

(2007) 12 CAL CK 0026

In the Calcutta High Court

Case No : F.M.A. No. 60 of 2006 and W.P. No. 6873 (W) of 1999

University of Burdwan and Another

APPELLANT

Vs

Dr. Prasanto Chatterjee

RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 1 CALLT 229 : (2008) 2 CHN 773 : 112 CWN 907 : (2008) 2 ILR (Cal) 685

Hon'ble Judges : Tapas Kumar Giri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Dipak Kumar Sengupta and Monish Sen, for the Appellant;Shaktinath Mukherjee, P.K. Das, Pravat Chatterjee and Gouranga Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—Dr. Prasanto Chatterjee, the respondent No. 1 was a professor of history in Burdwan University. He retired on January 31, 1996. Prior to his superannuation he applied for re-employment for two years in terms of University Ordinance No. 10(T.U.). His application was placed before the Screening Committee and thereafter before the Executive Council who rejected the same on the ground that his continued availability was not indispensable for the existing academic and research programme of the university. It was also observed in the said order that he did not fulfil the conditions laid down in G.O. No. 2883(7) Edn.(U) dated November 15, 1979 read with Ordinance No. 10(T.U.).

2. He challenged the order of rejection by filing a writ petition. The learned single Judge allowed his writ petition by setting aside the order of the Executive Council coupled with a direction to the Executive Council to pass necessary order of re-employment in the light of the Judgment delivered by His Lordship. An appeal was preferred. The Division Bench rejected the contention raised by the respondent No. 1 on the allegation of mala fide and bias. The Division Bench also

held that it was not necessary to assign any reason for such rejection. After holding that, the order of rejection was not vitiated by malice or bias or for non-disclosure of reasons. The Division Bench upheld the decision of the learned single Judge setting aside the order of rejection on the ground that the Government Order relied upon by the University was not existing on the day when he was considered. The Division Bench remanded the matter back to the University for being decided afresh in terms of Ordinance 10(T.U.). Being aggrieved by and dissatisfied with the Judgment and order of the Division Bench the respondent No. 1 filed a SLP which was dismissed as withdrawn.

3. The University considered his application afresh through the Screening Committee and thereafter through the Executive Council. The Executive Council in a meeting held on July 9, 1998 resolved that the recommendation of the Screening Committee rejecting his application be accepted and such resolution of the Screening Committee was confirmed and he was accordingly not given the re-employment.

4. Challenging the order of the Executive Council the respondent No. 1 filed the second writ application being W.P. No. 6973(W) of 1999. In the writ petition he not only alleged mala fide and bias as against the University but also took several grounds including illegality and/or irregularity committed by the University in constituting the Screening Committee as according to him one of the experts Dr. Prasad was not an academician and as such was not entitled to be included in the said committee.

5. The writ petition was opposed by the University by filing affidavit-in-opposition. The respondent No. 1 also filed affidavit-in-reply. There was direction for filing supplementary affidavit disclosing detailed qualification of Dr. Prasad. There was some delay in affirming the said affidavit for which the learned single Judge did not allow the same to be filed.

6. The learned single Judge finally heard the writ petition and again set aside the order of the Executive Council on the ground that the performance of the respondent No. 1 or his research works were not at all considered, to put it other way the University negated the respondent's work without having any material. His Lordship also observed that no reason had been spelt out. His Lordship also observed that the Executive Council did not independently apply its mind and merely confirmed the resolution of the Screening Committee. His Lordship directed re-employment to be given to him notionally as by that time two years period was over.

7. His Lordship, however, negated the contention of the respondent No. 1 on the issue of bias and malice. His Lordship also observed that benefit of Article 14 of the Constitution was not available to the respondent No. 1.

8. Being aggrieved by and dissatisfied with the Judgment and order of the learned single Judge delivered on May 21, 2004 University preferred the instant appeal.

Judgment of the Division Bench - Analysis

(i) Earlier re-employment of teacher was to be done only in exceptional cases where a highly qualified teacher immediately be replaced or continued availability of his/her was found indispensable for existing research programme.

(ii) Will of a corporation or body can only be expressed by the whole or a majority of its members, and the act of a majority is regarded as act of the whole.

(iii) Screening Committee and Executive Council both acted illegally and without jurisdiction in considering the matter of reemployment in terms of circular dated November 15, 1979 which was not applicable in the instant case.

(iv) No hearing need be given while taking a decision on the issue. Such consideration must be made on the basis of the materials on record to be placed by the applicant in his application and/or other materials available on the records of the university. The Ordinance No. 10(T.U.) did not contemplate any opportunity of hearing.

(v) Principles of natural justice were not attracted. The principle of natural justice normally applies, when a person suffers from civil or evil consequence by reason of an administrative decision. The applicant did not have any existing right to obtain reemployment as a matter of course. Hence, he was not entitled to a writ of mandamus. Non-grant of re-employment did not suffer any civil or evil consequence.

(vi) A person who did not have any right of re-employment could not complain of failure on the part of the statutory authority to comply with the principle of natural justice. It is true that a discretion conferred on a statutory authority must be exercised reasonably and fairly and not whimsically or capriciously. But that does not mean that an opportunity of hearing would have to be given.

(vii) It was also not necessary to assign any reason while rejecting the application.

(viii) The plea of bias could not be upheld for more than one reason. The allegations of bias were absolutely vague and general in nature. Further bias had been attributed mainly as against the Vice-Chancellor. He was not made a party respondent in his personal capacity.

(ix) When a case of malice of fact is made out normally the Court would not interfere.

(x) The Screening Committee and Executive Council adopted a wrong procedure by relying on the Government circular which did not exist in the eye of law and as such impugned order could not be sustained.

(xi) In academic matters the Court should be slow to interfere. The High Court should not interfere with the decision of the academic body. When an expert

body had passed an order not on a wrong premise, the same should not be interfered with.

(xii) It might be true that the writ petitioner has a brilliant carrier. It may further be true that he could have been granted reemployment if his performance and ability were considered on proper perspective. But does it mean that while considering the matter, the High Court itself would usurp the role of the expert body? To our mind the answer should be rendered in negative.

(xiii) As the statute has laid down the procedure such procedure must be followed. There is no provision for relaxation of such procedure and the Court cannot exercise a procedure not contemplated thereunder.

(xiv) If a direction cannot be issued to violate the provision of Constitution such a direction could not be issued in violation of the statute particularly in academic matters.

(xv) It is not a case where the decision of the competent authorities are being set aside because the discretion has not been correctly exercised. It is a case where the criterias adopted by the competent authority were not in accordance with law and in that view of the matter only, mandamus can be issued directing the Screening Committee and Executive Council to consider the case of the writ petitioner upon adopting a correct procedure i.e. the criteria in terms of Ordinance No. 10 (T.U.) alone.

(xv) The Screening Committee and the Executive Council would act impartially, fairly, reasonably, honestly and in an unbiased manner. The decision shall be taken on adopting objective criteria and not on whims or caprice.

Requirement Under 10 (T.U.):

(i) Application for re-employment would be considered considering the applicant's academic performance particularly during the last 5 years preceding his superannuation.

(ii) Recommendation of the Screening Committee regarding re-employment shall be made on the basis of the performance of the teacher concerned as a teacher and or quality of research papers or books produced by him as also on the basis of a medical certificate indicating his physical fitness.

Recommendation of the Screening Committee:

The Committee, considering all aspects particularly the quality of research papers produced by him during the last five years preceding the date of his superannuation [in reference to Under Ordinance(T.U.) as a whole and Clause (iv) thereunder in particular/does not think the case to be fit for favourable recommendation and therefore does not recommend the re-employment of Professor Prasanto Kumar Chatterjee after his superannuation on 31st January, 1996.

Recommendation of the Executive Council:

The recommendation of the Screening Committee along with relevant records in connection with the application of Professor Prasanto Krunhr Chatterjee of the Department of History was placed before the Executive Council. The Screening Committee was found to have not recommended favourably the prayer of Professor Prasanto Kumar Chatterjee. The Council after considering the entire matter in the light of Under Ordinance (T.U.) did not find any reason to differ with the recommendation of the Screening Committee and it decided to accept the same. The prayer for grant of first term re-employment of Professor Prasanto Kumar Chatterjee could not, therefore, be acceded to.

Relevant Facts as Came Out in the Pleadings With Regard to Consideration by The Screening Committee And The Executive Council.

(i) The Executive Council in a meeting held on June 11, 1998 prepared the following panel of six experts and submitted the same to the Vice-Chancellor for choosing two of them as External Experts to avoid the allegation of bias:

(a) Professor Suprakash Sanyal, Professor (Retd.), Calcutta University.

(b) Dr. Y.D. Prasad, Director, A.N. Sinha Institute of Social Studies,, Patna.

(c) Professor Ajit Neogi, Viswavarati

(d) Professor Joyanta Roy, Institute of South-East Asian Studies.

(e) Professor Chitrabrata Palit, Jadavpur University.

(f) Professor K.P. Mishra, Gorakhpur University.

(ii) The said resolution was communicated to Professor Chatterjee. Professor Chatterjee raised objection with regard to the some of the members but new Vice-Chancellor ultimately appointed Dr. Suprakash Sanyal and Dr. Y.D. Prasad as experts.

(iii) The screening Committee thereafter met. The Din of the faculty did not take part in deliberation as Professor Chatterjee earlier made allegation of bias as against him along with the then Vice-Chancellor.

(iv) He continued his objection with regard to Dr. Y.D. Prasad in absence of relevant disclosure of his credentials as according to him Dr. Prasad was not a member of the faculty. In the affidavit used by the University Dr. Prasad was described as former professor of Patna University. However, in subsequent supplementary affidavit which was not allowed to be filed his detailed credentials were given as appears from page 329-330 of the Paper Book.

The Judgment of the Learned Single Judge impugned in the Appeal Analysis:

(i) According to the writ petitioner, in course of his regular employment he had to approach this Court twice and on both occasions he was successful. Hence, the

University became adamant to unjustly victimise him.

(ii) It was contended on behalf of the petitioner that the Screening Committee made no real consideration of his candidature on merit and made adverse comments on his recent research work which had been proved baseless and motivated by the award of national fellowship.

(iii) It was also contended on behalf of the petitioner that the Screening Committee and the Executive Council blatantly violated the Division Bench mandate by not proceeding objectively and acted on subjective consideration extraneous to 10(T.U.).

(iv) It was contended that as the matter was required to be dealt with under statutory power such exercise pertakes the character of quasi-judicial function. The boggy of the matter being in educational field and capable of being untouched by the Court for any reason, is not sustainable.

(v) According to the writ petitioner, the decision of the Executive Council is vitiated being contrary to relevant rules as Chancellor's nominee was absent and one of the members was not an expert in the concerned field.

(vi) It was contended that the respondent No. 5 although not participated in deliberation was capable of influencing the other members and as such the decision was vitiated by illegality. The petitioner was treated with hostile discrimination. The University and its officials must conform to Article 14 and 16 of the constitution with fair and equitable decision and without any bias or discrimination.

(vii) It was contended on behalf of the University that the Screening Committee and the Executive Council were the Supreme Authority in the field of academic administrative matters and their decision was not liable to be questioned being not open to Judicial review.

(viii) Charges of bias and mala fide are wholly unfounded. Division Bench disbelieved the story of bias and mala fide. Hence, the plea was hit of principles of res-judicata.

(ix) According to His Lordship, Court had power to mould the relief to avoid impossible situation inasmuch as by that time he crossed the age of 65 years.

(x) The allegations of bias against a particular Member of the Screening Committee is in my view untenable, for it is difficult to believe that one particular member could influence all the members of the Screening Committee, who under the aforesaid provision of Ordinance is obliged to make recommendation if any upon collective decision and deliberation. Moreover, under the provision of the aforesaid Ordinance it is the Executive Council, which has to take decision finally, I am unable to accept the case of bias or malice said to have harboured by the respondent No. 5 against the petitioner for that matter his opinion could influence or dictate the members of the Executive Council.

(xi) Moreover, it has been noted by the Division Bench of this Court as rightly, argued by Mr. Sengupta that mere allegation of bias will not do and this has to be established that, but for such bias the decision would have been in favour of the petitioner.

(xii) The affidavits of other members of the Screening Committee have been filed and then have denied unanimously having been influenced by any person. Therefore, the impugned decision of the Screening Committee and the Executive Council cannot be said to be vitiated with bias.

(xiii) The Screening committee has to recommend on the basis of the performance of the teacher concerned as a teacher and/or quality of research papers or books produced by him as also on the basis of the medical certificate indicating his fitness. Hence, while rejecting the application the committee should come to a conclusion that performance of the teacher and his research papers were not upto the mark for re-employment. Hence, the performance was stigmatized with inferior quality and as such it could not be said that the same had no civil or evil consequence in view of refusal. Once such prayer was refused it would certainly impair his reputation and does not remain merely an administrative function simpliciter in which no reason is required to be informed or recorded.

(xiv) No reason had been recorded specifically to conclude that performance was not satisfactory or research work was not upto the mark. Absence of reason compels the Court to examine whether decision was taken fairly or honestly. The authority failed to produce any other such record to support such presumption.

(xv) I do not think that the principle of discrimination under Article 14 in this case can be applied, since choice and/or selection for re-employment has to be made on the basis of the performance of the teacher concerned, his quality of research paper or books produced by him and on the basis of medical certificate, the discrimination is bound to occur as there is scope for reasonable classification being made in the procedure itself, because performance of teacher varies from man to man and so also the quality of research papers or books produced by them. Moreover, the discrimination can be complained where one is chosen amongst others having equality in all respects leaving out others unjustly and wrongly. In this case I find the petitioner was the lone candidate in History faculty for consideration of re-employment. Therefore, there was no scope for applying the principle of discrimination. The other candidates were in different field, their performance had to be adjudged differentially by the Screening Committee and so also the Executive Council. The argument advanced by Mr. Das and Mr. Mukherjee that the respondents has adopted pick and choose policy are not at all appreciated by the Court.

