

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 791 OF 2011**

Dr. Silvia Noronha, major, r/o.
H.No.1513/9, Plot E-7, Rego Bagh, P.O.
Bambolim Complex 403 202.

..... Petitioner.

V/s.

1. Goa University, having its Office at
Taleigao Plateau 403 206
Goa represented by its Registrar.

2. State of Goa, represented by the
Chief Secretary, Secretariat, Porvorim,
Goa.

..... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Lobo and Mr. F.E. Noronha, Advocates for the petitioner.

Ms. A. A. Agni, Advocate for respondent No.1.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. Dangui, Addl. Govt. Advocate for respondent No.2.

**CORAM :- S.J. VAZIFDAR &
U.V. BAKRE, JJ.**

Reserved on : 10th October, 2012.

Pronounced on : 12th October, 2012.

ORAL JUDGMENT:- (Per S.J. VAZIFDAR, J.)

Rule. Rule is made returnable and heard forthwith.

1. Respondent No.2 is State of Goa. The petitioner has sought an order setting aside the report of the Selection Committee, not recommending the petitioner for promotion to the post of Professor. The petitioner has challenged resolutions dated 1st October, 2010 and 15th February, 2012 of the Executive Council confirmed on 4th April, 2012 and a letter dated 13th November, 2010, conveying the impugned result to the petitioner.

2. This is the second round of litigation. The petitioner had earlier filed Writ Petition No. 832/2009 which was heard and disposed of along with Writ Petition No.825/2009 filed by another candidate, by an order and judgment dated 19th April, 2010. Considering the order that we propose passing, we would refer to only a few facts as are also referred to in the said judgment.

3. The petitioner is a Reader in the Department of English.

4. (A) In the year 1998, the University Grants Commission (UGC) recommended the CAS for the University Teachers, in different

categories, including the Readers. The scheme was accepted by the State of Goa and the Goa University, for implementation with effect from 1.1.1996. Statute SA-19 was, accordingly, amended by the Goa University, approved by the State Government and assented to by the Chancellor.

(B) A notification dated 17.12.2002 was issued by the Registrar to all the concerned authorities, including all the Heads of University Teaching Departments, the Deans/Principals of affiliated colleges and the Directors of recognized institutions. The same notified the amendments to Statute SA-19 (xi) (3) relating to career advancement carried out by the Executive Council of the University and assented to by the Chancellor on 26.11.2002. It is this notification which falls for consideration. The entire notification is relevant for the purpose of this writ petition. It is, necessary, therefore, to set it out in extenso. It reads as under :

“ It is notified for the information of all concerned that the following amendment to Statute SA-19(xi)(3) relating to career advancement has been carried out by the Executive Council of the University and assented to by the Chancellor on 26th November, 2002.

SA-19(xi)(3) ■ that a minimum **8 years experience as a Reader** be an eligibility:

- . that the Professor already appointed under direct recruitment be not eligible.
- that self-appraisal report for the period including five years before the date of eligibility be submitted.
- that minimum of **five research publications** out of which two could be books, be submitted for evaluation/assessment before the interviews;
- . that the assessment of the research publication, including books, be done by three eminent experts in the subject which shall be different than those called for interview to be conducted later on:
- that all the recommendations be positive from the three experts. In case the recommendation of one out of the three is negative, the research publications be sent to the fourth expert for evaluation and assessment. In all, there has to be a minimum of three positive recommendations out of the total of four experts, in case the fourth expert has participated in the exercise due to one negative report out of the initially three experts involved in evaluation:
- that there be a separate column in the evaluation report of the expert saying whether the research publications and books are

recommended or not recommended;

- that the University be permitted to hold the interview for promotion under CAS only for those candidates who have cleared by obtaining minimum of three positive recommendations from the experts on their research publications/books:
- that there after the interview be conducted inviting three experts of the concerned subject making sure that these experts be different than those who had assessed and evaluated the research publications;
- that repeat process of promotions/ interview for the rejected candidates can be conducted only after a **minimum period of one** year from the date of promotion process/interview in which the candidate was rejected;
- that the promotion from Reader to Professor under CAS being a personal position and not against a sanctioned post, the teaching work-load of the Reader be carried forward with him/her and be undertaken by the promotee even in the capacity of the CAS Professor;”

5. The referees recommended the petitioner to be promoted to the status of Professor under the CAS. The petitioner, therefore, contended that she was entitled to be interviewed for promotion under the CAS. The interview was to be conducted by experts of the concerned subject. The petitioner was not invited to attend the interview, inter alia, on the ground that one of the publications was to be found in a book. The UGC contended that such a work could not be considered to be a research publications entitling to be evaluated under the notification. Thus, despite the referees recommending her for promotion, she was not invited for the interview. By the said order and judgment dated 19th April, 2010 to which one of us (S.J. Vazifdar, J.) was a party, it was held that the UGC, by a subsequent order, cannot alter the terms of the notification under the guise of a clarification. It was further held that the petitioner was entitled to be considered for promotion to the post of Professor in accordance with the Notification dated 17th December, 2002 and that the Goa University was directed to permit the petitioner to appear for the interview and to consider her case in accordance with the said notification. The impugned orders in that writ petition were, accordingly, quashed and set aside.

