

(1998) 12 OHC CK 0031

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4604 of 1996

Sachidananda Pradhan

APPELLANT

Vs

Vice-Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Orissa Universities Act, 1989 — Section 21(2)

Citation : (1999) 1 OLR 321

Hon'ble Judges : P.K. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : L. Mohapatra, M.R. Mohanty-2 and S.C. Mohanty, for the Appellant; Rakhi Sikdar, Sudhashree Ghosh, Amitosh Sikdar (OPs. 1-4) and A.N. Mishra and Ashutosh Palit (OP 5), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner challenges the appointment of opposite party No. 5 against the substantive post of Lecturer in Public Administration in the Post-Graduate Department of Political Science of the Utkal University. It has been alleged that without issuing any advertisement and without holding any selection, opposite party No. 5 has been "adjusted against the post of Lecturer, Political Science" thus depriving the petitioner of an opportunity of offering his candidature for the said post. It is contended that such "adjustment" against a substantive post of Lecturer is opposed to the principle contained in the Orissa Universities Act, 1989 (Orissa Act 5 of 1989) as well as the provisions contained in the Orissa Universities First Statutes, 1990, and also opposed to the principle of equal opportunity in the matter of employment as envisaged in the Constitution.

2. Opposite parties 1 to 4 and opp. party No. 5 have filed two separate counter affidavits taking almost similar stand. In justification of the appointment, it has been submitted that opposite party No. 5, had earlier been selected for the post of Lecturer, Political Science, in an interview held in the year 1989-90, but since

the said post was a leave vacancy post, he had joined as a Lecturer in Political Science under the Utkal University in the Directorate of Correspondence Courses, where he was continuing as a Lecturer till the present appointment took place. It is further contended that there is no difference between a Lecturer in the Directorate of Correspondence Courses and other Lecturers of the University, as has been decided by the Orissa High Court in OJC No. 1153/78. It has been further submitted that pursuant to an advertisement issued for the post of Reader in Public Administration in the Department of Political Science, present opposite party No. 5 had appeared as a candidate and he had been selected in the second position. The person who was selected in the first position at the said interview was appointed as Reader in Public Administration and since petitioner was already continuing as a Lecturer in Political Science in the Directorate of Correspondence Courses and was otherwise qualified, he was "adjusted" against the substantive post of Lecturer in Public Administration in the Post-Graduate Department of Political Science of the Utkal University. It has been also submitted that on two earlier occasions, two other Lecturers functioning in the Directorate of Correspondence Courses had also been appointed as Lecturers in the Post-Graduate Departments of Political Science and Oriya respectively.

3. Section 21 (2) of the Orissa Universities Act, 1989, provides:

"21. Appointment of officers, teachers and other employees of the University.

(1) * * * * * (2.) The teachers of a University shall be appointed by the Syndicate of that University on the recommendation of a Selection Committee after scrutinising all the papers concerning the selection."

Chapter-II of the Orissa Universities First Statutes, 1990, contains provisions relating to the teachers of University and Statute 4 (2) envisages that the teachers of the University shall be appointed by the Syndicate either on fixed tenure or on permanent basis on the recommendation of a Selection Committee constituted in accordance with Sub-section (2) of Section 21 of the Orissa Universities Act, 1989. Though nothing is indicated in the Act or the Statutes relating to source of appointment, it is self-evident that the appointment has to be made following a selection to be made by the Committee and the selection can be made only on the basis of advertisement of a post. In view of the right of equal opportunity of employment guaranteed under the Constitution, there cannot be any doubt that in the matter of appointment to any public post, appropriate notice is to be issued enabling all eligible candidates to compete for appointment. It is not the case of the University that the source for recruitment to the post of Lecturer in a Post-Graduate Department of the University is confined to the Lecturers in the Directorate of Correspondence Courses. In fact, the stand of the University is that there is no difference between a Lecturer in Correspondence Course and a Lecturer in the Post-Graduate Department. Since the question of public employment is involved, it is axiomatic to say that appointment to such a post can be made only after giving opportunity to all eligible candidates by issuing appropriate notice. No doubt, opp. party No. 5 had

applied for the post of Reader and had been selected in the second place in order of merit, but that by itself cannot be an excuse for not undertaking a selection process for the post of a Lecturer.

4. The opposite parties have also tried to justify the appointment by contending that on two previous occasions, two other Lecturers under the Directorate of Correspondence Courses had been adjusted in the Post-Graduate Departments of Oriya and Political Science. The opposite parties have not brought to our notice any provision contained in any Act or Statutes enabling the University to transfer a Lecturer or adjust a Lecturer of Directorate of Correspondence Courses in any other Post-Graduate Department of the University. In the absence of any provision authorising the University to do so, merely because such practice had been adopted in two cases, it cannot be said that adoption of such a course by the University was legally justified. The authorities have to act in accordance with the rule of law. Practice however hallowed it may be, cannot be a substitute for rule of law in such matters. In the absence of any provision authorising the University to transfer a Lecturer from the Directorate of Correspondence Courses to any other Post-Graduate Department of the University, the so-called adjustment of opposite party No. 5 against the substantive post of Lecturer in Public Administration in the Post-Graduate Department of Political Science was illegal.

5. After the filing of the writ application, an interim order had been passed on 29.5.1996 staying operation of the impugned order in Annexure-1. However, it appears that opposite party No. 5 joined the post on 1.6.1996 before the order of the Court was served on the University at 3.00 p.m. on 1.6.1996. Subsequently, by order dated 25.6.1996, it was observed :

"..... Since opposite party No. 5 had already joined, our order dated 29.5.1996 to the effect that the order vide Annexure-1 shall not be given effect to has become infructuous. The appointment of opposite party No. 5 shall be subject to the result of the writ application."

In course of hearing of this writ application, it was submitted by counsel for opposite parties that the post which opposite party No. 5 was holding under the Directorate of Correspondence Courses had been advertised for, though the counsel for the University could not state as to whether the said post has been filled up in the meantime. Since the adjustment or appointment of opposite party No. 5 in the post of Lecturer, Public Administration, as per Annexure-1 is being quashed, he must be taken to be continuing as a Lecturer in the Directorate of Correspondence Courses as he is not to be blamed for the present imbroglio. The University must now take steps to fill up the post by issuing appropriate advertisement. Needless to say that opposite party No. 5, if he is otherwise qualified, shall also be eligible to apply for the post bereft of the question of his age.

6. The writ application is accordingly allowed and Annexure-1 is quashed and it is

directed that opposite party No. 5 must be deemed to be continuing in the post which he was holding prior to Annexure-1. There will be no order as to costs.

A. Pasayat, J.

7. I agree.