(xvi) When the decision warranting reason, is without the same, the same cannot be sustained being hit by Article 14.

(xvii) The performance of the petitioner or his research work was not considered

as no reason apparently had been spelt out.

(xviii) Executive Council also did not independently apply their mind and acted mechanically without applying its own mind while accepting the recommendation of the Screening Committee.

(xix) I have materials namely, expert views and opinion that petitioner's performance and research work are quite satisfactory and I hold he was entitled to be re-employed and he has been wrongly and unjustly denied. Consequently, I direct the respondent authority to treat him to have been re-employed notionally.

Inference:

9. On a sum total it appears that His Lordship rejected the contentions on bias and mala fide. Once such finding is taken into account it logically follows that there was no scope for judicial review. Division Bench already held that there was no civil or evil consequence. Such observation of the Division Bench was not properly considered by His Lordship. Even after holding that there was no case for bias or mala fide. His Lordship set aside the impugned decision by holding that the same was open for judicial review and was liable to be set aside as the University failed to assign reason before the Court. His Lordship held that he was entitled to be re-employed and directed notional re-employment with all pecuniary benefit.

Contention of the Appellant Before Us:

10. Mr. Dipak Kumar Sengupta, learned senior counsel appearing for the University contended as follows:

(i) Once His Lordship held that there was no case of bias or mala fide Article 14 did not have any application as the subject process did not have any civil or evil consequence as held by the Division Bench.

(ii) His Lordship did not accept the submission of the writ petitioner with regard to the alleged illegality in formation of the Screening Committee by inclusion of Dr. Prasad. Even if supplementary affidavit was not taken into account where detailed bio-data of Dr. Prasad was given it would appear from the earlier affidavit that he was described as a former professor of history Patna University.

(iii) Since majority of the members present unanimously took a decision absence of one member could not vitiate the entire process and in any event such submission was not accepted by His Lordship as appears from the Judgment impugned.

(iv) Since there was no civil or evil consequence as envisaged in Article 14 or 16 no reason need be given while rejecting the said application.

(v) The order impugned in the writ petition was administrative in nature and could not be termed as quasi judicial.

(vi) Evaluation of writ petitioner's past academic record was purely

administrative job and fell within the domain of the experts and as such it was not open to the Court to review the said decision.

(vii) The arguments sought to be advanced by the writ petitioner to the extent of mala fide, bias and alleged illegality were hit by principles of res judicata as those were conclusively decided by the Division Bench earlier.

(viii) The Division Bench rejected all the contentions of the writ petitioners, however, set aside the decision after holding that the same was taken by adopting a wrong procedure. Hence, the writ petitioner was not entitled to raise those issues once again and in any event the learned single Judge did not accept those contentions.

(ix) After holding that there was no case of mala fide or bias and after not accepting the case of alleged irregularity in forming the Screening Committee it was not open to His Lordship to examine impugned decision and coming to conclusion that he had pre-requisites to be re-employed. It was nothing but an attempt to encroach upon an arena of the experts whose decisions were not open to judicial review.

(x) Once it was held that the subject decision was administrative and did not have any civil or evil consequence as held by the Division Bench the impugned decision was not available for judicial review.

(xi) The learned Judge in absence of appropriate expertise erred in holding that he was fit to be re-employed on the basis of the materials on record.

Cases Cited by the Appellant:

11. Mr. Dipak Kumar Sengupta, learned senior counsel appearing for the University, in support of his contentions cited the following decisions:

(i) All India Reporter 1974 Calcutta Page 460 (State of Mysore v. C.R. Seshadri and Ors.)

(ii) R.S. Dass Ors. Vs. Union of India (UOI) and Others,

(iii) State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal,

(iv) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others,

(v) Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others,

(vi) Major General I.P.S. Dewan Vs. Union of India (UOI) and Others,

(vii) All India Reporter 1996 Supreme Court Page 1810 (Election Commission of India and Anr. v. Dr. Subramanian Swamy and Anr.)

