

GAHC030000812020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/4/2020

The Mizoram University r/b its Vice Chancellor and Anr.
Tanhri, Aizawl, Mizoram 2: The Executive Council
Mizoram University

VERSUS

Prof. Dr. Ganesh Chandra Jagetiia and Anr.
Mizoram University Campus, Tanhri, Aizawl 2: The University Grant
Commission

Advocate for the Petitioner : Mr. L.H. Lianhrima, Sr. Adv.

Advocate for the Respondent : Mr F Lalengliana for R1

Linked Case : I.A.(Civil)/17/2020

The Mizoram University r/b its Vice Chancellor and Anr
Tanhri
Aizawl
Mizoram

2: The Executive Council
Mizoram University
The Principal Executive body of the University r/b its Registrar
having its Office at Tanhri
Aizawl
VERSUS

Prof. Dr. Ganesh Chandra Jagetiia and Anr
Mizoram University Campus

Tanhiril
Aizawl

2:The University Grant Commission
through its Secretary
Bahadur Shah Zafar
Marg
New Delhi-110002

Advocate for the Petitioner : Mr Anil Rinliana Malhotra
Advocate for the Respondent : Mr F Lalengliana for R1

– BEFORE –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. L.H. Lianhrima, Senior Advocate assisted by Ms.
Ruth Lalruatfeli, Advocate.

For the respondent(s) : Mr. F. Lalengliana, Advocate for respondent No.1.

Date of Hearing : 05.09.2024.

Date of Judgment : 09.09.2024.

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

The instant writ appeal is filed by the appellant University being aggrieved with the judgment and order dated 18.10.2019 passed by the learned Single Judge in WP(C) No.131/2015, whereby the learned Single Judge, while allowing the writ petition filed on behalf of the writ petitioner/respondent No.1 (hereinafter to be referred as 'the private respondent'), directed the appellant

University to place the case of the private respondent before the Executive Committee for consideration/re-consideration for promoting him to Professor (Stage- VI)/Higher Academic Grade (HAG) from a date he became eligible to be promoted by counting the 5(five) years of service rendered by him as Professor of Kasturba Medical College, Manipal University and 5(five) years of service as Professor in Mizoram University provided he fulfills the other eligibility/qualifications required for being promoted.

The learned Single Judge further observed that the appellant University should also keep in mind the fact that the private respondent had, in any event, completed 10(ten) years of service as professor in Mizoram University prior to his retirement. It was further directed that the exercise for reconsidering the case of the private respondent for promotion to the Professorship (Stage-VI)/HAG pay scale should be completed by the appellant University within 3(three) months from the date of receipt of a certified copy of the order.

The learned Single Judge had set aside the Minutes of the 41st Executive Council Meeting of the Mizoram University held on 20.02.2015 and also set aside the consequential letter dated 03.03.2015 issued by the Mizoram University.

2. The brief facts of the case are that the private respondent, while serving as Professor in the Department of Radiobiology at Kasturba Medical College, Manipal University, was offered appointment to the post of Professor in the Department of Zoology in Mizoram University vide letter dated 02.01.2007 and was appointed to the said post of Professor in Mizoram University vide order dated 22.08.2007 in the pay-scale of Rs.16,400-450-20900-500-22,400/- plus usual allowance as admissible under Mizoram University, w.e.f. 19.02.2007.

However, the request of the private respondent for promotion/entitlement of benefits of the post of Professor (Stage-VI)/HAG pay-scale under Career Advancement Scheme (CAS) had been rejected by the Executive Committee of the Mizoram University in its 41st Executive Council Meeting dated 20.02.2015.

3. Being aggrieved with the same, the private respondent preferred writ petition, being WP(C) No.131/2015 while claiming 2(two) reliefs: *firstly*, to issue a direction to the appellant University to give arrear of pay as per pay fixation given in the order dated 29.09.2011, issued by the Registrar of the Mizoram University and *secondly*, to issue a direction to the appellant University to count past services of the private respondent herein rendered as Professor in Kasturba Medical College, Manipal University for promotion/ entitlement of the benefits of Professor (Stage- VI)/HAG pay-scale under Career Advancement Scheme.

4. It is noticed that during the pendency of the writ petition, the arrears of pay as per the pay-fixation given in the order dated 29.09.2011 had been paid to the private respondent and therefore, the only question, left to be decided by the learned Single Judge, was with regard to the claim of the private respondent for counting his past services as Professor in Kasturba Medical College, Manipal University for the purpose of promotion to Professor (Stage-VI)/HAG pay-scale under the Career Advancement Scheme (CAS).

5. After considering the rival stands, the learned Single Judge had disposed of the writ petition filed by the private respondent and set aside the Minutes of the 41st Executive Council Meeting of the appellant University dated 20.02.2015, whereby the private respondent was denied the benefit of counting of past services as Professor in Kasturba Medical College, Manipal University for the purpose of promotion to Professor (Stage –VI)/HAG pay-scale under the

Career Advancement Scheme (CAS).

6. As observed earlier, the learned Single Judge had directed the appellant University to consider the case of the private respondent for promoting him to Professor (Stage-VI)/HAG from a date he became eligible to be promoted by counting 5(five) years of service as Professor of Kasturba Medical College, Manipal University and 5(five) years of service as Professor in Mizoram University subject to fulfillment of other eligibility/qualifications required for being promoted.

7. Being aggrieved with the impugned judgment and order dated 18.10.2019 passed by the learned Single Judge, the appellants have assailed the same by filing the instant writ appeal mainly on the ground that the learned Single Judge has failed to take into consideration the fact that, as per Clause 10.1(b) of the University Grants Commission (Minimum Qualification for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (hereinafter to be referred as the UGC Regulations, 2010), for the purpose of direct recruitment and promotion under the CAS, past services of an Assistant Professor, Associate Professor or Professor is liable to be counted in the event when a person claiming the benefit of counting of past service is/was holding a post which was in an equivalent Grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer), Associate Professor (Reader) and Professor.

8. It is contended that, as per the clarifications issued by the Kasturba Medical College, Manipal University, where the private respondent was working as Professor, his grade was not in an equivalent grade or of the pre-revised scale of pay as the post of Professor prescribed under the UGC Regulations,

2010. It is further contended that the Registrar, Manipal University has clarified that the private respondent, while working as Professor in the Kasturba Medical College, Manipal University, was drawing pay in scale-of pay of Rs.19,500-25,700 up to the year 2005 and was drawing pay in the pay-scale of Rs.21,500-28,900 till he was relieved on resignation from Kasturba Medical College, Manipal University in February, 2007. It is contended that the scale of pay drawn by the private respondent while working as Professor in the Kasturba Medical College, Manipal University was higher than the scale of pay prescribed by the UGC for the post of Professor and therefore, as per the provision of Clause 10.1(b) of the UGC Regulations, 2010, his past services while working as Professor in the Kasturba Medical College, Manipal University, are not liable to be accepted/counted.

It is contended that for that reason the Executive Committee of the Mizoram University, in its 41st Meeting held on 20.02.2015, had rejected the claim of the private respondent for promoting him to the post of Professor (Stage-VI)/HAG, while counting the past services as Professor in the Kasturba Medical College, Manipal University as being not tenable. It is contended that the learned Single Judge has altogether ignored this aspect of the matter and has passed the impugned order illegally.

9. It is to be noticed that only the above ground is pressed while arguing the appeal, however, the findings arrived at by the learned Single Judge in the impugned judgment, has not been assailed as such.

10. Before considering the sole ground raised on behalf of the appellant University, it would be appropriate to take note of the decision of the 41st Executive Council Meeting of the University held on 20.02.2015, whereby the

claim of the private respondent for promoting him to the post of Professor/HAG, while counting his past services as Professor at Kasturba Medical College, Manipal University, has been rejected.

The relevant portion of the Resolution of the 41st Executive Council Meeting of the University of this effect is reproduced hereunder:

“The Council after detailed deliberation resolved that the past service of Prof. G.C. Jagetia cannot be taken into account for promotion to Professor HAG since his appointment of Professor at Manipal University was based on the provisions laid down in the Regulations of Manipal University which are not in conformity with the UGC Guidelines/Regulations.”

11. The learned Single Judge, while taking into consideration of the said Resolution of the Executive Council, has made the following observations:

“A perusal of the Meeting Minutes dated 20.02.2015 held in the 41st Executive Committee Meeting shows that the Executive Committee had come to a finding that the petitioner’s past service as Professor in Kasturba Medical College, Manipal could not be counter for the propose of promotion to Professor, HAG. No specifics have been given in the Executive Council Minutes to show whether the petitioner was not an eminent scholar or that he had not published works of high quality. It also does not say anything with regard to whether the petitioner fulfilled the requirement of “about 10 years” experience of teaching and/or research. The Executive Council Minutes has not stated anything specific with regard to whether the petitioner did/did not have any experience in guiding research at doctoral level. It has only come to a simple finding that the petitioner’s past service cannot be counted for the purpose of promotion to Professor, HAG as the appointment of the petitioner as Professor in KMC was based on the Regulations of the Manipal University, which were not in conformity with the UGC Regulations, without any specifics being provided for the same in the Meeting Minutes.”

12. Having gone through the aforesaid Resolution, we do not find any illegality in the observations made by the learned Single Judge in respect of the above Resolution of the Executive Council of the University because it simply says that the past services of the private respondent as Professor in the Manipal University cannot be taken into consideration because the Regulations of the Manipal University are not in conformity with the UGC Guidelines/Regulations without specifying any other things.

13. Be that as it may, the learned Single Judge has taken into consideration the UGC Regulations of 1982 which were in vogue at the time when the private respondent was appointed as Professor in Kasturba Medical College, Manipal University and has come to the conclusion that the appointment of the private respondent as Professor in the Manipal University cannot be said to be was not inconformity with the UGC Regulations. The appellants have not challenged the said finding of the learned Single Judge and rightly so, because we also do not find any illegality in the said conclusion arrived at by the learned Single Judge.

14. Now, considering the argument advanced on behalf of the appellant University to the effect that as the private respondent while working as Professor in the Kasturba Medical College, Manipal University was drawing higher scale of pay than the scale of pay prescribed by the UGC for the post of Professor, his claim for counting past services rendered as Professor in Manipal University for the purpose of promotion to Professor (Stage-VI)/HAG pay-scale under Career Advancement Scheme (CAS) is not tenable, we do not find any merit in the said submission. First of all, no such argument was advanced before the learned Single Judge at any point of time either in the pleadings on behalf of the appellant University or during the course of final arguments in the writ petition.

15. It is also to be noticed that the Executive Committee of the Mizoram University has also not rejected the claim of the private respondent of counting his past services as Professor in the Kasturba Medical College, Manipal University on the ground that the private respondent was drawing the scale of pay higher than the scale of pay prescribed by the UGC for the post of Professor.

16. It is well settled that when a statutory functionary makes an order based on certain grounds, the said order passed by it is required to be examined on the basis of the reasons so mentioned in the order. The statutory functionary cannot supply fresh reasons to justify its order.

A Constitutional Bench of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.***, reported in **(1978) 1 SCC 405** held as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J in Gordhandas Bhanji (Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16) :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

17. So when the Executive Committee has not rejected the claim of the private respondent for counting his past services as Professor in the Manipal University for granting him the benefit of Career Advancement Scheme (CAS), now, it is not open for the appellant University to take the above ground to justify the decision of the Executive Committee.

18. It is also apposite to quote the relevant portions of Clause 10 of UGC Regulations, 2010:-

“10.0 COUNTING OF PAST SERVICES FOR DIRECT RECRUITMENT AND PROMOTION UNDER CAS

10.1 Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, IHR, ICMR, DBT etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III-Table No.II provided that,

(a)

(b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer), Associate Professor (Reader) and Professor.”

19. The above provisions of UGC Regulations provides that, for the purpose of counting the past services for direct recruitment and promotion under CAS, the services rendered by an Assistant Professor (Lecturer), Associate Professor (Reader) and Professor in equivalent grade or of the pre-revised scale of pay are to be taken into consideration. This provision nowhere provides that if any Assistant Professor/Associate Professor or Professor drawing higher scale of pay

than the scale of pay prescribed by the UGC for the said posts is required to be non-suited. Certainly, if any incumbent drawing lesser scale of pay in comparison to the scale of pay prescribed by the UGC, he/she is not entitled for consideration but any person whose pay is more than what is prescribed by the UGC, cannot be non-suited.

20. In view of the observations made hereinabove, we are of the view that the challenge made by the appellant University to the impugned judgment and order dated 18.10.2019 passed by the learned Single Judge in WP(C) No.131/2015 is without any merit. Hence, this writ appeal is dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant