

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

WPA 27587 of 2017

Dr. Tushar Kanti Ghosal
versus
The State of West Bengal & Ors.

For the Petitioner	:Mr. Victor Chatterjee, Adv.
	:Mr. Barnamoy Basak, Adv.
	:Mr. S. Chakraborty, Adv.

For the respondent No. 2-4	: Mr. Biswaroop Bhattacharyya, Adv.
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Hearing on	: 03.10.2023
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Judgment on	: 20.02.2024
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Subhendu Samanta, J.:-

1. The present writ petitioner is aggrieved against the order dated 13.04.2015 passed by the Vice-Chancellor of Uttar Banga Krishi Viswavidyalaya (UBKV) regarding reversion of the present petitioner from the upgraded post of Lecturer (Teaching Post) to the post of Superintendent Technical (non-teaching post); and an order dated 21.06.2017 by the Additional Chief Secretary, Government of West Bengal whereby the petitioner's representation was rejected as having no merit to be governed under Section 57 of (UBKV) Act, 2000.

2. The brief facts of the case is that the present petitioner join the Bidhan Chandra Krishi Viswavidyalaya (BCKV) as a Technical Assistant Grade-II and placed in teaching wing of erstwhile North Bengal Campus. Subsequently, the petitioner was promoted to Technical Assistant Grade-I while continuing in his service of (BCKV) in the same Campus. The Uttar Banga Krishi Viswavidyalaya (UBKV) was established by the Uttar Banga Krishi Viswavidyalaya (UBKV) Act, 2000. The petitioner was transferred from BCKB to UBKV as did not opt to retain in the service of BCKV and his service was governed by the Clauses 53 and 57 of UBKV Act, 2000. In the year 2002 the petitioner was upgraded to the Superintendent (Technical) in UBKV. The petitioner made several representations before the UBKV Authority for upgradation to the post of Lecturer. The Registrar (Acting) of UBKV sent the file of the petitioner to the Department of Agricultural, Government of West Bengal. On 24.08.2009 the Government of West Bengal directed that its Agricultural Department has "No Objection" for upgradation/re-designation of the petitioner to the post of Lecturer. The erstwhile Vice-Chancellor of UBKV, provisionally upgraded the petitioner to the post of Lecturer, Department of Agriculture Entomology, with effect from 01.06.2008. The petitioner joined the post of Lecturer on 23.09.2009. The provisional pay fixation order was issued by the UBKV and approved on 23.04.2010. On 10.04.2010, in 42nd Executive Council (E.C.) meeting, upgradation/re-designation of the petitioner to the post of Lecturer was ex-post-facto approved. The

42nd meeting of Executive Council (E.C.) stood confirmed in 43rd Executive Council (E.C.) meeting of UBKV. The petitioner wanted to intervene the election process of UBKV as Lecturer. The election tribunal vide order dated 19.09.2014 directed UBKV to delete the name of the petitioner from the Register of teacher as he is not a teacher. On 26.11.2014 the Vice-Chancellor of UBKV issued an order through which the petitioner had been reverted back to his earlier post of Technical Assistant. The order of the Vice-Chancellor was set aside by this Court in No. WP 32844 (W) of 2014 vide its order dated 19.01.2015. The Hon'ble Court also directed the University to proceed in accordance with law against the petitioner but without in any manner, making the order of election tribunal as the basis of any adverse decision against the petitioner.

3. The Vice-Chancellor issued show-cause notice to the petitioner, the petitioner replied the show-cause and after hearing, the Vice-Chancellor has issued the impugned order on 13.04.2015 whereby the petitioner was reverted back from the upgraded post of Lecturer to the downgraded post of Superintendent (Technical).
4. The petitioner made a representation to the Principal Secretary, Government of West Bengal which was not adhered to. However, by virtue of order of this Court in a writ petitioner W.P.11907 (W) of 2015, the Additional Chief Secretary, Government of West Bengal had passed the impugned order on 21.06.2017 whereby the petitioner's representation was rejected as having no merit under Section 57 of UBKV Act, 2000.

