

(2013) 09 GAU CK 0026

In the Gauhati High Court

Case No : Writ Petition (C) No. 4225 of 2007 and 480 of 2008

Syed Khairul Anam Samsuddin and Another

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Gauhati University Act, 1947 — Section 15A, 15A(1)(c)

Citation : (2014) 1 GLD 324 : (2013) 5 GLT 327

Hon'ble Judges : Mutum A.K. Goswami, J

Bench : Single Bench

Advocate : D. Baruah and Mr. A.M. Buzarbaruah, for the Appellant; L.P. Sarma, Standing Counsel, Gauhati University, for the Respondent

Judgement

Mutum A.K. Goswami, J.—Heard Mr. D. Baruah, learned counsel for the petitioner in W.P. (C) No. 4225/07 and Mr. A.M. Buzarbaruah, learned counsel for the petitioner in W.P. (C) No. 480/2008. Also heard Mr. L.P. Sarma, learned Standing Counsel, Gauhati University. The Writ Petitioner in W.P. (C) No. 4225/07 is the Respondent No. 3 in WP(C) No. 480/2008.

2. In W.P. (C) No. 4225/07, the subject matter of challenge is the direction of the Executive Council of the Gauhati University to re-advertise the post of Lecturer in Arabic by not accepting the recommendation of the Selection Committee in favour of the writ petitioner for the post in question on the basis of the interview held on 28.6.2007. Prayer is also made to appoint the petitioner in the post of Lecturer in Arabic. In W.P. (C) No. 480/2008, prayer has been made for setting aside the selection of the writ petitioner in W.P. (C) No. 4225/07 for the post of Lecturer in Arabic and the decision of the Executive Council to re-advertise the post. A further prayer is made for directing the Selection Committee to make a fresh selection for the post of Lecturer in Arabic from amongst the candidates who responded to the advertisement dated 15.9.2005.

3. The salient facts as emerging from the pleadings, which are not in dispute, may, at this stage, be noted for proper appreciation of the contentions advanced

by the learned counsel for the parties, who have extensively argued their respective cases with reference to Section 15A of the Gauhati University Act, 1947 (for short, "the Act").

4. The Registrar, Gauhati University issued an advertisement, which was published on 15.9.2005 in the Assam Tribune, inviting applications for filling up of posts of Professor, Reader and Lecturer in many disciplines including a post of Lecturer in Arabic. The essential qualification for the post of Lecturer in Arabic, as mentioned in the advertisement is good-academic record with at least 55% of marks or, an equivalent grade of B in the 7-point scale with letter grades O, A, B, C, D, E & F at the Master's degree level, in the relevant subject from an Indian University, or, an equivalent degree from a foreign University. Apart from the above qualifications, candidates must have cleared the National Eligibility Test (NET) for lecturers conducted by UGC, CSIR or similar test accredited by the UGC. Both the petitioners along with many others responded to the said advertisement and 10 number of candidates who were found eligible, were called for the interview before the Selection Committee, which was held on 28.6.2007. Seven candidates appeared before the Selection Committee and the Selection Committee recommended only the writ petitioner in W.P. (C) No. 4225/07 for the post of Lecturer in Arabic. The Executive Council of the Gauhati University considered the recommendation of the Selection Committee in a meeting held on 17.7.2007. The Executive Council chose not to accept the sole recommendation made for the post of Lecturer in Arabic and consequently directed the Registrar, Gauhati University to advertise the vacancy once again.

5. This decision of the Executive Council in its meeting dated 17.7.07 is questioned in both the two writ petitions, albeit, on different perspectives and on different planks.

6. The thrust of the argument of Mr. Baruah, learned counsel for the petitioner in W.P. (C) No. 4225/07 is that the Executive Council was wholly wrong in not accepting the recommendation made by the Selection Committee, which consisted of eminent persons having expertise in the field, without assigning any reason and without there being any cogent or germane material to nullify the recommendation so made in favour of the writ petitioner. The learned counsel submits that the decision for re-advertisement to the post in question was wholly uncalled for. It is submitted that such a decision was taken by the Executive Council as a blue eyed boy of the Executive Council was not recommended by the Selection Committee. When the very basis of arriving at a decision for re-advertisement of the post was based on faulty premise, the decision of the Executive Council is liable to be interfered with and the Executive Council is liable to be directed to appoint the writ petitioner to the post of Lecturer in Arabic. Vinodan T. and Others Vs. University of Calicut and Others, and Secretary, Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu,

