

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No. 10132 of 2019

With

I.A. No. C.A.N.1 of 2020

DR. (MS.) TANUKA DAS

-VERSUS-

THE UNION OF INDIA AND OTHERS

For the petitioner : Mr. Pradip Kumar Roy, Adv.,
Ms. Suparna Shyam, Adv.

For the Visva-Bharati : Mr. Soumya Majumder, Adv.,
Mr. Victor Chatterjee, Adv.

For the U.G.C. : Mr. Anil Kr. Gupta, Adv.

Hearing concluded on : 30.06.2022

Judgment on : 12.09.2022

Kausik Chanda, J.:-

The writ petitioner in this writ petition has prayed for a direction upon Visva-Bharati, Santiniketan to promote her to the post of Professor in English following the Career Advancement Scheme (CAS, in short) under the U.G.C. Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (in short “U.G.C. Regulations, 2010”).

2. The petitioner became an Associate Professor in English on December 04, 2018, and she became eligible for promotion under CAS to the post of Professor (Stage-5) from Associate Professor (Stage-4) after the completion of three years of service.

3. In the month of September 2013, she submitted her application before the Chairman of Internal Quality Assurance Cell (IQAC, in short) of the Visva-Bharati for promotion under the said scheme.

4. It is the case of the petitioner that she appeared before the selection committee of the University on March 16, 2019, and produced all relevant documents. The petitioner answered all the questions asked by the subject experts in the committee, but the Vice-Chancellor and his nominee in the interview board conducted the interview in a manner that harassed and humiliated her. The petitioner has alleged that under the influence of the Vice-Chancellor, who was the Ex-officio Chairman of the selection

committee, the selection committee denied her promotion maliciously and arbitrarily.

5. The U.G.C. Regulations, 2010 have mandated Performance Based Appraisal System (PBAS, in short) for Career Advancement Scheme (CAS) promotion through Academic Performance Indicators (API, in short) under three board categories.

A. Contribution to Research:

Five Research Articles are examined by three external experts individually. Then these three sets of marks are added up and the final score is calculated from that total out of 50 marks.

B. Domain Knowledge and Teaching Practices:

The domain knowledge and the teaching practices of the applicant for Career Advancement Scheme Promotion are scrutinized and out of the points gained from the academic activities of different descriptions the API score is calculated by the IQAC, Visva-Bharati, out of 30 marks as per Academic Performance Indicators Guidelines set out in University Grant Commission Regulations 2010 and also in the Performance Based Appraisal System Proforma as evolved by Visva-Bharati. The minimum

requirement for qualifying in this assessment consists of 120 marks.

C. Interview Performance:

When the applicant qualifies in the above two stages then he/she is called to appear in an interview before a selection committee which is the third and last stage of the assessment. The score allotted to the Selection Committee is 20 marks for the interview.

6. The applicant should fulfill the “minimum eligibility period” (for getting a promotion to “Professor”, it is 3 years as Associate Professor).

7. The applicant should do “self-appraisal” to satisfy themselves of eligibility and then only should submit the application.

8. In the final assessment, the applicant should (a) fulfill minimum API scores and obtain (b) 50% in expert assessment. The subject experts for each of these assessments are chosen in a confidential process and they do their assessments confidentially and independent of each other.

9. It is not in dispute that the following marks were obtained by the petitioner in those three stages of assessment.

1. Contribution to Research: (50 marks)

Three external experts awarded average marks of 28 out of 50.

2. Domain Knowledge and Teaching Practices: (30 marks)

The petitioner scored 140 marks whereas the minimum requirement was 120 marks. Therefore, the petitioner has scored 30 out of 30 marks.

3. Interview Performance : (20 marks)

The petitioner was given 7 marks by the selection committee.

10. As per the aforesaid particulars, the petitioner would have scored $28+30+7=65$ out of 100 marks against the minimum requirements of 50 marks.

11. However, the selection committee, which consisted of seven members, reduced the marks under the heading “Contribution to Research” and “Assessment of Domain Knowledge and Teaching Practices” in final selection from 28 to 18 and 30 to 20 respectively and awarded 7 marks for “Interview Performance.” Thus, the total marks awarded to the petitioner were 45 out of 100 as per the following details:

1. Contribution to Research =18 out of 50
 2. Assessment of Domain Knowledge and Teaching Practices =20 out of 30
 3. Interview Performance = 7 out of 20
- Total =45 out of 100

12. For the sake of clarity the score sheet of the selection committee dated March 16, 2019, is reproduced:

Sl. No.	Nature of the candidate and Department	50%- Contribution to Research	30%- Assessment of domain Knowledge and teaching practices	20%- Interview performance	Marks obtained out of 100 (hundred)
1.	Dr. Tanuka Das, Department of English, Bhasha-Bhavana, Visva-Bharati	18	20	7	45

1. Sd/-(illegible) 2. Sd/-(illegible)

3. Sd/-(illegible) 4. Sd/-(illegible)

5. Sd/-(illegible) 6. Sd/-(illegible)

7. Sd/-(illegible)

13. The petitioner, therefore, fell 5 marks short of the required 50 marks to be qualified as a Professor in the final selection.

14. Having regard to the aforesaid, I need not advert to the justification of the selection committee in scaling down the marks under the heading “Domain Knowledge and Teaching Practices” and awarding the marks under the heading “Interview Performance.” I assume that the marks awarded under the said headings by the selection committee are proper and justified. But if the selection committee had awarded the same marks as awarded by the expert committee under the heading “Contribution to Research”, she would have scored the required marks [20 (*Domain*

Knowledge and Teaching Practices) +28 (*Contribution to Research*) +7 (*Interview Performance*)” = total 55 marks] for the promotion. Therefore, outcome of this writ petition depends on the question as to whether the selection committee was justified in reducing the marks of the petitioner from 28 to 18 under the heading “Contribution to Research.”

15. Appearing for the petitioner, Mr. Pradip Kumar Roy has argued that the notification of the University inviting application for CAS promotion dated January 7, 2013, and July 23, 2013, specifically provided that evaluation of the publication by the experts shall be factored into the weightage score while finalising the outcome of selection. Rule 6.0.7 of the U.G.C. Regulations, 2010 also provides for the same. The selection committee has not factored in the marks allotted by the expert committee and thereby acted in violation of the U.G.C. Regulations, 2010 with the oblique motive to ensure that the petitioner was not promoted under the CAS.

16. It has been further argued that the IQAC is a prestigious and crucially important committee with the Upacharya at its helm and it was IQAC which selected the three experts for assessing the five publications of the petitioner.

17. It has been further argued that if the selection committee does not consider the marks given by the subject experts, the same may give rise to arbitrariness, nepotism, and favouritism.

18. It has been argued that the expert assessment is not a single step rather it is a system. The total weightage points in the expert assessment are 100. This is a point base mechanism to make the selection bereft of any personal bias and illogical denial of promotion to deserving candidates. The selection committee headed by the Vice-Chancellor has put imaginary marks on the score sheet deliberately to disqualify the petitioner to be promoted as Professor without taking into consideration the assessment made by the Expert Committee and Internal Quality Assurance Selection Committee.

19. Refuting the submissions advanced on behalf of the petitioner, Mr. Soumya Majumder, learned advocate for the Visva-Bharati, submits that the outside experts, who had marked the petitioner on the assessment of publication, were not members of the selection committee. The factors to be considered by the selection committee are within the domain of the selection committee. Taking away the assessment on publication and giving it the stamp of finality on the basis of evaluation made by the persons who are not members of the selection committee will lead to a situation where the selection committee loses its role and right to evaluate one factor of assessment of a candidate.

20. It has been further suggested that the petitioner has not made a case when a mala fide and vindictiveness against the constituted members

of the selection committee. None of the selection committee members has been impleaded in its personal capacity.

21. Mr. Majumder further argued that promotion is not a matter of right and every selection process for promotion has some elements of subjectivity. By placing reliance upon a judgment reported at **(2000) 8 SCC 395 (*Badrinath v. Government of Tamil Nadu*)**, Mr. Majumder submits that none of the grounds as indicated in the said judgment exists in the present case that calls for interference.

22. It has further been submitted by Mr. Majumder that even if the promotional exercises are found to be wrongful the Court should remand the matter to the selection committee since the Court does not assume the role of expert.

23. I am of the opinion that the impugned selection process cannot be sustained and the petitioner should have been promoted to the post of Professor from the post of Associate Professor.

24. The score sheet of the selection committee has been quoted above. The said score sheet makes it clear that the members of the selection committee in the interview did not award marks individually. All the members awarded consolidated marks. The Supreme Court in the judgment reported at **(2015) 11 SCC 493 (*Pradeep Kumar Rai v. Dinesh Kumar Pandey*)** after noticing the judgment reported at **(1981) 4 SCC 159 (*Lila Dhar v. State of Rajasthan*)** held as follows:

“**19.** Now, so far as the question of awarding consolidated marks by all the panellists in the interview is concerned, we are in agreement with the finding of the learned Single Judge. The purpose of constituting multi-member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panellist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though not conclusive, whether each panellist applied his/her own mind independently. ...”

25. I am, however, not inclined to interfere with the selection process on the sole ground of awarding consolidated marks by the members of the selection committee.

26. The particulars of marking by the expert committee under the heading “Contribution to Research” are as follows:

a) Professor of English, West Bengal State University (Retd.)	(8+7+6+6+6) = 33 out of 50
b) Professor, Department of English, Kalyani University.	(4.5 + 04 + 3.5+04+04)= 20 out of 50
c) Professor, Department of English, Calcutta University (Retd.)	62% i.e. 31 out of 50
Total =84 out of 150 <u>i.e. average 28 out of 50</u>	

While Professor of English, West Bengal State University (Retd.) and Professor, Department of English, Kalyani University, awarded separate marks against each of the publications and provided reason in support of the same, Professor, Department of English, Calcutta University (Retd.) did not assign separate markings against the publications or give any reason for his marks.

27. It is also necessary to quote regulation 6.0.7. of the U.G.C. Regulations, 2010, which provides as follows:

“6.0.7. The process of selection of Professor shall involve inviting the bio-data with duly filled Performance Based Appraisal System (PBAS) proforma developed by the respective universities based on the API criteria based PBAS set out in this Regulation and reprints of five major publications of the candidates.

Provided that such publications submitted by the candidate shall have been published subsequent to the period from which the teacher was placed in the Assistant Professor stage-II.

Provided further that such publications shall be provided to the subject experts for assessment before the interview and the evaluation of the publications by the experts shall be factored into the weightage scores while finalizing the outcome of selection.”

28. There cannot be any doubt that a selection committee cannot violate the said U.G.C. Regulations, 2010, and is bound to factor the marks awarded by the expert committee in the final selection.

29. Mr. Majumder may be right in contending that the selection committee was not bound by the assessment made by the external expert committee but the same does not necessarily mean the selection committee, in violation of regulation 6.0.7. of U.G.C. Regulations, 2010, could altogether ignore the evaluation of the expert committee with regard to the publication made by the petitioner

30. In my view, if the selection committee differs with the expert committee on any ground, the reason for the same must be provided. The reasoning of the experts in support of their marking was before the selection committee. Though forceful argument was advanced on the authority of the selection committee to differ with the expert committee, the justification for the same could not at all be demonstrated. If the selection committee chooses to differ, the burden lies heavily upon it to demonstrate the justified reason for such difference.

31. In the present case, the affidavit of the University and the documents obtained by the petitioner in response to her application under the Right to Information Act, 2005, related to the selection in question do not disclose any reason whatsoever as to why the selection committee drastically reduced the average of marks from 28 out of 50 to 18 out of 50. It is anybody's guess how the selection committee awarded even lower than the lowest marks amongst three members of the expert committee. Nothing has been demonstrated to show the assessment of the three-member expert

committee was at all factored in the final assessment in terms of regulation 6.0.7. of U.G.C. Regulations, 2010.

32. In view of the discussion, as above, the impugned selection proceeding is set aside. I am not inclined to remand back the matter to the selection committee once again. The petitioner retired from service long ago. It is wholly unjustified to direct the petitioner again to face the ordeal of the interview at this stage.

33. The writ petition is accordingly allowed. The University will recalculate the salary, pension, and other retiral dues of the petitioner treating her to be promoted as Professor on the basis of the interview held on March 16, 2019, and release the same accordingly together with the arrears within two months from the date of communication of this order.

34. Accordingly, W.P.A. No.10132 of 2019 is allowed and the connected application being I.A. No. C.A.N. 1 of 2020 is disposed of.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)