

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.22366 of 2019

With

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

DR. UTTAM KUMAR SIKDAR

-VERSUS-

THE UNION OF INDIA AND OTHERS

For the petitioner : Mr. Pradip Kumar Roy, Adv.,
Mr. Joydeep Roy, Adv.,
Mr. Tirthajit Roy Choudhury, Adv.

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

For U.G.C. : Mr. Anil Kumar Gupta, Adv.

Hearing concluded on : 05.12.2023

Judgment on : 07.03.2024

Kausik Chanda, J.:-

The petitioner in this writ petition has prayed for a direction upon Visva-Bharati, Santiniketan, to promote him to the post of Associate Professor Stage IV in Economics following the Career Advancement Scheme (CAS) 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, the UGC Regulations, 2010).

2. The petitioner joined as a Lecturer (now Assistant Professor, Stage I) in 2001, was promoted to Senior Lecturer (now Assistant Professor, Stage II) in 2006, and then to Assistant Professor, Stage III, in 2012. He was awarded a Ph.D. in Economics in 2015 and has been serving continuously.

3. In 2016, the petitioner applied for promotion under CAS and underwent assessment by the Internal Quality Assurance Cell (IQAC). The IQAC recommended him for promotion to Associate Professor, Stage IV, with effect from September 24, 2015.

4. UGC Regulations, 2010, mandate a Performance Based Appraisal System (PBAS) for promotions, based on Academic Performance Indicators (API) across the following three key categories:

Contribution to Research: *This aspect involves the evaluation of three research articles by three external experts. Each expert individually examines the articles and assigns marks, which are then totaled to calculate the final score out of 30.*

Domain Knowledge and Teaching Practices: *The domain knowledge and teaching practices of the applicant are scrutinized, and points are awarded based on various academic activities. The API score in this category is calculated by the Internal Quality Assurance Cell (IQAC) of Visva-Bharati University, following the guidelines set out in the UGC Regulations 2010. The total marks for this category are 50, and the minimum requirement for qualifying in this assessment is 150 marks out of a maximum of 250.*

Interview Performance: *Once the applicant qualifies in the above two stages, he/she appears for an interview before a Selection Committee. The score allotted to the interview is 20 marks.*

5. In order to be eligible for promotion to Associate Professor, the applicant must fulfill the "minimum eligibility period," which is three years as an Assistant Professor (Stage III). Additionally, the applicant must conduct a self-appraisal to ensure eligibility before submitting the application.

6. In the final assessment, the applicant must either fulfill the minimum API scores or obtain 50% in the expert assessment. The subject experts for each assessment are chosen through a confidential process, and they conduct their assessments independently of each other.

7. According to the petitioner's API score, as mentioned in Annexure P7 page 9 of the supplementary affidavit, and the score given by the external experts, as mentioned in annexure P7 page 62 to 64 of the Writ Petition, the petitioner obtained the following marks in the three stages of assessment:

Contribution to Research: The petitioner received an average of 14.5 out of 30 from the three external experts.

Domain Knowledge and Teaching Practices: The petitioner obtained 150 marks out of 250, which was remarked by the IQAC as equivalent to 60%, i.e., 30 out of 50.

Interview Performance: The Selection Committee awarded the petitioner 10 out of 20 marks.

8. Based on this, the petitioner would have scored 54.5 out of 100 marks against the minimum requirement of 50 marks. However, the Selection Committee, consisting of seven members, reduced the petitioner's scores under the headings of “Research Contribution” and “Assessment of Domain Knowledge and Teaching Practices” without providing any reason.

This reduction resulted in the petitioner being awarded only 35 out of 100 marks, as detailed in the score sheet of the Selection Committee dated March 17, 2019.

9. The Selection Committee reduced the marks for “Research Contribution” from 14.5 out of 30 to 10 out of 30 and for “Assessment of Domain Knowledge and Teaching Practices” from 30 out of 50 to 15 out of 50, without providing any reasons for such significant reductions.

10. The petitioner argues that the reduction in marks by the Selection Committee was arbitrary and lacked transparency.

11. The petitioner asserts that the actions of the Selection Committee are in violation of the UGC Regulations of 2010, which require assessments to be conducted fairly and objectively. The petitioner claims that the committee's decision to reduce the marks was influenced by malafide intent, as there was no justification provided for the reduction and no opportunity given to the petitioner to address any concerns raised by the committee.

12. He highlights the criteria laid down by the U.G.C. Regulations, 2010, particularly regarding the Performance Based Appraisal System (PBAS) and the role of the Internal Quality Assurance Cell (IQAC) in evaluating candidates for promotion.

13. The petitioner cites a judgment passed in W.P.A. No.10133 of 2019 (*Dr. Atanu Sasmal v. The Union of India and Others*), where it was held that the Selection Committee must provide justifiable reasons for deviating from expert assessments and that marks should be awarded transparently and objectively. He alleges that the reduction in his marks was arbitrary and done with malafide intent.

14. The petitioner prays for a direction upon Visva-Bharati to promote him to Associate Professor, Stage IV, and to calculate and release his salary and other dues accordingly, along with interest.

15. To appreciate the controversy, the score-sheet of the petitioner as prepared by the Selection Committee is reproduced below:

“Assessment of the candidate for promotion from Assistant Professor (Stage-3) to Associate Professor (Stage-4) under Career Advancement Scheme as per UGC guideline.

Date of Interview: 17/03/2019

Venue: Rathindra Atithi Griha,
Visva-Bharati, Santiniketan

Sl. No.	Name of the candidate and Department	30% - Contribution to Research	50%- Assessment of domain Knowledge and teaching practices	20%- Interview performance	Marks obtained out of 100 (hundred)
1.	Dr. Uttam Kumar Sikder, Department	10	15	10	35

	of Economics & Politics, Vidya- Bhavana, Visva- Bharati				
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1. Sd/-(illegible) 2. Sd/-(illegible)
3. Sd/-(illegible) 4. Sd/-(illegible)
5. Sd/-(illegible) 6. Sd/-(illegible)
7. Sd/-(illegible) 8. Sd/-(illegible)”

16. 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.
 ...”

17. The failure to provide individual marks by the Selection Committee members may not always result in the cancellation of the selection. The Court must otherwise be satisfied as to the irregularity and illegality in the selection process.

18. This Court had the occasion to deal with Regulations 6.0.7. of the UGC Regulations, 2010, in W.P.A. No.10133 of 2019 (**Dr. Atanu Sasmal v. The Union of India and Others**). It was held, *inter alia*, as follows:

“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 his 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 36 out of 50 to 20 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."

19. In the present case, the university could produce nothing to demonstrate how the Selection Committee factored in the marks given by

the experts under the heading “Contribution to Research.” The marks of the petitioner in this heading was reduced by the Selection Committee from 14.5 to 10 without any assigned reason thereby violating Regulation 6.0.7. of the UGC Regulations, 2010.

20. Similarly, the heading “Assessment of Domain Knowledge and Teaching Practices” is also a two-stage assessment process. When the IQAC calculated the marks of the petitioner to be 60%, nothing transpired from the minutes of the Selection Committee or the score sheet to justify the reduction of such marks to 30%.

21. In the above conspectus of the matter, I am of the view that the Selection Committee has not acted in a fair and transparent manner resulting in an arbitrary denial of right to promotion of the petitioner.

22. Accordingly, W.P.A. No.22366 of 2019 is allowed with the following directions, and I.A. No. C.A.N. 1 of 2020 is disposed of.

23. The minutes of the Selection Committee dated March 17, 2019, is set aside. The university shall constitute a fresh Selection Committee, preferably within a period of two months from the communication of this order.

24. It is desirable that the committee should not consist of the members who were part of the earlier Selection Committee. The present vice-chancellor of the university shall act as a chairman of the committee.

25. The committee members shall reassess his eligibility for promotion from Assistant Professor (Stage III) to Associate Professor (Stage IV) in the light of this judgment by awarding individual marks. Such exercise shall be completed by the Selection Committee within one month from the date of its formation.

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

(Kausik Chanda, J.)