

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9768 of 2021

<i>Laxminandan Satpathy</i>		<i>Petitioner</i>
		<i>Mr. S.K. Das Adv.</i>
		<i>on behalf of</i>
		<i>Mr. D.P. Dhal, Sr. Adv.</i>
		<i>-versus-</i>
<i>State of Orissa and Ors.</i>		<i>Opposite Party</i>
		<i>Mr. D. Mund, AGA</i>

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

12.

ORDER

27.10.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the illegal and arbitrary appointment of Opposite Parties No. 7 & 8 as Guest Faculties in the Department of Zoology in Dhenkanal Autonomous College, Dhenkanal on the ground that the said appointment is in violation of the guidelines dated 07.01.2021 issued by the Opposite Party No.1.
3. Shorn of unnecessary details, the substratum of matter presented before this Court remains that the Petitioner applied for enrolment as a guest faculty in the department of Zoology in Dhenkanal Autonomous

College for the academic session 2015-16. The interview board after due consideration selected the Petitioner as Guest Faculty vide letter no. 1387 dated 25.07.2015. The Petitioner performed his duties as Guest Faculty from 2015-2020.

4. Owing to shortage of regular faculties in the department of Zoology, an interview was conducted in the year 2019 by a 3-member Board comprising Opposite Parties No. 4 to 6. The Opposite Party No. 4 & 5 are the regular faculties in the Department of Botany in Dhenkanal Autonomous College whereas Opposite Party No. 6 is a regular faculty of Zoology in a Higher Secondary School. Subsequently, a merit list was prepared by the interview board and the name of the Petitioner can be found at Sl No. 2 in the said list. However, the case of the Petitioner was not considered for appointment and Opposite Party No. 7 & 8 were appointed to the post of Guest Faculties in the Department of Zoology even though they were placed at Sl. No. 6 & 7 in the said merit list.
5. It is submitted by Learned Counsel for the Petitioner that even though the Petitioner is highly qualified and experienced, he has been ignored for appointment to the post of Guest Faculty whereas the Opposite Parties No.

7 & 8 possess qualification up to M.Sc. level and they have been selected to the said post ahead of the Petitioner. Hence, the appointment of the Opposite Parties No. 7 & 8 is completely arbitrary, illegal and in contravention to Govt. Notification dated 07.01.2021.

6. Furthermore, it is contended by Learned Counsel for the Petitioner that the Opposite Parties No. 4 to 6 were not adequately competent to test the eligibility of the Petitioner for appointment to the post of Guest Faculty in the Department of Zoology. The Opposite Party No. 4 & 5 being faculties in the Department of Botany, had proficiency in domain of knowledge that was different to that of the Petitioner and Opposite Party No. 6 was a faculty in a Higher Secondary School and, had experience only to the +2 level.
7. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that the Writ Petition has been rendered infructuous by lapse of time as in the meantime, interview for the year 2021-2022 and for the year 2022-2023 has already been conducted for the post of guest faculties in different disciplines including Zoology and the Petitioner didn't participate in the said interviews.

8. It is further submitted by Learned Counsel for the Opposite Parties that the then Principal of Dhenkanal Autonomous College issued bonafide experience certificates in favour of the Petitioner on his request for applying elsewhere and considering his studentship in the college. However, the case of the Petitioner was not considered for engagement as Guest Faculty by virtue of decision rendered by the Committee consisting of 15 members who are Heads of different departments.
9. There are three questions that arise for consideration in the present case:
- i. Whether the Petitioner has vested right to seek the writ of mandamus for appointment to the post of Guest Faculty;
 - ii. Whether the Opposite Parties have acted in an illegal and arbitrary manner in giving appointment to Opposite Party No. 7 & 8 who were ranked below the Petitioner in the merit list prepared by the interview board;
 - iii. Whether the constitution of interview board was done in accordance to Govt. guidelines and the members were competent to ascertain the eligibility of the Petitioner for appointment to the post of guest faculty?

10. With regard to the first question, it must be remembered that the petition is for a mandamus. The Jharkhand High Court has pointed out in *Dr Rai Shivendra Bahadur v. Governing Body of the Nalanda College*¹ that mandamus may be issued to compel an authority to do something, however, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. In the present case, the Opposite Parties have no legal duty to appoint the Petitioner to the post of Guest Faculty.

11. The Supreme Court in the case of *All India SC & ST Employees' Assn. v. A. Arthur Jeen*² observed:

"Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court in Shankarsan Dash v. Union of India."

