

A BERHAMPUR UNIVERSITY AND ANR.

v.

DR. SAILABALA PADHI

APRIL 21, 1997

B [K. RAMASWAMY AND D.P. WADHWA, JJ.]

Service Law :

Universities Act, 1989 :

C *S. 21—Appointment—Post of Professor—Candidate interviewed—Sub-Committee of the Syndicate recommending her appointment—Expert Committee giving opinion for re-advertisement of the post—High Court directing appointment of the candidate—On appeal, held, the Chancellor's direction for re-advertisement in accordance with Rules—High Court erred in directing*
D *appointment of the candidate—Expert body having not selected her, no positive direction could be given for her continuance till the selection for the post is made.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3146 of 1997.

From the Judgment and Order dated 11.9.96 of the Orissa High Court in O.J.C. No. 8420 of 1993.

P.N. Misra, S. Misra and A. Mohapatra for the Appellants.

F Ms. Indira Jaising, Manoj Misra, S. Das and Bharat Sangal for the Respondent.

The following Order of the Court was delivered :

G Leave granted.

We have learned counsel on both sides.

This appeal by special leave arises from the judgment of the Division Bench of the Orissa High Court, made on September 11, 1996 in O.J.C.
H No. 8420 of 1993.

The admitted position is that the respondent had applied for selection to the post of Professor, Environmental Science. The Selection Committee on January 31, 1992 interviewed 13 candidates and found none to be qualified for appointment to the post of Professor, Environmental Science. The matter was referred to the Sub-Committee of the Syndicate which by its proceedings dated June 22, 1992 opined that since the respondent had secured 44 out of 90 marks, she was eligible for appointment and accordingly the matter was referred to the Chancellor under first proviso to Section 21(2) of the Orissa Universities Act, 1989 (for short, the 'Act') The Chancellor (the Governor of Orissa) directed re-advertisement as per opinion of the Expert Committee by its proceedings dated January 15, 1993. Pursuant thereto, another advertisement was issued on October 16, 1993 for recruitment to the post of Professor in Environmental Science. The qualification desired was Master's degree in Botany or Zoology or Environmental Biology. The respondent questioned the re-advertisement of the post in question. The High Court in the impugned judgment has directed appointment of the respondent within four weeks from the date of the judgment. We are informed that pursuant to the contempt proceedings initiated by the respondent, appointment of the respondent came to be made.

It is contended by Mr. Misra, learned counsel appearing for the appellants that the Expert body is the competent Committee to opine as to who is qualified and fit to be selected as Professor in Environmental Science which requires Environmental Biology and the respondent is not possessed of Master's degree in Environmental Biology. The High Court cannot evaluate the relative requisite qualifications and come to its own conclusion as to who would be fit for appointment. Ms. Indira Jaising, learned senior counsel appearing for the respondent, contends that the advertisement made does not relate to Environmental Biology; it requires only Master's degree in Botany or Zoology or Environmental Biology. Since the respondent possessed Master's degree in Botany with requisite experience in the field, she, having secured 44 marks out of 90, is entitled to be considered for the post and the competent authority has no power to direct re-advertisement of the post. The High Court was, therefore, right in giving direction to appoint the respondent as Professor in Environmental Biology.

A Having regard to the respective contentions the question that arises for consideration is whether the High Court is justified in evaluating whether the respondent is qualified to be appointed as Professor. Section 21 reads as under :

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

C (1) All officers of the University excepting the Registrar, and the Comptroller of Finance shall be appointed by the concerned Vice-Chancellor on the recommendation of a Selection Committee consisting of the Director, the registrar, one member to be selected by the Syndicate of Such University from amongst the remaining members thereof and two experts appointed by the said Vice-Chancellor whether necessary.

D (2) The teachers of a University shall be appointed by the Syndicate of that University on the recommendation of a Selection Committee consisting of the concerned Vice-Chancellor, the Director, an expert nominated by the Chancellor in the case of appointment of Professor, and three experts selected by the said Vice Chancellor from out of the list of six experts furnished by the said Syndicate, which shall not include -

E (i) any teacher of such University or of any of its constituent or affiliated colleges; or

F (ii) any person who has been an examiner of such University in the preceding or the relevant year.

G Provided that where the Committee fails to make any specific recommendation or where the Syndicate differs from the recommendation made by the Committee, the matter shall be referred to the Chancellor whose decision thereon shall be final."