5. Being aggrieved by the said orders the instant writ petition has been preferred.
6. Learned advocate for the petitioner submits that the upgradation to the post of Lecturer was granted to the petitioner with Government approval. The petitioner possessed Master Degree with Ph.D. qualification. The qualification of the petitioner is fit to be a Lecturer of the University. He further argued that after considering all documents, evidences and factors, the Government had issued “No Objection” towards upgradation of the writ petitioner to the post of Lecturer. Apart from the satisfaction of the Government with regard to the possession of the Government was the petitioner in this case, the petitioner would have got the same benefit of upgradation, had he been in the service of BCKV. Admittedly, the writ petitioner had rendered 22 years of service before he was granted upgradation, which other employees of BCKV had received.
7. Learned advocate for the petitioner further submits that the benefit of upgradation granted in favour of the employees of BCKV by the Government has never been challenged; the petitioner is on the same footings of those persons under BCKV. So, the order of upgradation issued by the Government cannot be challenged. He further argued that the decision of the Vice-Chancellor in the impugned order is illegal. The Vice-Chancellor cannot challenge the decision taken by the Executive Council (E.C.) of UBKV in its 40th, 42nd, 43rd and 44th meetings on the grounds of non-availability of quorum. He further argued that the impugned order in respect of

non-availability of quorum in Executive Council (E.C.) meeting is completely misconceived and without basis. Out of full strength of 20 (twenty) members on the Executive Council (E.C.), 12 (twelve) members had not been appointed, and the Executive Council (E.C.) never had the full strength of members from its inception. There was only 12 appointed members of Executive Council (E.C.) during 40th to 44th meeting and as such the quorum would be constituted by $1/3^{\text{rd}} + 1$ is equally to 5 members. He further argued that the 55th Executive Council (E.C.) meeting dated 18th August, 2015 refers to the modality of selection such question is not germane. The petitioner had been regularized as a teacher in comparison with his co-employee in BCKV, possessing all requisite qualification. It is factually incorrect to record in 55th meeting held on 18th August, 2015 that the upgradation of the petitioner as Lecturer did not have the approval of Executive Council (E.C.) and the recording his contrary to record.

8. He further argued that the impugned order of rejection of the Additional Chief Secretary dated 21.06.2017 is grossly illegal since it ought not to have gone into merit after having recorded that it had no power to decide on the issue by invoking provision under Section 57 (11) of the UBKV Act, 2000.
9. On the basis of such argument he submits that the impugned orders passed by Vice-Chancellor as well as the State of West Bengal are arbitrary and illegal, and the same is required to be set aside. The order of reversion of the petitioner from the post of Lecturer to

the earlier post of Superintendent (Technical) in the cadre of non-teaching post is required to be set aside and the petitioner may be reinstated to the post of Lecturer in the Department of Agricultural Entomology.

10. Learned advocate appearing on behalf of the respondent Nos. 2-4 submits that the instant writ petition have had no qualification to be upgraded to the rank of Lecturer. He referred an advertisement of the UBKV in the post of Lecturer wherein the essential qualification for the post of teachers is mentioned as **“M.SC (Ag) in Agril Entomology or its cognate subject/discipline R-open, L-Economy Entomology, Ecology, Animal Behaviour and Pest Management/Numerology/Insecticide Toxicology (G) Etc”**. He further argued that the present petitioner having Master degree in Zoology cannot be fit for the post of Lecturer in Agriculture Entomology. He further argued that the Government order dated 08.10.1993 which is the basis of the “No Objection” deals with the conversion and not upgradation.
11. He further argued that the 42nd Executive Council (E.C.) meeting did not have any required quorum thus; the upgradation of the present petitioner to the post of Lecturer and ex-post-facto approval by the Executive Council (E.C.) is totally illegal. He further argued that the present writ petitioner has not challenged the impugned order dated 13.04.2014 in the previous writ petition. Thus, the present prayer challenging the impugned order of the Vice-Chancellor is barred under the provision of Order-II, Rule 2 of the Civil Procedure Code.