6. Pursuant thereto, the petitioner appeared before the Selection Committee. The Selection Committee, however, did not recommend her for promotion. It is this decision that is challenged in the present writ petition. The decision is challenged on several grounds, including on the ground that the Selection Committee was not constituted in accordance with law, inasmuch as it did not include a lady member. Various other allegations have also been raised against the representative of the UGC. It is alleged that the representative of the UGC is only an observer and was not entitled to participate as a member of the Selection Committee. This view finds support from the judgment of this Court in *Dr. Gorakh Nath Mishra vs. Goa University and another* (Writ Petition No.16/87). The question, of course, is whether the petitioner has established the facts in support of this contention. At this stage, it is not necessary to go into these questions for the reasons that we will now state.

7. Ms. Agni appearing on behalf of respondent No. 1 made a statement that if the petitioner applies afresh under the said notification for promotion to the post of Professor under the CAS, her case would be considered on the basis of earlier notification under

which she had applied. She expressly stated that any modification thereto subsequently would not operate for the petitioner's case. She further stated that in the event of the petitioner being selected, she would be granted the promotion with effect from 2004 i.e. the date when she made the application for promotion.

8. It is in view of these statements alone that we think it unnecessary to consider the writ petition on merits, at least at this stage. Considering the order that we intend passing, in view of the statements made on behalf of the respondents, it may well be unnecessary to decide this writ petition at all. The only point of difference is whether the petitioner ought to go through the first stage, namely having her work/publications evaluated by the referees/three experts for considering whether the petitioner ought to be invited for the interview by the Selection Committee. As we stated earlier, in the first round the petitioner had successfully completed this stage. She, therefore, does not wish to go through this part of the exercise again. We do not suggest that her reluctance to do so is not justified. However, in the present case, a decision on the issues raised in this writ petition may be entirely academic if the experts on the fresh

application consider her fit for being invited for the interview. In that event, the petitioner would be in the same position as she would be in the event of our allowing the writ petition. If the petitioner was to succeed in this writ petition, the impugned order of the Selection Committee would be set aside and the respondents would be directed to appoint a fresh Selection Committee to interview her and to consider her case. Thus, upon the fresh panel of experts at the first stage holding the petitioner suitable for being interviewed for the post, the petitioner's grievances in this writ petition would, in any event, stand redressed. The hearing of this writ petition, therefore, may well result in a waste of judicial time.

9. Mr. Lotlikar, learned Senior Counsel appearing for the petitioner submitted that the petitioner ought not to be made to go through the first stage once again as she had already successfully completed that stage as a result of the judgment of this Court. Ms. Agni, however, submitted that this is a procedure which must be followed. We agree. We appreciate that the petitioner's work having once been evaluated by the Committee of three experts as meeting the requirement, it would be rather unusual, if not curious, if the same

works are held to be ineligible by another Committee. We, however, see no reason to proceed on the basis that the fresh Committee will be arbitrary or vindictive merely because the petitioner has adopted proceedings in respect of her grievances in this Court.

10. Mr. Lotlikar Submitted that in the unlikely event of the petitioner not being recommended for any reason for promotion at the first stage on the ground that her publications do not comply with the requirements of the notification, it will prejudice the petitioner's case in this writ petition. The apprehension is absolutely unfounded. In that event, undoubtedly, this writ petition would stand revived and there would be no question of this Court reopening or even reappreciating the effect of the order and judgment dated 19th April, 2010. In other words, this Court would not consider whether the decision of the referees in the first round recommending the petitioner's promotion afresh was correct or not. That aspect stands concluded in the petitioner's case and only the issues raised in this petition would be decided.

11. We appreciate that the respondents are burdened with

work. Mrs. Agni stated that even processing the petitioner's case upto the first round would take six weeks as there are several other applications. However, the petitioner's case pertains to the year 2004 and it would be unfair to club her in the waiting list with others. We, therefore, request the respondents to complete the process in her case within eight weeks of the petitioner's filing a fresh application.

12. In the circumstances, the writ petition is disposed of by following order :

(I) The statements made by Ms. Agni that if the petitioner applies afresh for promotion to the post of Professor under the CAS, her application would be considered in accordance with and as per SA 19 as it stood in the year 2002 under which the petitioner was found eligible to appear for the interview before the Selection Committee and that if the petitioner is promoted pursuant to such an application, it would be with effect from 16th May, 2004, are accepted.

(II) The petitioner shall file a fresh application for promotion to the post of Professor under the CAS in accordance with the Rules and Regulations and the procedure prevalent in the year 2002, and the same shall be considered in accordance with SA 19. This application

will be without prejudice to the petitioner's rights and contentions in this writ petition.

(III) If the petitioner is not found eligible to appear for the interview before the Selection Committee pursuant to the fresh application for any reason whatsoever, this writ petition would stand revived forthwith, without further orders of this Court.

(IV) In the event of the petitioner being appointed to the post, her appointment shall be deemed to be with effect from 16th May, 2004 and she will be entitled to all the benefits accordingly.

(V) The respondents are requested to complete the entire process as expeditiously as possible, and preferably within eight weeks of the petitioner filing a fresh application.

S.J. VAZIFDAR, J.

U.V. BAKRE, J.

ssm.