7. Mr. A.M. Buzarbaruah, learned counsel for the Writ Petitioner in W.P. (C) No. 480/2008 contends that on the basis of merit, academic career and other

experiences which was evaluated by the Executive Council, it had rightly not accepted the recommendation made by the Selection Committee recommending the writ petitioner in W.P. (C) No. 4225/07, as the materials on record, even on a cursory comparison of the qualifications and credentials among the candidates in the fray, would amply demonstrate that the petitioner is the most suitable candidate. He submits that the petitioner is aggrieved by the decision of the Executive Council to re-advertise the post instead of directing the Selection Committee to make a fresh selection of the candidates from the candidates already interviewed and to forward the recommendation after such selection to the Executive Council once again for fresh consideration. It has been argued by Mr. Buzarbaruah that in a situation like this where there is only one recommendation, 2nd proviso to Section 15A(1)(c) of the Act enables the Executive Council to exercise one option out of two available options before them, namely, (i) directing re-advertisement or (ii) convening a fresh meeting of the Selection Committee for making fresh recommendation. It is submitted by him that the word "and" in between the words "again" and "convene" is to be read as "or" as otherwise the words "convene a meeting of the selection committee for making fresh recommendation" will be rendered otiose, which cannot be the intention of the legislature. It is argued that while opting to take either of the courses, it will be necessary for the Executive Council to record its reasons. In view of the fact that recruitment is a long drawn process, when there are large number of candidates in the pool, in public interest, it would have been only proper for the Executive Council to have taken recourse to give a direction to the selection committee for making fresh recommendation from the available candidates but without recording any reason, mechanically, direction for re-advertisement was issued. It is also submitted by him that the 2nd proviso to Section 15-A(1)(c) is also controlled by Section 15-A(3) and if that be so, the Executive Council ought to have referred the matter to the Chancellor. The learned counsel relies, in support of his submissions, on paragraph 26 of Hindustan Ideal Insurance Co. Ltd. Vs. Life Insurance Corporation of India, and in paragraph 9 of The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited,

8. Mr. L.P. Sarma, learned Standing Counsel, Gauhati University, does not dispute on the core facts going to the root of the matter. According to him, the resolution adopted by the Executive Council in the meeting dated 17.7.2007 cannot be invalidated and impeached as the same does not suffer from any infirmity. Such decision had been taken in strict compliance of 2nd proviso to Section 15-A(1)(c) of the Act. He submits that if there is one recommendation made by the Selection Committee and if such recommendation is not acceptable to the Executive Council, the only course open for the Executive Council is to record its reason in writing for not accepting the recommendation to the post and thereafter, to direct advertisement for the vacancy for a fresh selection. In a given case where recommendation consists more than one name and if none of the recommendations are acceptable to the Executive Council, in terms of

Section 15-A(3), the Executive Council is mandated to forward the papers to the Chancellor, recording reasons as to why it is not accepting the recommendation of the Selection Committee. Learned counsel submits that there is no conflict of 2nd proviso to Section 15-A(1)(c) and Section 15-A(3) and they operate in different fields. Mr. Sarma also denounces the submission of Mr. Buzarbaruah that "and" in 2nd proviso to Section 15-A(1)(c) should be read as "or" as entirely without any merit. The plea of favouritism taken by Mr. Baruah is also refuted by Mr. Sarma as a figment of imagination.

9. I have heard the learned counsel for the parties and have perused the materials on records.

10. Before proceeding further, it will be appropriate to take note of provisions which are relevant for proper appreciation and understanding of the issues involved in this case.

11. Section 7 of the Act defines the authorities and offices of the University. They are as follows: (i) The Chancellor, (ii) The Vice-Chancellor, (iii) The Rector, (iv) The Court, (v) The Executive Council, (vi) The Academic Council, (vii) The Faculties, (viii) The Standing Finance Committee, (ix) The Construction Committee, (x) The Selection Committee, (xi) The Registrar, (xii) The Treasurer, and (xiii) Such other Authorities and Officers as may be provided for by the Statute.

12. Section 12 of the Act defines the Executive Council. Executive Council is the Executive body of the University and consists of, amongst others, the i) Vice-Chancellor, ii) the Rector, iii) the Director of Public Instruction, Assam, iv) the Director of Technical Education, Assam, v) the Director of Health Services, Assam, vi) the Director of Public Instruction, Manipur, vii) the Director of Public Inspection, Arunachal Pradesh and viii) the Chairman, Board of Secondary Education, Assam. The Executive Council also has two Principals of non-Government affiliated Degree Colleges to be elected from amongst themselves, one Principal of Govt. affiliated Degree Colleges to be elected from amongst themselves, two Heads of Departments who are professors, to be chosen by the Vice-Chancellor by rotation according to seniority for a period of three years, one Dean of Faculty to be chosen by the Vice-Chancellor for a period of three years by rotation according to seniority, three members to be elected by the Court from amongst its members at its Annual General Meeting other than employees and students of the University of the affiliated Colleges, two teachers other than a Dean of Faculty of the University and the Principals of the affiliated Colleges, to be elected by the Academic Council from amongst such teachers who are its members, three persons out of whom at least one shall be woman nominated by the Chancellor and three persons nominated by the Government.

13. Powers and duties of the Executive Council is delineated in Section 13 of the Act. Section 13(f) provides that Executive Council shall appoint officers (other than the Chancellor, the Vice-Chancellor and the Rector), Teachers, Librarian, the

Proctor, the clerical staff and other employees of the University and shall define their duties and conditions of service and shall provide for the filling up of temporary vacancies.

14. Section 15-A deals with Selection Committee. It will be appropriate to reproduce Section 15-A in its entirety.

15-A. Selection Committee.-

(1)(a) There shall be a Selection Committee for making recommendations to the Executive Council for appointment of Professors, Readers, Lecturers, Registrar, Treasurer, Librarian and other officers of the University as may be provided for by the Statutes consisting of the following members.

(i) the Vice-Chancellor as Chairman of the Selection Committees;

(ii) three persons not holding any office of profit under the University of whom one nominated by the Chancellor, or to be nominated by the State Government and the other to be nominated by the Executive Council;

(iii) the Registrar shall be the Member-Secretary of the Selection Committee except for the Selection Committee for the appointment of Registrar in which case the Vice-Chairman shall nominate one person as Member-Secretary in consultation with the Executive Council.

(b) In making recommendations for the appointment of Professors of the University, the Selection Committee shall co-opt the Head of the Department concerned, if he is Professor, one Professor of the Department to be nominated by the Vice-Chancellor and two persons not in the services of the University to be nominated by the Executive Council out of the panel of not less than five names of persons recommended by the Academic Council who have special knowledge of the subject for which the Professor is to be selected.

(c) In making recommendations for the appointment of Readers or Lecturers and other teachers of the University the Selection Committee shall co-opt the Head of the Department concerned, one Professor of the Department to be nominated by the Vice-Chancellor and two persons to be nominated by the Executive Council out of a panel of not less than five names of persons recommended by the Academic Council being persons not connected with the University, who have special knowledge of or interest in the subject for which the Reader or Lecturer is to be selected:

Provided that where the Executive Council proposes to make an appointment otherwise than in order of merit arranged by the Selection Committee in the post of Professors, Reader or Lecturers it shall record its reasons in writing and submit them to the Chancellor who may approve the proposal or return it to the Executive Council for reconsideration. After re-consideration, if the Executive Council desires to pursue its original proposal, it shall refer the matter again to the Chancellor for his decision which shall be final:

Provided further that, where a Selection Committee recommends to the Executive Council the name of one person only and that person is not acceptable to the Executive Council, the Executive Council shall record its reason in writing for not accepting the recommendation and direct the Registrar to advertise the vacancy again and convene a meeting of the Selection Committee for making fresh recommendation, and in so doing, communicate to every member of the Selection Committee the reasons recorded as above.

(d) Where an appointment is to be made to a temporary vacancy of Teachers of the University, the appointment shall be made, if vacancy is for a period of one year or more, on the recommendation of the Selection Committee in accordance with the provisions of the preceding sub-section and no ad-hoc appointment shall be made by the Executive Council.

(2) If a member of the Selection Committee is unable to attend, he may send his opinion in writing to the Vice-Chancellor and such opinion shall be taken into consideration by the Committee in making its recommendations.

Explanation.- For the purpose of this section the co-opted members will be deemed to be members of the Selection Committee for the purpose for which they are co-opted.

(3) 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.

(4) The Executive Council shall constitute one or more Committees for making recommendations to the Executive Council for appointment to other administrative posts and may prescribe by Ordinance the procedure and methods to be followed in making such recommendations.