12. In the case at hand, the appointment of Guest Faculties for various departments was purely in the nature of an executive decision for larger interest of the students as a stop gap arrangement. The candidates were also fully

¹ 1962 AIR 1210

² (2001) 6 SCC 380

aware as to the nature of appointment which stipulated to be purely on ad hoc basis without any accrual of any vested rights, whatsoever.

13. In the case of *Hemant Kumar Pandey v. State of Madhya Pradesh*³, main issue that arose before the High Court was whether an appointment for the position of a guest faculty can be claimed as a vested right. The Court observed:

"4. According to the petitioner, Principal of the School is not permitting him to join and work as a Teacher as Guest Faculty. He submitted a representation to the Collector, Indore on 24.08.2018 (Annexure P/3).

5. From the contents of that representation, it appears that the petitioner was given joining, but some untoward events took place between Teachers and the petitioner was part of that; hence he was not permitted to perform the duties as Guest Faculty.

6. Even otherwise, an aspirant has not vested right to seek a writ from this Court for appointment to the said post. The Apex Court in a number of cases has held that despite selection, a candidate cannot seek writ of mandamus for appointment; as appointment is not a vested right."

14. In the case of *Secretary, State of Karnataka v. Umadevi*⁴, the Supreme Court observed:

³ (2018) SCC MP 811

⁴ Appeal (civil) 3595-3612 of 1999

“Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be ‘litigious employment’. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.”

15. Insofar as the second question is concerned, this court is of the view that the appointment of Guest Faculties, in this case, is based on the policy of the institution and the Courts cannot interfere in such matters. It is the prerogative of the institution to select the right candidates who are best suited to dispense duties attached to the said post. The Petitioner's publications and engagement with academia, his academic inputs and research, and whether it qualifies him as an “outstanding faculty in the Department of Zoology”, is a matter properly reserved for the Interview Board's decision-making authority, which the Court cannot enter. Indeed, this breadth of authority granted to the Interview Board is particularly apt given that it sits as an expert body to consider the suitability of the academic

qualifications of the candidates, which this Court should not and, as a matter of propriety, cannot review on merits.

16. Moreover, the resolution dated 11.01.2021 stated that the Petitioner's engagement as Guest Faculty was terminated on the grounds of past performance, commitment, attitude and style of functioning and it was unanimously resolved not to allow him to continue in the said post on administrative grounds. The adverse inferences that have been made against the Petitioner vide resolution dated 11.01.2021 is borne out of Petitioner's professional conduct in the institution and therefore, this Court must be careful before substituting its own views.

17. In its jurisdiction under Article 226, the Court must not become the "primary decision maker" but rather, remain deferential in its assessment. In *Rajesh Awasthi v. Nand Lal Jaiswal*⁵ it was reiterated that the Court is concerned only with eligibility and legality of appointments to public offices, not suitability of individual candidates, in proceedings under Article 226 of the Constitution of India.

⁵ (2013) 1 SCC 501

18. In the present case, the Interview Board constituted vide notification dated 07.01.2021, was properly seized of the matter, and tasked to fill the position of Guest Faculties in the Department of Zoology. There is no material on record, to indicate that the Interview Board did not apply its mind to the facts present before it, or that any extraneous or irrelevant considerations played a part in the decision-making process, such that the interference of this Court is warranted under Article 226.

19. The Petitioner's candidature for engagement as Guest Faculty was rejected on serious administrative grounds and appointment orders in favour of Opposite Party No. 7 & 8 was issued after refusal by other rank holders in the merit list. Therefore, it cannot be said that there was malafide intention on the part of the Opposite Parties in not allowing the Petitioner to be engaged as a Guest Faculty.

20. In the case of *National Institute of Mental Health & Neuro Sciences vs. Dr. K. Kalyana Raman & Ors*⁶, the Supreme Court held that the selection committee is not under obligation to record reasons for its decision and there is no role to this effect. The Court observed:

⁶ (1992) Supp (2) SCC 481

“In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in Union of India v. Mohan Lal Capoor⁷. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in Capoor case was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulated for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural

⁷ 1974 SCR (1) 797

justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R. S. Dass v. Union of India⁸ in which Capoor case was also distinguished."

21. The third and final point of consideration is regarding the validity of the constitution of the Interview Board/ Selection Committee. The relevant portion concerning "Selection Procedure" vide Proceedings dated 27.03.2019 and Guidelines dated 12.06.2019 is extracted hereinunder for convenience:

"Selection of guest/ visiting faculties shall be made by a committee. The composition of such committee for each subject shall be as follows:

- 1) *Principal of the college shall be the Chairman of the committee*
- 2) *Head of the Department*
- 3) *One Senior faculty from other department/ subject nominated by the Principal*
- 4) *One subject expert from the same college (if there is a member at all)*

Colleges where there is no faculty member in the concerned subject, persons in order of the following preferences may be invited.

- i. *Faculty of nearby Govt. College*
- ii. *Retired Faculty of Govt. College*
- iii. *Faculty of nearby Non- Govt. Aided College*
- iv. *Retired Faculty of Non-Govt Aided College"*

⁸ 1987 SCR (1) 527

22. In the instant case, a 3-member Board comprising of Opposite Parties No. 4 to 6 was constituted and it was headed by the Principal. The constitution of the committee is in consonance with the guidelines prescribed by the State and the same can be affirmed by analysing the composition of the Interview Board/Selection Committee.

23. Insofar as the legality of the recommendation of the Interview Board is concerned, the Supreme Court in the case of *University of Mysore v. C.D. Govinda Rao*⁹ was dealing with selection of candidates by a Board of Experts appointed by the University for the Post of Reader, an academic post. Negating the challenge to the recommendations of the Board, the Supreme Court held as under: -

“Boards of Appointments are nominated by the universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face

⁹ AIR 1965 SC 491

than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the

criticism made by the High Court against the Board and its deliberations is not justified."

24. It is a settled law that the scope of judicial review of Courts and/or Tribunals in matters of selection is extremely limited. Courts have repeatedly affirmed that recommendations of Selection Committees cannot be challenged except on grounds of malafides or violations of Statutory Rules. Court cannot sit as an Appellate Authority to examine the recommendations or findings of a Selection Committee. The Supreme Court has observed in several judgements that the discretion to select is that of a Selection Committee only and it is not the business of the Court to examine its recommendations for evaluating and substituting its opinion for that of the Committee. Selection Committees are carefully constituted and are manned by experts in the field and their assessments have to be invariably respected and trusted unless they are actuated and bristle with malice or arbitrariness.

25. Further, it has been contended by the Petitioner that he was not given an opportunity to defend himself against the adverse administrative inferences. The law on this point is well established that rules of natural justice and their application depends upon the setting and the background of statutory provision, nature of the right

which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations.

26. In *Union of India & Anr., v. Tulsiram Patel*¹⁰, a Constitution Bench of Supreme Court considered the scope and extent of applicability of principles of natural justice to administrative actions. The Court summarised the position of law on this point and observed as follows:

"So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands."

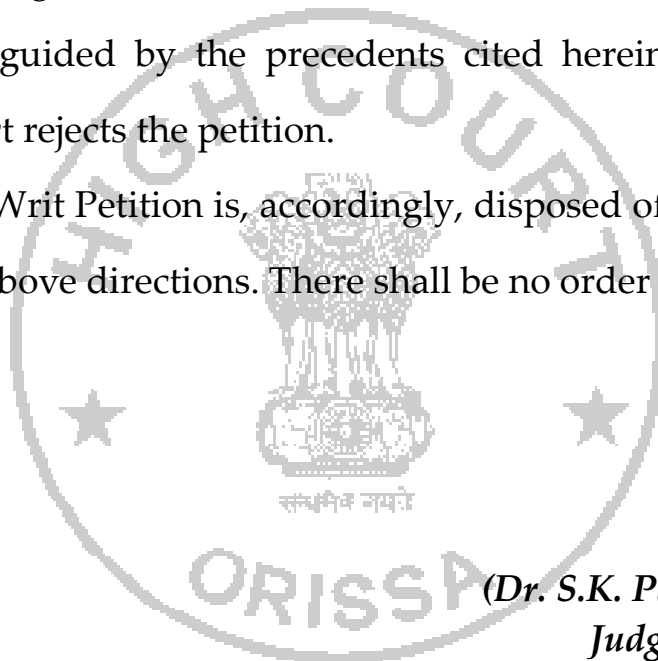
27. From the conspectus of factual matrix, this Court is of the opinion that appointment of the individual in this case is based on the policy of the institution and the

¹⁰ [1985] 3 SCC 398

Courts cannot interfere in such matters. Furthermore, the Writ Petition has been rendered infructuous by lapse of time as in the meantime, interview for the year 2021-2022 and for the year 2022-2023 has already been conducted for the post of guest faculties in different disciplines including Zoology and the Petitioner didn't participate in the said interviews.

28. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court rejects the petition.

29. The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.



(Dr. S.K. Panigrahi)
Judge

B.Jhankar