He further argued that the present petitioner cannot have any preference or cannot claim any equity as in the similar circumstances, the BCKV is granting the equal relief to the similarly placed persons. The UBKV have no provision or instances for upgradation of any person under the basis of so-called “No Objection” from the Government of West Bengal. He submits that the impugned order under challenge has no reason to interfere with.

12. Heard the learned advocates perused the materials on records also perused the impugned orders passed by the Vice-Chancellor as well as the Additional Chief Secretary, Government of West Bengal.
13. First of all, let me consider whether the impugned order passed by the Additional Secretary, Government of West Bengal dated 21st June, 2017 is at all illegal. The impugned order was passed in compliance with the order dated 23.07.2015 by this Court in W.P. 11907 (W) of 2015. This Court has directed the Government to take the appropriate decision on the basis of representation of the present writ petitioner. The present writ petitioner made a representation before the Government challenging the order of the Vice-Chancellor dated 13.04.2015 wherein the writ petitioner was downgraded, on the ground that the said order is violative to the provisions of Section 57 (11) of the UBKV Act, 2000. On hearing the representation from the parties the Additional Chief Secretary is of view that:

***“5. It is observed that the Section 57
of the Uttar Banga Krishi Viswavidyalaya Act,***

2000, is related with transfer of employees and protection of their interest during transition in between newly established Uttar Banga Krishi viswavidyalaya and the Section 57(11) of the Uttar Banga Krishi Viswavidyalaya Act, 2000, is not applicable to Dr. Ghosal's claim.

6. Now, after hearing and careful consideration of the facts of the present case and on the basis of various documents, provisions of the UBKV Act, 2000, other relevant provisions related with the representation and UBKV's response vide No. VC/UBKV-2024, dated 23.02.2016, it is found that Dr. Ghosal's representation dated 6tyhy May, 2015 has no merit and as such the same is hereby rejected".

14. I have perused the provision under Section 57 of the UBKV Act, 2000. The Section 57 deals with the transfer of employees from the BCKV to UBKV. The right liability, Seniority, pay protection, promotion, financial benefit, service benefit, inter se seniority etc. have been protected by the provision of Section 57 of said Act to the employees who has been transferred from one Viswavidyalaya to another Viswavidyalaya. Sub Section 11 of Section 57 empowers the State Government to issue order of any clarification or any direction in respect of provision of this Section (Section 57). The present petitioner challenges the order of Vice-Chancellor regarding his degradation from the upgradaded teaching post to non-teaching

post. Such act of the Vice-Chancellor is actually not covered under Section 57 of UBKV Act, 2000. Thus, I am of the view that the impugned order passed by the learned Additional Chief Secretary, Government of West Bengal dated 21.06.2017 is not at all illegal or arbitrary.

15. The impugned order dated 13.04.2015 is mainly basis of two grounds.

Firstly: the Vice-Chancellor is of view that the present petitioner being a non-teaching employee cannot be upgraded to the post of Lecturer (teaching employee). On that score, it is the finding of the Vice-Chancellor that the Government Order dated October 8/9, 1993 is not applicable for appointment of Lecturer from the service of Technical Assistant.

Secondly: the 42nd Executive Council (E.C.) meeting had no quorum, thus, the ex-post-facto approval of the present petitioner regarding his upgradation to the post of Lecturer is illegal.

16. In considering the first point it is true that the present petitioner do not have required qualification for the post of Lecturer in the Agricultural Entomology. I have perused the G.O. dated 8th October, 1993 of the Government of West Bengal wherein the appointment of existing Demonstrators in non-Government colleges with post graduate qualification are upgraded as Lecturers. The Notification is as follows:

Dated Calcutta, the 8th October, 1993

No- 579-Edn(CS) 41-8/93

To: The Director of Public Instruction, West Bengal.
Sub: Appointment of existing Demonstrators in Non Govt. Colleges with post graduate qualifications as Lecturer.

The undersigned is directed by order of the Governor to say that after careful consideration, the Governor has been pleased to decide that the posts of Demonstrators held at present by persons who possess either a Honours degree and a Masters degree or a Master's degree and a M. Phil/Ph. D degree in the same subject in which he has been surviving as a Demonstrator, be converted to posts of Lecturers in the same college in the usual scale of pay of Rs. 2200-4000/-along with all other service benefits attached thereto and be filed by the concerned incumbent with effect from the date of issue of this order or from the date from which the incumbent joins as Lecturer whichever is later. Each of these posts of Lecturer so created on conversion will be treated as personal one and will be automatically abolished as soon as it is vacated by the incumbent concerned. The existing concerned incumbent will be placed at the appropriate stage of the pay scale with effect from the date of joining the post of Lecturer. The concerned colleges may be informed accordingly.

This order issues with concurrence of the Finance Department vide their U.O. No. Group-P (Service) No. 2549 dated 6.10.93.

The accountant general, West Bengal is being informed”.

17. On perusing the said notification it appears to me that the notification is applicable to the Demonstrators in non-Government colleges. The present petitioner is possessing the post of Superintendent (Technical) i.e. upgraded post of Demonstrators in University. Thus, the “No Objection” of the Government dated 24.08.2009 on the basis of the said Notification dated 8th October, 1993 appears to me not inconformity with the order passed by the Government. The observation of the Vice-Chancellor appears to me correct. It further appears that the similarly placed persons were upgraded by the various decisions of BCKV. There are no instances in UBKV of same nature. Thus, the order of upgradation of the present petitioner has no further reference in UBKV. On that score, the decision of the Vice-Chancellor appears to me not arbitrary.
18. Section 10 of UBKB Act discussed about the Executive Council (E.C.) the total number of members of the Executive Council (E.C.) are divided in three categories. They are ex-officio members, the nominated members and elected members. The ex-officio members are eight in number, nominated members are five in number and elected members are three in numbers. So the total number of members in Executive Council (E.C.) is 18. Section 10 (5) of the said Act, 2000 has stated that $\frac{1}{3}$ rd of total members of Executive Council (E.C.) +1 shall be a quorum for a meeting of Executive Council (E.C.). So, to form a quorum of a meeting of Executive Council (E.C.) the member at least requires to be present is $6+1=7$.

Accordingly, the 42nd Executive Council (E.C.) meeting had no required quorum to obtain a decision. Section 22 of the said Act 2000 is dealing with principle of validation. The provisions of Section 22 of the said Act is not an embargo to the provision of Section 10 of UBKV Act 2000. Thus, the each and every Executive Council (E.C.) meeting UBKV requires at least 7 members for quorum. On that score, the observation of Vice-Chancellor in the impugned order appears to me correct.

19. I have categorically perused the impugned order it appears to me that the impugned order dated 13.04.2015 passed by the Vice-Chancellor by reverting the present petitioner to the post of Superintendent (Technical) appears to me logical and requires no interference.
20. However, the present petitioner has performed his job as a Lecturer according to the order issued by the Government of West Bengal and duly approved by the UBKV, though it may be not according to law, but, it has not been proved that such order has been obtained by the present writ petitioner illegally or by practicing fraud. Thus, the impugned order of Vice-Chancellor regarding recovery of payment towards the service of petitioner rendered as Lecturer of UBKV is not legal or in conformity with the provisions of Law. Thus, the order of recovery is set aside.
21. Regarding the prayer of payment of salary of the petitioner from 27th March, 2017 to 25th July, 2017 cannot be considered in this writ petition as it is beyond scope and merit of this writ petition.

22. Accordingly, the instant writ petition is disposed of under the above observation.
23. The instant **WPA 27587 of 2017** is disposed of.
24. All connected applications, if any, stand disposed of.
25. Interim orders, if any, stand vacated.
26. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)