, if found suitable, could be given the designation of Reader.

(Emphasis supplied)

5. As seen that under paragraph 7.3.0 the Selection Committee for the post of lecturer (Selection Grade) will be "the same as for promotion to the post of Reader". Therefore, it is appropriate to refer to the paragraphs relating to the promotion to the Post of Reader. Paragraphs 7.4.0 and 7.4.1 refer to the post of Reader (Promotion) and the qualifications attached to that post Paragraph 7.4.2 stipulates that "Promotion to the Post of Reader will be through a process of selection by a Selection Committee to be set up under the Statutes/Ordinances of the concerned university or other similar Committee set up by the appointing authority." Thus UGC notification empowers the University to set up a Selection Committee under the Statute/Ordinance of the concerned University. Accordingly, as evident from the supplementary affidavit in opposition, the University had constituted a selection committee u/s 20G of the Viswa Bharati Act, 1951 for selecting a candidate for the post of Lecturer (Selection Grade) which, in my view, was valid. Though the petitioner has challenged the constitution of the selection committee for the post concerned on the ground that as there were Scheduled Caste candidates vying for the post, as postulated under paragraph 5.0.0 of the UGC notification, a representative of the Scheduled Caste community should have been in the selection Committee, yet the statement in paragraph 8 of the supplementary affidavit in opposition regarding the constitution of the Committee has gone unchallenged in the supplementary affidavit in reply filed by the petitioner. That apart from a comparative study of paragraphs 5.0.0, 7.1.4, 7.3.0 and 7.4.2 of the UGC notification, I find that composition of the selection committee for direct recruitment and for career advancement is different from that of the Selection Committee for the post of lecturer (Selection Grade). Therefore, the submission of the petitioner that the Selection Committee for the post of Lecturer (Selection Grade) was not properly constituted cannot be accepted.

6. In order to decide the second issue it is necessary to refer to the minutes of the meeting, as evident from the annexure to the affidavit in opposition filed by the University, which is as under:

Appear interviewing the above candidates and consider on his/her qualifications, experiences and performances at the interview and also the reports of the Referees the Committee could not recommend.

7. I find though it has been stated in the writ petition that the petitioner had submitted all relevant documents such as documents relating to educational qualification, self appraisal report, papers connected with seminar/conference and experience, yet it is not at all evident from the minutes how those have been considered. Though it is well settled and as it had been correctly contended on behalf of the University that the petitioner has no legal right for the post, however, the legal right of the petitioner to be considered for promotion under the scheme cannot be denied. When scheme confers a benefit and when the same is denied, in my view for the sake of transparency it should have been

supported with minimum reasons since consideration does not mean mere consideration. Consideration means taking into account and dealing with the materials on record leading to a decision. Though detailed reasons are not required to be furnished, but in the absence of minimum reasons it is not at all clear what had prevailed upon the members of the selection committee to select the respondent No. 7 and whether the documents furnished by the petitioner were at all considered since the minutes are silent on how the documents furnished were taken note of. Though it is well settled that in academic matters a recommendation by the expert body should not be disturbed, in view of the reasons as enumerated, the recommendation made by the selection committee recommending respondent No. 7 to the post of lecturer (Selection Grade) cannot be sustained and is, thus, set aside and quashed. The writ petition is allowed in part.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.