

Serial No. 28
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 73 of 2023

Date of Decision: 01.08.2023

Dr. Dinesh Bhatia

Vs. The Vice Chancellor, North Eastern
Hill University & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Pandey, Adv.

For the Respondent(s) : Mr. S. Sen, SC NEHU.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The writ petitioner is before this Court seeking a mandamus for release of the contents of the sealed envelope containing the results of the interview of the petitioner for promotion to the post of Professor.

2. The grievance of the writ petitioner is centered around the fact that, though he had become eligible for the post of Professor since 2016, as per UGC norms, and had also submitted an application; on the failure of the respondent University to conduct interviews as mandated by the Career Advancement Scheme (CAS), he has been deprived of being considered for promotion at the relevant point of time. It appears that it was only in the year 2022 that, interviews were conducted on 08.02.2022 and 07.03.2022, by the Selection Committee, for consideration of promotion to the post of Professor, and the petitioner had appeared before the same. However, as the petitioner was facing trial before the Special CBI Court, in connection with two criminal cases, the result thereof, was kept under sealed cover as per “sealed cover procedure” under the guidelines and instructions contained in Paragraph – 2 of the Office Memorandum dated 14.09.1992, issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India (DoPT).

3. Mr. S. Pandey, learned counsel for the petitioner submits that the Prosecution Sanction was obtained and Charge Sheet filed only in February, 2020 and as such, for the earlier preceding period when the petitioner had not yet been charge sheeted, and was already eligible for promotion of Professor, the same should not be taken into consideration,

inasmuch as, had the DPC been conducted earlier or annually, as prescribed, there was every possibility of the petitioner already being promoted to the post of Professor. In this context, the counsel for the petitioner has referred to Office Memorandums dated 23.04.2015 and 27.10.2016, issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India (DoPT), where instructions have been given, with regard to adherence to a time bound manner for holding of DPCs. He submits that the non-holding of the DPCs had adversely affected the career prospects of the writ petitioner. In support of his arguments, learned counsel has placed reliance on the following cases.

(i) ***Union of India & Ors. vs. Anil Kumar Sarkar*** rendered in ***Civil Appeal No. 2537 of 2013.***

(ii) ***Judgment of Allahabad High Court dated 08.02.2023, passed in Writ-A No. 1789 of 2022 in the case of Ranbir Singh vs. State of U.P. & Ors.***

4. Mr. S. Sen, learned Standing counsel for the respondent University submits that on a basis of a complaint dated 23.11.2008, a case under Section 7 of the Prevention of Corruption Act was registered against the petitioner, and it was only thereafter that, the petitioner had submitted an application dated 02.09.2009, for promotion to the post of

Professor. He submits that while the same was being examined, the CBI had sought for Prosecution Sanction, which was accorded on 26.02.2020, and subsequently a charge sheet dated 28.02.2020, was filed before the Court of the Special Judge (CBI), Shillong. He further submits that, the respondent University without prejudice to the criminal case pending against the petitioner on 18.08.2020, forwarded his application for consideration. This application, he submits along with other cases was then forwarded by the Screening Committee, which then sent its recommendation to the respondent University. However, he submits, since the petitioner on the date of consideration/interview for promotion to the post of Professor under the CAS held on 07.03.2022, was facing trial, the respondent University as per the guidelines and instructions contained in Paragraph – 2 of the Office Memorandum dated 14.09.1992, issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India (DoPT), adopted the “Sealed Cover Procedure”. As such, he submits non-disclosure of the results to the petitioner cannot be termed unlawful.

5. Having heard the learned counsels for the parties, without alluding to other attendant facts, the only question that this Court is to address is as to whether, the procedure adopted by the respondent University is lawful and not arbitrary. In this regard, as the only ground

for adopting the “Sealed Cover Procedure” by the respondent University, is stated to be as per Paragraph – 2 of the Office Memorandum dated 14.09.1992, the same for the sake of convenience is reproduced herein below.

Cases of Government Servants to whom Sealed Cover Procedure will be applicable.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of Departmental Promotion Committee:-

- i) Government servants under suspension;***
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and***
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.***

Procedure to be followed by DPC in respect of Government servants under cloud.

2.1. The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including ‘Unfit for Promotion’, and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed ‘Findings regarding suitability for promotion to the grade/post of in respect of Shri.(name

of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.' The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover."

6. A bare perusal of the above quoted paragraph, clearly shows the situations under which the results or grading are to be kept in a sealed cover. Paragraph – 2(iii) in this context, is squarely applicable to the case of the petitioner, inasmuch as, he has been charged sheeted and a criminal trial is pending before the Court of Special Judge (CBI), Shillong, at the time he was being considered for promotion. This Office Memorandum having been adopted by the respondent University and thereby being applicable to the case of the petitioner, it cannot therefore be held that the action taken by the respondent University is irregular, arbitrary or unlawful.

7. The Supreme Court in the case of *Union of India vs. K. V. Jankiraman* reported in *AIR 1991 Supreme Court 2010*, in such matters has held that "Sealed Cover Procedure" is to be resorted to only after the

charge memo/sheet is issued, which is applicable in the instant case, as it is not a case that the same has been resorted to, when the case against the petitioner is at the stage of preliminary investigation. As such, no case has been made out for any interference by this Court. The judgment of the Supreme Court relied upon by the petitioner in the case of *Union of India & Ors. vs. Anil Kumar Sarkar* rendered in *Civil Appeal No. 2537 of 2013*, will have no application as the conditions laid down in Paragraph – 2 of the O.M. dated 14.09.1992, were not present at the time of consideration of promotion of the employee therein. Similarly, the other judgment of the Allahabad High Court relied upon by the petitioner, though having only persuasive value is also not applicable as in that case, the charge sheet and subsequent criminal proceedings were occasioned after the date of the DPC.

8. In view of the facts and circumstances as aforesaid, this writ petition is devoid of merit and is accordingly dismissed.

9. No order as to costs.

Judge

Meghalaya
01.08.2023
"D.Thabab-PS"