

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. Nos. 209 And 202 of 2019

Manoranjan Bisoyee ***Appellant***
(In W.A. No.209 of 2019)

Mr. J. Biswal, Advocate

-versus-

Vice Chancellor, Berhampur University ***Respondents***
and others

Mr. Satyaranjan Pati, Advocate for Respondent Nos.1 & 2

Mr. Ranjan Kumar Rout, Advocate for Respondent No.4

Manoranjan Bisoi ***Appellant***
(In W.A. No.202 of 2019)

Mr. J. Biswal, Advocate

-versus-

Vice Chancellor, Berhampur University ***Respondents***
and others

Mr. Satyaranjan Pati, Advocate for Respondent Nos.1 to 5

Mr. Abhisek Mohanty, Advocate

On behalf of Mr. B. P. Das, Advocate for Respondent No.6

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
14.12.2022

Order No.

06. 1. The challenge in both these writ appeals is to the common judgment dated 19th March, 2019 passed by the learned Single Judge disposing of two writ petitions, i.e., W.P.(C) No.848 of 2016 filed by one Dr. Ashok Kumar Panda (Respondent No.6 in W.A. No.202 of 2019) and W.P.(C) No.4008 of 2016 filed by one Dr.

Bibhuti Bhusan Acharya (Respondent No.4 in W.A. No.209 of 2019).

2. By the impugned judgment, the learned Single Judge has set aside the appointment of the present Appellant as a Lecturer in Odia in the Berhampur University pursuant to an advertisement issued under a notification dated 22nd April, 2015.

3. The learned Single Judge has in the impugned judgment, come to the conclusion that as far as Dr. Ashok Kumar Panda is concerned, although he did not possess the NET qualification, he had, in terms of the amended UGC (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions affiliated to it) Regulations, 2009 ('UGC Regulations, 2009') possessed a Ph.D. degree and, therefore, the exclusion of his name from the list of 44 eligible candidates was unsustainable in law.

4. As far as Dr. Bibhuti Bhusan Acharya is concerned, the finding of the learned Single Judge in his petition challenging the Appellant's appointment, was that although the Selection Committee had recommended his case for appointment as a Lecturer under the Unreserved (UR) Category, the Syndicate of the University appointed the present Appellant. It was held by the learned Single Judge that if the Syndicate was going to differ from the recommendation made by the Committee then the matter ought to have been referred to the Chancellor of the University. Further, although no minimum qualifying mark for the viva-voce test had been fixed, the Syndicate appears to have passed a resolution

prescribing such minimum qualifying marks in the viva-voce. This prescription of minimum qualifying mark was after the selection process had commenced and, particularly, without communicating the above criteria to the candidates.

5. The second ground on which the present Appellant was held disqualified for being appointed was that the Ph.D. guide of the Appellant, one Dr. D.P. Pattnaik, was a member of the Selection Committee which recommended the candidature of the Appellant. It appeared that Dr. Pattnaik did not dissociate himself from the Committee although he did not sign the proceedings.

6. For all of the above reasons, the selection of the present Appellant as a Lecturer was held to be unsustainable in law. As consequential directions, the learned Single Judge remitted the matter to the University to prepare a fresh list of the eligible candidates pursuant to the aforementioned advertisement by including the name of Dr. Ashok Kumar Panda. Thereafter, a fresh selection was to be conducted by a Selection Committee to be constituted by the Syndicate and from out of the eligible candidates, a fresh merit list had to be prepared and placed before the Syndicate for its approval. The selection process was to be confined to the list of eligible candidates prepared and published by the authorities on 9th January, 2016 including the name of Dr. Ashok Kumar Panda.

7. In the present writ appeals, an interim order was passed by this Court on 24th July, 2019 while directing notice to issue.

8. This Court has heard the submissions of Mr. J. Biswal, learned counsel appearing for the Appellant in both these appeals, Mr. Ranjan Kumar Rout, learned counsel appearing for Respondent No.4 (in W.A. No.209 of 2019), Mr. Abhisek Mohanty, learned counsel appearing for Respondent No.6 (in W.A. No.202 of 2019) and Mr. Satya Ranjan Pati, learned counsel appearing for the Berhampur University.

9. At the outset, it must be mentioned that the University itself had filed two writ appeals being W.A. Nos.179 and 180 of 2019 which, however, were dismissed for non-prosecution by this Court on 5th September, 2019.

10. Mr. Pati, learned counsel appearing for the University, at the outset, stated that during the pendency of the present writ appeals, an amendment had been made to the Orissa Universities Act, 1989 by a notification dated 9th November, 2020 in terms of which the entire process of appointment of persons in various academic positions now stands taken over by the Orissa Public Service Commission (OPSC). Although the validity of the said amendment was upheld by this Court in a separate batch of writ petitions, the said judgment of this Court is in appeal in the Supreme Court and has been stayed. Be that as it may, as far as the present appeals are concerned, he submitted that the University does not take any particular position. He did not dispute the fact that the Ph.D. guide of the present Appellant was a part of the Selection Committee which recommended his name to the Syndicate for appointment as Lecturer in Odia.

11. Mr. Biswal, learned counsel for the Appellant submitted that as far as Dr. Bibhuti Bhusan Acharya is concerned, the Ph.D. degree possessed by him was not in conformity with the UGC Regulations of 2009 and, therefore, he would still not be qualified for appointment as a Lecturer in Odia in terms of the advertisement dated 22nd April, 2015 which clearly spoke of the applicability of the UGC Regulations 2009.

12. As far as the above submission is concerned, it is pointed out by Mr. Ranjan Kumar Rout, learned counsel appearing for Dr. Bibhuti Bhusan Acharya, that the present Appellant, although arrayed as an Opposite Party in the W.P.(C) No.4008 of 2016 and having been represented by counsel, chose not to file any counter affidavit before the learned Single Judge to question the candidature of Dr. Acharya. He accordingly submitted that the Appellant should not be permitted to advance the above submission before this Court for the first time.

13. The difficulty, as far as the above submission is concerned, is this. It is one thing to say that Dr. Acharya was not qualified to be appointed as a Lecturer in Odia but, an entirely different thing for the Appellant to explain why he should be considered qualified to be so appointed. The finding by the learned Single Judge is that he was disqualified for such appointment on account of the participation of his own Ph.D. guide in the Selection Committee which made the recommendation of his name for appointment to the Syndicate. The Appellant is unable to deny the fact of his Ph.D. guide not recusing from the Selection Committee which considered his candidature. The mere fact that the Ph.D. guide may not have

signed the proceedings of the Selection Committee will not remove the taint of bias vitiating the entire selection process in which recommendation was made by the Selection Committee in favour of the Appellant for appointment to the post.

14. Further, the Court finds that once Dr. Panda was shown to possess the Ph.D. degree and without there being any material before the learned Single Judge to show that he had not validly acquired such Ph.D. degree, the conclusion that he was wrongly excluded from the list of the eligible candidates cannot be faulted.

15. The Court is unable to find any error having been committed by the learned Single Judge in requiring the inclusion of Dr. Panda's name in the list of eligible candidates.

16. For the aforementioned reasons, the Court is unable to find any error committed by the learned Single Judge in passing the impugned judgment and issuing the directions as contained therein.

17. As no grounds are made out for interference, the writ appeals are dismissed. The interim orders passed earlier stands vacated.

18. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge