

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 997 of 2008****Reserved on 11/04/2019****Delivered on 18/06/2019**

Dr. (Smt.) Vibha Dadheech, W/o. Shri Dr. Puru Dadheech, Aged about 56 years, R/o. Abhinav Bhawan, 59/2, Civil Lines, Khairagarh, District Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. Indira Kala Sangeet Vishvidyalaya Khairagarh, Through Registrar, Khairagarh, District Rajnandgaon, Chhattisgarh
2. Proff. Dr. T. Unnikrishnan, Dean and Member of the Executive Council, Indira Kala Sangeet Vishvidyalaya, Khairagarh, District Rajnandgaon, Chhattisgarh
3. Joint Secretary, Secretariat to the Hon'ble Governor, Raipur, State of Chhattisgarh

----Respondents**AND****WPS No. 2512 of 2009**

Dr. (Smt.) Vibha Dadheech, W/o. Dr. Shri Puru Dadheech, Aged about 56 years, R/o. Abhinav Bhawan, 59/2, Civil Lines, Khairagarh, District Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

Indira Kala Sangeet Vishwavidyalaya Khairagarh, Through its Registrar, Khairagarh, District Rajnandgaon, Chhattisgarh

----Respondent

For Petitioner	:	Mr. Prashant Jaiswal, Sr. Advocate with Mr. Ashutosh Shukla, Advocate
For Respondents	:	Mr. U.N.S. Deo, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER**

1. These are two writ petitions filed by the same petitioner against the same set of respondents. The first writ petition i.e. WPS No. 997/2008 has been filed seeking for the following two main reliefs:

“7.2] That, the petitioner most humbly and respectfully prays to this Hon'ble Court to issue a writ of certiorari for quashing name of the

respondent Prof. Dr. T. Unnikrishnan from the list of the member of Tribunal constituted under Section 44(2) of Indira Kala Sangeet Vishvidyalaya Act, 1956 to hear the appeal of the petitioner.

7.3] That, the petitioner most humbly and respectfully prays to this Hon'ble Court to issue a writ of mandamus directing the respondent University to appoint any other competent member of the Tribunal constituted under Section 44(2) of Indira Kala Sangeet Vishvidyalaya Act, 1956 to hear the appeal of the petitioner.”

2. The second writ petition i.e. WPS No. 2512/2009 has been filed primarily challenging the order of termination from service dated 26.09.2003 (Annexure P/1) with a consequential relief. For convenience sake we have taken WPS No. 2512/2009 as the main case for adjudication.
3. The facts which are relevant for adjudication of the present dispute is that the respondents had published an advertisement in the year 1998 for filling up of the post of Professors, Readers and Lecturers. The petitioner had in pursuance to the advertisement submitted her Bio-data for the post of Professor as well as Reader. The petitioner was thereafter called upon for interview on 28.02.2000. The petitioner was later on issued with an order of appointment on 22.03.2000 on the post of Reader in Katthak Dance and on completion of the probation period, the services of the petitioner was also confirmed on the post of Reader on 03.11.2001. Subsequently, the Department issued a show cause notice to the petitioner alleging that she had not produced sufficient proof so far as her experience of having worked on the post of Lecturer, which was mandatorily required for appointment to the post of Reader and therefore the petitioner was called upon to explain as also to produce document, if any, to establish her credentials, so far as the requirement for the post of Reader is concerned. Though the petitioner

has given certain reply to the show cause notice, however since she failed to produce sufficient materials establishing her experience as Lecturer, the Executive Committee of the respondent/University in its meeting dated 25.09.2003 found the information submitted by the petitioner at the time of appointment to be incorrect. Accordingly, her appointment on the post of Reader was cancelled vide the impugned order dated 26.09.2003.

4. The petitioner initially had challenged for cancellation of termination before this Court vide WPS No. 3278/2003. The writ petition got disposed of on 31.08.2006 on the request of the petitioner permitting her to approach the respondent/University for constitution of a Tribunal as per Section 44(2) of the Indira Kala Sangeet Vishwavidyalaya Act, 1956, which was not opposed by the counsel for the respondents and the writ petition accordingly got disposed of. Subsequently, the Appellate Tribunal was constituted. While constituting the Committee, Dr. C.R. Kar, Principal and HOD, Pt. Ravishankar University, Raipur was appointed as an Empire nominated by the Chancellor. In addition, two members were also appointed, one Professor Dr. T. Unnikrishnan, Dean and Member Executive Council of the respondent/University nominated by the Executive Council and one Shri Vinay Pandey, Advocate, High Court Bilaspur was appointed as the other member nominated by the petitioner herself. Subsequently, the petitioner seems to be unhappy on the appointment of Professor Dr. T. Unnikrishnan as the member of the Tribunal and she had raised certain objections in this regard and later on when her grievance was not redressed, she had filed WPS No. 997/2008 seeking for a direction to the respondents to replace the said member by any other person. Though the said writ

petition was filed as early as on 13.02.2008, no interim protection as such was granted against the proceedings of the Tribunal and this Court vide its order dated 18.02.2008 in WPS No. 997/2008 had only ordered that any decision of the Tribunal shall be subject to the final decision of this case.

5. Pending the said writ petition before this Court, the Tribunal submitted its report on 03.04.2008 to the University and thereafter the report of the Tribunal was placed before the Executive Council meeting held on 25.04.2008. That based upon the findings of the Tribunal, the Executive Council affirmed the order of cancellation of appointment. The said decision of the Executive Council was intimated to the petitioner vide Annexure P/1 in June, 2008. This Annexure P/1 issued in June, 2008 intimating the decision of the Tribunal to the petitioner and the order dated 26.09.2003 cancellation of her appointment is under challenge in WPS No. 2512/2009.
6. Arguing in WPS No. 997/2008, the learned Senior counsel questioned the appointment of Professor Dr. T. Unnikrishnan as a member of the Appellate Tribunal. According to the petitioner, since Professor Dr. T. Unnikrishnan was also a member of the Selection Committee, in which the petitioner got selected as a Reader, later on he could not have sat as a member of the Domestic Appellate Tribunal, which was constituted to examine the credentials of the petitioner based upon which she had been granted appointment to the post of Reader. According to the learned Senior counsel, since Professor Dr. T. Unnikrishnan is a member of the Executive Committee also, there is a chance of bias and as such it would become violative of the basic principles of natural

justice applying the principles of “No Man can be a Judge in his own cause”.

7. Now that since the Appellate Tribunal proceeded with the proceedings and has submitted their report to the University and based on the Appellate Tribunal's report, the respondents also have affirmed the cancellation of appointment. The proceedings of the Appellate Tribunal as such has attained its finality. The subsequent decision of the University also being under challenge in the subsequent writ petition filed i.e. WPS No. 2512/2009, technically the earlier WPS No. 997/2008 has become infructuous. However on the merits, what primarily has to be seen is how Professor Dr. T. Unnikrishnan's appointment as a member of the Tribunal can be said to be arbitrary or violative of the principles of natural justice. The only ground of challenge is that of Professor Dr. T. Unnikrishnan being a member of the Selection Committee. That as a member of the Appellate Tribunal the Professor Dr. T. Unnikrishnan was not required to justify the appointment made rather the Tribunal was constituted to examine the cancellation of appointment of the petitioner and in the process, the Tribunal may examine the credentials of the petitioner. Thus, in the opinion of this Court, the presence of Professor Dr. T. Unnikrishnan in the Appellate Tribunal would have been to the advantage of the petitioner and not otherwise, as he was one of the members of the Selection Committee and would have justified the appointment. Therefore, this Court does not find any prejudice which would have been caused, so far as the interest of the petitioner is concerned by the appointment of Professor Dr. T. Unnikrishnan as a member of the Appellate Tribunal.

8. It was not the case where the job assigned to the Tribunal was to justify the appointment given to the petitioner, rather the Tribunal was constituted to examine whether the cancellation of appointment dated 26.09.2003 of the petitioner was proper, legal and justified or not. For both the aforesaid reasons, the WPS No. 997/2008 stands dismissed.
9. So far as the WPS No. 2512/2009 is concerned as is reflected from paragraph No.1 of this order, the writ petition has been primarily filed questioning the order dated 26.09.2003 i.e. the order canceling the appointment of the petitioner and subsequent decision of the departmental Appellate Tribunal affirming/upholding of the order of canceling of appointment vide order passed in June, 2008.
10. What has to be first understood at this juncture is that vide order dated 26.09.2003, the respondents have cancelled the appointment given to the petitioner. The cancellation was on account of the petitioner not fulfilling the requisite eligibility criteria as notified in the advertisement of 1998 under which the order of appointment was issued. Now for better understanding the dispute or the issue involved in the case, it would be relevant to refer to qualification prescribed for the post of Reader in Katthak Dance. The qualification prescribed under the advertisement was as under:-

“Reader: Good academic record with doctoral degree or equivalent published work, evidence of being actively engaged in (a) Research or (b) Innovation in teaching methods or (c) Production of teaching materials. About 5 years experience in teaching and/or research provided that at least three years of these years were as Lecturer or in an equivalent position. This condition may be relaxed in case of candidates with outstanding records of Teaching/Research.”