(viii) State of U.P. and another Vs. Girish Bihari and others,

(ix) Berhampur University and another Vs. Dr. Sailabala Padhi,

- (x) Ma Ananda Oil Mills Pvt. Ltd. and Others Vs. W.B.F.C. and Others,
- (xi) A.P.S.R.T.C. represented by Depot Manager Vs. K. Pochaiah and Another,
- (xii) All India Reporter 1999 Calcutta Page 2860 (Ranganathan and Anr. v. Union of India and Ors.)
- (xiii) Tariq Islam Vs. Aligarh Muslim University and Others,
- (xiv) Union of India and Another Vs. Ashutosh Kumar Srivastava and Another,
- (xv) 2002 Volume - I Supreme Court Cases Page 712 (G.N. Nayak v. Goa University and Ors.)
- (xvi) 2005 Volume - XI Supreme Court Cases Page 589 (Union Public Service Commission, Delhi v. P. Harikumar and Ors.)
- (xvii) Satya Narain Shukla Vs. Union of India (UOI) and Others,
- (xviii) Sibnath Koley and Others Vs. State of West Bengal and Others,

Contention of the Respondents/Writ Petitioner:

12. Both Mr. P.K. Das and Mr. Shaktinath Mukherjee, learned senior counsel appearing for the respondents/writ petitioner argued opposing the appeal.

Mr. Das contended as follows:

- (i) Once the Screening Committee as well as the Executive Council was directed by this Court to consider the issue afresh the order passed by the said authority could not be said to be merely an administrative order as it took the character of a quasi-judicial order.
- (ii) In case of quasi-judicial order the authority was supposed to act reasonably so directed by the Division Bench. "Acting reasonably" pre-supposes that reasons must be given.
- (iii) The formation of the Screening Committee was not properly done in view of the fact that Dr. Prasad could not be said to be an expert in the subject.
- (iv) Dr. Prasad was a Director of an institute. Being an administrator he could not be said to be an academician.
- (v) The decision of the committee was vitiated by illegality as one of the members of the Committee remained absent.
- (vi) Since the order was quasi-judicial in nature it was open for judicial review.
- (vii) In case of judicial review the Court was to consider whether the order was illegal or irrational or there was any procedural impropriety. The order impugned passed by the authority being contrary to the true spirit of the order of the Division Bench, was illegal.
- (viii) Since the order impugned was devoid of any logic it was irrational.

(ix) Non-disclosure of reason was a procedural impropriety. The Division Bench directed to act reasonably. Hence, they must show that they acted reasonably meaning thereby they must assign reason which they did not.

(x) The formation of the Screening Committee was contrary to the guidelines laid down in 10 (T.U.).

(xi) Since no reason was indicated the order was open for judicial review and was liable to be set aside being devoid of reason.

(xii) Except one Mr. Parag Dasgupta, no one was refused in the past. Mr. Dasgupta was not considered because of allegations levelled against him. Professor Chatterjee had unblemished track record.

(xiii) The Executive Council merely affirmed the decision of the Screening Committee without applying their mind. Hence, the same was perverse.

In support of the above Mr. Das cited the following decisions:

(i) 1947 All England Law Reports Volume II Page 680 (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation)

(ii) A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

(iii) 1984 All England Law Reports Volume III Page 935 (Council of Civil Service Unions and Ors. v. Minister for the Civil Service)

(iv) Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,

(v) S.N. Mukherjee Vs. Union of India,

(vi) 1994 Volume - VI Supreme Court Cases Page 651 (Tata Cellular v. Union of India)

(vii) State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo,

13. Mr. Das further contended that in the event the appeal was dismissed he would be entitled to claim salary for two years period and Court should mould the relief accordingly. In this regard, he relied on the Apex Court decision in the case of Nawal Kishore Prasad v. State of Bihar and Ors. reported in 2001 Volume-IV SCALE Page - 445.

14. Mr. Das also distinguished the cases cited by Mr. Sengupta. He contended as follows:

(i) In the case of Tariq Islam (supra) requisite qualification was an issue before the Selection Committee. No academic issue was involved. In the instant case the decision making process was wrong as the committee did not follow the mandate of the Division Bench. Hence, this decision would have no application.

(ii) In the case of Asutosh Kumar Srivastava (supra) the facts were totally different. In the said case the issue of interview/viva-voice test was involved

whereas in the present case Professor Chatterjee was the lone candidate. Neither any interview nor any test was required to be taken. The Committee was to consider his past teaching record and his research work. Hence the decision of the Apex Court in the said case did not apply.

(iii) In the case of G.N. Nayak (supra) it was a case of selection where many candidates were involved. The facts were totally different from the present case.

(iv) In the case of Satya Narayan Sukla (supra) whether a scheme was followed or not was questioned. It was also a case where many candidates were involved.

15. Mr. Das also contended that since the issue was re-considered and a fresh order was passed challenge to the same was based on a fresh cause of action. Hence plea of res judicata or constructive res judicata or the principles analogous thereto would not be applicable. In any event such plea being not taken before the learned single Judge the appellant was not entitled to raise the said issue afresh before the Division Bench. In support of such contention Mr. Das cited the following decisions:

(i) The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others,

(ii) 1982 1 CLJ 37 (Pinaki Ranjan Bharatt v. State of West Bengal and Ors.)

(iii) Madhukar D. Shende Vs. Tarabai Aba Shedage,

(iv) G.N. Nayak Vs. Goa University and Others,

(v) Smt. V. Rajeshwari Vs. T.C. Saravanabava, .

(vi) Begam Suraiya Rashid and Others Vs. State of Madhya Pradesh and Others,

(vii) Volume 84 Calcutta Weekly Notes Page 795 (Jaykishore Pande v. Biswanath Ahir)

16. On the issue of Res judicata Mr. Das distinguished the decision in the case of Girish Behani (supra) as according to him the ratio decided therein had no application in the instant case. Mr. Das lastly contended that the decision in the case of Shibnath Koley (supra) being contrary to the consistent view of the Apex Court was not a good law.

17. Mr. Shaktinath Mukherjee, learned senior Counsel appearing for the respondent/writ petitioner adopting the argument made by Mr. Das contended that even if it was held that no reason need be given not only it was incumbent upon the authority to consider the available records in terms of notification No. 10(T.U.) but also such consideration should be ex-facie apparent on the face of such record.

18. According to Mr. Mukherjee the reason might not be indicated but such reason must be apparent. In support of his contention he contended that the research work relied on by Professor Chatterjee was accredited by various

reputed organisations. In fact, he was awarded National Fellowship. Such factors were not at all considered by the authority as appears from the records.

19. In support of his contention Mr. Mukherjee cited the following decisions:

- (i) Union of India (UOI) Vs. Mohan Lal Capoor and Others,
- (ii) Virendra Kumar and Others Vs. Union of India (UOI),
- (iii) AIR 1984 SC 1499 (Sengara Singh and Ors. v. The State of Punjab and Ors.)
- (iv) 1987 1 CHN 268 (Sankar Prasad Chakraborty v. State Bank of India)
- (v) Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,
- (vi) State Bank of India etc., Vs. Kashinath Kher and others, etc.,,
- (vii) Rajpal Vs. State of Haryana and Others,
- (viii) Badrinath Vs. Government of Tamil Nadu and Others,

Contention of the Appellant in Reply:

20. Mr. Sengupta while dealing with the submission of Mr. Das contended that Dr. Prasad was all through an academician as would be appearing from his bio-data disclosed in the supplementary affidavit. He admitted that there had been some delay in filing the same and the learned Judge as such did not take note of the said fact. However, the original affidavit which was admittedly an record did disclose that Dr. Prasad was a former professor of Patna University in history. Hence, he could not be said to be not an expert on the subject. Counter-acting the allegation on the violation of principles of natural justice Mr. Sengupta contended that once such contention was negated by the Division Bench earlier as well as by the learned single Judge it was no more open to the respondent/writ petitioner to contend that there had been violation of Article 14 of the Constitution. Hence, principle of natural justice did not have any application as rightly held by the learned single Judge. Once such principle did not apply no reason was required to be given. He further contended that the allegation of mala fide or bias was negated by the learned single Judge and there was no cross-objection on that score. On the plea of res judicata Mr. Sengupta contended that in case of a subsequent fact or a fresh cause of action such plea would not be applicable. In the instant case on a plain reading of the writ petition it would appear that identical plea was taken which was negated by the Division Bench. Hence, the learned Judge was right in rejecting such contention.

21. While distinguishing the cases cited by Mr. Das Mr. Sengupta contended that the decision in the case of Mysore State Electricity Board (supra) would rather support the case of the appellant as would appear from paragraph 12 of the said Judgment. In G.N. Nayak (supra) the case was based on new cause of action and as such the Apex Court rightly negated such objection holding it as misconceived. Similarly the decision in the case of Madhukar D. Sindhey (supra) had no application as would appear from paragraph 14 of the said decision.

22. On the issue of judicial propriety Mr. Sengupta relied upon a decision of this Bench in the case of Eastern Coal Fields Limited v. Sudama Das and Ors. reported in 2007 1 CHN 851 and the decision in the case of Rajasthan Public Service Commission and Another Vs. Harish Kumar Purohit and Others, . In the case of Eastern Coal Fields Limited (supra) the learned single Judge ignored a Division Bench Judgment holding it as per incurium. Such observation of His Lordship was negated by the Division Bench following the earlier precedents of the Apex Court. In the case of Rajasthan Public Service Commission (supra) the Apex Court observed that the later Bench being a coordinate Bench did not even indicate as to why it was not following the earlier Bench Judgment though brought to its notice. Judicial propriety and decree warranted such a course indicated therein to be adopted.

23. On the issue of administrative order and quasi-judicial order Mr. Sengupta distinguished two Apex Court decisions cited by Mr. Das. In the case of A.K. Kraipak (supra) in paragraph 13 of the said decision the Apex Court observed that the dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. The Apex Court in paragraph 14 also observed that it was neither possible nor desirable to fix the limits of the quasi-judicial power. Relying on these observations Mr. Sengupta contended that once the plea of bias or mala fide was absent the administrative order could not be said to be a quasi-judicial order warranting reasons to be given. In the case of Kumari Nilima Mishra (supra) in paragraphs 19, 20 and 22 the Apex Court observed that for the concept of fairness adjudicative settings were not necessary, nor it was necessary to have lites inter parties. There need not be any struggle between two opposing parties giving rise to a lis. Commenting on the said decision Mr. Sengupta contended that since the writ petitioner was the lone candidate and since he had no right to get re-employment rejection did not have any civil or evil consequence. Hence, the observation of the Apex Court rather supported the contention of the University in the instant case. He strongly relied on the observations made by the Apex Court in the decision particularly in paragraphs 23 and 26 thereof. He strongly relied on the observation, "The decision of the Chancellor in exercise of the statutory function does not, in our opinion, expressly or impliedly require the application of the principles of natural justice".

24. While distinguishing the decision of the Apex Court in the case of Tata Cellular (supra), he contended that the observations of the Apex Court in paragraphs 90, 94, 150 and 152 would rather support the contention of the University.

25. He contended that the decision in the case of S.N. Mukherjee (supra) and State of N.C.T. of Delhi and Ors. (supra) did not have any application in the instant case. The facts were totally different. In the case of State of N.C.T. of Delhi, police authorities passed an order of externment which clearly violated the right of the writ petitioner to stay in Delhi whereas in the case of S.N. Mukherjee

(supra) question was raised with regard to the reasonableness of the order passed in a Court Marshall. According to him, these facts were totally distinguishable from the present case.

26. Mr. Sengupta further contended that the order passed by the Screening Committee and the Executive Council did disclose reason. Mere insufficiency of reason could not be a ground for quashing the same. He further contended that lot was said on the National Fellowship which the respondent got after the order had been passed by the Screening Committee and the Executive Council. Hence, such factor had no relevance while considering the legality of the order impugned in the writ petition. He also contended that the argument of the respondent that the consideration should be quasi-judicial in view of the order of the Division Bench was wrong. In this regard he relied on the decision of the Apex Court in the case of Union Public Service Commission. Delhi (supra) and the decision in the case of National Institute of Mental Health and Neuro Science (supra).

27. While distinguishing the decision cited by Mr. Das in the case of State of NCT of Delhi and Ors. he contended that such decision would rather support the contention of the appellant. According to him once a discretion was exercised in good faith and reasonably the same was not available for Judicial review. In this regard he also relied on the decision in the case of Satyanarayan Sukla (supra).

28. Mr. Sengupta also distinguished the cases cited by Mr. Mukherjee and contended that the facts were totally different and distinguishable. He contended that the case of Badrinath (supra) would rather support the contention of the appellant. In this regard he relied on the paragraph 41 of the said decision wherein the Apex Court was of the view that the judicial power remains but its use is restricted to rare and exceptional situations. He also contended that the decision in the case of Sankar Prasad Chakraborty v. State Bank of India (supra) was not a good law in view of the decision in the case of State of Bikanir and Jaipur (supra). He relied on paragraph 12 of the said decision. He also contended that the decision in the case of Union of India v. M.K. Kapoor (supra) was clearly distinguished by the Apex Court in the case of R.S. Das (supra) after relying on the decision of Kraipak (supra). In this regard he relied paragraphs 18, 19 and 21 of the decision in the case of R.S. Das (supra).

29. He lastly contended that the appeal should be allowed.

Contention of the Respondents/Writ Petitioner as Rejoinder:

30. Mr. Das distinguished two new cases cited by Mr. Sengupta in reply being Eastern Coal Fields Limited (supra) and Rajasthan Public Service Commission (supra). While distinguishing the said two cases Mr. Das contended that the ratio decided therein had no conflict in the instant case as it was not the case of either party that the learned single Judge violated the principle of judicial propriety. Rather the learned single Judge relied on the Division Bench decision while coming to the final conclusion. He also contended that it was not correct to say that on the withdrawal of the SLP right to challenge the order impugned stood

waived as the order impugned was based on fresh consideration which gave new cause of action to the respondent to challenge the same. Mr. Das lastly contended that once the self assessment statement given by the respondent was accepted there was no reason why he was denied re-employment. He further contended that the teaching ability of the respondent was not considered as apparent from the face of record. He lastly contended that the English cases cited by him were not at all dealt with by Mr. Sengupta. The principle of law so decided by the Apex Court in the case of State of NCT of Delhi (supra) was based on those two English cases which were not dealt with. He lastly contended that the appeal should be dismissed.

Principal Issue Involved Herein:

31. On a sum total of the submissions and cross submissions according to us the following issues emerge:

(i) Once the plea of bias or mala fide was negated by the learned single Judge in absence of a cross-objection or cross-appeal was such plea still available before the Division Bench? If so, whether there was any such act of mala fide or bias involved?

(ii) Was the impugned order available for judicial review? If so, to what extent?

(iii) If the answer to issue No. (ii) is positive did the order impugned require any reason to be given?

Our View:

32. The decisions cited on the plea of res judicata and/or constructive res judicata and/or the principles analogous thereto consistently held that when there was a new cause of action such plea was not available. If such issue stood resolved earlier on the facts brought again in the subsequent proceeding such plea was available. On a combined reading of the Division Bench decision and the decision of the learned single Judge impugned herein as also on a plain reading of the writ petition it would appear that the allegation of bias and mala fide was nothing but a repetition with some colourable modification. In any event once such plea was negated by the learned single Judge and no cross-appeal or cross-objection was filed such plea was not available to the respondent/writ petitioner. Hence we answer this issue in the negative as against the writ petitioner/respondent.

33. This leaves us with the sole question as to what extent the order impugned in the writ petition was available for Judicial review. Law was settled on the sufficiency of materials to support the reason. Mr. Das went to the extreme by saying that reason should have been disclosed and indicated. With all humility, may we say, such was not the direction of the Division Bench. Mr. Mukherjee, however, did not go that far. According to him the reason should have been apparent on the face of the record. When there was no violation of Article 14 as held by the Division Bench and reiterated by the learned single Judge the

principles of natural justice would not be applicable. It is not the case where a right to be considered for employment along with all eligible candidates was called in question. The respondent spent full time of his service career. He had no right to remain in employment after superannuation. It was the sole discretion of the University to re-employ him for two years provided the University found him "indispensable" applying the earlier notification. Pre-requisite to earlier notification was that the incumbent must be found to be "indispensable". However, such pre-requisite was relaxed by 10 (T.U.). Professor Chatterjee was considered at a stage when the earlier notification stood superseded by 10(T.U.). How such consideration was to be made was spelt in 10 (T.U.). The University erred in following the earlier notification which was rightly negated by the earlier Division Bench. Once he was reconsidered in terms of 10 (T.U.) such decision of the University was final as in our humble opinion such decision was not available for judicial review. We humbly admit that we do not have the expertise to judge the performance of the respondent. We can only say that he had a good academic track record. Such work was accredited by various organisations of repute as appears from the record. Whether those are sufficient to come to a conclusion that he was fit for re-employment is not to be judged by us. Rather we express our inability in absence of expertise. This is highly expertised job involving academic expertise on the concerned subject.

34. Let us examine the issue from another angle. Assuming it was open for judicial review to what extent we could examine. Learned judge made one line observation that since his research works were accredited by organisations of repute he was entitled to re-employment. Accreditation of a research work is a subjective analysis. One organisation might find a research work valuable and recognise the same. Such organisation may be having high reputation in the field. However, such consideration might have a positive value in this regard but cannot have a dominating effect on the decision of the University to come to a conclusion that he was fit for re-employment. The Apex Court consistently held that in academic matters Court must be slow to interfere. Our conclusion as above gets support from such consistent view of the Apex Court. We do not know who is correct and who is wrong. We cannot judge the same in view of our inability. Had the case of mala fide and bias being proved, undoubtedly such decision would be open for judicial review although we are not sure to what extent we could do that in absence of expertise. We are to that extent fortunate, we are not compelled to do so in view of the finding of the learned single Judge that there was no act of mala fide or bias.

We get support for our conclusion from the observation of the Apex Court in the case of Tata Cellular (supra).

35. The Apex Court in the said case relied on the observation of Professor Wade made in his book on Administrative Law, "The point to note is that a thing is not unreasonable in the legal sense merely because the Court thinks it is unwise."

The Apex Court also observed, "The Court does not have the expertise to correct

the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

37. The appeal in our view must succeed and is hereby allowed. The order of the learned single Judge impugned herein is set aside. Writ petition is dismissed.

There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

I agree.