

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 7 OF 2010**

Dr. Manoj S. Kamat
R/o. 'Muktangan', B II,
Mevilton Classique,
Nr. Golden Marbles,
Off. NH 17,
Kalwaddo-Navelim,
Salcete-Goa.

... Petitioner

versus

1. Goa University, through
its Registrar, having office
at Goa University, Taleigao
Plateau, Bambolim-Goa.
2. The State of Goa through
its Chief Secretary, having
office at Secretariat,
Porvorim-Goa.
3. Managing Committee,
DNYAN PRABODHINI MANDAL,
Shree Mallikarjun College
of Arts and Commerce,
Delem-Canacona, Goa.

... Respondents

Shri Sahish Mahambrey, Advocate for the Petitioner.

Mrs. A. Agni, Advocate for Respondent No.1.

Ms. Winnie Coutinho, Government Advocate for Respondent No.2.

**CORAM : NARESH H. PATIL &
N. A. BRITTO, JJ.**

DATE : 3RD MARCH, 2010

ORAL JUDGMENT(Per N. A. BRITTO, J.)

Rule. By consent heard forthwith.

2. Challenge in this Writ Petition is to the refusal to grant approval by the Goa University(Respondent No.1) for the appointment of the Petitioner to the post of Principal(Reader's grade) of the College managed by Respondent No.3, conveyed to the College by undated letter of October, 2009. The said approval was required to be given in terms of Statute SC-5(2)(d) of the Statutes of the University which provides that the recommendations of the Selection Committee shall be subject to the approval of the Vice-Chancellor. The University has not given its approval for the appointment of the Petitioner as Principal of the said College, as in the opinion of the Vice-Chancellor, the services rendered by the Petitioner for the period from June, 1999 to December, 1999 on lecture basis cannot be counted for the purpose of 10 years experience.

3. Some more facts necessary to decide the controversy need be stated:

The College advertised for the filling of the post of

Principal(Readers' Grade). As per the advertisement as well as SA-19(vii)(b), the eligibility criteria was as follows:-

(b) Principals(Readers' Grade)

1. A Masters' Degree with at least 55% marks or its equivalent grade of B in the 7 point scale with latter grades 0, A, B, C, D, E & F
2. Ph.D or equivalent qualification
3. Total experience of 10 years of teaching/Research in Universities/Colleges and other institution of higher education

4. The Petitioner applied for the said post of Principal(Readers' Grade) by his application dated 18-6-1999. A duly constituted Selection Committee which had two nominees of the Vice-Chancellor and two experts appointed by the Goa University considered the names of four candidates and shortlisted two of them including the Petitioner and recommended the appointment of the Petitioner for the said post of Principal. This was done after considering their qualifications, teaching and research experience, publications, etc. The College informed the Petitioner by their letter dated 9-9-2009 that he was selected for the post of Principal of their College, and further informed him that a formal order will be issued to him after being approved by the University and the Government of Goa.

5. As already stated, the University vide their undated letter of October, 2009 informed the College that the services rendered by the Petitioner for the period from June, 1999 to December, 1999 on lecture basis could not be considered, and, therefore the Petitioner was not eligible for the post of Principal, and, therefore no approval could be given. The Petitioner was informed by the College about the same vide their letter dated 31-10-2009. The Petitioner appears to have represented to the College and also to the Vice-Chancellor but the Petitioner's request for appointment was again turned down by the University.

6. The University has filed their affidavit-in-reply through its Registrar, and in the said reply, it is contended that the total experience of 10 years of teaching and research in a College and other institutions of higher education refers either to total experience of teaching itself or total experience of research itself or experience of teaching and research taken together. It is stated that the Petitioner did not meet all the qualifications and experience as per the advertisement for the post of Principal and SA-19(vii) of the Statutes of the Goa University and also UGC guidelines prescribing minimum qualifications and experience for the appointment to the post of Principal. It is denied that the decision of the University to reject the approval for the appointment of the Petitioner is unjust, perverse and arbitrary. It is stated that although there were nominees of the Goa University on the Selection

Committee that would not take away the power of the Goa University to refuse approval in case the University finds that the approval cannot be given in terms of its Statutes. It is further stated that SA-19 which refers to total experience of research and teaching cannot be equated to or include teaching on lecture basis, and if such an interpretation is given, even experience of part time teacher for some months with break in between over a large period of time would also qualify which is not the mandate of the Statute. It is stated that the post of a Principal is a very responsible post and he is expected to be at the helm of affairs, guide the teachers, and, therefore the post requires that there must be experience of teaching which is interpreted by the University to mean teaching in terms of workload as specified in the Statutes of the University.

7. It is stated that a uniform interpretation has been applied by the Goa University while considering the condition as to experience in teaching that teaching on lecture basis cannot be taken into consideration while computing total experience from teaching of a candidate. It is further stated that the research experience acquired during the period spent for obtaining the Research Degree is required to be deducted while computing the total research experience of the candidate, and that in the entire petition, the Petitioner has not been able to specify the actual period spent by him in doing research. It is further stated that during the period the Petitioner was engaged in teaching, if

some projects are handled by him, he cannot contend that the same should be treated or considered separately in addition to teaching experience as it is the research during the same period which the Petitioner wants to be considered as his teaching experience. It is stated that the workload contemplated by the Statutes of the University is 40 clock hours per week. It is denied that the services rendered by the Petitioner during June, 1999 to December, 1999 were regular full time service and mere signing of a muster roll or teaching, like a regular full time college teacher would not mean that the workload of a teacher on lecture basis is the same as that of a regular college teacher. It is also stated that no details have been furnished about the research experience in completing and presenting research papers and projects, and, in any event, it is stated that the research projects are done or papers are published during the same span of time which the Petitioner wants to be considered as his teaching experience but the same cannot be computed twice for the purpose of considering the total experience of the teacher. It is stated that the teaching experience has to be understood in the light of other provisions of Statute SA-19 of the Statutes with reference to workload referred to herein above. It is further stated that the workload of a teacher who is working on lecture basis cannot be compared to the teacher who renders complete workload in terms of Statute SC-5, and, it is further stated that in terms of advertisement dated 3-6-2009 by which time the Petitioner had not completed the total teaching experience as required and the teaching experience contemplated under Statute

SA-19 is the post-acquisition of qualifications as a lecturer. It is stated that the Petitioner passed M.Com on 10-7-1999 and the experience which the Petitioner wants to be taken into consideration by the University is the experience from 1-6-1999, and, therefore by no stretch of imagination even assuming but not admitting that the total experience would also encompass teaching on lecture basis on the date of filing of the application the Petitioner did not have total experience of 10 years and at the highest his experience post 10-7-1999 only could be taken into consideration and this on the assumption that the teaching on lecture basis is to be taken into consideration as part of total teaching experience, and, therefore the Petitioner could not be stated to have put in 10 years experience as on 18-6-2009. It is also stated that the Petitioner also submitted a declaration stating that he had rendered service comprising of 21 lectures of 45 minutes duration including the workload of guiding two T.Y. B.Com projects, and, it was the contention of the Petitioner that this was as good as workload of a full time college teacher but the said contention of the Petitioner is absolutely incorrect because in terms of Statute SC-5 the workload of a teacher is 40 clock hours which cannot be compared to teaching on lecture basis of 45 minutes duration. It is stated that the workload of a person on lecture basis would be less than half as compared to the workload of a teacher in terms of Statute SC-5. The Research experience of Ph.D was during the teaching tenure and there is no independent research carried on by the Petitioner.

8. The Petitioner has not filed any affidavit in rejoinder.

9. We have heard Shri S. Mahambrey and Mrs. A. Agni, learned Counsel on behalf of the Petitioner and Goa University/Respondent No.1. The representative of the College has only lamented that the College is without a Principal for quite some time now.

