
(2002) 07 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 41 (K) of 2001

T. Vihienuo

APPELLANT

Vs

Nagaland University and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Citation : (2002) 3 GLT 56

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : Taka Masa and M. Theyo, for the Appellant; C.T. Jamir and Apollo Longvah, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr Taka Masa, learned Counsel for the Petitioner as well as Mr C.T. Jamir, learned Counsel for the Respondents.

2. The Petitioner was appointed as Lecturer in the Department of Commerce, Nagaland Campus of the North Eastern Hill University (for short NEHU) by an order dated 9.4.81. Subsequently, he was appointed as Officer on Special Duty (OSD), Examination Branch, Nagaland University (for short N.U.) by an order dated 3.9.96. Thereafter, the Petitioner was appointed as Controller of Examinations, Nagaland University through selection by order dated 1.4.2000 for a period of 5 years. It is this appointment for a period of 5 years that the Petitioner is aggrieved and has approached this Court by this petition.

3. Briefly stated facts are that the N.U. a Central University was established on 6.9.94 by an Act of Parliament known as Nagaland University Act, 1989. The Act came into operation on 20.10.89 and published in the Gazette of India Extra-Ordinary on 23.10.89. After the Nagaland Campus of NEHU was converted into Nagaland University, by virtue of the said N.U. Act the Petitioner who was under the NEHU opted to remain under the N.U.

4. The first Executive Council meeting of the N.U. was held on 27.2.95

(Annexure-A to the writ petition) and in the resolution item No. 2.1(1) it was resolved as follows:

Item No. 2.1(1): Use of NEHU Ordinances and Regulations by Nagaland University:

The Council resolved that Nagaland University will continue to follow the Ordinances and Regulations of North Eastern Hill University till such time, the Nagaland University formulates its own Ordinances and Regulations.

5. An advertisement dated 15.10.97 was issued by the N.U. inviting applications for several posts including the post of Controller of Examinations prescribing therein the eligibility criteria for such post which is as follows:

Eligibility criteria: A Post-Graduate degree with at least 55% marks or its equivalent grade, relaxable by 5% marks in the case of SC/ST. Candidates with at least 15 years of experience as Lecturer/Reader of which 8 years should be in the Reader's grade and with experience in educational administration;

OR

Comparable experience in research establishments and other institutions of higher education;

OR

15 years of administrative experience of which 8 years as Deputy Registrar or an equivalent post.

Desirable: Proven ability of administering academic/research institutions with a depth of understanding of intellectual process and perspective of university system.

6. The above criteria was made in accordance with the Ordinance OE-9 Clause (2) of Statute 5A of NEHU Ordinance. The tenure for the post of Controller of Examinations was not mentioned in the advertisement. Subsequently, another advertisement dated 19.8.98 was issued by NU inviting application for the post of Controller of Examinations laying down new eligibility criteria for the post which is as follows:

Controller of Examinations: A Post-Graduate degree in any discipline with at least 55% marks or its equivalent grade, relaxable by 5% marks in case of SC/ST candidates with atleast 15 (fifteen) years experience as Lecturer/Reader or equivalent with proven ability of administering academic process of a University system at the level of Reader or equivalent for at least 3 (three) years.

7. The Petitioner in response to the said advertisement dated 19.8.98 submitted an application for the post of Controller of Examinations. He appeared before the Selection Committee and he was selected. His name was recommended by the Selection Committee to the Executive Council in a sealed envelop. The recommendation of the name of the Petitioner was approved by the Executive

Council on 13.3.2000 and letter of offer for appointment was issued to the Petitioner on 30.3.2000. The Petitioner accepted the letter of offer and accordingly, he was appointed to the post of Controller of Examination vide appointment order dated 1.4.2000.

8. Mr Taka Masa, learned Counsel for the Petitioner vehemently urged that in both the advertisement no mention was made that the tenure of the office of the Controller of Examination is for a period of 5 years only. Even in the letter of offer of appointment the tenure of the office of 5 years was not mentioned. The Petitioner under the belief that he would be appointed and retired only on attaining the age of 60 years has accepted the offer. However, the Petitioner was shock when he received the appointment letter specifying that the tenure of office is 5 years only contends the learned Counsel. In support of his contention Mr Taka Masa submitted that as per the Statute of the Nagaland University which was assented to by the President of India as a visitor to the Nagaland University on 2.11.98 under Statute 6A(2) it is provided that the Controller of Examinations shall retire on attaining the age of 60 years or as it may be revised from time to time by the competent authority. Statute 6A(2) reads as follows:

6A(2) The emoluments and other terms and conditions of service of the Controller of Examinations shall be such as may be prescribed by the ordinances provided that the Controller of Examinations shall retire on attaining the age of sixty years or as it may be revised from time to time by the competent authority.

9. Based on the above statute of the NU, the learned Counsel contended that the Ordinance OE-9 of NEHU is no more applicable to the Nagaland University. The learned Counsel also submitted that when the Petitioner submitted representation to the Vice-Chancellor of the NU on 20.4.2002, the then Vice-Chancellor made a remark in his representation that as the term of Controller of Examinations is not specified in the Statute of the University, the term of 5 years may be removed from his appointment order and a fresh appointment order superceding the previous order may be issued. Therefore, in view of the remark of the then Vice-Chancellor the Petitioner is entitled to continue till he attains the age of 60 years. He also contended that the succeeding Vice-Chancellor was wrong in refusing the representation of the Petitioner by stating that the service of the Petitioner is governed by Ordinance OE-9 of NEHU.

10. Mr C.T. Jamir, learned Counsel for the Respondents on the other hand contended that the post of Controller of Examinations (COE for short) is a tenure post and the selection was made under OE-9 of the NEHU which is applicable at the relevant time. According to the learned Counsel, appointment of the Petitioner for a period of 5 years is in accordance to OE-9 of the NEHU. The learned Counsel also contended that the Statute 6A of the NU is not applicable in the instant case.

11. On perusal of the records it shows that the 2nd advertisement was made on 19.8.98 and the last date for receipt of application was fixed on 30.10.98. As per

the resolution dated 27.9.95 in item No. 2.1(1) of the NU it shows that the Ordinance and Statutes of the NEHU will be followed till such time the NU formulates its own Ordinances and Statutes. From the records it shows that till 19.8.98 when the advertisement was made the NU has not framed its own Ordinances and Statutes and that the Ordinances and Statutes of the NEHU are still applicable to the NU. The Statute 6A of the NU came into force only from 2.11.98 when it was assented to by the President of India as visitor of University. The Statutes/Ordinances which are existing as on the date of advertisement are applicable to posts in the advertisement. The Statutes/Ordinances which came into existence after the advertisement cannot be made applicable to the posts advertised before the statutes/ordinances came into effect, unless such Statutes/Ordinances are made to have retrospective effect by making special provision in that regard. In this case, the Ordinances and Statutes of NEHU are applicable to the NU till the time when the Statute 6A of the NU came into being on 2.11.98. Therefore, selection of the Petitioner at relevant time is governed by OE-9 of the NEHU.

12. The next point is that whether non specification of 5 years of the post of COE in the advertisement will override the Ordinance and Statute. The answer is emphatically No. It may further be observed that the Petitioner being an internal candidate serving in the NU since 9.4.81 and particularly in the Examination Branch with effect from 3.9.96 is fully aware of the tenure and functions of the COE. He has applied for the post, appeared in the selection and was selected and he was appointed. The Petitioner was also quite aware that till the said Statute 6A came into force on 2.11.98 the Ordinances and Regulations of NEHU are applicable to the NU.

13. For the aforesaid reasons I find that the appointment of the Petitioner for the term of 5 years is in consonance with OE-9 of NEHU as adopted by the NU. The Statute 6A of the NU is not applicable for selection of the Petitioner.

14. In the result, I find no merit in this writ petition and accordingly it is dismissed.