15. The extract of the decision of the Executive Council in the meeting held on 17.7.07 reads as follows:

Read the report of the Selection Committee held on 28.6.07 for the post of Lecturer in Arabic, vide Advt. No. T/2005/3 (Sl. No. 3(O) attended by the Vice Chancellor (Dr. A. Choudhury), G.U., Dr. P.K. Choudhury, Dr. Devdad Kakati, Sri Harekrishna Gayan, Dr. Abdul Majeed, Reader and Head, Deptt. of Arabic, the Registrar (Dr. R.N. Das), G.U. as Member Secretary, Prof (Dr.) I.K. Burke, and Prof (Dr.) M. Bhuyan, expert nominated by the Executive Council recommending Syed Khairul Anam Samsuddin for appointment as Lecturer in the Deptt. of Arabic.

Considered the report of the Selection Committee.

The Executive Council in its meeting held on 17.7.07 considered the recommendations of the selection committee for the post of Lecturer in Arabic. The Selection Committee recommended the name of the persons only viz Syed

Khairul Anam Samsuddin, Sl. No. 10.

The Executive Council considered the merit, academic career and other experiences of the said candidate and also compared with other candidates. It is apparent from the select list that there are candidates with consistently good academic career than the selected one. Hence for the aforesaid reasons, the Executive Council decided not to accept the recommendation of the selection committee and directed the Registrar to advertise the vacancy again.

RESOLVED that the post be re-advertised.

16. The select list referred to in the decision dated 17.7.2007 of the Executive Council is the Statement of Candidates. A perusal of the aforesaid decision shows that the Executive Council had considered the merit, academic career and other experiences of the recommended candidates vis-a-vis other candidates and came to a conclusion that there are candidates with consistently good academic career than the recommended candidate. On this consideration, the Executive Council decided not to accept the recommendation of the Selection Committee. This court is unable to accept the contention of Mr. Baruah that the recommendation of the Selection Committee was rejected by the Executive Council without there being any reason. No doubt, Selection Committee consists of eminent persons in the field of academics. But the Executive Council is a larger body consisting of similar eminent and knowledgeable persons, on whom power is vested to appoint Teachers. This court will not sit on appeal on the decision of the Executive Council not to accept the recommendation of the Selection Committee unless it is shown that the decision of the Executive Council is perverse or without any basis. The learned counsel is unable to show that the reasoning assigned by the Executive Council is factually not correct. It cannot also be said that the reasons alluded by the Executive Council are irrelevant or not germane in a selection process.

17. The decision in Vinodan T. (supra) has no application to the facts of the instant case inasmuch as, the ratio of the said case is to the effect that the appointment to the vacancies must be made in accordance with rules, if any, relating to reservation and the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well-founded reasons. It is also noted that a person selected for a post does not acquire a right to be appointed in such post. In Secretary, Department of Home, A.P. & Ors. (supra), the Apex Court laid down that whether a person is fit to be appointed or not is a matter within the special domain of the Government and for denying appointment after one is selected, though there is no inherent right to be appointed, such denial has to be on the basis of some statutory provisions or norms. This case is also not applicable in the facts of the case as recommendation made by the Selection Committee was not accepted by the Executive Council on valid grounds.

18. Before the argument of Mr. Buzarbaruah is considered, it will be necessary to

note that the word "or" is normally disjunctive and "and" is normally conjunctive but there may be times when in order to give effect to manifest intention of the legislature as disclosed by the context, they have to be read vice versa. If the literal meaning of the words produces an unintelligible or absurd result "and" may be read for "or" and "or" for "and".

19. At this stage, it will also be appropriate to take note of the decisions cited by Mr. Buzarbaruah. In *Hindustan Ideal Insurance Co. Ltd.* (supra), the Supreme Court laid down that where the main provision is clear, its effect cannot be cut down by the proviso but where it is not clear, the proviso, which cannot be presumed to be a surplusage, can properly be looked into to ascertain the meaning and scope of the main provision. It will also be appropriate to quote herein below relevant extract of paragraph-9 of *Commissioner of income tax, Mysore, Travancore-Cochin and Coorg* (supra):

9..... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

.....

It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

.....

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

20. The role of the Selection Committee is to make recommendation to the Executive Council for appointment of Professors, Reader, Lecturers and other classes of Officers as indicated in Section 15-A. From the scheme of Section 15-A, as a whole, it appears that the Selection Committee may make a sole recommendation for a particular post or recommend number of persons in order of merit arranged by it. In a case where Executive Council accepts the recommendation made by the Selection Committee, 1st proviso and 2nd proviso to Section 15-A(1)(c) or Section 15-A(3) will not come to play.

21. There may be cases when the Executive Council may not agree with the order of merit arranged by the Selection Committee and it may decide to appoint a person otherwise than in order of merit. This eventuality is envisioned in 1st proviso to Section 15-A(1)(c). In such an event, the Executive Council shall record its reason in writing and submit the same to the Chancellor who may approve the proposal or return it to the Executive Council for reconsideration.

After reconsideration, if the Executive Council desires to pursue its original proposal, it shall refer the matter again to the Chancellor for his decision which shall be final.

22. The 2nd proviso to Section 15-A(1)(c) deals with a situation where there is only one recommendation, which is not accepted by the Executive Council. In such a situation, the Executive Council shall record its reason in writing for not accepting the recommendation and direct the Registrar to advertise the vacancy again and convene a meeting of the Selection Committee for making fresh recommendation. In this context, argument of Mr. Buzarbaruah is that if direction for re-advertisement is given, there is no necessity for a further direction to convene a meeting of the selection committee, as in any view of the matter, if the process is initiated by an advertisement, as a logical corollary, consequential steps are required to be taken and one of such consequential steps to bring the advertisement process to its logical conclusion is to convene a Selection Committee to evaluate the candidates and therefore, he had submitted reading of "and" as "or" to make advertising the vacancy and convening a meeting of the Selection Committee for making fresh recommendation disjunctive and independent courses of action. The argument is not well founded. A key component of 2nd proviso to Section 15-A(1)(c) is advertisement of the vacancy. Advertisement has a definite connotation in the context of filling up of vacancy by way of appointment. Advertising the vacancy would involve inviting applications and thereafter convening a meeting of the Selection Committee for making fresh recommendation. Advertising the vacancy again and convening a meeting of the Selection Committee for making fresh recommendation does not produce an unintelligible or absurd result so as to warrant the interpretation which Mr. Buzarbaruah has advocated. It cannot also be said that the expression "convening a meeting of the Selection Committee for making fresh recommendation" is superfluous or wholly meaningless. The legislative intent in 2nd proviso to Section 15-A(1)(c) is very clear that in the case of a sole recommendation, in case the recommendation is not accepted by the Executive Council, the only option it has is to direct the Registrar to advertise the vacancy and to convene a meeting of the Selection Committee for making fresh recommendation. The scheme of Section 15-A does not envisage Selection Committee making recommendation twice on the basis of applications received pursuant to an advertisement. Once the Selection Committee recommends, it does not have any further role in the matter. In case its sole recommendation is not accepted by the Executive Council, the process of selection has to begin de novo with issuance of fresh advertisement of the vacancy.

23. Section 15-A(3) caters to a situation where the Executive Committee does not accept any of the recommendations of the Selection Committee. The argument of Mr. Buzarbaruah that "any of the recommendations" in Section 15-A(3) may also mean sole recommendation is without any merit and such submission runs counter to his interpretation of 2nd proviso to Section 15-A(1)(c). 2nd proviso to Section 15-A(1)(c), as has been noted earlier, deals with sole

recommendation. "Any of the recommendations" would mean that the Selection Committee had recommended more than one recommendation. In the event of the Executive Council not accepting any of the recommendations, the only course that is open to the Executive Council is to state clearly the reason for not agreeing with the Selection Committee and to refer the matter to the Chancellor. Section 15-A(3) does not, in any manner, come in conflict with 2nd proviso to Section 15-A(1)(c) and both the provisions address different situations and contingencies.

24. Thus, an analysis of the 1st proviso to Section 15-A(1)(c), 2nd proviso to Section 15-A(1)(c) and Section 15-A(3) of the Act demonstrate in clear and unambiguous terms that each of the said provisions caters to a situation distinct from one another and cumulatively taken together, provide a mechanism to the Executive Council to meet all conceivable situations in case of its non acceptance of recommendation(s) made by the Selection Committee. In view of the discussions above, I am of the considered opinion that there is no merit in both the Writ Petitions and accordingly, both the Writ Petitions are dismissed. However, I leave the parties to bear their own costs. Interim order passed earlier stands vacated.