H It is not in dispute that an Expert Committee has been constituted to select the candidates. The Expert Body consists of Vice-Chancellor, Berhampur University; Director, Higher Education, Orissa; Professor, Anna University, Quindy; Professor, School of Environmental Science, Cochin University; and Professor, Environmental Science, Andhra Univer-

sity, Visakhapatnam. They have opined as under :

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"13 candidates were called for interview out of which 10 candidates appeared before the Selection Committee and they were interviewed. Taking into consideration the candidates; career, research publications, teaching experience, confidential character roll and performance at the *Viva-voce* test, the Selection Committee recommends no one for the Professor of Environmental Science."

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The Vice-Chancellor, after taking into consideration the opinion expressed by the expert Selection Committee, has opined as under :

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"(2) For the post of Professor of Environmental Science, Dr. (Smt.) Sailabala Padhy, who has secured the highest marks in the interview, does not have specialisation in Environmental Science either at the P.G. stage or at the Doctoral stage. However, she passed M.Sc. in Botany with specialisation in Algology, securing a 1st class and did Ph.D. in Algology. According to the proposal submitted to the UGC for the 8th Plan, it was indicated that the specialised course (Ph.D/M.Phil) in Environmental Science shall be started as an inter-disciplinary course of Botany/Zoology Departments, and for this purpose the Professor and the Reader should be from the Botany and Zoology streams. The Sub-Committee, therefore, suggested that the Syndicate might consider referring her case to the Chancellor for a decision under the 1st proviso of Section 21(2) of the Orissa Universities Act, 1989.

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The recommendations of the Selection Committee and the report of the Syndicate Sub-Committee thereon, alongwith the above observations of the Syndicate be referred to the Chancellor for consideration/decision."

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The Syndicate in its Resolution stated as under :

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"The Chancellor has further been pleased to order that the Berhampur University should re-advertise the following vacancies as per the required stipulations viz., qualification, experience and specialisation etc."

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A (1) xxx xxx xxx

(ii) Professor of Environmental Science.

xxx xxx xxx"

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In the light of these factual and legal situation, the question that arises for consideration is : whether the High Court would be justified in directing appointment of the respondent? It is seen that, admittedly, the respondent possessed Master's degree in Botany with specialisation on the subject of Algology. Even among her articles published in various Journals

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we come across, only two articles are on Environmental Science but the experience referred therein relates to other subjects. Obvious, therefore, the Expert Body was to select a candidate for Professor in Environmental Science from amongst the candidates by adjudging whether a candidate is fit for appointment as Professor. It is true that the Syndicate thought it

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justified that if respondent should have the qualifications in one of the subjects namely; Master's degree in Botany, she would be preferred as a candidate since Environmental Science shall be started as inter-disciplinary course of Botany/Zoology and for that purpose the Professor/Reader should be from the Botany and Zoology streams. Under the first proviso to sub-section (2) of Section 21, the order of the Chancellor shall be final

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and that therefore, the opinion expressed by the Sub-Committee of the Syndicate loses its sanctity. In the selection of Professor/Reader or any other teacher with specified qualifications, it is for the Expert Body to go into the merit and competency of the candidates for selection to the posts advertised for No doubt, in the advertisement, 'Environmental Science'

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was not specifically mentioned but it is not in dispute that Botany and Zoology being the integral part of Environmental Science, necessarily the Syndicate is enjoined to select candidates having the needed qualification and experience for the post of Professor in the Environmental Science with Master's degree in Botany, Zoology or Environmental Science. Thus, it

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could be seen that the authority was competent to evaluate the merit of the candidates and the Expert Body came to its own conclusion that the candidate securing 44 marks out of 90 should be passed for appointment to the post. The Chancellor having had the advantage of the Report of the Export Body, obviously was not inclined to agree with the sub-Committee of the Syndicate to appoint the respondent as Professor and accordingly,

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he has given direction in accordance with the rules for re-advertisement

of the post of Professor in Environmental Science. The High Court was, therefore, manifestly in error in directing the appointment of the respondent. The re-advertisement is accordingly in accordance with the rules. Ms. Indira Jaising has prayed that since the respondent has been appointed, she may be allowed to continue in the post of Professor, Environmental Science. Having noted that the Expert Body has not selected her, we cannot give any positive direction for her continuance till the selection for the post of Professor in Environmental Science is made.

The appeal is accordingly allowed. No costs.

G.N.

Appeal allowed.