10. Shri S. Mahambrey, learned Counsel appearing on behalf of the Petitioner submits that the Statutes nowhere say that the experience of 10 years has to be on a regular basis. Learned Counsel next submits that the Petitioner was selected after an interview by a duly constituted Selection Committee, and to such a selected candidate, the University ought to have granted its approval, and in support of this submission, learned Counsel has placed reliance on a decision of the Apex Court in the case of **Dr. Kumar Bar Das v. Utkal University and others**((1999) 1 SCC 453). Learned Counsel further submits that SA-19(vii)(b)(3) does not state that lecture basis teaching does not fall within the ambit of “total teaching experience” inasmuch as the UGC Notification also does not explicitly state that teaching on lecture basis cannot be considered in computing the “total teaching experience of 10 years”. Learned Counsel further submits that the Research experience garnered by the Petitioner after obtaining his Ph.D, in completing, presenting and publishing

research papers and projects has been excluded by the University and which shows that their action is illegal and arbitrary.

11. On the other hand, Mrs. Agni, learned Counsel on behalf of the Goa University, has made her submissions in the light of the reply filed on behalf of the University. Learned Counsel has submitted that the University has been interpreting the said provision in all cases in a manner set out in the affidavit-in-reply. It is further submitted that the Petitioner did not have 10 years teaching experience on the date of application i.e. 18-6-1999 even assuming that the teaching experience on lecture basis could otherwise be counted for the purpose of computing the total experience of the Petitioner. Mrs. Agni has also submitted that there is no averment in the petition that the Petitioner worked for 10 years and that the same period spent on teaching cannot be considered separately as period spent on research. Reference is made to Statute SA-19(xii) which deals with counting of past service for the appointment of a Professor and it is submitted that in terms of sub-clause (vi) of SA-19(xii) any appointment on ad hoc basis or in a leave vacancy of less than one year duration is not counted for the purpose of computing 5 years service. Learned Counsel has placed reliance on the decision of the Apex Court in **G. N. Nayak v. Goa University and others** ((2002) 2 SCC 712) wherein the Apex Court has stated as follows:-

“27. That a candidate can club together his qualifications of teaching and research to cover the 10 years' period as has been held in **Kumar Bar Das(Dr.) v. Utkal University**. The question still remains, would any kind of research at a University do? Strictly speaking and as a matter of legal interpretation, the phrase “research at the University/national level institution” should be read ejusdem generis and in the context of the alternate qualifications specified i.e. “teaching experience” and the last phrase “including experience of guiding research at doctoral level”. In other words, the research must be independent such that the researcher could guide others aspiring for Doctorate degrees and not the research where the researcher is striving for a Doctorate degree himself. The appellant's research prior to 17-9-1986 was pre-doctoral. Consequently and according to the letter of law, perhaps the appellant was not qualified to be considered as a candidate for a Professorship in 1996 since he had failed to meet the criteria by about four months”.

“28. However, the Court would not be justified in adopting a legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility, since it is for the University to decide what kind of research would be adequate to qualify for professorship. The University had intended, understood and consistently proceeded on the basis that the pre-doctoral research could be counted towards the 10 years' experience clause. So did Respondent No.5. When Respondent No.5 applied for the post

when it was advertised in 1994 he did not have 10 years' cumulative experience of teaching and post-doctoral research. Since he had obtained a Doctorate degree in November 1985, the University also considered his application and called him for an interview in September 1985, though according to a strict interpretation of the eligibility criteria Respondent No.5 was not qualified. Finally in **Dr. Kumar Bar Das v. Utkal University** this Court in construing similar eligibility criteria has held at page 458 that the research required could include pre-doctoral research experience”.

12. In our view, the stand taken by the University is reasonable and in accordance with the Statutes of the University. In fact the Petitioner has not controverted the stand taken by the University. If, according to the Petitioner Statute 19(vii)(b)(3) does not say that lecture basis experience cannot be added for the purpose of computing total experience of 10 years, it also does not say that it should be added. The University has understood and consistently proceeded on the basis that such experience ought to be excluded and in that the University's decision cannot be faulted.

13. The case of **Dr. Kumar Bar Das v. Utkal University and others**(supra) stood on its own facts. The eligibility requirement there was “about ten years of experience of teaching and/or research and experience of

guiding at doctoral level”. **Dr. Kumar Bar Das**(appellant therein) was found to have held teaching experience of 7 years, 7 months and 14 days, and research experience of 1 year, 5 months and 14 days, and in all, 9 years, 26 days and the Selection Committee gave him 4 marks out of 10 on that score, a decision which was approved by the Syndicate of the University but was upset by the Vice-Chancellor, and, in this context, the Apex Court observed that the Vice-Chancellor cannot normally interfere with the substantive assessment of merit of candidates made by an expert body unless mala fides or other collateral reasons are shown. The Apex Court referred to the case of **Neelima Misra v. Harinder Kaur Paintal**((1999) 2 SCC 746) with reference to the powers of the Chancellors in matters of appointment of Professors/Readers and held that it was purely an administrative function and not quasi judicial. Indeed, it was observed in **Neelima Misra v. Harinder Kaur Paintal**(supra) that:

“The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the statutes. He must not be guided by extraneous or irrelevant considerations. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, ... is liable to be quashed being violative of Article 14 of the Constitution of India”.

14. As per Statute SA-5(xix) the overall workload of a full time College teacher has got to be 40 clock hours per week, and, out of 40 clock hours, the teacher is expected to put in work of 30 clock hours per week on the college premises; of the 30 clock hours the classroom instruction work should be for 16 hours in case of lecturers/Senior lecturers/Lecturers(Selection Grade) and 14 hours in the case of Readers, and shall consist of 18 lectures each of 45 minutes duration and three or one tutorial(as the case may be) each of 45 minutes duration, per week. In the case of subjects where tutorials are not prescribed, the Principal shall assign extra classes to teachers in such subjects for coaching students who are weak in their subjects and/or intensive training of students. The remaining 14 hours on the premises shall be spent by a full time teacher on guidance, consultation by students, curricular and extra-curricular activities, administration and professional work, etc. The Principal is required to work out the staffing pattern of college teacher on the basis of the above norms.

15. It is not the case of the Petitioner that while he was teaching in different colleges from 1-6-1999 to December, 1999 on lecture basis, he had put in a workload of 40 clock hours. It appears that for first 1 ½ months of the said period the Petitioner worked for Sindhdurga, Education Society, Mumbai, and for the next 5 ½ months the Petitioner worked for Murgao Education Society at Goa and it is not the case of the Petitioner that during the

said period he had put in 40 clock hours of work per week. According to the Petitioner himself, he had put in a workload of about 21 lectures of 45 minutes duration which certainly does not work out even to half of the workload which was required of him as full time college teacher. The Petitioner's explanation is that although he did not put in 40 clock hours per week he was all the time available in the college premises during working hours, which explanation has not been accepted by the University, and in our opinion, rightly. Admittedly, and as stated on behalf of the University, the Petitioner as on the date of application also did not have qualifying service of 10 years of teaching/research experience in the Colleges or Universities, which was an essential eligibility criteria for the appointment to the post of the Principal(Readers' Grade). The research experience, which the Petitioner claims was not considered is also the experience, if at all, gained by the Petitioner during the time he was teaching and therefore could not be computed separately. Moreover, it is stated by the University that the Petitioner passed his M.Com only on 10-7-1999 and any experience to be counted could not be counted from 1-6-1999. These aspects were not at all considered by the Selection Committee but have been considered by the University at the time of declining its approval to the appointment of the Petitioner. It has also been stated on behalf of the University that they have given a uniform and consistent interpretation in all cases whilst considering the condition of experience in teaching, that teaching on lecture basis cannot

be taken into consideration while computing total experience of teaching of a candidate. As already stated it may be that the Statute itself does not provide that the teaching experience on lecture basis is to be excluded but neither it provides that it is to be included and the fact remains that the University has considered the said provision of Statute 19(vii) as excluding experience gained on lecture basis and that too which is not 40 clock hours per week.

16. We find that the stand taken by the University that total experience of 10 years has to be computed post qualification and on the basis of 40 clock hours per week is both reasonable, and in accordance with the Statutes, and, therefore calls for no interference of this Court in writ jurisdiction.

17. We, therefore, dismiss the petition. Rule discharged with no order as to costs.

NARESH H. PATIL, J.

N. A. BRITTO, J.

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