11. The dispute in the instant is not in respect of the qualification that the petitioner has, but the dispute is in respect of the experience that the petitioner possesses. As is reflected above the requirement was 5 years of experience in teaching and/or in research provided that atleast 3 years of these were as Lecturer or in an equivalent position. Further what is reflected from the advertisement is that the qualification and eligibility criteria may be relaxed in case of candidates with outstanding records of teaching/research. In the Bio-data that the petitioner had submitted for the said post, what reflected in the work experience column was that of being a Lecturer (Kathak Dance) Bhatkande Sangeet Mahavidyalaya Lucknow, Sangeet Bharti Lucknow and others. In addition, she had also mentioned certain other experiences that she had. It is this experience of a Lecturer at Bhatkhande Sangeet Mahavidyalaya, Lucknow, which is in dispute. The respondents had received an information that the petitioner only had an appointment order of the Bhatkhande Sangeet Mahavidyalaya, Lucknow, but had never joined the services there and as such she did not have the working experience as was required under the advertisement. A couple of show cause notices were issued and the petitioner finally vide Annexure P/13 dated 30.08.2003 submitted her reply and the relevant portion of which is reproduced herein under:

“2. यह सत्य है कि उक्त पद के लिए दिए गए मेरे आवेदन पत्र में कार्यानुभव में “प्रवक्ता कथक नृत्य भातखण्डे संगीत महाविद्यालय लखनऊ, संगीत भारती लखनऊ व अन्य” दर्शाया गया है, किन्तु आवेदन पत्र संबंधित कॉलम में स्थानाभाव, अंतिम तिथि की निकटताजन्य जल्दबाजी और सहज मानवीय भूलवश वहां यह स्पष्टतः लिखना रह गया था कि सैद्धान्तिक कारणों से मैंने उक्त पद का कार्यभार ग्रहण नहीं किया परन्तु साक्षात्कार के अवसर पर मैंने यह बात चयन समिति को स्पष्ट रूप से बता दी थी, तदपि उक्त भूल के लिए मुझे खेद है।”

12. The plain reading of the explanation given above on the show cause notice by the respondents clearly reflects that there is an admission on

the part of the petitioner that she only had an order of appointment in her favour from the Bhatkhande Sangeet Mahavidyalaya, Lucknow, and in fact she had never joined the services there and as such did not have an experience of Lecturer.

13. The aforesaid admission on the part of the petitioner and the fact as it stands from the Bio-data that the petitioner had submitted (Annexure P/3) she does not have a working experience of teaching or research of 5 years as is required. More particularly as a Lecturer for atleast 3 years or in an equivalent position. What is also to be taken note of is that the selection committee at the first instance does not seem to have been apprised of this fact and there also does not seem to have been any relaxation granted to the petitioner.
14. From all the above what is explicit is that the petitioner in fact did not fulfill the requisite eligibility criteria required for the post of Reader as per the advertisement under which the petitioner had applied. So far as the ground of cancellation of appointment was without conducting any sort of inquiry is concerned, what is reflected from the proceedings is that the Department had on more than couple of occasions issued notices to the petitioner to ascertain that she did have the requisite qualification and experience required for appointment to the post of Reader as per the advertisement. There is no dispute that the show cause notices were not issued to the petitioner. The show cause notice was also replied by the petitioner as is evident from the reply dated 30.08.2003. The relevant portion of which is already reproduced in the preceding paragraph. Thus, a fair opportunity of hearing has been provided to the petitioner and from the reply to the show cause notice

that she has made, it is also evident that she did not have the requisite experience.

15. Given the said facts, this Court does not find any strong case made out by the petitioner for holding the order dated 26.09.2003 and the order intimating the petitioner about the rejection of the appeal in June, 2008 to be in any manner bad in law, arbitrary or illegal. Even during the course of hearing also there has been no iota of evidence produced by which it could be established that the petitioner did have the requisite eligibility criteria, particularly establishing her experience either by way of pleading in the writ petition or by way of documentary proof, if any, in possession of the petitioner.

16. The Hon'ble Supreme Court in the case of **“Ashok Kumar Sonkar v. Union of India & others” 2007(4) SCC 52** in paragraphs No. 26 & 27 held as under:

“26. This bring us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillar of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well-settled that it cannot be put any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.”

17. Again in the case of **“Kendriya Vidyalaya Sangathan & Others v. Ajay Kumar Das & Others” 2002(4) SCC 503**, the Hon'ble Supreme

Court dealing on the issue of principles of natural justice had held that if an appointment order is a nullity, the question of observance of principles of natural justice would not arise.

18. In view of the aforesaid legal position as it stands and from the admitted factual matrix of the case, particularly, the requisite eligibility criteria prescribed under the advertisement and taking note of the reply to the show cause notice that the petitioner has given, this Court is of the opinion that the view taken by the respondents in canceling the appointment on the ground that the petitioner does not fulfill requisite eligibility criteria cannot be faulted with and the writ petition thus being devoid of merits deserves to be and is accordingly dismissed.
19. As a consequence, both the writ petitions i.e. WPS No. 997/2008 and WPS No. 2512/2009 stand dismissed.

Sd/-
(P. Sam Koshy)
Judge